

From: Charles MacLeod
To: "[Okeeffe, Mary](mailto:Mary.Okeeffe@mail.house.gov)"
Cc: [Daniels, Tim](mailto:Daniels.Tim@ccgov.org); [James Massey \(jmassey@ccgov.org\)](mailto:jmassey@ccgov.org); [Ronald H. Fithian \(rfithian@rockhallmd.gov\)](mailto:Ronald.H.Fithian@rockhallmd.gov)
Subject: RE: Question from the Office of Congressman Harris @ H.R. 3043 - Hydropower Policy Modernization Act
Date: Wednesday, November 08, 2017 1:14:49 PM
Attachments: [CCC Ltr to MD Congressional Delegation re HR 3043 \(8-31-17\).pdf](#)
[image001.png](#)

Dear Ms. O'Keeffe:

Thank you for contacting me for input on behalf of the Clean Chesapeake Coalition (CCC) regarding H.R. 3043. I've copied Mr. James Massey, Council Manager for Cecil County, as he too was asked for clarification in light of Cecil County's concerns.

Given the immense attention now on the relicensing of Conowingo Dam currently pending before FERC (Exelon is seeking a 46-year license for continued operations), the chief concern for the Maryland counties in the CCC is how changes to the Federal Power Act (FPA) might undermine or curtail the existing authority granted to the State of Maryland under Section 401 of the Clean Water Act (CWA) to establish conditions (to protect water quality and downstream public investments to improve water quality) on a hydropower dam license/relicense issued by FERC. Currently, the relicensing of the Conowingo Dam by FERC is subject to Maryland's "water quality certification" (WQC) approval with or without conditions (this is the oversight/authority granted the State per CWA Section 401). Under current federal law, any conditions imposed by the State in connection with a WQC approval must be incorporated into any final license issued by FERC. As FERC's focus and charge is energy production, not environmental protection, the State's role per the CWA and WQC process is essential to protecting the State's waters and mitigating adverse downstream impacts.

HR 3043 gives FERC more unchecked control over the licensing process (i.e., timelines/deadlines, schedules for intervening party input) to the extent that it (FERC) can thwart the State's ability to conduct the necessary environmental impact reviews/scientific studies to ensure that applicable water quality standards will be met as required by CWA Section 401. Streamlining the process for FERC licensing of hydropower dams to increase green energy production is understandable; however, it should not be at the expense of the State's ability to protect its waters (which it holds in trust for its citizens) as authorized under the CWA.

To address the concerns of the State of Maryland (8/14/17 letter from MDE and DNR) and the CCC most directly, HR 3043 could be amended to carve out the pending relicensing of Conowingo Dam. Can the changes giving FERC unilateral control over the licensing process be prospective, applying only to future hydropower applications – not those that are pending? Exelon's application to the State for WQC is currently under consideration with a public hearing scheduled for December 2017. The Conowingo relicensing processes has been underway for several years and there are multiple intervening parties heavily invested in the process. By amending the FPA via HR 3043 to allow FERC to change the procedural ground rules (midstream), Maryland's ability to protect its waters and protect its substantial investments in meeting EPA's Bay TMDL goals will indeed be undermined, along with the efforts and expenditures of multiple stakeholders/intervening parties.

By Presidential Executive Order dated May 12, 2009, the Chesapeake Bay was declared a National Treasure and most worthy of protection. The adverse environmental impacts attributable to the operation and maintenance of Conowingo Dam (including its upstream reservoir) have been scientifically confirmed. Maryland's authority under CWA Section 401 is the only opportunity to impose conditions on FERC's relicensing of Conowingo Dam for the betterment of the Bay. Now is hardly the time to limit the State's interest in protecting the Bay vis a vis Conowingo relicensing. Accordingly, for the sake of the Chesapeake Bay and in furtherance of EPA's Bay TMDL goals, carve out the hydropower dams that impact the Chesapeake Bay from HR 3043.

Moreover, the concerns can be addressed by making it absolutely clear in HR 3043 that nothing in the bill is intended to alter, amend or abridge the State's authority, role, responsibilities and timelines as currently provided under Section 401 of the CWA. Additionally, the State's WQC decision and/or conditions should not be subject to a trial-type hearing before a FERC Administrative Law Judge as proposed under HR 3043.

Thank you again for the opportunity to comment further on behalf of the Clean Chesapeake Coalition.

Regards,
Chip MacLeod

Charles D. MacLeod, Esq.
MacLeod Law Group, LLC
120 Speer Road, Suite 1
Chestertown, MD 21620
Phone: 410-810-1381
Fax: 410-810-1383
www.mlg-lawyers.com

Confidentiality Notice: The information contained in this electronic or written communication is confidential and may be subject to protection under the law. This message is intended for the sole use of the individual or entity to which it is addressed. If you are not the intended recipient, you are notified that any use, distribution or copying of the message is strictly prohibited. If you received this communication in error, please contact the sender immediately by replying to this email and deleting the material from any computer.

From: Okeeffe, Mary [mailto:Mary.Okeeffe@mail.house.gov]
Sent: Tuesday, November 07, 2017 2:36 PM
To: Charles MacLeod <cmacleod@mlg-lawyers.com>

Cc: Daniels, Tim <Tim.Daniels@mail.house.gov>

Subject: Question from the Office of Congressman Harris @ H.R. 3043 - Hydropower Policy Modernization Act

Good Afternoon Mr. MacLeod:

I work for Congressman Harris in the Bel Air District Office. I am assisting our LD, Tim Daniels in monitoring H.R. 3043, the Hydropower Policy Modernization Act. Tim Daniels is cc'd on this email.

As you probably know, H.R. 3043 is scheduled for House consideration this week. It is our understanding that that the Clean Chesapeake Coalition is opposed to H.R. 3043.

It would be very helpful if you could share with our office the specific legislative language and/or Section of the bill that the Coalition finds problematic?

Thank you for your consideration to our request.

Sincerely,

Mary O'Keeffe

Congressman Andy Harris, M.D.

15 Churchville Rd., Suite 102B | Bel Air, MD 21014

Office: 410-588-5670

Fax: (410) 588-5673

Twitter: @RepAndyHarrisMD

harris.house.gov

Please subscribe to Rep. Harris' e-newsletter at <http://harris.house.gov/contact-me/newsletter>