



MARYLAND LEAGUE
OF CONSERVATION VOTERS

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Support SB540: Federal Clean Water Act - Authority of State

Maryland League of Conservation Voters

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Dear Chairman Pinsky and Members of the Committee,

Maryland LCV supports SB540: Federal Clean Water Act - Authority of State, and we thank Senator Hershey for his leadership on this issue. SB540 prohibits the state from entering into an agreement that waives the state's authority under § 401 of the federal Clean Water Act (the State's Water Quality Certification) as part of its duties related to the federal relicensing of the Conowingo Dam.

Ensuring Maryland does not enter into a settlement agreement with Exelon that waives this authority is critical for three reasons:

1. **Marylanders and the Bay at risk:** The settlement would put the Bay in precarious risk of a catastrophic scouring event of the sediment behind that dam that could eliminate our progress towards our 2025 Bay restoration goals and damage the Bay for years to come. It could also ignore the environmental justice concerns affecting those who have been identified as living in an environmental justice hot spot just downstream of the dam.
2. **Loss of billions of dollars:** The settlement with Exelon will be for nearly 50 years. Once signed, the state would lose billions of dollars over the life of the permit. These funds could be used to clean up the pollution allocated to the Conowingo sediment build up including 6 million pounds of nitrogen and 260,000 pounds of phosphorus every year.
3. **Disastrous 'fine print':** The 'Collateral Proceedings' section of the settlement would mean that permits and watershed implementation plans could not require additional action for 50 years, and the fatal flaws in existing permits could not be fixed for decades.

Background:

Exelon, which boasts over thirty billion dollars in annual revenue,¹ operates the Conowingo Dam. This 252-megawatt plant across the Susquehanna River was built in 1928 and powers about 159,000 homes. The dam blocks 97% of historically available spawning habitat for migratory fish in PA and NY. Downstream, extreme peaking operations of the dam have eliminated almost all spawning habitat for fish such as striped bass, as well as historic habitat for other keystone species important to water quality including freshwater mussels and submerged aquatic vegetation.

For years, the dam has acted as a barrier for pollution coming down the Susquehanna River. The dam has been settling out 200 million tons of polluted sediment for the last 90 years in a 14-mile reservoir that is now full. This means that from now on, pollution coming down the Susquehanna from upstream will be going through the dam into the Chesapeake Bay. While this is a challenge, we also have a huge opportunity to ensure that Exelon is part of the solution.

Conowingo Dam requires a federal license from the Federal Energy Regulatory Commission (FERC) that must be renewed every 50 years. The dam's license was up for renewal in 2014. As a part of the federal re-licensing process, Maryland had the opportunity to issue a State Water Quality Certification (WQC) for the dam—with new conditions that would help ensure the owner, Exelon Corporation, was responsible for a number of cleanup requirements.

Exelon applied for a Water Quality Certification from Maryland in 2014. The application was deficient, and the state notified Exelon that the application would be denied if it was not withdrawn. This happened three more times until finally, in 2018, MDE issued a final WQC for Conowingo Dam with robust conditions that would require Exelon to pay a fair share for the cleanup around the dam. Under this new Maryland-issued water quality certification, the new conditions would require Exelon to control the pollution running through the dam by reducing nutrients to the level that was previously being trapped by the reservoir. This amounts to about 6 million pounds of nitrogen and 260,000 pounds of phosphorus a year beginning in 2025. If Exelon could not reduce the pollution, it would pay into funds that would be used to reduce sources of pollution. Unfortunately, Exelon sued Maryland and, after the lawsuit was filed, Maryland proposed to settle with Exelon.

This proposed settlement waives Maryland's right to apply the Water Quality Certification and would be disastrous for Maryland and the Bay and would be in place for 50 years.

SB540 simply states that the State may not enter into a settlement agreement related to the Conowingo relicensing if it waives its authority under the Water Quality Certification. We support this bill for three main reasons:

¹ <https://www.macrotrends.net/stocks/charts/EXC/exelon/revenue>

1. Marylanders and the Bay at risk

One big hurricane could scour out a huge amount of sediment laden with all sorts of pollution that is built up behind the Conowingo dam and send polluted water downstream resulting in significant impacts to the Bay. The dam did not create the sediment, primarily Pennsylvania agriculture did. However, the dam operation does prevent the polluted sediment from going downstream and significantly affecting the health of the river and Bay.

Studies show that the operation of the dam itself is causing some of this scouring and pollutant loading (up to 20% of the pollution coming past the dam in big storm events). A large enough storm could destabilize much of the sediment behind the dam and dump much of it into the Bay. This would not only have negative impacts on the ecosystem of the Bay, but it is also worth noting that according to [Maryland EJScreen Mapper](#), the area just below the dam in Harve de Grace and Perryville is an environmental justice hotspot. These already overburdened communities would feel the disproportionate impacts of pollution going through the dam.

Under the Clean Water Act and Maryland state law, a federal permit to any facility that discharges to navigable waters may not be issued unless the state certifies that the activity does not violate state water quality standards or limitations. The dam is not meeting water quality standards and therefore, should not receive a permit.

2. Loss of billions of dollars

The settlement only requires Exelon pay \$200 million over nearly 50 years. However, much of the work these funds would be applied is already underway and has nothing to do with water quality. In fact, only about \$61 million in cash payments, or about \$1.2 million worth of pollution reduction per year, would be required. Studies show that the actual cost of meaningfully reducing the nutrients and sediment behind the dam has been estimated at approximately \$41 – \$172 million each year. While the financing to address the sediment pollution at the Conowingo Dam is currently being discussed, at this point in time, the state should not agree for the next 50 years that Exelon's obligations are limited to approximately 1% of the financial needs.

3. Disastrous 'fine print'

3.6 SRBC, Conowingo WIP, Chesapeake Bay TMDL, and Similar Proceedings (a) Collateral Proceedings states: *"As part of this Settlement Agreement and throughout its Term, MDE agrees that it shall not seek to impose upon Exelon, as part of (1) any SRBC proceeding, the Conowingo Watershed Implementation Plan (or "Conowingo WIP"), the Chesapeake Bay TMDL or any proceedings related thereto including proceedings of the Chesapeake Bay Program partnership (each, a "Collateral Proceeding"), or (2) any NPDES permit for the Dam, any State Discharge Permit for the Dam, any modification of the New License throughout its Term, any new CWA Section 401 water quality certification issued in*

connection with a federal permit requirement for any construction related to the FERC Relicensing Proceeding, or any similar proceedings” This language means that under the settlement, Maryland would agree to not make the WIP or the NPDES permit stronger for nearly 50 years. Conowingo desperately needs a stronger WIP and NPDES permit if we want to reach our 2025 goals to restore the Bay and keep it healthy for years beyond. “MDE agrees that it shall not seek to impose upon Exelon” any additional requirements under these provisions **even if it becomes apparent during the dam’s 50-year license that additional requirements are necessary to assure compliance with the Clean Water Act and/or water quality standards.**

NPDES Permit: Under the settlement, MDE could not put in place a more stringent permit than what the current permit requires and the current NPDES Clean Water Act permit is woefully inadequate. Under the current NPDES permit, that would essentially remain in effect under this settlement, 398.41 pounds of sediment would be permitted to be discharged per day on average.² ‘Emergency releases’ would also be allowed. So, this allows all those litter filled dam releases we see summer after summer and could lead to increasingly devastating problems in the future. The fact we see this release happen time and time again shows that the underlying controls are inadequate. The permit also does not address a lot of issues such as possible catastrophic scouring, effects on fish populations, and effects that changes in flow rates have downstream.

Conowingo Watershed Implementation Plan: Under the proposed settlement, Maryland would not be able to significantly improve the Conowingo Watershed Implementation Plan (CWIP). The current CWIP has no plan to address the millions of pounds of sediment behind the dam. It does not require enough best management practices to mitigate the influx of pollution coming down to the Bay from upstream, and it does not hold Exelon financially accountable for cleaning up the pollution. The CWIP goals that are laid out cannot be performed without sufficient funding. Finally, because no feasible funding source was identified for the CWIP, the nitrogen, phosphorus, and sediment loads at the dam will need to be allocated among the other states if this plan falls through. In terms of both funding and additional loads, officials from Bay partner states have already sounded their concerns over the inequity of this approach. SB540 would help Maryland from having to rely on vague cleanup plans and inequitable offsets.

²A monthly average of 30mg/L and daily maximum of 45mg/L of suspended solids. Average design flow is 47.74 MDG (MDG= Millions of Gallons per day). Since 1mg/L is 8.3454e-6 gallons, that means 398.41 pounds of sediment permitted to be discharged per day on average equating to 145,519 pounds of sediment permitted per year legally to be discharged.

<https://mde.maryland.gov/programs/Water/WetlandsandWaterways/Documents/ExelonMD/FERC/Conowingo-Vol1-Public.pdf#page=180&zoom=100,249,344>

Conclusion:

SB540 is a bi-partisan bill that will prevent Maryland from entering into a settlement agreement that waives the state's authority under Section 401 of the Clean Water Act and jeopardizes the state's clean-up efforts for the next 50 years. **For all the above reasons, Maryland League of Conservation Voters urges a favorable report of SB540.**

If you have any questions, please email Water Program Director Ben Alexandro at balexandro@mdlev.org.