

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1036
Rules

(Senator Hershey, *et al.*)

Environment - Conowingo Dam - Water Quality Certification

This emergency bill requires the Maryland Department of the Environment (MDE), as part of its review and approval process for an application for a water quality certification in accordance with § 401 of the federal Clean Water Act (CWA) for the Conowingo Dam relicensing process, to require the applicant to fulfill specified requirements related to removing trash and debris from the Conowingo Reservoir.

Fiscal Summary

State Effect: The bill does not affect State finances or operations. The water quality certification for the Conowingo Dam issued by MDE already includes the requirements addressed in the bill, among other trash- and debris-related requirements.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: MDE must require the applicant for the Conowingo Dam's water quality certification to (1) remove floating trash and visible debris from the Conowingo Reservoir at least 40 times between January 1 and November 1 of each year, as specified; (2) use a self-propelled skimmer barge to remove trash and debris from the Conowingo Reservoir daily, weather permitting; (3) sponsor, plan, and implement at least two annual community-based cleanups of the Conowingo Reservoir each year; and (4) conduct a feasibility study on obtaining, locating, installing, and using water wheel trash interceptors for removing trash and debris from the Conowingo Reservoir.

Current Law:

Chesapeake Bay Restoration and the Total Maximum Daily Load

In December 2010, the U.S. Environmental Protection Agency (EPA) established a Chesapeake Bay Total Maximum Daily Load (TMDL), as required under CWA and in response to consent decrees in Virginia and the District of Columbia. The TMDL sets the maximum amount of nutrient and sediment pollution the bay can receive and still attain water quality standards. It also identifies specific pollution reduction requirements; all reduction measures must be in place by 2025, with at least 60% of the actions completed by 2017.

As part of the Chesapeake Bay TMDL, bay jurisdictions must develop watershed implementation plans (WIPs) that identify the measures being put in place to reduce pollution and restore the bay. WIPs (1) identify pollution load reductions to be achieved by various source sectors and in different geographic areas and (2) help to provide reasonable assurance that sources of pollution will be cleaned up, which is a basic requirement of all TMDLs.

The Conowingo Dam and Permitting

The Conowingo Dam – a peaking hydroelectric facility that uses reservoir storage to generate electricity during peak electricity demand periods – has been described as the biggest best management practice on the Susquehanna River because it collects sediment and phosphorus that would otherwise flow into the bay. However, the Conowingo Dam, owned by Exelon Corporation, has reached an end state in terms of sediment storage capacity. The Conowingo Dam officially has its own target of 6.0 million pounds of nitrogen and 260,000 pounds of phosphorus under a separate WIP to be managed by a third party contracted for this purpose.

In addition, the Conowingo Dam is in the midst of relicensing by the Federal Energy Regulatory Commission (FERC); its license expired on September 1, 2014, and it will receive automatic one-year renewals until it is relicensed. FERC cannot act on an application for licensing unless a CWA – Section 401 water quality certification – is issued by MDE. MDE issued the water quality certification with special conditions on April 27, 2018, which requires Exelon annually to reduce 6.0 million pounds of nitrogen and 260,000 pounds of phosphorus. Exelon has filed an administrative appeal with MDE and lawsuits in federal and State court alleging that the water quality certification imposes on it the sole responsibility to remove from the Susquehanna River pollutants that Exelon did not introduce into the river but that flow through the Conowingo Dam. On October 11, 2018, a Baltimore circuit court judge rejected one of Exelon's lawsuits on the

basis that Exelon had not yet exhausted its options under the State administrative appeals process. The other actions are still pending.

MDE advises that the water quality certification contains a suite of conditions (nutrient reductions to meet dissolved oxygen in the bay, flow management for habitat, trash and debris, fish passage and migration, etc.) to mitigate the water quality impacts from the Conowingo Dam. MDE further notes that the provisions in the water quality certification include the provisions required under the bill, as well as several other trash- and debris-related requirements.

The WIP specifically addresses the increase in sediments and the associated nutrients as a result of infill behind the dam. The Conowingo WIP was developed because EPA and the states in the bay watershed realized that the Chesapeake Bay TMDL goal for 2025 could not be met if the 6.0 million pounds of nitrogen and 260,000 pounds of phosphorus continued coming into the bay from the dam.

Additional Information

Prior Introductions: None.

Cross File: HB 921 (Delegate Jacobs, *et al.*) - Environment and Transportation.

Information Source(s): Maryland Department of the Environment; Department of Legislative Services

Fiscal Note History: First Reader - March 11, 2019
md/lgc

Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510