



110 North Cross Street  
Chestertown, Maryland 21620  
410-810-1381  
cmacleod@mlg-lawyers.com

November 25, 2025

Debbie-Anne Reese, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Room 1-A  
Washington, DC 20426

**Re: *Conowingo Hydroelectric Project FERC Project No. P-405-106*  
Notice of Administrative Appeal Filed with Maryland Department of the  
Environment Regarding Challenges to the “Revised” Clean Water Act § 401 Water  
Quality Certification**

Dear Secretary Reese:

Pursuant to 18 C.F.R. §§ 385.211 and 385.214, the Clean Chesapeake Coalition (“Coalition”) hereby submits this Protest and Comments to alert the Federal Energy Regulatory Commission (“FERC” or “Commission”) that the State of Maryland’s Clean Water Act § 401 “Revised” Water Quality Certification (“Revised WQC”) submitted in the above-captioned proceeding is procedurally invalid and cannot lawfully be relied upon by the Commission. The Coalition further notifies the Commission that it has filed an Administrative Appeal with the Maryland Department of the Environment (“MDE”) pursuant to COMAR 26.08.02.10F(4), challenging MDE’s Revised Clean Water Act § 401 Water Quality Certification and Reconsideration Order issued October 2, 2025. A copy of the Administrative Appeal filed with MDE on November 14, 2025, is attached as **Exhibit A** for inclusion in the record of FERC Project No. 405.

As explained below, MDE failed to provide the mandatory public notice and comment procedures required under COMAR 26.08.02.10(C)–(F) and related sections. The Coalition is composed of multiple Maryland counties that have a direct and substantial interest in this proceeding, given that the Conowingo Hydroelectric Project (“Project”) significantly affects water quality, sediment transport, natural resources and property within the region. The Coalition members depend upon the affected waters for commerce, fishing, crabbing, oysters, environmental quality, ecological use, and recreation. The Coalition has actively participated in FERC’s relicensing process since 2012 and has a substantial and direct interest in ensuring that Maryland’s Clean Water Act § 401 certification complies with State and federal law.

The Administrative Appeal raises significant procedural and legal challenges to the Revised WQC issued by MDE. In view of these challenges, the Coalition has requested that MDE stay the Revised WQC pending resolution of the appeal.

At the outset, there is a substantial issue whether the Revised WQC is final, complete, and actionable as a matter of State law. Although the Revised WQC purports to constitute MDE's "final determination" as published in the *Maryland Register* on October 17, 2025, and although MDE submitted the Revised WQC to FERC in a joint submission with Constellation Energy Generation, LLC, Waterkeepers Chesapeake, and the Lower Susquehanna Riverkeeper Association on October 14, 2025 (Accession number 20251014-5029), COMAR 26.08.02.10F(4) affords any aggrieved person thirty (30) days from publication to seek reconsideration. The Coalition exercised this right, and the Revised WQC is now under administrative review. Therefore, it is not final or legally operative under State law.

COMAR 26.08.02.10(C)(1) provides that "[t]he Department shall provide public notice of each application for certification." This requirement is mandatory, not discretionary. MDE did not publish notice of any application for the Revised WQC in the *Maryland Register*. MDE initiated a limited public comment period between June 30 and August 1, 2023 but did not offer an opportunity for a hearing, despite COMAR 26.08.02.10(D) expressly allowing hearings when a substantial public interest exists. Although MDE has recently initiated after-the-fact notice procedures, these steps do not cure the defect. Under the Clean Water Act, 33 U.S.C. § 1341(a)(1), notice must occur *before* a certification is issued and must be tied to the application itself, not to a final determination after the State has already acted.

In this regard, if MDE intends to rely on the limited, undated WQC announcement posted on its website *circa* June 2023 as satisfying the Water Quality Certification notice requirement, that position is deficient and does not comply with COMAR 26.08.02.10. The Coalition submitted substantial public-interest comments in response to that WQC announcement, as well as a timely request for a public hearing within the applicable comment period. A copy of the Coalition's August 1, 2023 comment letter is attached as **Exhibit B** for inclusion in the record of FERC Project No. 405. Nevertheless, MDE's October 17, 2025 Water Quality Certification Notice (17-WQC-02(R1)) did not acknowledge the Coalition's comments or its hearing request, nor did it reflect consideration of input from many stakeholders. The Notice provided no indication that public participation formed any part of MDE's Water Quality Review. In addition, MDE did not communicate with the Coalition's governmental representatives regarding these matters until after the Revised WQC had been issued on October 2, 2025.

Beyond these procedural deficiencies, the Coalition's Administrative Appeal also implicates several issues of first impression with substantial, precedent-setting implications for Maryland's ability to address Chesapeake Bay water quality impacts associated with a 50-year license term. The Revised WQC is the product of a confidentially negotiated Settlement Agreement executed on September 26, 2025, between MDE, Constellation, and Waterkeepers Chesapeake. This agreement raises significant legal, policy, and transparency concerns. The Revised WQC is purported to be a negotiated revision of the WQC issued by MDE on April 27, 2018 (17-WQC-02), yet MDE's October 13, 2025 joint submission to FERC compares terms and provisions of the Revised WQC to a separate, confidentially negotiated 2019 Settlement Agreement between MDE

and Exelon (now Constellation), filed with FERC on October 29, 2019 (*see* Joint Offer of Settlement and Explanatory Statement, Docket No. P-405-106).

Following receipt of that 2019 Settlement Agreement, FERC issued an “Order Issuing New License” for the Project on March 19, 2021. Waterkeepers Chesapeake appealed the new License issued in 2021 by FERC in federal court. On December 22, 2022, the U.S. Court of Appeals for the D.C. Circuit issued a decision vacating the 2021 License and remanded for further proceedings, noting that “vacating the license, moreover, will allow completion of the administrative and judicial review that was interrupted by the [2019] settlement agreement” and that such review could result in either (1) the invalidation of Maryland’s 2018 WQC, which would require Constellation to request a new certification, or (2) the validation of the 2018 WQC, which would require FERC to issue a new license.

Furthermore, MDE’s notice of its issuance of the Revised WQC published in the *Maryland Register* on October 17, 2025, incorrectly states that the WQC issued by MDE on April 27, 2018 (17-WQC-02) was an “initial decision” when in fact 17-WQC-02 expressly states it was a “final decision.” That “final decision” by MDE served as a primary basis for Exelon’s filing of a federal Complaint in the United States District Court for the District of Columbia against MDE officials; a state Protective Petition for Reconsideration and Administrative Appeal filed with MDE; and a state Complaint for Declaratory Relief, Petition for Judicial Review, and Complaint for Mandamus filed against MDE in the Circuit Court for Baltimore City, Maryland. In addition, MDE’s published notice does not reference comments from multiple stakeholders or the requests for a public hearing.

In light of these unresolved administrative considerations, and given the numerous procedural deficiencies surrounding the Revised WQC, the certification transmitted by MDE cannot be considered final, valid, or enforceable under either State or federal law. Accordingly, the Commission should not rely upon the Revised WQC for any purpose in the above-captioned proceeding.

Please contact me if further information is required. Thank you for your attention to this matter.

Respectfully submitted,

*/s/ Charles D. MacLeod*

---

Charles D. MacLeod  
MacLeod Law Group, LLC  
110 North Cross Street  
Chestertown, Maryland 21620  
Tel: (410) 810-1381  
Email: [cmacleod@mlg-lawyers.com](mailto:cmacleod@mlg-lawyers.com)  
*Counsel for the Clean Chesapeake Coalition*

Debbie-Anne Reese, Secretary  
Federal Energy Regulatory Commission  
November 25, 2025  
Page 4

Attachments: Exhibit A: Clean Chesapeake Coalition's Administrative Appeal of Final Decision to Issue Revised Clean Water Act Section 401 Certification for the Conowingo Hydroelectric Project

Exhibit B: Clean Chesapeake Coalition's August 1, 2023 comment letter

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of November 2025 I have served the foregoing document upon each person designated in the official service list compiled by the Secretary in this proceeding.

/s/ Charles D. MacLeod  
Charles D. MacLeod

# Exhibit A

**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.4<sup>th</sup> 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 30<sup>th</sup>, 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.<sup>1</sup> 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.

---

<sup>1</sup> 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.<sup>2</sup>

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.

---

<sup>2</sup> 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.”<sup>3</sup> 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.<sup>4</sup>

---

<sup>3</sup> 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>

<sup>4</sup> 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.<sup>5</sup> 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."<sup>6</sup>

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

---

<sup>5</sup> 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](#)

<sup>6</sup> 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.<sup>7</sup> 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

---

<sup>7</sup> 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.<sup>8</sup> Many of these filings

---

<sup>8</sup> 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

Charles D. MacLeod

Andrew C. Meehan

MacLeod Law Group, LLC

110 North Cross Street

Chestertown, Maryland 21620

(410) 810-1381

[cmacleod@mlg-lawyers.com](mailto:cmacleod@mlg-lawyers.com)

[ameehan@mlg-lawyers.com](mailto:ameehan@mlg-lawyers.com)

*Counsel for Clean Chesapeake Coalition*

**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:

The Honorable Serena Coleman McIlwain  
Secretary of the Environment  
Maryland Department of the Environment  
1800 Washington Blvd.  
Baltimore, MD 21230  
[mde.secretary@maryland.gov](mailto:mde.secretary@maryland.gov)

Adam Ortiz, Deputy Secretary  
Maryland Department of the Environment  
1800 Washington Blvd.  
Baltimore, MD 21230  
[adam.ortiz@maryland.gov](mailto:adam.ortiz@maryland.gov)



D. Lee Currey, Director  
Water and Science Administration  
Maryland Department of the Environment  
1800 Washington Blvd.  
Baltimore, MD 21230  
[lee.currey@maryland.gov](mailto:lee.currey@maryland.gov)

Jonathan E.C. May, Assistant Attorney General  
Office of the Attorney General  
Maryland Department of the Environment  
1800 Washington Boulevard, Suite 6048  
Baltimore, Maryland 21230  
[jonathan.may@maryland.gov](mailto:jonathan.may@maryland.gov)

/s/ Andrew C. Meehan

# **Exhibit B**



110 N. CROSS STREET  
CHESTERTOWN, MARYLAND 21620  
PHONE: 410-810-1381  
FAX: 410-810-1383

[WWW.CLEANCHESAPEAKECOALITION.ORG](http://WWW.CLEANCHESAPEAKECOALITION.ORG)

August 1, 2023

**Via Electronic and Regular Mail**

Attn: Regulatory and Customer Service Division Chief  
Wetlands and Waterways Protection Program  
Water Services Administration  
Maryland Department of the Environment  
1800 Washington Boulevard, Suite 430  
Baltimore, Maryland 21230  
[conowingo.mde@maryland.gov](mailto:conowingo.mde@maryland.gov)

Re: Conowingo Hydroelectric Project – FERC Docket No.: P-405-106  
Constellation Power Generation, LLC (formerly Exelon) 17-WQC-02 Issued April 2018  
Lower Susquehanna River and Upper Chesapeake Bay – Use 1 & 2 Waters  
Limited Public Comment Period – WQC Reconsideration

Dear Ladies and Gentlemen:

On behalf of the Clean Chesapeake Coalition (“Coalition”), we respectfully submit the following comments and recommendations regarding the Clean Water Act Section 401 water quality certification (“WQC”) issued by Maryland Department of the Environment (“MDE”) on April 27, 2018 (No. 17-WQC-02) to Constellation Power Generation, LLC (formerly Exelon) (“Constellation”) for the relicensing of Constellation’s Conowingo Hydroelectric Project by the Federal Energy Regulatory Commission (“FERC”) (FERC Project No. 405). This comment letter during MDE’s reconsideration is intended to supplement the Coalition’s previously filed written comments and exhibits regarding the water quality certification for Conowingo Dam relicensing, specifically:

1. Letter to Robert M. Summers, MDE Secretary, October 10, 2014;
2. Letter and exhibits to Elder A, Ghigiarelli, Jr., MDE Deputy Program Administrator, dated August 16, 2017;
3. Coalition testimony during MDE Public Hearing on December 5, 2017;
4. Letter and exhibits to Program Administrator Ghigiarelli, Jr., January 15, 2018; and
5. Letter and exhibits to Deputy Administrator Ghigiarelli, Jr., January 30, 2018.

The WQC issued April 27, 2018 by the State of Maryland for Conowingo Dam relicensing was a bold and historic permitting decision with long-overdue conditions on the operation and maintenance of the Dam and project area (the 14-mile reservoir). It was a watershed moment in the history of Chesapeake Bay restoration, finally addressing one of the most vexing threats to Bay water quality – the Conowingo factor. The Coalition continues to endorse the original April 2018 WQC issued by MDE as minimum conditions for the operation and maintenance of the Dam and reservoir – for the sake of downstream Maryland water quality.

Well-supported by science and enforceable under the law, the original WQC issued in 2018 responsibly embraced the once-in-a-generation opportunity to impose licensing conditions requiring the owner of Conowingo Dam to properly manage the vast quantities of nutrients, sediment and other contaminants that are accumulated in the reservoir above the Dam and scoured into the Bay during major storm events and now with more regularity in equally harmful proportions because of the loss of trapping capacity in the reservoir. Indeed, the EPA Chesapeake Bay Program interim Midpoint Assessment in 2017 (CBP 2017a) confirmed that the 2025 Bay TMDL goals would not be met in part due to the well-documented pollution loading attributable to the infill of Conowingo Dam.

Susquehanna River is the single largest source of pollution loading to the Chesapeake Bay and because all that flows down the Susquehanna flows through the Conowingo Dam, the Dam is a significant point source of sediment and nutrient pollution that negatively impacts Chesapeake Bay. The Dam converted the lower Susquehanna River into the Bay watershed's largest stormwater management pond. Conowingo reservoir has been trapping upstream nutrients, sediments and other contaminants for nearly 95 years. The reservoir has never been dredged or otherwise maintained and, until the 2018 WQC issued by Maryland, **nobody** has been legally responsible to dredge or otherwise maintain it or mitigate its adverse environmental impacts. Since Hurricane Agnes in 1972, the devastating impacts on the Bay from the accumulated nutrients and sediments above the Conowingo Dam when coupled with the forces of Mother Nature have been well-known, well-documented and thoroughly studied.

When Maryland's conditional WQC permit for Conowingo relicensing was issued and a Conowingo specific watershed implementation plan (WIP) was required under the auspices EPA's Chesapeake Bay Program, the Coalition counties felt the stage had been set for regionally addressing the Conowingo factor (instead of Maryland suing EPA to call out Pennsylvania) and we were looking forward to discussing short and long-term strategies, including dredging, that reduce pollution loading into Chesapeake Bay and that make scientific and fiscal sense (not the same old tired and unproven BMPs or relentless blame on farmers and watermen for what ails the Bay). It is perplexing that the recent settlement of the lawsuit filed by Maryland, Virginia, Delaware, District of Columbia, Anne Arundel County, Chesapeake Bay Foundation, and others against EPA to shame and lean on Pennsylvania makes no mention whatsoever of the Conowingo WIP and related regional efforts (i.e., expert panel on dredging) as a means of meaningfully and measurably improving downstream water quality. Likewise, the recent Scientific and Technical Advisory Committee (STAC) report *Knowledge Gaps, Uncertainties, and Opportunities Regarding the Response of the Chesapeake Bay Estuary to Restoration Efforts* (May 2023) makes no mention of the Conowingo WIP; but the STAC report does confirm that in 2017 all the parties responsible for the 2010 Bay TMDL (aka "pollution diet", dubbed "Clean Water Blueprint" by CBF) were on notice that the Blueprint was flawed and the Conowingo factor would thwart the attainment of the 2025 goals.

In FY2022, Bay jurisdictions reported spending an estimated \$1 billion in "watershed restoration" through state programs. The FY2022 Region 3 Chesapeake Bay Program budget



was \$388 million. In July 2023, the U.S. EPA Office of Inspector General confirmed that the 2010 Bay TMDL goals set for 2025 will not be met, observing “nearly 40 years after the Chesapeake Bay Program was established, the bay’s water quality remains degraded.” Why?

In part, because the two largest sources of pollution loading to the Maryland portion of Chesapeake Bay are (1) the Susquehanna River, exacerbated by the loss of trapping capacity in Conowingo reservoir and more frequent and intense storms, and (2) the Baltimore regional WWTPs, deemed operational failures by Maryland Environmental Service and routinely violating State and federal discharge limits, are not being meaningfully addressed. Instead of real action, we get Constellation Power litigating and ducking responsibility for its privileged use of the Susquehanna River’s natural flow to generate electricity for sale and we get a Regional Governance Task Force from the General Assembly to study the abject dysfunction of the State’s largest WWTPs serving the Baltimore region. Another big reason for the Bay being degraded is people, and lots of them in the watershed. And now we have federal legislation introduced to establish a “Chesapeake National Recreation Area” (a federal park designation) intended to bring millions more visitors to an already stressed and out-of-balance ecosystem. Other than commerce over environment and full employment for NGOs, this contrast is hard to square.

Smartly and necessarily, the 2018 WQC permit conditions promote **adaptive management** and reserve to Maryland the ability to re-open the water quality certification as information is learned and/or events occur that may impact the efficacy of the permit. In the case of 50-year license issued by FERC, **re-openers** during the license term are essential for adaptive management. Reopener triggers during the license term should include episodic storm / scouring events, new or improved science, and the availability of regulated nutrient trading/offsets.

Since the issuance of the 2018 WQC, there have been multiple filings by Constellation and FERC in the FERC docket P-405-MD related to Conowingo Dam’s structural integrity, emergency plans, safety audits and Part 12 inspection reports. However, these filings are not accessible to the public. Given its age and state of the reservoir, the structural integrity of the Dam is a concern and downstream plans in the event of a catastrophic failure should be readily available for public review and input. The WQC for Conowingo Dam should require complete transparency in this regard. In its Order granting the new license to Exelon (March 2021), FERC noted the Coalition’s concerns for the stability of the Dam through the license term, having posited to FERC and MDE that the 2017 spillway failure at the Oroville Hydroelectric Project in California (FERC No. 2100) underscores the need to dredge the reservoir to minimize environmental damage downstream and to have reopeners and associated triggers in order to adapt to environmental changes and other new technology (FERC Order Paragraph 181). Footnote 241 of the new license Order sums it up: “Coalition describes the dredge and reopener requirements as a necessary condition of any water quality certification for the project; however, as noted above, the certification is being waived in this proceeding.” FERC’s tendency to grant long-term (50-year) licenses to hydroelectric projects is another compelling reason for reopeners in the State’s WQC.



At a minimum, Chesapeake Bay needs the water quality improvement protections and conditions embodied in the 2018 WQC for Conowingo Dam relicensing. We implore MDE and the State to hold fast. My fellow Clean Chesapeake Coalition local officials and I refuse to accept as the new normal for the Maryland portion of Chesapeake Bay that all the reservoirs in the lower Susquehanna River are full, that enormous amounts of upstream Susquehanna River pollution are no longer being trapped, that more storms and harmful scour are inevitable and that Conowingo reservoir dredging, or Upper Bay sediment management are off the table.

All things considered, given the significance of the State's WQC reconsideration after remand from the Court, and with the passage of time since many stakeholders like the Coalition counties were actively involved in the WQC process for Conowingo Dam relicensing, we respectfully request that a public hearing(s) be conducted as part of MDE's reconsideration process.

Thank you for your attention and consideration of our comments.

Sincerely,



Ronald H. Fithian, *Chairman*  
and *Kent County Commissioner*

cc: Maryland Rural Counties Coalition

