

May 27, 2010

BY HAND DELIVERY

Honorable Debra Shipp, Clerk
Albemarle Circuit Court
Albemarle County Courthouse
Court Square
501 East Jefferson Street
Charlottesville, VA 22902-5110

Re: The Rector and Visitors of the University of Virginia v. Kenneth T. Cuccinelli, II, Attorney General of Virginia

Dear Ms. Shipp:

With respect to the above-referenced matter, enclosed please find an original and one (1) copy of The Rector and Visitors of the University of Virginia's Petition to Set Aside Civil Investigative Demands Issued to the University of Virginia. Please file the original with the court and file-stamp one copy for return by courier.

In accordance with Section 17.1-266 of the Code of Virginia, this filing on behalf of the Commonwealth of Virginia is exempt from a filing fee.

Thank you for your assistance. Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,



Jon M. Talotta

Partner
jon.talotta@hoganlovells.com
D 703 610 6156

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No.
(CLERK'S OFFICE USE ONLY)*

Albemarle

Circuit Court

The Rector and Visitors of the University of Virginia

PLAINTIFF(S)

v./In re:

Kenneth T. Cuccinelli, II,

DEFENDANT(S)

Attorney General of Virginia

I, the undersigned ☐ plaintiff ☐ defendant ☒ attorney for ☒ plaintiff ☐ defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

- | | | |
|--|--|---|
| <input type="checkbox"/> Accounting | <input type="checkbox"/> Construe Will | <input type="checkbox"/> Landlord/Tenant |
| <input type="checkbox"/> Administrative Appeal | <input type="checkbox"/> Contract Action | <input type="checkbox"/> Mechanics Lien |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Contract Specific | <input type="checkbox"/> Medical Malpractice |
| <input type="checkbox"/> Adoption - Foreign | <input type="checkbox"/> Performance | <input type="checkbox"/> Motor Vehicle Tort |
| <input type="checkbox"/> Adult Protection | <input type="checkbox"/> Correct/Erroneous State/Local | <input type="checkbox"/> Name Change |
| <input type="checkbox"/> Aid and Guidance | <input type="checkbox"/> Taxes | <input type="checkbox"/> Order to Sever |
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Counterclaim | <input type="checkbox"/> Partition |
| <input type="checkbox"/> Annulment | <input type="checkbox"/> Cross Claim | <input checked="" type="checkbox"/> Petition |
| <input type="checkbox"/> Appeal Decision of ABC Board | <input type="checkbox"/> Custody/Visitation/Support/ | <input type="checkbox"/> Product Liability |
| <input type="checkbox"/> Appeal Decision of Board of Zoning | <input type="checkbox"/> Equitable Distribution | <input type="checkbox"/> Quiet Title |
| <input type="checkbox"/> Appeal Decision of Comp Board | <input type="checkbox"/> Declaratory Judgment | <input type="checkbox"/> Referendum Elections |
| <input type="checkbox"/> Appeal Decision of Employment | <input type="checkbox"/> Declare Death | <input type="checkbox"/> Reformation of Trust |
| <input type="checkbox"/> Commission | <input type="checkbox"/> Delinquent Taxes | <input type="checkbox"/> Reinstatement of Driving |
| <input type="checkbox"/> Appeal Decision of Local | <input type="checkbox"/> Detinue | <input type="checkbox"/> Privileges |
| <input type="checkbox"/> Government | <input type="checkbox"/> Divorce | <input type="checkbox"/> Reinstatement (General) |
| <input type="checkbox"/> Appeal Decision of Marine Resources | <input type="checkbox"/> Ejectment | <input type="checkbox"/> Removal |
| <input type="checkbox"/> Commission | <input type="checkbox"/> Encumber/Sell Real Estate | <input type="checkbox"/> Separate Maintenance |
| <input type="checkbox"/> Appeal Decision of Voter | <input type="checkbox"/> Enforce Vendor's Lien | <input type="checkbox"/> Standby Guardian/ |
| <input type="checkbox"/> Registration | <input type="checkbox"/> Escheat | <input type="checkbox"/> Conservator |
| <input type="checkbox"/> Appointment of Church Trustee, | <input type="checkbox"/> Establish Boundaries | <input type="checkbox"/> Termination of Mineral |
| <input type="checkbox"/> Substitute Fiduciaries | <input type="checkbox"/> Expunge | <input type="checkbox"/> Rights |
| <input type="checkbox"/> Approval of Right to be Eligible to | <input type="checkbox"/> Forfeiture of U.S. Currency | <input type="checkbox"/> Unlawful Detainer |
| <input type="checkbox"/> Vote | <input type="checkbox"/> Freedom of Information | <input type="checkbox"/> Vehicle Confiscation |
| <input type="checkbox"/> Asbestos Litigation | <input type="checkbox"/> Garnishment | <input type="checkbox"/> Will Contested |
| <input type="checkbox"/> Attachment | <input type="checkbox"/> General Tort Liability (other | <input type="checkbox"/> Writ of Certiorari |
| <input type="checkbox"/> Bond Forfeiture Appeal | <input type="checkbox"/> than motor vehicle) | <input type="checkbox"/> Writ of Habeas Corpus |
| <input type="checkbox"/> Child Abuse and Neglect - Unfounded | <input type="checkbox"/> Grievance Procedures | <input type="checkbox"/> Writ of Mandamus |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Guardian/Conservator | <input type="checkbox"/> Writ of Prohibition |
| <input type="checkbox"/> Civil Contempt | <input type="checkbox"/> Appointment | <input type="checkbox"/> Writ of Quo Warranto |
| <input type="checkbox"/> Claim Impleading Third Party | <input type="checkbox"/> Impress/Declare a Trust | <input type="checkbox"/> Wrongful Death |
| <input type="checkbox"/> Defendant | <input type="checkbox"/> Injunction | <input type="checkbox"/> Other |
| <input type="checkbox"/> Complaint - (Miscellaneous) | <input type="checkbox"/> Interdiction | |
| <input type="checkbox"/> Compromise Settlement | <input type="checkbox"/> Interrogatory | |
| <input type="checkbox"/> Condemnation | <input type="checkbox"/> Intentional Tort | |
| <input type="checkbox"/> Confessed Judgment | <input type="checkbox"/> Judgment Lien-Bill to Enforce | |
| <input type="checkbox"/> Conservator of Peace | <input type="checkbox"/> Judicial Review | |

☐ Damages in the amount of \$ are claimed.

May 27, 2010

DATE

☐ PLAINTIFF

☐ DEFENDANT

☒ ATTORNEY FOR ☒ PLAINTIFF

☐ DEFENDANT

Jon M. Talotta, Hogan Lovells US LLP

PRINT NAME

Park Place II, Ninth Floor, 7930 Jones Branch Drive, McLean, VA 22102 / 703.610.6100

ADDRESS /TELEPHONE NUMBER OF SIGNATOR

* See reverse side for Civil Action Type Codes
- for Clerk's Office Use Only

THE RECTOR AND VISITORS OF THE
UNIVERSITY OF VIRGINIA,

Petitioner,

v.

KENNETH T. CUCCINELLI, II,
ATTORNEY GENERAL OF VIRGINIA,

Respondent.

OF COUNSEL:
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*Counsel for the Rector and Visitors of
the University of Virginia*

Dated: May 27, 2010

PRELIMINARY STATEMENT

Academic freedom is essential to the mission of our Nation's institutions of higher learning and a core First Amendment concern.¹ As Thomas Jefferson intended, the University of Virginia (the "University") has a long and proud tradition of embracing the "illimitable freedom of the human mind" by fully endorsing and supporting faculty research and scholarly pursuits.² Our Nation also has a long and proud tradition of limited government framed by enumerated powers, which Jefferson ardently believed was necessary for a civil society to endure.

The Civil Investigative Demands³ ("CIDs") issued to the University by the Office of the Attorney General of Virginia (the "Attorney General") threaten these bedrock principles. The CIDs are deficient under the Virginia Fraud Against Taxpayers Act, Va. Code § 8.01-216.1 *et seq.* ("FATA"), and their sweeping scope is certain to send a chill through the Commonwealth's colleges and universities. For these reasons, the Rector and Visitors of the University of Virginia, pursuant to Va. Code § 8.01-216.18, respectfully petition this Court for an order setting aside the CIDs.

¹ "To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation . . . Teachers and students must always remain free to inquire, to study and to evaluate . . ." *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

² "This institution of my native state, the Hobby of my old age, will be based on the illimitable freedom of the human mind, to explore and to expose every subject susceptible of it's contemplation." Thomas Jefferson to Antoine Louis Claude Destutt de Tracy, 26 December 1820 < [http://wiki.monticello.org/mediawiki/index.php/Illimitable_freedom_of_the_human_mind_\(Quotation\)_-_note-0#_note-0](http://wiki.monticello.org/mediawiki/index.php/Illimitable_freedom_of_the_human_mind_(Quotation)_-_note-0#_note-0) >.

³ A CID is similar to an administrative subpoena and may, under circumstances limited by statute, command the production of documents, information or testimony. The CIDs at issue in this Petition are attached hereto as Exhibits 1 and 2.

The CIDs at issue appear to be unprecedented. To the University's knowledge, this is the first time that a Virginia Attorney General has used the limited authority under FATA to issue a CID in service of an investigation into scientific research conducted by a university faculty member. The CIDs identify Dr. Michael Mann, an Assistant Professor in the University's Department of Environmental Science from 1999 to 2005, and his research on climate change, which was funded in part by four federal grants and one University grant all initially awarded between 2001 and 2003. The CIDs do not state why they identify Dr. Mann and his research, but the requests for information are sweeping in scope, seeking, among other things, all "data, materials, and communications that Dr. Mann created, presented or made in connection with or related to" the grants specified in the CIDs.

Under FATA, the Attorney General may issue a CID *only* if (i) the CID states "the nature of the conduct constituting the alleged violation of a false claims law that is under investigation," and (ii) the Attorney General has "reason to believe" that the CID recipient has information about a violation of FATA. Va. Code Ann. §§ 8.01-216.10(A), 8.01-216.11. The CIDs meet neither requirement.

The CIDs do not state the nature of the conduct that could constitute a potential FATA violation. And for good reason. None of the five identified grants appears to implicate FATA.⁴ Four of the five grants were awarded by the federal government, not the Commonwealth. FATA extends only to allegations of false claims submitted for Commonwealth funds. The fifth grant was an internal University grant initially awarded in 2001. FATA did not become effective until

⁴ FATA imposes civil penalties on any person who, among other things, "[k]nowingly presents, or causes to be presented, to an officer or employee of the Commonwealth a false or fraudulent claim for payment or approval;" "[k]nowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Commonwealth;" or "[c]onspires to defraud the Commonwealth by getting a false or fraudulent claim allowed or paid." Va. Code Ann. § 8.01-216.3(A)(1), (2), (3).

2003, *see* Virginia Acts 2002, c.842 (effective date January 1, 2003), and it does not apply retroactively. Given these circumstances, there is no objective “reason to believe” that the University has information about a FATA violation.

Furthermore, the expansive scope of the information requested in the CIDs likewise appears untethered to any potential FATA violation. Rather, the requests seek a voluminous body of academic and scientific information, documents and correspondence related to the merits of scientific research spanning a period of more than ten years. The nexus between these broad requests and the five identified grants (or any potential FATA violation) is unexplained.

The Attorney General has authority under FATA to issue CIDs in order to investigate potential violations of that statute – to root out fraud on the taxpayers of the Commonwealth. FATA does not authorize the Attorney General to engage in scientific debate or advance the Commonwealth’s positions in unrelated litigation about federal environmental policy and regulation. This is particularly true where, as here, the information requested goes to the core of academic research otherwise protected by law. Unfettered debate and the expression of conflicting ideas without fear of reprisal are the cornerstones of academic freedom; they consequently are carefully guarded First Amendment concerns. Investigating the merits of a university researcher’s methodology, results, and conclusions (on climate change or any topic) goes far beyond the Attorney General’s limited statutory power. The CIDs at issue thus exceed the limited investigative authority granted to the Attorney General under FATA. Permitting them to be used in the sweeping fashion attempted here would impair academic freedom in the Commonwealth.

For these reasons, and the grounds identified herein, the CIDs should be set aside.

FACTUAL AND PROCEDURAL HISTORY

CID Authority. “The issuance of a CID is a unique procedure almost, but not quite, akin to a grand jury investigation.” *In re Oral Testimony of a Witness Subpoenaed Pursuant to Civil Investigative Demand No. 98-19*, 1 F. Supp. 2d 587, 589 (E.D. Va. 1998) (discussing federal False Claims Act CID authority). Under FATA, the Attorney General may issue a CID *only* if (i) the CID states “the nature of the conduct constituting the alleged violation of a false claims law that is under investigation,” and (ii) the Attorney General has an objective “reason to believe” that the CID recipient has information about a FATA violation. Va. Code Ann. §§ 8.01-216.10(A), 8.01-216.11; *see also id.* at § 8.01-216.2 (definition of “investigation”).

“Climategate” Emails. In November 2009, thousands of emails and related documents were stolen from a computer system at the Climatic Research Unit (“CRU”) of the University of East Anglia in England. It was initially alleged that these emails showed that certain members of the climate science community manipulated research data and conclusions. Those allegations have been and continue to be investigated by an international panel established by the University of East Anglia, the United Kingdom’s House of Commons Science and Technology Committee, and Pennsylvania State University, where Dr. Mann has been a faculty member since 2005. Although considerable media attention was devoted to the allegations initially raised regarding these “climategate” emails, the subsequent investigations have not found any fraudulent conduct.

The Commonwealth’s EPA Litigation. In February 2010, the Commonwealth filed a petition in the U.S. Court of Appeals for the District of Columbia Circuit, challenging the EPA’s Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 (Dec. 15, 2009). *Commonwealth of Virginia v. United*

States Envtl. Prot. Agency, Case No. 10-1036 (D.C. Cir., filed February 16, 2010). Citing the CRU “climategate” emails, the Commonwealth has requested an order requiring EPA to reconsider its finding that climate change poses a threat to public health and welfare. The proceedings before the D.C. Circuit are limited to the administrative record. On April 15, 2010, the Commonwealth filed a motion to remand the D.C. Circuit proceedings to adduce additional evidence; specifically, the CRU “climategate” emails. *See* Joint Motion of the State of Alabama and the Commonwealth of Virginia to Remand to Adduce Additional Evidence (Document No. 1240064, filed April 15, 2010).

The CIDs at Issue. On April 23, 2010, the Attorney General issued two nearly identical CIDs to the University “in connection with an investigation by the Attorney General into possible violations by Dr. Mann of §§ 8.01-216.3(A)(1), (2), and (3) of FATA.” Exhibit 1, CID No. 1-MM at 1 (served on the President of the University); Exhibit 2, CID No. 2-MM at 1 (served on the Rector of the University’s Board of Visitors). The CIDs state that the investigation “relates to data and other materials that Dr. Mann presented in seeking awards/grants funded, in whole or in part, by the Commonwealth of Virginia or any of its agencies as well as data, materials and communications that Dr. Mann created, presented or made in connection with or related to [five specified] awards/grants.” *Id.*

The Five Identified Grants. The five grants listed in the CIDs appear to be the five listed in Dr. Mann’s publicly available curriculum vitae that reference the University:

2003-2006	<i>Decadal Variability in the Tropical Indo-Pacific: Integrating Paleo & Coupled Model Results</i> , NOAA-Climate Change Data & Detection (CCDD) Program [Principal Investigators: M.E. Mann (U.Va), J. Cole (U. Arizona), V. Mehta (CRCES)] U.Va award (M.E. Mann): \$102,000
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- 2002-2005 *Remote Observations of Ice Sheet Surface Temperature: Toward Multi-Proxy Reconstruction of Antarctic Climate Variability*, NSF-Office of Polar Programs, Antarctic Oceans and Climate System [Principal Investigators: M.E. Mann (U. Va), E. Steig (U. Wash.), D. Weinbrenner (U. Wash)] U.Va award (M.E. Mann): \$133,000
- 2002-2003 *Paleoclimatic Reconstructions of the Arctic Oscillation*, NOAA-Cooperative Institute for Arctic Research (CIFAR) Program [Principal Investigators: Rosanne D'Arrigo, Ed Cook (Lamont/Columbia); Co-Investigator: M.E. Mann] U.Va subcontract (M.E. Mann): \$14,400
- 2002-2003 *Global Multidecadal-to-Century-Scale Oscillations During the Last 1000 years*, NOAA-Climate Change Data & Detection (CCDD) Program [Principal Investigator: Malcolm Hughes (Univ. of Arizona); Co-Investigators: M.E. Mann; J. Park (Yale University)] U.Va subcontract (M.E. Mann): \$20,775
- 2001-2003 *Resolving the Scale-wise Sensitivities in the Dynamical Coupling Between Climate and the Biosphere*, University of Virginia-Fund for Excellence in Science and Technology (FEST) [Principal Investigator: J.D. Albertson; Co-Investigators: H. Epstein, M.E. Mann] U.Va internal award: \$214,700

The first four grants were awarded by federal government agencies. The fifth grant was an internal University grant initially awarded in 2001 – two years before FATA came into effect.

Breadth of the CIDs. The requests for information in the CIDs are extremely broad and do not appear to be tailored to any of the grants identified. For example, while the grants appear to have been initially awarded between 2001 and 2003, the CIDs seek information spanning an 11-year period from January 1, 1999 to the present. Included among the requests are “[a]ll correspondence, messages or e-mails sent to or received by Dr. Michael Mann” and *thirty-nine* other scientists, as well as “[a]ll research assistants, secretaries or administrative staff with whom

Dr. Mann worked while he was at the University of Virginia.” Exhibit 1 at 3, 7-8. The CIDs do not identify any connection between these various individuals and the five grants.

Agreements Regarding this Process. Like other Commonwealth entities, the University is typically represented by the Attorney General and/or counsel reporting to the Attorney General. The University’s response to the CIDs was initially delayed while, with the approval of the Attorney General, it engaged special outside counsel to represent its interests in responding to the CIDs. By written agreement with the Attorney General, the date for the University to seek relief from the CIDs was extended to May 27, 2010.

GROUND FOR RELIEF

1. Failure to State Nature of Conduct Constituting Violation. The CIDs are invalid for failure to state the “the nature of the conduct constituting the alleged violation of a false claims law that is under investigation.” Va. Code Ann. § 8.01-216.11.

2. No Basis for FATA Violation. The CIDs are invalid because the five grants identified therein do not appear to provide a basis to allege a FATA violation and, thus, there is no statutory basis for the CIDs to be issued.

3. No Objective “Reason to Believe.” The CIDs are invalid because there is no objective “reason to believe” that the University has information relevant to a FATA violation. Va. Code Ann. § 8.01-216.10(A).

4. No Statutory Authority to Issue CIDs. The CIDs are invalid because FATA does not authorize the issuance of CIDs to the Commonwealth and her agencies and instrumentalities.

5. Overbroad Exercise of the Attorney General’s Limited Statutory Authority. The CIDs are invalid because they constitute an impermissibly overbroad use of the Attorney

General's limited authority under FATA to investigate fraud on the taxpayers of the Commonwealth.

6. Requests for Information in CIDs Are Overbroad. The CIDs are overbroad because they seek documents and information far beyond what is relevant to an investigation of a potential FATA violation.

7. Compliance with CIDs Is Unduly Burdensome. Compliance with the sweeping temporal and substantive scope of the CIDs would constitute an undue burden.

8. CIDs Impermissibly Interfere with Academic Freedom. Enforcing the CIDs will interfere with recognized First Amendment principles and important public policies protecting the academic freedom of institutions of higher learning from government intrusion into research and scientific inquiry.

9. CIDs Request Information Protected by Law. Relief from the CIDs should be granted with respect to all documents and information covered by applicable statutory and common law privileges, protections and doctrines, and the University reserves the right to raise such objections with respect to specific documents and information as appropriate.

The University's assessment of the CIDs and the requested documents and information is ongoing and, thus, the University reserves the right to assert such other grounds for relief as the University may deem appropriate.

BRIEFING ON THE MERITS

The University will file briefing in support of this Petition on a schedule to be addressed with the Attorney General.

PRAYER FOR RELIEF

WHEREFORE, the University respectfully requests that the Court enter an Order to:

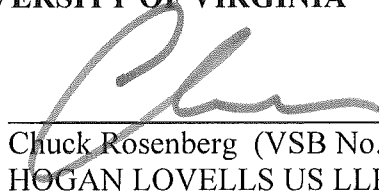
- (1) Stay the running of time for compliance with the CIDs while the Petition is pending;
- (2) Set aside the CIDs in their entirety; and
- (3) Award any other relief that the Court deems just and appropriate.

Date: May 27, 2010

Respectfully submitted,

**THE RECTOR AND VISITORS OF THE
UNIVERSITY OF VIRGINIA**

By:



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Email: jon.talotta@hoganlovells.com

*Counsel for the Rector and Visitors of
the University of Virginia*

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May 2010, a true and correct copy of the foregoing was served by electronic mail and certified U.S. Mail, with return receipt requested, on the following:

Kenneth T. Cuccinelli, II
Attorney General
OFFICE OF THE ATTORNEY GENERAL
900 East Main Street
Richmond, Virginia 23219
(804) 786-2071
(804) 786-1991 (fax)

Wesley G. Russell, Jr.
Deputy Attorney General
OFFICE OF THE ATTORNEY GENERAL
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Richmond, Virginia 23219
(804) 786-2071
(804) 786-1991 (fax)



Jon M. Talotta

EXHIBIT 1

OFFICE OF THE ATTORNEY GENERAL
COMMONWEALTH OF VIRGINIA
900 EAST MAIN STREET
RICHMOND, VIRGINIA 23219

CID NO. 1-MM

TO: University of Virginia
SERVE: John T. Casteen, III, President
University of Virginia
c/o Paul J. Forch, General Counsel
2nd Floor – Madison Hall
1827 University Avenue
Charlottesville, Virginia 22903

CIVIL INVESTIGATIVE DEMAND

The Attorney General of the Commonwealth of Virginia, pursuant to the authority conferred upon him by the Virginia Fraud Against Taxpayers Act ("FATA"), *Virginia Code* § 8.01-216.1, *et seq.*, hereby commands your production of the information and documentary materials described in the Attachment hereto at the Office of the Attorney General, 900 East Main Street, Richmond, Virginia 23219, on the 27th day of May, 2010 at 10:00 a.m.

This Civil Investigative Demand (CID) is issued in connection with an investigation by the Attorney General into possible violations by Dr. Michael Mann of §§ 8.01-216.3(A) (1), (2), and (3) of FATA. The investigation relates to data and other materials that Dr. Mann presented in seeking awards/grants funded, in whole or in part, by the Commonwealth of Virginia or any of its agencies as well as data, materials and communications that Dr. Mann created, presented or made in connection with or related to the following awards/grants (hereinafter the "Grants"):

(1) *Decadal Variability in the Tropical Indo-Pacific: Integrating Paleo & Coupled Model Results*, NOAA-Climate Change Data & Detection (CCDD) Program [Principal Investigators: M.E. Mann (U.Va), J. Cole (U. Arizona), V. Mehta (CRCES)] U.Va award (M.E. Mann): \$102,000;

(2) *Remote Observations of Ice Sheet Surface Temperature: Toward Multi-Proxy Reconstruction of Antarctic Climate Variability*, NSF-Office of Polar Programs, Antarctic Oceans and Climate System [Principal Investigators: M.E. Mann (U. Va), E. Steig (U. Wash.), D. Weinbrenner (U. Wash)] U.Va award (M.E. Mann): \$133,000;

(3) *Paleoclimatic Reconstructions of the Arctic Oscillation*, NOAA-Cooperative Institute for Arctic Research (CIFAR) Program [Principal Investigators: Rosanne D'Arrigo, Ed Cook (Lamont/Columbia); Co-Investigator: M.E. Mann] U.Va subcontract (M.E. Mann): \$14,400;

(4) *Global Multidecadal-to-Century-Scale Oscillations During the Last 1000 Years*, NOAA-Climate Change Data & Detection (CCDD) Program [Principal Investigator: Malcolm Hughes (Univ. of Arizona); Co-Investigators: M.E. Mann; J. Park (Yale University)] U.Va subcontract (M.E. Mann): \$20,775; and

(5) *Resolving the Scale-wise Sensitivities in the Dynamical Coupling Between Climate and the Biosphere*, University of Virginia-Fund for Excellence in Science and Technology (FEST) [Principal Investigator: J.D. Albertson; Co-Investigators: H. Epstein, M.E. Mann] U.Va internal award: \$214,700.

Please refer any questions you may have about this CID to Wesley G. Russell, Jr., Deputy Attorney General, 900 East Main Street, Richmond, Virginia 23219, (804) 786-6731

This CID is issued at Richmond, Virginia, this 23rd day of April, 2010.


WESLEY G. RUSSELL, JR.
DEPUTY ATTORNEY GENERAL

cc: **John T. Casteen, III, President**
University of Virginia
c/o Paul J. Forch, General Counsel)
2nd Floor – Madison Hall
1827 University Avenue
Charlottesville, Virginia 22903

ATTACHMENT

INSTRUCTIONS

1. Unless otherwise indicated, each paragraph of this Civil Investigative Demand (CID) relates to the period from January 1, 1999 through the present date. Any documents prepared during this time period, or before this time period but which relate thereto, are also to be produced.

2. If any document requested was, but is no longer in your possession, subject to your control, or in existence, state for each such document:

- (a) the type of document;
- (b) whether it is missing, lost, has been destroyed, or has been transferred to the possession, custody, or control of other persons;
- (c) the circumstances surrounding, and the authorization for, the disposition described in (b) above;
- (d) the date or approximate date of the disposition described in (b) above;
- (e) the identity of all persons having knowledge of the circumstances described in (c) above; and
- (f) the identity of all persons having knowledge of the document's contents.

3. With respect to each document produced, identify the person producing the document and the paragraph number of the request in response to which such production is being made.

4. All uses of the conjunctive should be interpreted as including the disjunctive and vice versa in order to bring within the scope of this CID any information or documents that might otherwise be construed to be outside of its scope.

5. Words in the singular should be read to include the plural and vice versa.

6. Each document request contemplates production of the entire document without redaction, abbreviation or deletion.

7. If you have a document retention/destruction program, you are asked to suspend it immediately. Regardless of whether you have a document retention/destruction program, you should take precautions to ensure that no documents called for by this CID are inadvertently or intentionally destroyed.

8. To the extent that any of the documents or data are stored in an encrypted fashion, the documents and data should be produced in such a way that this Office can decrypt and read such documents or data.

9. The scope of this CID is intended to reach any of the described items which are stored for you by a third party organization, and/or stored at an offsite location.

10. The scope of this CID is to reach any and all data, documents and things in your possession, including those stored or residing on any computer, hard drive, desktop, laptop, file server, database server, email servers or other systems where data was transmitted or stored on purpose or as a result of transient use of a system or application in the course of day to day research or product processing work that is owned or contracted for by you or any of your officers, managers, employees, agents, board members, academic departments, divisions, programs, IT department, contractors and other representatives.

11. Optional methods of compliance.

A. This CID requires the personal appearance of a representative(s) of the University of Virginia when the documents herein described are produced. The purpose of the appearance is to testify under oath as to the fact and manner of compliance herewith. At your option, you may substitute the filing of an affidavit for the personal appearance. Such affidavit must set forth the matter contained in the form affidavit delivered herewith. Any alteration of the form except to complete it as indicated may be treated as a refusal to comply with this CID. **If you elect to exercise this option, please notify the Office of the Attorney General no later than seven (7) days prior to the time you are required to appear.**

B. This CID also requires generally the production of original documents. At your option, you may substitute a readable duplicate of an original writing or a printout of electronically stored material, if you identify it as a duplicate or as a printout of electronically stored material and if you agree without qualification that thereafter, at anytime during the course of this investigation or any litigation arising therefrom, the original document will be delivered for inspection by the Attorney General within five (5) days after receipt by you or your attorney of a demand therefor.

DEFINITIONS

1. As used herein, the words "University of Virginia," "you," and "your" mean the entity to which this CID is addressed, and includes all of your officers, managers, employees, agents, board members, academic departments, divisions, programs, IT department, contractors and other representatives.

2. As used herein, the words "document" or "documents" mean the original and any copies of any written, printed, typed, electronic, or graphic matter of any kind or nature, however

produced or reproduced, any book, pamphlet, brochure, periodical, newspaper, letter, correspondence, memoranda, notice, facsimile, e-mail, manual, press release, telegram, report, study, handwritten note, working paper, chart, paper, graph, index, tape, data sheet, data processing card, or any other written, recorded, transcribed, punched, taped, filmed or graphic matter now in your possession, custody or control.

3. As used herein, the words “identify,” “identity,” or “identification” when used in reference to a natural person mean to state his or her full name, present or last known address, telephone number, last known position and business affiliation, and each of his or her positions during the relevant time period. When used in reference to any other type of person, these words mean to state the name of the entity, its present or last known address, and its telephone number.

4. When used in reference to a document kept or prepared in the course of business the words “identify” or “identification” mean to state its date, author, the type of document (e.g., letter, memorandum, telegram, chart, photograph, sound reproduction, etc.) or, if the above information is not available, some other means of identifying it; its present location; and the name of each of its present custodians.

5. As used herein, the words “person” or “persons” include any individual, firm, partnership, association, trust, joint venture, corporation, limited liability company, or other legal or commercial entity.

6. As used herein, the word “relating” means to make a statement about, discuss, describe, reflect, identify, deal with, consist of, establish, comprise, list, or in any way pertain, in whole or in part, to the subject.

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- c. Dr. Keith Briffa,
- d. Dr. John Christy,
- e. Dr. Edward Cook,
- f. Dr. Thomas Crowley,
- g. Dr. Roseanne D'Arrigo,
- h. Dr. Valerie Masson-Delmotte,
- i. Dr. David Douglass,
- j. Dr. Jan Esper,
- k. Dr. Melissa Free,
- l. Dr. Chris de Freitas,
- m. Dr. Vincent Grey,
- n. Dr. James Hack,
- o. Dr. Malcolm Hughes,
- p. Dr. Eystein Jansen,
- q. Dr. Phil Jones,
- r. Dr. Thomas Karl,
- s. Dr. Otto Kinne,
- t. Dr. A.T.J. de Laat,
- u. Dr. Murari Lal,
- v. Dr. Stephen Mackwell,
- w. Dr. Glenn McGregor,
- x. Stephen McIntyre,
- y. Dr. Ross McKittrick,
- z. Dr. Patrick Michaels,
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- dd. Dr. Benjamin Santer,
- ee. Dr. Gavin A. Schmidt,
- ff. Dr. Stephen Schneider,
- gg. Dr. Olga Solomina,
- hh. Dr. Susan Solomon,
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- jj. Dr. Eugene Wahl,
- kk. Dr. Edward Wegman,
- ll. Dr. Thomas Wigley,

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4. Any and all documents, things or data that were submitted as part of the award/grant process for the Grants.
5. Any and all documents, drafts, things or data that were generated as a result of any activities conducted pursuant to the Grants.
6. Any checks, purchase orders, agreements, documents or other things that evidence any amounts paid under the Grants.
7. Any and all policies, procedures, manuals, documents or other things that describe or regulate the retention or destruction of any of the above-referenced documents/things from January 1, 1998 until the present day.
8. Any and all e-mails or pieces of correspondence from or to Dr. Michael Mann since he left the University of Virginia that are in your possession, including but not limited to, those stored on any computer, hard drive, floppy drive, tape drive, optical drive, desktop, laptop, file server, database server, email servers or any other systems, and all backup copies used for archive, continuity or disaster recovery purposes, where data was transmitted or stored on purpose, or captured as a result of transient use of a system or application in the course of day to day research or to produce any work product or result. Include messages that may have been kept by individuals who interacted on the Grants.

9. Any and all computer algorithms, programs, source code or the like created or edited by Dr. Michael Mann, in the time period from January 1, 1999, to the present that are in your possession, including but not limited to, those stored on any computer, hard drive, floppy drive, tape drive, optical drive, desktop, laptop, file server, database server, email servers or any other systems, and all backup copies used for archive, continuity or disaster recovery purposes, where data was transmitted or stored on purpose, or captured as a result of transient use of a system or application in the course of day to day research or to produce any work product or result. Include messages that may have been kept by individuals who interacted on the Grants.
10. Any data, information or databases, structured or unstructured information, source code and formulas that may be stored in any format or media type, including but not limited to, back up copies used for archive, continuity or disaster recovery purposes that was used in any way in connection with the application for or as a result of any of the Grants.

INTERROGATORIES

1. To the extent that you are no longer in possession of any portion of the correspondence, messages, e-mails, documents or things referenced above, please identify when such of the correspondence, messages, e-mails documents or things referenced above were removed from University of Virginia servers or other systems, who removed said items and under what authority the removal was undertaken.
2. Identify any person who is currently employed at the University of Virginia or performing work for the University of Virginia as a contractor, grantee or agent who played any role in the applications for the Grants.
3. Identify any person who conducted any research or other work in support of the award of or as a result of the Grants.
4. Identify any person who played any role in awarding/making the Grants.
5. Identify all persons known to you who are familiar with the data, information or databases, structured or unstructured information, source code, raw or underlying data, and formulas that were used in any way in connection with the application for or as a result of any of the Grants.
6. For each person identified in response to the foregoing Interrogatories, specifically identify which of the Grants the person played any role in and a description of what role each such person played regarding each Grant so identified.

**FORM OF AFFIDAVIT OF COMPLIANCE
WITH CIVIL INVESTIGATIVE DEMAND**

The undersigned, [insert name and job title of person responsible for producing documents on behalf of the University of Virginia], has [conducted or supervised, whichever is appropriate] a complete and comprehensive search of all files and records of the University of Virginia, at [state the location(s) where search was conducted]. All documents and things that are responsive to Civil Investigative Demand No. 1-MM are included in the return. All documents produced herewith are authentic and genuine.

University of Virginia

By: _____
Signature

Printed Name

Title: _____

STATE/COMMONWEALTH OF _____:

CITY/COUNTY OF _____:

Sworn to and subscribed before me, a notary public in and for the jurisdiction aforesaid, this ____ day of _____, 2010.

/s/ Notary Public

My Commission expires: / /

EXHIBIT 2

OFFICE OF THE ATTORNEY GENERAL
COMMONWEALTH OF VIRGINIA
900 EAST MAIN STREET
RICHMOND, VIRGINIA 23219

CID NO. 2-MM

TO: The Rector and Visitors of the University of Virginia
SERVE: John O. Wynne, Rector
University of Virginia
One Commercial Place, Suite 1420
Norfolk, VA 23510

CIVIL INVESTIGATIVE DEMAND

The Attorney General of the Commonwealth of Virginia, pursuant to the authority conferred upon him by the Virginia Fraud Against Taxpayers Act ("FATA"), *Virginia Code* § 8.01-216.1, *et seq.*, hereby commands your production of the information and documentary materials described in the Attachment hereto at the Office of the Attorney General, 900 East Main Street, Richmond, Virginia 23219, on the 27th day of May, 2010 at 10:00 a.m.

This Civil Investigative Demand (CID) is issued in connection with an investigation by the Attorney General into possible violations by Dr. Michael Mann of §§ 8.01-216.3(A) (1), (2), and (3) of FATA. The investigation relates to data and other materials that Dr. Mann presented in seeking awards/grants funded, in whole or in part, by the Commonwealth of Virginia or any of its agencies as well as data, materials and communications that Dr. Mann created, presented or made in connection with or related to the following awards/grants (hereinafter the "Grants"):

(1) *Decadal Variability in the Tropical Indo-Pacific: Integrating Paleo & Coupled Model Results*, NOAA-Climate Change Data & Detection (CCDD) Program [Principal Investigators: M.E. Mann (U.Va), J. Cole (U. Arizona), V. Mehta (CRCES)] U.Va award (M.E. Mann): \$102,000;

(2) *Remote Observations of Ice Sheet Surface Temperature: Toward Multi-Proxy Reconstruction of Antarctic Climate Variability*, NSF-Office of Polar Programs, Antarctic Oceans and Climate System [Principal Investigators: M.E. Mann (U. Va), E. Steig (U. Wash.), D. Weinbrenner (U. Wash)] U.Va award (M.E. Mann): \$133,000;

(3) *Paleoclimatic Reconstructions of the Arctic Oscillation*, NOAA-Cooperative Institute for Arctic Research (CIFAR) Program [Principal Investigators: Rosanne D'Arrigo, Ed Cook (Lamont/Columbia); Co-Investigator: M.E. Mann] U.Va subcontract (M.E. Mann): \$14,400;

(4) *Global Multidecadal-to-Century-Scale Oscillations During the Last 1000 Years*, NOAA-Climate Change Data & Detection (CCDD) Program [Principal Investigator: Malcolm Hughes (Univ. of Arizona); Co-Investigators: M.E. Mann; J. Park (Yale University)] U.Va subcontract (M.E. Mann): \$20,775; and

(5) *Resolving the Scale-wise Sensitivities in the Dynamical Coupling Between Climate and the Biosphere*, University of Virginia-Fund for Excellence in Science and Technology (FEST) [Principal Investigator: J.D. Albertson; Co-Investigators: H. Epstein, M.E. Mann] U.Va internal award: \$214,700.

Please refer any questions you may have about this CID to Wesley G. Russell, Jr., Deputy Attorney General, 900 East Main Street, Richmond, Virginia 23219, (804) 786-6731

This CID is issued at Richmond, Virginia, this 23rd day of April, 2010.


WESLEY G. RUSSELL, JR.
DEPUTY ATTORNEY GENERAL

cc: **John O. Wynne, Rector**
University of Virginia
One Commercial Place, Suite 1420
Norfolk, VA 23510

ATTACHMENT

INSTRUCTIONS

1. Unless otherwise indicated, each paragraph of this Civil Investigative Demand (CID) relates to the period from January 1, 1999 through the present date. Any documents prepared during this time period, or before this time period but which relate thereto, are also to be produced.

2. If any document requested was, but is no longer in your possession, subject to your control, or in existence, state for each such document:

- (a) the type of document;
- (b) whether it is missing, lost, has been destroyed, or has been transferred to the possession, custody, or control of other persons;
- (c) the circumstances surrounding, and the authorization for, the disposition described in (b) above;
- (d) the date or approximate date of the disposition described in (b) above;
- (e) the identity of all persons having knowledge of the circumstances described in (c) above; and
- (f) the identity of all persons having knowledge of the document's contents.

3. With respect to each document produced, identify the person producing the document and the paragraph number of the request in response to which such production is being made.

4. All uses of the conjunctive should be interpreted as including the disjunctive and vice versa in order to bring within the scope of this CID any information or documents that might otherwise be construed to be outside of its scope.

5. Words in the singular should be read to include the plural and vice versa.

6. Each document request contemplates production of the entire document without redaction, abbreviation or deletion.

7. If you have a document retention/destruction program, you are asked to suspend it immediately. Regardless of whether you have a document retention/destruction program, you should take precautions to ensure that no documents called for by this CID are inadvertently or intentionally destroyed.

8. To the extent that any of the documents or data are stored in an encrypted fashion, the documents and data should be produced in such a way that this Office can decrypt and read such documents or data.

9. The scope of this CID is intended to reach any of the described items which are stored for you by a third party organization, and/or stored at an offsite location.

10. The scope of this CID is to reach any and all data, documents and things in your possession, including those stored or residing on any computer, hard drive, desktop, laptop, file server, database server, email servers or other systems where data was transmitted or stored on purpose or as a result of transient use of a system or application in the course of day to day research or product processing work that is owned or contracted for by you or any of your officers, managers, employees, agents, board members, academic departments, divisions, programs, IT department, contractors and other representatives.

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4. Identify any person who played any role in awarding/making the Grants.
5. Identify all persons known to you who are familiar with the data, information or databases, structured or unstructured information, source code, raw or underlying data, and formulas that were used in any way in connection with the application for or as a result of any of the Grants.
6. For each person identified in response to the foregoing Interrogatories, specifically identify which of the Grants the person played any role in and a description of what role each such person played regarding each Grant so identified.

**FORM OF AFFIDAVIT OF COMPLIANCE
WITH CIVIL INVESTIGATIVE DEMAND**

The undersigned, [insert name and job title of person responsible for producing documents on behalf of the Rector and Visitors of the University of Virginia], has [conducted or supervised, whichever is appropriate] a complete and comprehensive search of all files and records of the Rector and Visitors of the University of Virginia, at [state the location(s) where search was conducted]. All documents and things that are responsive to Civil Investigative Demand No. 2-MM are included in the return. All documents produced herewith are authentic and genuine.

The Rector and Visitors of the
University of Virginia

By: _____
Signature

Printed Name

Title: _____

STATE/Commonwealth of _____:

CITY/COUNTY OF _____:

Sworn to and subscribed before me, a notary public in and for the jurisdiction aforesaid, this ____ day of _____, 2010.

/s/ Notary Public

My Commission expires: / /