

**BEFORE THE
MARYLAND DEPARTMENT OF THE ENVIRONMENT**

CLEAN CHESAPEAKE COALITION)	
110 N. Cross Street)	
Chestertown, MD 21620)	
)	FERC Project No. P-405
)	MDE WSA App. No.17-WQC-02 (R1)
)	
)	

**ADMINISTRATIVE APPEAL OF FINAL DECISION TO ISSUE REVISED CLEAN
WATER ACT SECTION 401 CERTIFICATION FOR THE CONOWINGO
HYDROELECTRIC PROJECT**

Clean Chesapeake Coalition (“Coalition”) hereby administratively appeals and respectfully requests that the Maryland Department of the Environment (“MDE”) reconsider and revise its Clean Water Act § 401 Water Quality Certification (Revised) (“Revised WQC” or “Revised Certification”)) and accompanying Reconsideration Order dated October 2, 2025, pursuant to Sections 26.08.02.10E and 26.08.02.10F(4) of the Code of Maryland Regulations (“COMAR”), 33 U.S.C. § 1341(a)(1), and Maryland’s water quality standards codified in Title 9, Subtitle 3 of the Maryland Environment Article. The Coalition hereby incorporates by reference all documents, reports, filings, and materials cited below as though fully stated herein.

I. INTRODUCTION

A. The Coalition Counties Have Longstanding and Direct Interest in the Conowingo Water Quality Certification

The Coalition is an association of Maryland counties whose members include jurisdictions located along the Tidal Chesapeake Bay and Lower Susquehanna River, all of which are directly affected by water quality conditions downstream of the Conowingo Dam. The Coalition was formed in 2012 for the purpose of advancing policies and regulatory decisions that protect and

improve water quality in the Chesapeake Bay watershed.

The Coalition's member counties have actively participated in the Conowingo Hydroelectric Project's relicensing process since 2012, given that the Project's operation and release of sediment, nutrients, and other pollutants during scour and high flow events directly affect the environmental, economic and regulatory interests of these counties. The Coalition intervened in the Federal Energy Regulatory Commission ("FERC") relicensing proceeding on behalf of its member counties in August 2012 by filing a Motion to Intervene, and since then, it has consistently advocated for transparent decision-making and for water quality improvements that meaningfully address the Conowingo Dam's well-documented impacts on the Lower Susquehanna River and the Chesapeake Bay.

The Coalition strongly supported the MDE April 27, 2018 Water Quality Certification ("2018 WQC"), which the Coalition viewed as a sound, science-based and historic exercise of the State's authority under §401 of the Clean Water Act. The 2018 WQC incorporated many of the concerns raised by the Coalition counties regarding sediment, nutrient loading, and the effects of scour events that threaten downstream water quality.

The Coalition did not appeal the 2018 WQC and therefore was excluded from the 2019 and 2025 closed-door negotiations involving MDE, Exelon/Constellation and the Waterkeepers Chesapeake/Lower Susquehanna Riverkeeper Association. These confidential negotiations resulted in the issuance of a Reconsideration Order and the Revised Certification on October 2, 2025, accompanied by a confidential settlement valued at approximately \$340 million over the 50-year license term – far less protective and substantial than the 2018 WQC valued at \$7 billion over 50 years as quantified by MDE.

The Revised Certification purports to replace MDE's April 27, 2018 Water Quality

Certification (“2018 WQC”), which was the product of extensive public engagement and scientific review. Unlike the 2018 WQC, the Revised Certification emerged from a series of closed-door negotiations between MDE, Exelon/Constellation, and Waterkeepers Chesapeake, resulting in a confidential settlement valued at approximately \$340 million over the 50-year license term, an amount dramatically lower than the mitigation costs quantified by MDE in 2018. As explained below, although MDE characterized the Revised Certification as a “final decision,” it could not lawfully be issued as final under Maryland law given the procedural and substantive deficiencies described herein.

The Coalition, representing member counties situated downstream of the Conowingo Dam, was excluded from those negotiations despite its decade-long participation in the relicensing process. The Coalition and its member jurisdictions are aggrieved by the issuance of the Revised Certification because it materially weakens the protective conditions contained in the 2018 WQC, departs from MDE’s prior findings without reasoned explanation, fails to ensure compliance with Maryland’s water-quality standards, and exposes downstream counties to continuing environmental, economic, and regulatory harms for the duration of the forthcoming 50-year FERC license.

In light of these injuries and to preserve its administrative remedies, the Coalition hereby petitions for reconsideration and administrative appeal of the Revised Certification pursuant to COMAR 26.08.02.10(F)(4), to the extent that MDE retains jurisdiction to reconsider and revise its decision. See Revised Certification at 27 (“Any person aggrieved by the Department’s decision to issue this Certification may appeal such decision in accordance with COMAR 26.08.02.10F(4).”).

This Petition is timely, as it is filed within 30 days of the Revised Certification’s

publication in the *Maryland Register*. COMAR 26.08.02.10(F)(4)(a). The Coalition also respectfully requests that MDE stay the effectiveness of the Revised Certification pending completion of this administrative reconsideration and any related judicial proceedings.

II. STANDING AND PERSONS AGGRIEVED BY THE SHORTCOMINGS IN THIS CERTIFICATION

The Coalition and its member jurisdictions have substantial, legally protected interests in safeguarding the biological, chemical, and physical integrity of the Lower Susquehanna River and the Chesapeake Bay. These waters are integral to the region's environmental health and local economies, supporting recreation, fisheries, tourism, navigation, and infrastructure throughout the Coalition's member counties.

The Coalition comprises Maryland counties situated along or downstream of the Susquehanna River and the upper Chesapeake Bay, including Cecil, Kent, and Queen Anne's and Dorchester Counties. Collectively, these jurisdictions represent tens of thousands of residents, property owners, and businesses whose welfare depends directly on clean and navigable waters. The counties incur public costs associated with water quality degradation, including storm debris removal, dredging of public marinas and channels, shoreline stabilization, and emergency response to flooding and sediment surges.

Because of its location at the head of the Chesapeake Bay, the Conowingo Hydroelectric Project plays a determinative role in trapping and releasing sediment and nutrient loads from the Susquehanna watershed. For over a decade, the Coalition has monitored and documented the Project's impact on downstream water quality, particularly the effects of scour events that release millions of tons of sediment, nutrients, and debris during high-flow conditions. These events repeatedly cause turbidity spikes, anoxic conditions, and extensive debris accumulation along

county shorelines, leading to beach closures, damaged public facilities, and costly cleanup operations borne by local governments.

The Coalition and its members have participated extensively in the Conowingo relicensing process, submitting technical comments and advocating for science-based mitigation of sediment and nutrient discharges. Since at least 2012, the Coalition has urged Exelon, FERC, and MDE to conduct comprehensive modeling of sediment storage loss, bathymetric change, and scour frequency under projected climate and hydrologic conditions. Despite these efforts, neither the 2014 Lower Susquehanna River Watershed Assessment nor subsequent certifications adequately assessed sediment and nutrient transport from severe storm events likely to occur within the 50-year license term.

The Revised WQC fails to address these risks or require mitigation proportionate to the magnitude of harm documented in the administrative record. It omits feasible sediment management strategies, such as strategic dredging and sediment bypassing, and materially weakens protective conditions previously adopted in the 2018 WQC. The Revised WQC therefore exposes Coalition member counties to continuing environmental, economic, and regulatory harms throughout the forthcoming license term.

In addition, MDE issued the Revised WQC without conducting updated modeling or providing a public hearing, despite substantial interest from affected local governments. This lack of transparency and public process deprived the Coalition and its members of the opportunity to review and respond to critical data, impairing their ability to plan and fund local water-quality improvements under the Chesapeake Bay Total Maximum Daily Load (TMDL) framework and related state mandates.

Coalition counties situated on the Chesapeake Bay are directly impacted by the sediments

scoured from the floor of the Conowingo Reservoir. The oyster, rockfish, crab and other marine populations off the shores of Cecil, Kent, Queen Anne's and Dorchester Counties have been greatly diminished, if not totally wiped out, due to scour from the Conowingo Reservoir. This has resulted in the decimation of seafood harvesting and seafood processing/packaging industries that once thrived in those counties prior to Hurricane Agnes in 1972. The marina industry and related trades in Cecil, Kent, Queen Anne's and Dorchester Counties have been detrimentally impacted by sediment scour that fills the navigable channels of the Bay, the marinas in those counties, and the Bay tributaries in those counties used to access the Bay. Sediment scour has detrimentally and directly impacted the way of life in those counties and adversely affected the human and economic environment in those counties in addition to the adverse impact on the natural environment. All of the public has an interest in a clean Chesapeake Bay for recreation and commercial endeavors. The economic development and the economic vitality of the Bay counties are more directly impacted by the health of the Bay because their seafood harvesting and processing industries, that once formed the backbone of those local economies, are disappearing.

The Coalition's injuries are concrete, particularized, and redressable. A reconsideration and revision of the Revised Certification that incorporates current hydrologic and sediment data, ensures adaptive management, and restores consultation with affected jurisdictions would directly mitigate these harms and help ensure compliance with Maryland's water-quality standards. Accordingly, the Coalition and its member counties qualify as "persons aggrieved" within the meaning of COMAR 26.08.02.10(F)(4) and have standing to seek reconsideration and appeal of the Revised WQC.

III. PROCEDURAL ERRORS

The Revised WQC is procedurally defective in multiple respects. These deficiencies

undermine the legality of the Revised WQC under COMAR 26.08.02.10 and deprive the Coalition and its member counties of the ability to meaningfully protect their interests in downstream water quality.

A. Lack of Public Notice and Comment Opportunity

MDE issued the Revised WQC without providing adequate public notice or an opportunity for public comment. Unlike the 2018 WQC, which incorporated extensive public engagement and scientific review, the Revised WQC emerged from a series of closed-door negotiations involving MDE, Exelon/Constellation, and the Waterkeepers Chesapeake/Lower Susquehanna Riverkeeper Association. The Coalition, despite representing jurisdictions with substantial, direct, and legally protected interests in the Lower Susquehanna River and Chesapeake Bay, was excluded from these negotiations. By failing to provide adequate public notice, exemplified by late publication and providing no draft for review, and without soliciting input from affected local governments, MDE violated its obligations under COMAR 26.08.02.10, which contemplates public participation in decisions that materially affect water quality.

B. Failure to Provide Affected Counties with Participation Rights

The Coalition and its member counties have direct regulatory, economic, and environmental interests that are materially affected by the Revised WQC. Exclusion of the Coalition from the negotiations leading to the Revised WQC constitutes a denial of procedural rights, including the ability to review evidence, submit technical comments, and participate in the decision-making process. This exclusion is particularly significant given that the Revised WQC materially weakens protective conditions previously adopted in the 2018 WQC and exposes downstream counties to recurring environmental and economic harms, including sediment deposition, water quality degradation and associated public costs due to said harms.

C. Absence of Reasoned Explanation for Departure from 2018 Findings

MDE's Revised WQC departs substantially from the findings and mitigation requirements established in the 2018 WQC, yet provides no reasoned explanation for this departure. Administrative agencies are required under Maryland law to articulate the basis for substantive policy changes and to demonstrate that such changes are supported by the administrative record.

In Maryland, "the general rule is that agencies have discretion to announce new policies or standards in an adjudicatory proceeding." *Frederick Classical Charter School, Inc. v. Frederick County Board of Educ.*, 454 Md. 330, 331, 164 A.3d 285 (2017). Further, administrative agencies are "not precluded from announcing new principles in . . . adjudicative proceeding[s] and that the choice between rulemaking and adjudication lies in the first instance with the [agency's] discretion." *Id.* (citation omitted). An agency, however, does not have unlimited discretion in determining when adjudication, rather than rulemaking, is the proper procedure. The Court of Appeals has required that "when a policy of general application, embodied in or represented by a rule, is changed to a different policy of general application, the change must be accomplished by rulemaking." *CBS Inc. v. Comptroller of the Treasury*, 319 Md. 687, 696, 575 A.2d 324 (1990). A court will overturn the decision by an agency to proceed with adjudication, rather than rulemaking, only if the decision is arbitrary and capricious. *Maryland Ins. Comm'r v. Century Acceptance Corp.*, 424 Md. 1, 25, 33 A.3d 949 (2011). Only when an agency "changes a position clearly established in its own prior precedent [must] it '[] supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.'" *Frederick*, 454 Md. at 331. That situation exists with the Revised WQC. MDE's failure to explain why the Revised WQC substantially reduces protective measures for sediment and nutrient management violates this fundamental principle and undermines the transparency and accountability of the

administrative process.

D. Legal Constraints on Rescinding or Weakening a Previously Issued Section 401 Certification

The 2018 Water Quality Certification (“2018 WQC”) issued by MDE was a lawful and binding exercise of the State’s authority under Section 401 of the Clean Water Act, requiring strong pollution control conditions for the Conowingo Hydroelectric Project. Following issuance, Exelon (now Constellation) challenged the 2018 WQC through multiple mechanisms, including reconsideration requests, state and federal lawsuits and FERC petitions.

While these challenges were pending, MDE engaged in confidential negotiations with Exelon, resulting in a settlement that effectively attempted to retroactively waive or weaken the 2018 WQC by conditioning FERC’s new 50-year license on the settlement terms. FERC accepted the settlement-based license, nullifying the 2018 protections.

Environmental groups subsequently challenged this retroactive waiver. In *Waterkeepers Chesapeake v. FERC*, 46 F.4th 45 (DC Cir. 2022), the United States Circuit Court of Appeals for the District of Columbia held that under Section 401 of the Clean Water Act, a state may either (1) grant certification with conditions or (2) waive certification by failing or refusing to act within the statutory timeframe, but once a certification is granted, the state may not retroactively waive or rescind it. The Court vacated the FERC license that relied on the unlawful waiver and remanded for further proceedings consistent with this ruling. The court noted that “[v]acating the license, moreover, will allow completion of the administrative and judicial review that was interrupted by the settlement agreement. That review could result in **either (1) the invalidation of Maryland’s 2018 certification, which would require Constellation to request a new certification, or (2) the validation of the 2018 certification, which would require FERC to issue a license**

incorporating the conditions contained therein. Either result would comport with a major goal of the Clean Water Act: to make states the "prime bulwark in the effort to abate water pollution." (emphasis added, citation omitted).

Notwithstanding the Court's "either or" admonishment to the parties, they completely ignored the Court's directive and continued to maintain secret settlement discussions. As a result, the 2018 WQC remains legally operative and must be respected in any licensing or regulatory actions. The 2025 Revised Certification, issued without updated modeling or public participation and materially weakening the 2018 conditions, appears to repeat the same legal errors condemned by the D.C. Circuit. By attempting to substitute a weakened certification in place of a valid, federally recognized 2018 WQC, MDE exceeds its authority under Section 401 and compounds procedural and legal defects, further undermining the validity of the Revised WQC.

E. Violation of COMAR 26.08.02.10 Procedural Requirements

COMAR 26.08.02.10 establishes procedures for reconsideration, administrative appeal, and agency transparency. By issuing the Revised WQC through closed-door negotiations and failing to maintain an open administrative record accessible to affected stakeholders, MDE has contravened these procedural requirements. The Revised WQC does not provide the Coalition or the public with sufficient documentation of the analyses, data, or legal reasoning that informed MDE's decision, thereby denying stakeholders the ability to evaluate or contest the agency's findings. Additionally, no public hearing was held, despite numerous written comments received by MDE after the reconsideration Public Notice was issued June 30th, 2023, which clearly constitute "substantial public interest" and the federal relicensing of Conowingo Dam is of broad, general interest throughout Maryland and the Chesapeake Bay Watershed.

F. Premature Submission of the Revised WQC to FERC Prior to Required Public Notice

On October 13, 2025, MDE jointly submitted the Revised Water Quality Certification to FERC before the agency published notice of the certification in the Maryland Register, contrary to COMAR's public-notice and participation requirements.¹ This sequence of events deprived affected counties, stakeholders, and the public of a meaningful opportunity to review and comment on the operative certification before it was transmitted to the federal licensing authority. By transmitting the Revised WQC as if it were final agency action prior to completing mandatory state-law notice procedures, MDE effectively foreclosed participation rights guaranteed under COMAR 26.08.02.10 and undermined the procedural integrity of the § 401 certification process. MDE should be required to notify FERC that this administrative appeal is pending and that the October 13 filing does not represent final agency action.

IV. SUBSTANTIVE DEFICIENCIES IN THE REVISED CERTIFICATION

The Revised Water Quality Certification ("Revised WQC") issued by the Maryland Department of the Environment ("MDE") on October 2, 2025, is substantively deficient and fails to satisfy the requirements of Section 401 of the Clean Water Act, 33 U.S.C. § 1341(d), and applicable Maryland water quality standards. In contrast to the comprehensive and protective findings made in the 2018 WQC, the Revised WQC omits critical analyses and conditions necessary to ensure that the operation of the Conowingo Hydroelectric Project ("Project") will comply with Maryland's designated uses, narrative standards, and the Chesapeake Bay Total Maximum Daily Load (TMDL). The Revised WQC materially weakens the State's previous determinations without a scientific or legal basis, thereby rendering it arbitrary, capricious, and contrary to law.

¹ COMAR 26.08.02.10(F)

A. Failure to Analyze Sediment Scouring and High-Flow Events

The Revised WQC fails to adequately address the well-documented effects of sediment scouring during high-flow events at the Conowingo Dam. For decades, the Conowingo Reservoir has served as an artificial sediment trap, capturing approximately 50–67% of the Susquehanna River’s annual sediment load (1.5 to 2 million tons), along with nitrogen and phosphorus attached to those sediments. However, as MDE itself acknowledged in 2018, the Reservoir has reached equilibrium capacity and now functions as a periodic source of pollutant surges during large storm events.²

The Revised WQC disregards the scientific record establishing that the relationship between flow and sediment transport is exponential, not linear, and that the magnitude of sediment scouring during large storms (including 25-, 50-, 75-, and 100-year return interval flow events) is likely to overwhelm ongoing pollution reduction efforts in the Chesapeake Bay. The Lower Susquehanna River Watershed Assessment (“LSRWA”) modeling, which underpinned MDE’s 2018 findings, was already criticized for failing to evaluate these higher-magnitude flow events. Despite the opportunity to correct this deficiency, MDE’s 2025 revision perpetuates the same analytical flaws, relying instead on outmoded data that underestimate sediment remobilization and nutrient loading under realistic hydrologic conditions.

This omission violates Section 401’s requirement that certifications include conditions necessary to ensure compliance with state water quality standards and precludes any meaningful assurance that downstream water quality will be protected during the 50-year license period.

² 2018 WQC at 12, ¶ 6.G. *See also* FERC, Final Multi-Project Environmental Impact Statement for Hydropower Licenses, Susquehanna River Hydroelectric Projects at 72-73, FERC/FEIS-0255F (March 2015); Exelon, Lodging of Filings Regarding Clean Water Act Section 401 Certification Challenges for Conowingo Hydro Project of Exelon Corporation under P-405 at 28, 65 (FERC Accession No. 20180525-5191, May 25, 2018).

B. Omission of Climate Change and Hydrologic Variability Analysis

The Revised WQC entirely fails to consider the effects of climate change on the frequency and intensity of storm events and associated sediment scouring. Peer-reviewed studies by the U.S. Geological Survey (USGS) and the Chesapeake Bay Program have documented that increasingly intense precipitation patterns will accelerate sediment remobilization from the Conowingo Reservoir, particularly during the spring growing season for submerged aquatic vegetation (SAV).

In 2012, the USGS concluded that changes in the trapping and scouring dynamics of the Conowingo Reservoir “are already underway” and are “overwhelming the progress being made to reduce constituent loads from the Susquehanna River watershed.”³ Yet, the Revised WQC contains no updated modeling, projections, or adaptive management conditions to account for these changing conditions.

By failing to incorporate climate projections or require updated sediment transport modeling, MDE neglected a key determinant of water quality compliance during the license period. This omission renders the Revised WQC inconsistent with both the Clean Water Act’s preventative purpose and Maryland’s own antidegradation policy.

C. Lack of Conditions to Address Scoured Sediment and Nutrient Loads

MDE’s 2018 WQC included findings that the dam’s scouring processes significantly degrade downstream water quality by releasing large quantities of sediment and nutrients during storm events, with adverse effects on dissolved oxygen and aquatic life. The 2018 WQC recognized that “the Reservoir is now full” and that “significant amounts of trapped sediment and nutrients are scoured and discharged downstream” during high flows.⁴

³ USGS. *Flux of Nitrogen, Phosphorous, and Suspended Sediment from the Susquehanna River Basin to the Chesapeake Bay during Tropical Storm Lee, September 2011, as an Indicator of the Effects of Reservoir Sedimentation on Water Quality* at 13 (2012), <https://pubs.usgs.gov/sir/2012/5185/pdf/sir2012-5185-508.pdf>

⁴ Maryland Department of the Environment. (2018, April 27). *Conowingo Water Quality Certification* (p. 12).

Despite this acknowledgment, the Revised WQC eliminates or substantially weakens the sediment management and mitigation requirements that were necessary to prevent or offset these impacts. It fails to impose quantitative limits, reservoir maintenance obligations, or financial contributions toward sediment removal or dredging, which are measures that had been previously identified as necessary to maintain compliance with state standards and the Chesapeake Bay TMDL.

Without enforceable conditions tied to measurable sediment removal or nutrient load reductions, the Revised WQC fails to ensure that the Project will not contribute to further violations of Maryland's dissolved oxygen, turbidity, or nutrient criteria.

D. Inadequate Protection of Designated Uses and Narrative Standards

Maryland's water quality standards require the maintenance and protection of aquatic life, shellfish harvesting, and other designated uses. The Revised WQC, however, provides no analysis of how scouring-induced sediment plumes will affect these uses or the Chesapeake Bay's ecological health. Large-scale scour events cause severe discoloration, smother benthic habitats, and reduce light penetration critical to SAV growth.⁵ These impacts are inconsistent with Maryland's narrative standards, which prohibit pollutants in quantities that "[c]hange the existing color to produce objectionable color for aesthetic purposes" or "[i]nterfere directly or indirectly with designated uses."⁶

The Revised WQC's failure to analyze or condition against these violations demonstrates an arbitrary and unreasoned departure from MDE's 2018 findings, which expressly acknowledged the dam's contribution to nutrient and sediment pollution and its adverse consequences for the

⁵ Cerco & Noel, *Impact of Reservoir Sediment Scour on Water Quality in a Downstream Estuary*. (2016). [Impact of Reservoir Sediment Scour on Water Quality in a Downstream Estuary - PubMed](#)

⁶ Code of Maryland Regulations (COMAR) 26.08.02.03(B)(2)(c)

Bay's dissolved oxygen non-attainment area.

E. New and Material Information Since 2018: Striped Bass Declines and Fisheries Management Developments

Since MDE issued the 2018 WQC, a number of material scientific and fisheries-management developments have emerged that bear directly on the Revised WQC's adequacy and on MDE's obligation to reassess the Project's effects under changed conditions. MDE was required to solicit and consider "newly available data, science or information" when reopening its 2018 decision; the following developments are both newly available and material to assessing whether the Revised WQC protects designated uses and Maryland water quality standards

The Chesapeake Bay, particularly the Upper Bay, remains a primary spawning and nursery area for Atlantic striped bass, and recent surveys show persistent recruitment challenges. The Maryland DNR young-of-year (YOY) survey as key spawning/nursery areas for the Bay's striped bass and recent annual surveys (2019–2024) show multiple years of below-average recruitment in the Bay, with 2024 reporting virtually no improvement in recruitment metrics.⁷ These declines mean that habitat-altering events (large turbidity pulses, SAV loss, smothering from scoured sediment) in the Upper Bay and area directly downstream of Conowingo Dam impacts, have an outsized effect on a species of high ecological and economic importance.

These coastwide findings increase the regulatory and policy importance of protecting Chesapeake Bay, which accounts for a very large share of the species' productive habitat, and demonstrate the strengthened need for MDE to avoid any WQC decision that allows predictable, repeated degradation of the Upper Bay during the 50-year license term. The Revised WQC's

⁷ Durell, E.Q., and Weedon, C. "Juvenile Striped Bass Survey." Maryland Department of Natural Resources, Fishing & Boating Services, 2025, <https://dnr.maryland.gov/fisheries/pages/striped-bass/juvenile-index.aspx>

failure to analyze and require protection measures keyed to these new fisheries realities (e.g., explicit protections for spawning windows, SAV protection, turbidity thresholds during critical periods) is a substantive omission.

These biological and management developments are legally material to §401 determinations because they relate to designated uses and narrative water quality standards (aquatic life and habitat). Under § 401 and Maryland's water quality standards, MDE must ensure conditions that protect designated uses such as "Support of Estuarine and Marine Aquatic Life and Shellfish Harvesting," and must consider narrative standards protecting aesthetic quality and use. The new evidence of diminished striped bass recruitment and ASMFC's overfished determination are directly relevant to whether the Revised WQC's conditions will prevent violations of those standards over the next 50 years; MDE's failure to incorporate these developments into the Revised WQC's analysis and conditions renders the decision substantively deficient

These substantive deficiencies collectively demonstrate that the Revised WQC is arbitrary, unsupported by the administrative record, and inconsistent with the Clean Water Act's mandate that state certifications ensure compliance with water quality standards.

F. Failure to Consider New and Material Dam-Safety Information and Structural Risks Since 2018

Since issuance of the 2018 Water Quality Certification, Exelon/Constellation and FERC have filed multiple submissions in the FERC docket addressing dam-safety concerns at the Conowingo Project, addressing structural and monitoring issues, including issues involving piezometer performance and other indicators of structural stress and reservoir pressure.⁸ Many of these filings

⁸ Federal Energy Regulatory Commission. (2021, June 14). *Letter regarding the 2021 Dam Safety Surveillance & Monitoring Report for Project P-405* (Accession No. 20210614-3076). [eLibrary | Document Information](#); ; Federal Energy Regulatory Commission. (2025, June 23). *Letter to Constellation Energy Generation LLC regarding the 2024 Dam Safety Surveillance & Monitoring Report for Project P-405* (Accession No. 20250623-3041). [eLibrary |](#)

reference or rely upon technical reports and engineering assessments designated as confidential and therefore unavailable for independent public or county review. These materials could directly affect the environmental and operational risk profile associated with the Project over a proposed 50-year license term.

Despite the existence of new, material information regarding dam integrity, the Revised WQC contains no analysis of how structural risks, piezometer failures or the consequences of a catastrophic dam-failure scenario could impact downstream water quality or aquatic habitat. The absence of any such evaluation is particularly problematic because MDE does not itself inspect hydroelectric dams; Maryland defers dam-safety oversight to FERC. Without a transparent and updated analysis of dam-safety conditions, which include worst-case scenarios relevant to sediment mobilization, nutrient loading, and aquatic impacts, MDE lacks a legally adequate basis to conclude that the Revised WQC will ensure compliance with Maryland’s designated uses and narrative standards over the life of the license.

V. REQUESTED RELIEF

For the reasons stated above, the Clean Chesapeake Coalition (“Coalition”) respectfully requests that the Maryland Department of the Environment (“MDE”):

1. Reconsider and Vacate the Revised Water Quality Certification.

Withdraw or vacate the Revised Clean Water Act § 401 Water Quality Certification (“Revised WQC”) issued on October 2, 2025, and reopen the certification proceeding to ensure compliance with COMAR 26.08.02.10 and Section 401 of the Clean Water Act.

2. Reinstate or Reaffirm the 2018 Water Quality Certification as the Governing Determination.

Affirm that MDE’s April 27, 2018 Water Quality Certification (“2018 WQC”) remains the operative and lawful certification for the Conowingo Hydroelectric Project unless and until a new certification is developed through a transparent, evidence-based and participatory process consistent with applicable law.

3. Reopen the Administrative Record and Provide Public Notice and Comment.

Reopen the administrative record to allow affected jurisdictions, including Coalition member counties and the general public to review and comment on all scientific and technical materials that informed the Revised WQC, including sediment transport modeling, nutrient loading estimates and any related settlement analyses.

4. Conduct Updated Scientific and Technical Analyses.

Require updated, peer-reviewed modeling of sediment and nutrient dynamics under current and projected hydrologic and climate conditions, including analysis of scour events, high-flow frequency, and downstream ecological impacts on designated uses such as aquatic life and shellfish harvesting.

5. Address New and Material Environmental Information.

Incorporate and evaluate post-2018 data regarding striped bass recruitment declines, fisheries management developments and habitat conditions in the Upper Chesapeake Bay, ensuring that the certification reflects current science and complies with Maryland’s narrative and designated-use water quality standards.

6. Ensure Inter-Governmental Coordination and Transparency.

Establish a formal consultation mechanism between MDE, affected counties, and state and federal partners to ensure ongoing coordination on sediment management, adaptive measures, and monitoring throughout the license term.

7. Stay the Effectiveness of the Revised WQC Pending Resolution.

Grant a stay of the Revised WQC's effectiveness pending completion of administrative reconsideration and any related judicial review, to prevent irreparable harm to downstream water quality and to ensure compliance with applicable law.

Dated: November 14, 2025

Respectfully submitted,

/s/ Charles D. MacLeod

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November 2025, that I have served the foregoing document by hand delivery and email to the following:

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