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House Environment and Transportation Committee

Testimony in SUPPORT House Bill 1465

Federal Clean Water Act – Authority of State

Wednesday, March 4, 2020

The Clean Chesapeake Coalition supports HB 1465 to the extent such an enactment by the General Assembly will gain leverage for the State of Maryland and the Hogan Administration (and subsequent administrations) in addressing the Conowingo Dam factor[1] in the context of Bay TMDL water quality improvement goals, in litigation and/or negotiations with the Dam's owner (Exelon Corporation), in asserting the State's environmental protection authority in the Federal Energy Regulatory Commission (FERC) arena, or otherwise.

While such legislation may raise an interesting separation of powers issue between the Executive and Legislative branches of State government, and the timing may be off, HB 1465 brings much deserved attention to the single largest source of pollution loading to the Chesapeake Bay (the Susquehanna River). What's pending in the hands of FERC is indeed a once-in-a-generation opportunity to meaningfully, measurably and cost-effectively improve the Maryland portion of the Bay by tackling the accumulated pollution in Conowingo reservoir so Maryland's downstream restoration efforts and expenditures, especially in the upper Bay, are not in vain.

Since 2012, after a clarion call from Dorchester County elected officials, the following Maryland county governments have participated in the Coalition since inception or for a period of time to raise awareness and pursue improvement to the water quality of the Chesapeake Bay in the most prudent and fiscally responsible manner – through research, coordination and advocacy: Allegany, Caroline, Carroll, Cecil, Dorchester, Frederick, Harford, Kent, Queen Anne's and Wicomico. After the U.S. Geological Survey (USGS) issued a report in August 2012 (SIR 2012-5185) confirming the exponential loss of trapping capacity in the Conowingo Dam reservoir and associated threats to downstream water quality, the Coalition adopted as its calling card the striking NASA satellite image on page 2 of the report. (see copy attached)

Since inception, Coalition counties have submitted substantive and well-sourced testimony whenever legislation or joint resolutions have been introduced dealing with Conowingo Dam in the context of Bay restoration and protection. (see attached prior Coalition testimony, which however dated is relevant today). To date, there has been no enactment by the General Assembly

[1] The Emmy Award winning documentary video "The Conowingo Factor" summarizes the Dam's history and the water quality issues posed by both the Dam and sediment, nutrients and debris coming down the Susquehanna River. https://www.youtube.com/watch?v=LvK86Ripmc4&feature=youtu.be

whatsoever on this most important issue related to Bay health – sad and curious amidst all we in Maryland are doing and spending to improve Bay water quality.

We share the collective disappointment in Exelon's refusal to embrace the mantle of Bay stewardship as we've monitor their legal filings against the State and before FERC to shirk responsibility for the adverse downstream environmental impacts attributable to Conowingo Dam operations and maintenance (or lack thereof in the reservoir).

For better or for worse, the proposed Settlement Agreement between the State and Exelon related to Conowingo Dam relicensing as negotiated by the Hogan Administration has indeed moved the needle, as evidenced by the sudden popularity in the General Assembly and among NGOs and the media regarding Conowingo Dam relicensing and the significance of the 50-year relicense request now in the hands of FERC. We also understand the context in which the State was compelled to concede it's WQC authority for a settlement (or sorts) with Exelon as multiple federal policy, regulatory and FERC related case law stars lined up nicely for big energy.

To see or support this legislation as a means to vilify the Hogan Administration for their efforts to address the Conowingo factor would be misguided. Had the General Assembly, the Maryland Congressional Delegation, UMCES, EPA Chesapeake Bay Program, CBF and other large, wheel-healed and entrenched NGOs, USACE, etc. taken this issue more seriously (instead of denying, downplaying or distracting from the Conowingo Factor) there would have been considerably more leverage for the Administration in addressing this vexing issue.

The greatest concern about the current state of the Conowingo reservoir is the inevitability of storm events (more frequent and intense due to climate change) that propel vast amounts of the accumulated nutrients, sediment and other contaminants through and over the Dam in catastrophic surges that far exceed the Bay's ability to adequately assimilate such loadings. As a result, the sediment settles to the Bay bottom and smothers the Bay's oyster beds and submerged aquatic vegetation – Mother Nature's most efficient filters.

Agencies and NGOs may quibble about degrees of impact while citing estimated percentages of pollution attributable to scour during storms; but so much pollution loading to the Bay comes from the Susquehanna River and so much pollution has accumulated in the upstream reservoirs that any percentage of scour is still an enormous amount of pollution being delivered in shock loadings in a few days.

Simply put, the Coalition counties cannot accept as the new normal for the Maryland portion of the Bay that all of the reservoirs in the lower Susquehanna River are full, that enormous amounts of Susquehanna River pollution are no longer being trapped, that more storms and harmful scour are inevitable and that dredging Conowingo reservoir is off the table. Nor should any Marylander who cares about the Bay. With predictions for more frequent and intense storms comes the scouring of enormous amounts of nutrient-laden sediments and other contaminants from the Conowingo reservoir, which has lost its trapping capacity. Denial and downplaying risk widespread taxpayer fatigue watching the government ignore the elephant in the room.

All things considered, the Bay is declining, in spite of billions of dollars spent to restore it (and glossy colored reports reminding us just how little progress we've made). By bringing as much attention as possible to the single largest source of pollution to the Bay and the greatest threat to Bay restoration effects at every level, all the while pointing out that today nobody is responsible for dredging or otherwise addressing the accumulated nutrients and sediments above the Conowingo Dam and that our upstream neighbors are doing very little in comparison to the collective efforts of Marylanders, the Coalition has been stoking an overdue and deserving public policy discussion about the smartest, most cost-effective ways to save the Bay and help local economies in the process. It is time to take a step back and look again at the big Chesapeake Bay watershed picture, and to recognize the perfect storm of political, economic, governmental, regulatory, environmental and special interest forces – including Mother Nature herself. It is time to reprioritize what we do and spend to meaningfully improve the water quality of the Bay.

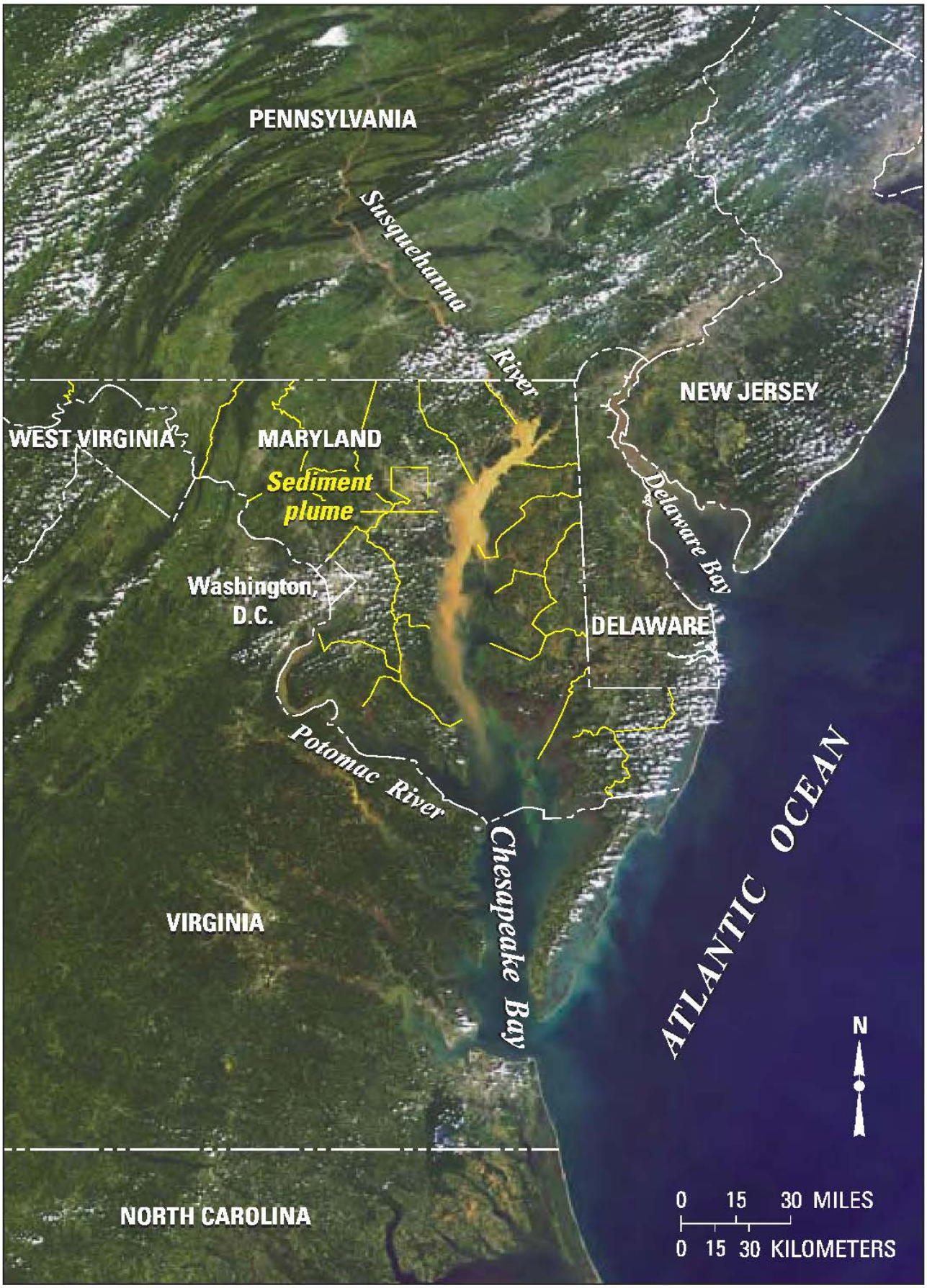
Keeping it simple: the 14-mile reservoir above Conowingo Dam is the largest stormwater management pond in the Bay watershed and it is full. It must be dredged and properly maintained in order to trap some of the sediment and other pollutants that flow down the Susquehanna River before entering the Bay. We support stopping all pollution from ever entering the Susquehanna River; however, we are realistic about how long that will take and at what costs (see widespread criticism of Pennsylvania's Phase III WIP). In the meantime, by dredging and maintaining Conowingo reservoir (and the other dam reservoirs in the lower Susquehanna River), the Maryland portion of the Bay will get the breathing room that it needs to recover and thrive. We believe that the Administration's "Conowingo Sediment Characterization and Innovative Reuse and Beneficial Use Pilot Project" will show positive economic opportunities and commercial benefits related to dredging the Conowingo reservoir, in addition to the environmental benefits downstream. The sediment characterization component of that project must be expedited as such information is critical to assessments and decisions being made regarding the Conowingo Factor.

We support the Conowingo specific watershed implementation plan (WIP) that is under development and look forward to the opportunity to participate in the formulation of this WIP. We understand how this approach will test the fortitude of the watershed states' partnership; but a healthier Chesapeake Bay is well worth the effort. We also understand that without addressing the Conowingo factor the Bay TMDL goals for downstream jurisdictions are unachievable and unaffordable.

For these reasons, the Coalition urges a FAVORABLE report on HB 1465.

CONTACT: Chip MacLeod at 410-810-1381 or cmacleod@mlg-lawyers.com

Exhibits



NASA photograph from the Terra satellite, September 13, 2011 (a few days after Tropical Storm Lee) showing sediment plume extending about 100 miles to the mouth of the Potomac River.

The objective of the Clean Chesapeake Coalition is to pursue improvement to the water quality of the Chesapeake Bay in a prudent and fiscally responsible manner.

A picture is worth a 1,000 words...

This NASA satellite image appeared in the August 2012 U.S. Geological Survey report that confirmed the exponential loss of trapping capacity in the Conowingo Dam reservoir, and has since served as a calling card for the Coalition. We added the county jurisdictional boundaries.

Here are the staggering numbers behind the photograph of the 100-mile long sediment plume emanating from the Conowingo Dam a few days after Tropical Storm Lee in September 2011.

Estimated amounts transported into the Bay during this single storm event (over 9 days), According to the *U.S. Geological Survey:*	
42,000 tons nitrogen	**10,600 tons phosphorus**
19 million tons sediment	****4 million tons scoured (at least)**
According to the *UMCES - Horn Point (Cambridge, MD) Survey:*	
115,910 tons nitrogen	**14,070 tons phosphorus**
By comparison (yearly Susquehanna River pollutant loading averages 1978-2011):	
71,000 tons nitrogen | 3,300 tons phosphorus | 2.5 million tons sediment	

Pollution reduction targets per EPA Bay TMDL and Maryland WIP (through 2025):

	State WIP Costs (billions)	**State WIP Results (tons/year)**
Stormwater	**$ 7.38**	**N**itrogen – **1,100** | **P**hosphorus – **116** | Sediment – **102,370**
Septics	**$ 3.71**	**N**itrogen – **620** | **P**hosphorus – **0** | Sediment – **0**
WWTP	**$ 2.36**	**N**itrogen – **1,909** | **P**hosphorus – **46** | Sediment – **0**
Agriculture	**$ .928**	**N**itrogen – **2,372** | **P**hosphorus – **187** | Sediment – **37,108**
TOTAL	**$ 14.4**	**N**itrogen – **6,001** | **P**hosphorus – **349** | Sediment – **139,478**

Learn more at CleanChesapeakeCoalition.com and follow us on Facebook.

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February 21, 2014

The Honorable Maggie McIntosh
Chair, House Environmental Matters Committee
House Office Building, Room 251
6 Bladen Street
Annapolis, Maryland 21401

Re: HB910 – Water Quality Certification – Conowingo Dam – Required Studies
SUPPORT

Dear Chairwoman McIntosh:

This letter is submitted by the Clean Chesapeake Coalition ("Coalition") in support of House Bill 910 – Water Quality Certification – Conowingo Dam – Required Studies ("HB910"). The Coalition is an evolving association of Maryland local governments that have coalesced to pursue improvement to the water quality of the Chesapeake Bay in a prudent and fiscally responsible manner.

The Susquehanna River is the single largest source of pollution loading to the Chesapeake Bay and because all that flows down the mighty Susquehanna flows through the Conowingo Dam ("Dam"), the Dam is a significant point source of sediment and nutrient pollution that negatively impacts the Chesapeake Bay. The Dam converted the lower Susquehanna River into the Bay watershed's largest stormwater management pond that the owner of the Dam calls the "Conowingo Pond." The Conowingo Pond has been trapping upstream nutrients, sediments and other contaminants for more than eighty (80) years; has never been dredged or otherwise maintained and today nobody is legally responsible to dredge or otherwise maintain it. 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.

The current relicensing process of the Dam, through the Federal Energy Regulatory Commission ("FERC"), offers the State of Maryland ("State"), impacted local governments and other interested parties a once in a generation opportunity to require the owner and operator of the Dam to properly manage and control the vast quantities of nutrients, sediment and other contaminants that are discharged 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 Conowingo Pond. (*See* the enclosed Conowingo Dam Scour Data Handout.)

A key requirement of FERC's relicensing of the Dam is that the owner/applicant (Exelon Corporation) must obtain from the State, through the Maryland Department of Environment ("MDE"), a Water Quality Certification ("WQC") pursuant to Section 401 of the Clean Water Act. Upon the issuance of such certification, MDE will have determined that the maintenance and operation of the Dam meet all applicable State water quality standards. Given the significance of the WQC in the Dam relicensing process, the extent to which HB910 enhances the scope and quality of MDE's review process and provides resources to ensure the review agency's access to meaningful scientific data is a good thing for Bay restoration efforts.

In a December 3, 2013 letter to Coalition Chairman Ronald H. Fithian, MDE Secretary Robert M. Summers highlighted the WQC as a significant regulatory requirement in the decision making process for the Dam's relicensing, while assuring the Coalition counties that "[t]he sediment issue, including the extent of Exelon's responsibility in addressing this issue, is the State's major concern and focus in the relicensing process. MDE will not issue a WQC unless the applicant can demonstrate that any impacts on water quality by the dam will be fully mitigated." (Emphasis added) We should expect no less from MDE and for the good of the Bay; however, for such promising words to ring true there must be the resources and objectivity for MDE to do the job well.

Exelon is seeking a forty-six (46) year license for the Dam. The WQC is the State's most significant regulatory tool for purposes of imposing license conditions that will meaningfully and quantifiably reduce pollution loading to the Bay, while protecting past, present and future Bay restoration efforts and expenditures below the Dam. For the sake of the Bay, this all-important regulatory requirement should not be squandered or politicized.

We commend the sponsors of HB910 for bringing attention to one of the most significant issues impacting the health and water quality of the Bay and challenging the State's unparalleled Bay restoration efforts and expenditures below the Dam.

The bill as proposed does raise two (2) issues of concern for the Coalition:

First is the issue of retroactivity. The effective date of HB910 is June 1, 2014. Approximately three (3) weeks ago, on January 30, 2014, Exelon filed its WQC application for the Conowingo Hydroelectric Project (FERC Project No. 405) with MDE. (*See* the enclosed letter from Exelon to MDE.) Given that HB910 imposes new requirements on the applicant for a WQC, are those new requirements enforceable on an already pending application to MDE? There is also a question of the timeframe allowed to MDE to complete the WQC review process as part of the FERC relicensing and the period provided for the enhanced studies under HB910.

Second is the reliance on the Lower Susquehanna River Watershed Assessment ("LSRWA") and the anticipated conclusions and recommendations to come in the LSRWA's final "study" report. The LSRWA study is expected to finish in late 2014. The Coalition has followed the LSRWA closely, although the Coalition (comprised of Maryland local governments directly impacted by the operation and maintenance of the Dam) has been denied a "seat at the

table" despite several requests made. Given our understanding of the data underpinning the LSRWA and the outcome driven approach adopted by handpicked "stakeholders" and the weight that many are advocating to be given to the LSRWA study in the FERC relicensing process, we outline in more detail our concerns below:

Given the parties involved in the LSRWA and the ongoing private negotiations among "settlement parties" and Exelon in connection with the FERC relicensing, the Coalition counties are concerned that the reliance on the LSRWA will substantially impair the ability of MDE, DNR and the State to fulfill its obligation to issue an objective WQC for the Dam;

All indications are that the LSRWA is being utilized to generate a model that will support the current Bay TMDL initiatives. The LSRWA's data, analysis and management methods are flawed and will not provide any protection to the Bay's water quality from scour, sediments and nutrients attributable to Conowingo Pond;

According to FERC, as the regulatory body responsible for licensing the Dam, the responsibility for conducting this type of study belonged to Exelon in its Final Study Plan Determination. Exelon, for whatever reason, failed to complete such requirement. Instead, the LSRWA was formed with Exelon supplying funding and having substantial weight in its deliberations and process. Shifting the execution and costs of this important environmental requirement in the FERC licensing process from a private corporation to the public sector with limited resources will undoubtedly compromise the scientific merits of the LSRWA. LSRWA study team members constantly mention the fact that data limitations exist in the model runs as a result of limited resources and cost concerns. Compromising the LSRWA's science will undermine efforts to improve the Bay's water quality below the Dam for over four (4) decades (*i.e.*, the potential term of the new FERC license).

The Coalition has discovered that the sediment transport models established by the LSRWA study team will not include data from recent peer-reviewed scientific studies (such as the U.S. Geological Survey's August 30, 2011, Hirsch report[1]) nor major storm events, but instead will rely on outdated reports and data from a limited time period that excludes major storm events such as Tropical Storm Lee (September 2011). This piecemeal approach is flawed in that it ignores the crucial impact of Conowingo Pond scour on the Bay. The expected shortcomings of the LSRWA will further challenge the efforts and expenditures of Coalition members and others to improve the Bay's water quality below the Dam.

[1] *See* Hirsch, R.M., 2012, Flux of nitrogen, phosphorus, 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: U.S. Geological Survey Scientific Investigations Report 2012–5185, 17 p.

Thank you for your consideration of our views and comments regarding HB910.

Respectfully submitted,

Ronald H. Fithian
Chairman, Clean Chesapeake Coalition
County Commissioner, Kent County

Enclosures:

Conowingo Pond Scour Data Handout
Exelon WQC Application to MDE (January 30, 2014)

cc: Members, House Environmental Matters Committee
Honorable David D. Rudolph, Delegate
Honorable Mary Dulany James, Delegate
Clean Chesapeake Coalition

FOR CONCERNED CITIZENS and LEGISLATORS

Clean Chesapeake Coalition Advocates for Conowingo Pond Dredging

The Conowingo Dam (the "Dam") converted the lower Susquehanna River into a large stormwater management pond that Exelon, the Dam's owner, calls the "Conowingo Pond." The Dam widened the natural course of the river and increased the depth of the river. Widening and deepening the river slowed the rate of flow of water in the river, which allowed suspended solids in the river to settle (fall out of suspension) on the bottom of the reservoir and become "trapped" in the same manner that a stormwater management pond "traps" sediments.

Like all stormwater management ponds, the Dam has altered the otherwise normal or natural flow of water in the Susquehanna River. Like all stormwater management ponds that have not been maintained (*i.e.*, periodically dredged of the sediments that accumulate in the artificially created reservoir), during significant storm events, accumulated sediments have been scoured from the bottom of the pond and dumped in mass below the Dam, shocking the Maryland portion of the Chesapeake Bay with a blanket of deadly sediments.

Sediment Scoured From The Conowingo Reservoir During Significant Storm Events[1]

Storm	Year	Month	Peak Flow Cu^3/sec	Volume of Sediment Scoured into Bay (Million Tons)
Hurricane Agnes	1972	June	1,130,000	20
Hurricane Eloise	1975	September	710,000	5
Unnamed	1993	April	442,000	2
Unnamed	1996	January	909,000	12
Hurricane Ivan	2004	September	620,000	3
Unnamed	2011	March	487,000	2
Hurricane Irene	2011	July	Unmeasured	Unmeasured
Tropical Storm Lee	2011	September	778,000	4
Hurricane Sandy	2012	October	Unreported	Unreported

[1] Jeffrey Brainard, *Big Year for Bay Storms, Bad Year for Bay Sediment?*, Chesapeake Quarterly Vol. 10 No. 4, Dec. 2011. See link: http://www.mdsg.umd.edu/CQ/V10N4/main1/. *See also The Impact of Sediment on the Chesapeake Bay and its Watershed*: U.S. Geological Survey, June 3, 2005. See link: http://chesapeake.usgs.gov/SedimentBay605.pdf.

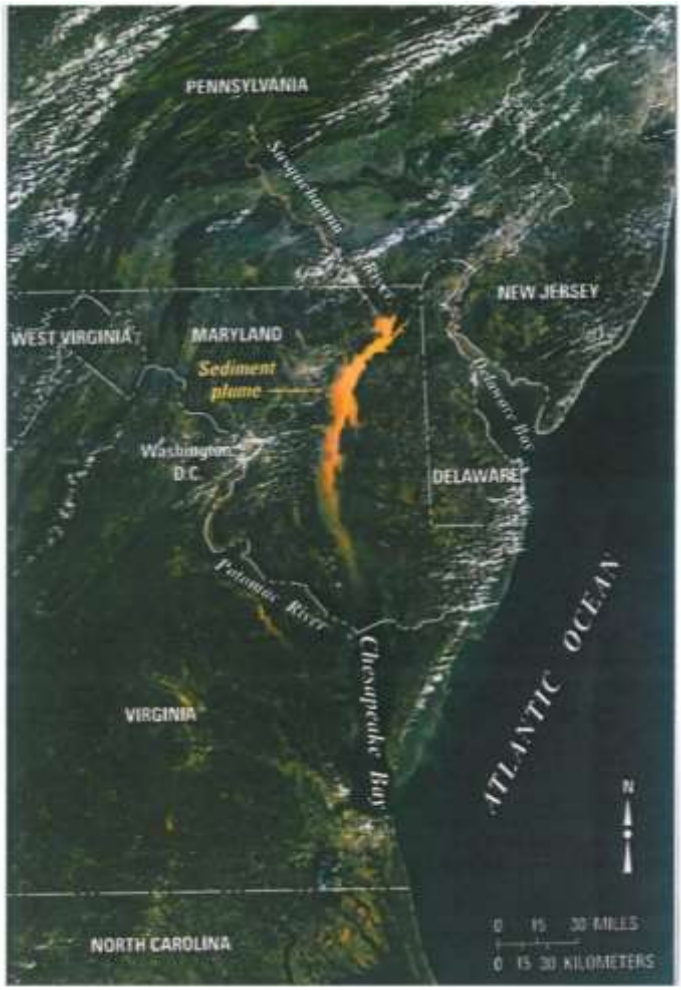
Billions of taxpayer dollars have been spent to dredge the navigable shipping channels in the upper Bay and the channels into local marinas that have been clogged with sediments. The largest source, if not the sole source, of those sediments is the Susquehanna River, including scour from the bottom of the Conowingo Pond. Economically and environmentally, those sediments should be dredged from the pond behind the Dam where they have accumulated (approximately 9,000 acres or 3,600 hectares), not after they are dumped into the Bay and spread across approximately 4,479 square miles.

Exelon, a company with over $30 billion in annual revenues, receives at least two benefits from the Dam: (1) it produces 572 megawatts of electricity, which is enough electricity to power an average of 572,000 or more homes; and (2) it receives renewable energy credits that may be used or sold to offset air emissions from power plants that burn fossil fuels.

Sediment Loading From Storm Event Scour In Comparison to Average Annual Sediment Loading from Susquehanna River

Storm	Year	Avg. Annual Sed. Load from Susquehanna River (Million Tons)	Sed. Load From Scour (Million Tons)	% of Avg. Annual Load from Scour
Hurricane Agnes	1972	1.5	20	1,333%
Hurricane Eloise	1975	1.5	5	333%
Unnamed	1993	1.5	2	133%
Unnamed	1996	1.5	12	800%
Hurricane Ivan	2004	1.5	3	200%
Unnamed	2011	1.5	2	133%
Tropical Storm Lee	2011	1.5	4	266%
Hurricane Sandy	2012	1.5	Undetermined	Undetermined

The photographs below were taken within 2-4 days after Tropical Storm Lee in September 2011.



Scour during significant storm events occurs in less than one week. Thus, in a matter of days, scour from the Conowingo Pond during a significant storm has added anywhere from 133% to 1,333% more than the average annual sediment loading from the Susquehanna River. Such loading results in a big die-off of oysters and underwater grasses in the Bay north of the Choptank River. In 1972, up to a meter of sediments was added to the floor of the upper Bay; two-thirds of that sediment was attributed to scour from the floor of the lakes and reservoirs behind the three dams in the lower Susquehanna River. During Tropical Storm Lee, over two inches of sediments were deposited on the floor of the upper Bay. In short, the shock effect of this rapid loading of scoured sediments is devastating to all fauna that cannot flee (swim) to the lower Bay and to all SAV in the upper Bay. The oysters and SAV in the upper Bay and the upper Bay tributaries have never recovered from the devastation caused by the scour from Hurricane Agnes. SAV in the Susquehanna Flats was killed to pre-1985 levels (thousands of acres of SAV were killed) as a result of the two storm events in 2011.

The Dam traps the best sediment - sand - and releases the most damaging sediments - clay and silt - into the Bay. The Bay has thus been deprived of sand that is necessary: (1) to hold the roots of SAV during storm events; (2) to support the shell beds of oysters; (3) to fortify shorelines and thus reduce erosion; and (4) to cover and suppress the clays and silts that are washed into the Bay so that those clays and silts (a) do not continue to emit phosphorus and nitrogen bound to them in the Susquehanna estuary, (b) do not continue to agitate into suspension and cloud the Bay waters; and (c) do not deprive Bay flora and fauna of needed sunlight and habitat.

If the Conowingo Pond is not dredged and maintained, the Bay will never recover. Coalition members have intervened in the relicensing of the Dam to urge the Federal Energy Regulatory Commission (FERC) to place conditions on the license to be issued that will require Exelon to dredge and maintain the stormwater management pond created by the Dam so that a blanket of deadly sediments cannot be scoured from the bottom of the reservoir and deposited in the Bay now with regularity and in devastating proportions during significant storm events.

The Coalition observes that the science underpinning the points being made all comes from federal agencies and institutions funded by federal agencies and federal tax dollars. The Coalition hopes that FERC will act consistently with federally conducted and federally funded studies, unless it is able to offer a scientifically based rationale for why such studies are invalid or unreliable and undeserving of due consideration in the relicensing of the Dam.

The Coalition observes that significant federal financial resources have been devoted to dredging below the Dam. Federal resources should be directed to the capture of sediments above the Dam before such sediments are widely dispersed over the Bay. It would be more cost effective to capture sediments above the Dam than below. To the extent that dredging of the Conowingo Pond will reduce the federal funds required to dredge the upper Bay in order to keep the Port of Baltimore and the stream of marine commerce viable, a portion of such savings could equitably be directed to assist Exelon with the cost of dredging and maintaining the Conowingo Pond.

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House Environment & Transportation Committee

Briefing: Conowingo Dam

Thursday, January 29, 2015

The Clean Chesapeake Coalition has intervened on behalf of its 10 member counties in the Federal Energy Regulatory Commission's pending relicensing of Conowingo Dam and is an active participant in those proceedings. The Coalition has also intervened in the Exelon-PHI merger proceedings now pending before the Maryland Public Service Commission to ensure that the impacts Conowingo Dam operations and maintenance (or lack thereof) on State and local government Chesapeake Bay restoration efforts and expenditures are duly considered in the public interest.

By way of introduction, attached is brief summary of the Coalition's purpose and priority focus areas. The summary also includes certain "inescapable realities" that have recently been acknowledged by various federal and State agencies in connection with Susquehanna River pollution, the state of the reservoirs above the hydroelectric dams in the lower Susquehanna River (including Conowingo Pond) and the undeniable adverse impacts of scour on the Chesapeake Bay ecosystem and downstream Bay restoration efforts. Agencies and NGOs may quibble about degrees of impact while citing estimated percentages of pollution attributable to scour during storms; but so much pollution loading to the Bay comes from the Susquehanna River and so much pollution has accumulated in the upstream reservoirs that any percentage of scour is still an enormous amount of pollution being delivered in shock loadings in a few days.

Simply put, the Coalition counties cannot accept as the new normal for the Maryland portion of the Bay that all of the reservoirs in the lower Susquehanna River are full, that enormous amounts of Susquehanna River pollution are no longer being trapped, that more storms and harmful scour are inevitable and that dredging Conowingo Pond is off the table.

Contact: J. Kenneth Battle or Sarah D. Sheppard

Attachment

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JANUARY 2015

Who We Are

In a state of sticker shock after being presented their local watershed implementation plan and on behalf of their local taxpayers, the Dorchester County Council reached out to county government officials across the State of Maryland with an appeal to coalesce for purposes of questioning the public costs and efficacy of myriad policies, programs and practices being mandated by the State and federal government in the name of saving the Chesapeake Bay. What started in concept as the "WIP Coalition" and then the "TMDL Coalition" evolved into the "Clean Chesapeake Coalition" when seven Maryland counties agreed in late 2012 to join forces and resources to pursue improvement to the water quality of the Chesapeake Bay in the most prudent and fiscally responsible manner - through research, coordination and advocacy. Currently there are 10 member counties - including Allegany, Caroline, Carroll, Cecil, Dorchester, Frederick, Harford, Kent, Queen Anne's, and Wicomico - representing more than 1 million Marylanders and roughly 40 percent of Maryland's total land area and shoreline.

Priority Focus Areas

1. Federal relicensing of Conowingo Dam pending before FERC; including MDE's water quality certification review and studies underpinning FERC and MDE decision making.

2. Oyster restoration as BMP – legislative initiative promoting Bay wide and properly motivated oyster cultivation for ecological value and economic impact.

3. Merger of Exelon and PHI pending before MD Public Service Commission, with emphasis on Chesapeake Bay restoration being in the public interest and Exelon's track record of environmental stewardship as owner/operator of Conowingo Dam.

4. Federal and state agency "coordination" with local governments as required by the National Environmental Policy Act (NEPA) to ensure that local plans and policies are harmonized with the federal and State actions and expenditures related to Bay restoration.

5. WIP adaptation to reflect local government policies, programs and priorities intended to achieve Bay TMDL pollution reduction goals. To matter and work, WIPs must be scientifically sound, financially feasible and beneficial to the human environment.

6. Neglect of large outmoded WWTPs prone to sewerage overflows and discharges of untreated wastes into Bay tributaries, and disparities in State (MDE) oversight of stormwater management and wetlands protection enforcement.

Fostering Debate, Rethinking the Bay Cleanup Agenda & Recalibrating the Bay TMDL

In the Clean Chesapeake Coalition participating local elected officials have joined forces, on behalf of the Maryland jurisdictions and taxpayers they represent, to collectively analyze the scientific justification, costs and efficacy of the current Chesapeake Bay cleanup agenda being driven by the U.S. EPA with its TMDL plan. Also known as the "pollution diet," the TMDL has been aggressively enforced by the State of Maryland by way of its own WIP and other mandates. The Chesapeake Bay Foundation likens the 2010 Bay TMDL and WIP combination as the "blueprint" for saving the Bay. Through comprehensive research and analysis of publicly available data and other resources, the Coalition is working in a manner unlike any other stakeholder entity to identify, advocate and take action to develop and implement the most cost-effective policies, programs and practices that will measurably improve the water quality of the Bay and its many tributaries; all the while respecting local government plans and prerogatives.

During the past three decades, the State of Maryland and local governments have spent more money and have implemented more stringent sanitary and environmental practices than our neighbors, particularly our upstream neighbors in the Susquehanna River basin (PA and NY). Our expenditures and efforts per the "blueprint" have not had a significant impact on improving the overall water quality of the Bay. There are reasons that our efforts have fallen short. With growing frequency, storm events send a torrent of nutrient-laden sediment scoured from the Conowingo Dam reservoir into the Bay that undermines our efforts and expenditures. The pollution loading from this single source significantly eclipses the loading from all Maryland sources. The models used by EPA to apportion the TMDL allocations fail to adequately account for such loading. Indeed, the recently released draft Lower Susquehanna River Watershed Assessment (LSRWA) confirms that the 2010 TMDL incorrectly assumed the capacity of the dams in the lower Susquehanna River to trap nutrients and sediments from upstream sources; warranting a TMDL recalibration to account for the lack of trapping capacity.

The Coalition is intended to ensure the accuracy and efficacy of the TMDL and related WIPs, before the expenditure of significant public resources. The Coalition counties want to enhance the public policy discourse regarding the agenda to improve the water quality of the Bay and the mandates being imposed in furtherance of the TMDL. The Coalition's goal is to elevate and enhance the public policy debate, not litigate.

Through continued research, coordination and advocacy, the Coalition will expand its beachhead in the free exchange of ideas on how best to meaningfully, measurably and cost-effectively improve the health of the Chesapeake Bay, and enhance the posture of the Coalition as a credible resource and advocate worthy of a seat and voice at any table where programs, policies and practices to improve the water quality of the Chesapeake Bay and impacting local governments are being developed and considered.

Please visit the Clean Chesapeake Coalition's website (www.CleanChesapeakeCoalition.com) to stay current on Coalition events, developments and items of interest. The Coalition can also be followed on Twitter and Facebook.

Inescapable Realities Threatening Maryland's Bay Restoration Efforts

The following inescapable realities have been acknowledged by the federal and State agencies responsible for the LSRWA draft report:

1. The reservoirs (Lake Clarke, Lake Aldred and Conowingo Pond) behind the three hydroelectric dams (Safe Harbor, Holtwood and Conowingo) in the lower Susquehanna River are full and no longer serve as net traps of sediments and nutrients.

2. U.S. EPA's 2010 TMDL, upon which Maryland's $14.5 billion WIP is premised, incorrectly assumed that the dams acted to trap 50% of the sediments in the Susquehanna River. As a consequence, the TMDL will have to be recalibrated to account for this fact, which will result in a determination that tens of thousands of tons of additional sediments, millions of pounds of additional nitrogen and hundreds of thousands of pounds of additional phosphorus need to be removed upstream from the Susquehanna River annually if the water quality of the Chesapeake Bay is to be improved.

3. Scour of nutrient-laden sediments that have accumulated in the reservoirs behind the dams in the lower Susquehanna River occurs several times a year during major storm events; which are becoming more frequent and intense because of climate change.

4. The nutrients that attach to the sediments that are scoured from the reservoirs behind the dams in the lower Susquehanna River are a bigger threat to the health of the Bay than the sediments themselves because those nutrients are released in the more saline, warmer, less oxygenated environment of the Bay estuary.

5. The loss of long-term sediment trapping capacity at Conowingo Dam is causing impacts to the health of the Chesapeake Bay ecosystem. According to MDE, the additional nutrient pollution associated with the conditions in the lower Susquehanna River system could result in Maryland not being able to meet Chesapeake Bay water quality standards, even with full implementation of WIPs by 2025.

Federal Energy Regulatory Commission (FERC) Relicensing of Conowingo Dam

Recognizing that MDE has not been provided sufficient scientific information to determine whether the discharges from Conowingo Dam comply with State water quality standards, Exelon withdrew its water quality certification application and has agreed with MDE to provide up to $3.5 million for another multi-year study on the effects of sediment and associated nutrients accumulated in the reservoir behind Conowingo Dam on the water quality of the downstream Susquehanna River and Chesapeake Bay. FERC has acknowledged that Exelon, in coordination with MDE, intends to withdraw and refile its water quality certification application for Conowingo Dam relicensing every year until the new study is complete. In the meantime, FERC has issued Exelon an annual license to continue operating Conowingo Dam with no new conditions (*i.e.*, no dredging or other measures to mitigate impacts of scour). The temporary annual license automatically renews until a long-term relicense is issued by FERC.

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July 18, 2014

The Honorable Brian E. Frosh
Chair, Judicial Proceeding Committee
Senate of Maryland
7315 Wisconsin Ave., Suite 800W
Bethesda, Maryland 20814-3412

Re: Chesapeake Bay Restoration
Clean Chesapeake Coalition

Dear Senator Frosh:

I am writing to you on behalf of the Clean Chesapeake Coalition. This is a growing coalition of nine Maryland counties: Allegany County, Caroline County, Carroll County, Cecil County, Dorchester County, Frederick County, Harford County, Kent County, and Wicomico County. The mission of the Coalition is to support and promote fiscally responsible and environmentally sound programs, policies and practices that will make lasting improvements to the water quality and the health of the Chesapeake Bay, and to protect the substantial investments thus far made by Marylanders in the name of Bay restoration.

You almost certainly will be the next Attorney General of the great State of Maryland - congratulations. Throughout your legislative career, you have established a reputation for environmental advocacy. I am writing to you today to present the Coalition's concerns with the pending Federal Energy Regulatory Commission (FERC) relicensing of the Conowingo Hydroelectric Power Plant owned by Exelon Corporation. It is our belief that the Office of the Attorney General should be playing a critical role in the relicensing process in support of the Maryland Department of the Environment and the Maryland Department of Natural Resources. This is a role which we fear is not currently being fulfilled to the benefit of the Bay.

As you contemplate the agenda for the Office of the Attorney General, the Coalition believes matters surrounding the Conowingo Dam should be a part of that agenda. The State has a huge lever in the FERC proceeding. Commencing on January 31, 2014, the State has one year to fashion and to submit to FERC conditions that it seeks to have FERC impose on Exelon in conjunction with the relicensing process. This is known as the 401(a) water quality certification, which is mandated pursuant to § 401(a) of the Clean Water Act. Failure to submit proposed conditions within the one-year time frame constitutes a waiver by the State of its right

to submit any conditions for consideration. We are fearful that the State has done little to nothing to exercise its rights and has a limited understanding of the power that it wields through the § 401(a) process.

Enclosed with this letter are the following documents:

1. The Coalition's Motion to Intervene in the FERC relicensing. This document compiles the facts (based in large measure on the research of the United States Geologic Survey, and other federal, state and institutional scientists cited in the motion). Basically, the Bay died its first death after Hurricane Agnes in 1972, when 20 million tons of nutrient laden sediments were scoured from the floor of a sediment full Conowingo Pond (behind the Conowingo Dam) and combined with 16 million tons of sediments scoured from the floors of the other full reservoirs behind upstream hydroelectric power dams and from the soils of Pennsylvania and New York. The scour and shock loading from subsequent storms has continued to undo all progress made in improving the water quality of the Bay over the past 42 years. The ponds behind the Conowingo Dam and the other upstream dams are full and have no remaining trapping capacity (they are in a state of equilibrium). Given projected climate change and the increase in frequency and severity of storm events predicted in conjunction with climate change, the damage caused by scour will continue to wipe out any improvements made by Marylanders to the Bay's water quality.

2. The Coalition's Supplement to Motion to Intervene, which is provided to show recent independent scientific studies that support the observations and conclusions made in the Coalition's original Motion to Intervene.

3. A brief filed by E. Curtis Whittaker (on behalf of New Energy Capital Partners, an energy consortium) in the FERC proceeding. This brief explains the history and intent of the Federal Water Powers Act that governs the relicensing, the power vested in the states, and the obligations that should be recognized and assumed by the power companies that benefit from this federal licensure program, which was made possible only through relinquishment by states of their rights in state waters in return for the benefit conferred on licensees – a benefit that was not recognized during the last relicensing and is currently being ignored. Mr. Whitaker's firm represents the State of North Carolina in a FERC relicensing proceeding in that state and is working with the states of New Hampshire and Connecticut in a FERC relicensing in those states.

4. The Chesapeake Bay Foundation's Motion to Intervene and subsequent CBF comments to FERC. You will note that the concerns raised by the Coalition are virtually identical to the concerns raised by several environmental organizations.

CLEAN CHESAPEAKE COALITION

In addition to the documents provided, we have motions to intervene in the FERC relicensing by the Midshore Riverkeeper Conservancy, the Stewards of the Lower Susquehanna, the Lower Susquehanna Riverkeeper, Waterkeepers Chesapeake, the Chester River Association, the Sassafras River Association and The Nature Conservancy. We would be happy to share these additional motions with you. Each reflects the same concerns raised by the Coalition and demonstrates that advocates for the Bay are in lockstep regarding the need to impose conditions on Exelon related to sediment accumulation and transport through the licensing process.

We would very much appreciate an opportunity to meet with you to discuss our concerns relative to the FERC proceeding. We would further welcome an opportunity to discuss more general concerns with the health of the Bay via our County members and to establish lines of communication moving forward. I believe the Coalition can be a resource and a partner to you going forward. We are happy to meet at any time that is convenient for you. The upcoming Maryland Association of Counties Summer Conference in Ocean City next month may serve as an opportunity to do so.

Please advise if you are willing to meet with us to discuss the above issues.

With kindest regards and best wishes for continued success,

Sincerely,

Ronald H. Fithian
Chairman, Clean Chesapeake Coalition
and Kent County Commissioner

Enclosures
cc: Clean Chesapeake Coalition