



Exelon & Maryland's Flawed Conowingo Dam Settlement Must be Corrected

On October 29, 2019, the Maryland Department of the Environment (MDE) announced a proposed settlement agreement with a subsidiary of Exelon Corporation in response to the 50-year renewal of Conowingo Dam's operating permit. With this settlement, MDE would waive their important right to issue a 401 Water Quality Certification to ensure that Conowingo Dam operations meet state water quality standards. The draft settlement agreement falls short of protecting Maryland's waterways. Further, the substantive portions of the settlement were not incorporated into the 50-year Federal Energy Regulatory Commission (FERC) license agreement that would undergo public input and scrutiny.

Legal Analysis

- (1)** The settlement provides grossly insufficient funds to deal with the risks that Conowingo operations pose to the Susquehanna River and Chesapeake Bay — primarily from the next large storm that will scour the millions of tons of sediment, nutrients, and debris currently trapped behind the Dam. As a 50-year agreement, this once-in-two-generation opportunity only amounts to entire cash payments totaling \$61 million for the entire 50 years, which is less than half of what would be required under the state's Water Quality Certification for just 1 year. It provides less than 1% of the funding, and divided over the term of the agreement, is only \$1.22 million per year. Vetted studies have shown that amount should be closer to \$35 million a year. A mere \$500,000 was dedicated to finding solutions for the millions of tons of trapped sediment, which will be wholly inadequate to addressing that problem and remains the biggest threat to the health of the Chesapeake Bay. The Water Quality Certification that MDE forfeited in light of this agreement required \$172 million a year for upstream nutrient abatement.
- (2)** The settlement includes statements of intent without assurances that the initiatives and actions under the agreement will actually be fulfilled by Exelon; there are no stipulated timelines for completion of some of the work to be done by Exelon.
- (3)** The settlement gives the public no enforcement power to make sure the terms of the settlement are fulfilled in a sufficient manner. It leaves oversight entirely up to the State of Maryland, giving no other parties standing to hold MDE or Exelon accountable.
- (4)** The settlement requires payments made by Exelon to go to the State's Clean Water Fund, which can be reallocated or raided by the Governor at any time over the next 50 years. As an example of how the funds can be used, in fiscal year 2017, salaries and wages accounted for roughly 78 percent of the Clean Water Fund's budget.
- (5)** The settlement does not mention any appropriation of funding for upstream water quality improvements to combat sediment and nutrient load to the Dam's reservoir.

Significant improvements must be made upstream, and those communities need support now as a part of this settlement.

Recommendations

The Susquehanna River is a public resource and should not be sold off to a private company for exclusive use without ensuring that the impacts to the public have been properly mitigated. Therefore:

- (1)** MDE and Governor Hogan should increase their funding ask from Exelon before fully signing off on the agreement or nix the agreement entirely and continue pursuing the more protective Water Quality Certification. Studies have confirmed that the monetary requirement should be about 10 times what the current settlement language promises in order to assure adequate cleanup and protections for the Chesapeake Bay and local waterways.
- (2)** The settlement should specifically include more funding from Exelon to address the sediment trapped behind the Dam, and research must be completed now so we can determine potential beneficial reuse of those sediments.
- (3)** The State should build realistic assurances into the agreement that the terms will be fulfilled, not just rely upon statements of intent. There should also be an opportunity for outside parties to enforce the terms of the agreement or become a part of the agreement itself.
- (4)** The settlement should create a separate fund specifically for restoration of the Susquehanna River and the impacts of Conowingo Dam.
- (5)** The settlement must include support for communities upstream to lessen their sediment load.
- (6)** The terms of the settlement must also be included in the federal license.

Next Steps

The settlement agreement has been submitted to FERC for approval (Docket # P-405-106). FERC has granted an extension to the comment period and comments are now due January 17, 2020.

This is a once in a lifetime opportunity to address these issues; we need to get it right.

About Us

Waterkeepers Chesapeake and Lower Susquehanna Riverkeeper has been working with Earthjustice since 2014 to hold Exelon accountable for its fair share of the dam cleanup. More information can be found at <https://waterkeeperschesapeake.org/conowingo-dam/> and <http://www.conowingodam.org>.