

EPW Committee, Introductory Statement of Ken Cuccinelli for May 13, 2014 Committee Hearing.

As this committee addresses runoff and pollution related to public infrastructure, I appreciate the chance to address two aspects of this issue: 1) EPA overreach, and 2) the devastating impacts of the EPA involving itself in local land use via storm water management.

I learned about both EPA's overreach and the consequences as Virginia's Attorney General in 2012.

In Northern Virginia, alongside the beltway (I-495) in Fairfax County, the EPA tried to use a TMDL to dramatically expand its jurisdictional reach by interpreting existing law in a way that treated rainwater like a pollutant under the Clean Water Act (CWA).

If it sounds strange to you that the EPA would treat rainwater as a pollutant under the CWA, it sounded strange to us too – and to the local government involved – Democrat-controlled Fairfax County, one of the most environmentally aggressive local governments in Virginia.

We quickly learned that the EPA's outrageous overreach was experimental in nature – we were one of only four instances in which EPA tried to use TMDLs in this manner in the whole country. And EPA made it clear that if they succeeded in Virginia, they were going to take it nationwide.

The cost to Virginia as a whole via our Virginia Department of Transportation (VDOT) was estimated to be approximately \$70 million and the financial impact to Fairfax County's taxpayers was approximately \$200 million – that's \$800 per family of four in Fairfax.

Mind you, all of this was with the knowledge that what EPA was attempting to mandate would not help the Accotink Creek! Fairfax County had already spent over \$100 million addressing the very same issues that EPA said it wanted to address via the TMDL, and Fairfax had further plans to spend more to continue to improve the Accotink Creek – without any mandates!

We were left with no choice but to sue the EPA to contest its incredible overreach in water regulation related to runoff from a federal highway.

The lawsuit was no partisan exercise, the 10-member Board of Supervisors of Fairfax County – seven democrats and three republicans – voted 9-1 to join VDOT in the lawsuit. This democrat-led local government was even willing to sue in July of 2012 – right in the heat of the President's re-election campaign in a swing state.

We won overwhelmingly. The federal court was aghast that the EPA would try to twist and stretch the CWA so badly. There is a warning here for this committee. I know the Administrator has made a number of "restrained" comments about what the regulation you are contemplating will or won't do. I'm here to tell you that they will take it to what you think is the limit and beyond – way, way beyond.

And they don't care about the costs or lost jobs. And I choose the phrase "they don't care" quite intentionally.

EPA knew that what they were trying to force Fairfax County and VDOT to do with the TMDL would not even achieve their own environmental goals. And even faced with the pleading of one of the most

aggressive local governments in Virginia when it comes to environmental stewardship, EPA would not give one inch – they were merciless.

Setting the approximately \$270 million in costs that would've been necessary to comply with EPA's illegal road-related TMDL, let me explain what compliance would likely have required in real-world terms.

Because EPA's complaint was with rainwater flowing off of the beltway, and because VDOT didn't own any property they could use to slow the flow of the rainwater, we would have had to condemn houses in some old middle-class neighborhoods along the beltway as well as some small businesses. After evicting the long-time residents, VDOT would have torn down their houses, and built retaining pools and planted grass to allow the water to soak into the ground instead of flowing into the Accotink.

As one citizen, I find EPA's willingness to destroy businesses and evict people from their homes for virtually no environmental benefit not just offensive, but scary. This is an agency that is out of control with its own power, and it concerns me that this committee is now considering expanding that power – power to displace families and destroy businesses.

Finally, as a practical matter, the authority this committee is contemplating granting to EPA would give EPA veto-power over an enormous number of local governments' land use decisions. And EPA's track record of simply not caring about the impact its decisions have on families, businesses and economic opportunity suggest this committee should be going in exactly the opposite direction regarding EPA power and authority.