



MARYLAND DEPARTMENT OF THE ENVIRONMENT
1800 Washington Boulevard • Baltimore MD 21230
410-537-3000 • 1-800-633-6101 • www.mde.maryland.gov

Larry Hogan
Governor

Ben Grumbles
Secretary

Boyd Rutherford
Lieutenant Governor

November 25, 2015

The Honorable Paul Ryan, Speaker
Congress of the United States
House of Representatives
H-232 The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi, Minority Leader
Congress of the United States
House of Representatives
233 Cannon House Office Building
Washington, DC 20515

Dear Speaker Ryan and Minority Leader Pelosi:

The State of Maryland (“Maryland”) provides the following comment on the House of Representatives Bill 8 (H.R. 8) – *North American Energy Security and Infrastructure Act of 2015*. Although Maryland generally welcomes reforms that streamline the Federal Energy Regulatory Commission (FERC) licensing process, Maryland strenuously opposes provisions in H.R. 8 that would strip states of their authority under Section 401 of the Clean Water Act to develop license conditions to protect water quality. States serve an essential role in the FERC hydropower licensing process. H.R. 8 designates the FERC as the sole lead agency over federal authorizations related to an application for a license, license amendment, or exemption for a hydropower project. As the sole lead agency, FERC would establish and control the timeline for the hydropower licensing process and may issue a license, license amendment, or exemption for a hydropower project without appropriate conditions to protect the environment, including the Clean Water Act Section 401 water quality certification. These types of conditions are essential for ensuring that existing and new hydropower projects are built and operated in a manner that is consistent with state and federal environmental laws and are protective of the environment.

Decades of federal court decisions interpreting Section 401 have established the states’ authority to require conditions in FERC licenses necessary to protect water quality. These decisions recognize and affirm the basic principle of federalism embodied in the Clean Water Act that states have the primary role and responsibility to ensure state water quality standards are met.

Maryland’s interest in protecting water quality is as important and relevant today as ever, particularly now as FERC considers the relicensing of the Conowingo hydroelectric dam on the Susquehanna River in Maryland. The Susquehanna River provides approximately 50% of the fresh water to the Chesapeake Bay and is an important driver of the Bay’s water quality. A joint study funded by Maryland and the Army Corps of Engineers concluded that the Dam’s loss of capacity to trap sediment and nutrients adversely affects the health of the Bay. The precise nature of the Dam’s adverse impacts on the health of the Bay and the circumstances under which they occur are currently the subject of additional study. What is clear, however, is that any new FERC license for the Dam will



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have to contain appropriate conditions to address sediment and nutrient transport and ensure that Maryland's water quality standards are maintained. Without appropriate conditions Maryland may not be able to meet its commitment to achieve EPA's Total Maximum Daily Loads ("TMDL") for the Bay.

In removing or impairing the states' primary role and responsibility under Section 401 to fashion conditions in FERC licenses, H.R. 8 relegate the states – the entities with the greatest interest and expertise in protecting state water quality – to bystander or second-class status. Maryland strenuously objects to the provisions in H.R. 8 that would strip states of their authority under Section 401 of the Clean Water Act.

Congressmen Sarbanes and Van Hollen have prepared an amendment to the Rules Committee Print for H.R. 8 that would address Maryland's concerns with the legislation's impact on the Conowingo hydroelectric dam relicensing process by amending the definition of "federal authorization" for the hydropower provisions of the legislation to exclude "Section 401 of the Federal Water Pollution Control Act." Maryland strongly supports this amendment to H.R. 8. In the absence of this amendment being adopted by the House of Representatives, Maryland urges that the provisions of H.R. 8 that would strip states of their authority under Section 401 of the Clean Water Act be stricken from the bill.

Thank you for your consideration of this information.

Respectfully,



Ben Grumbles
Secretary
Maryland Department of the Environment



Mark Belton
Secretary
Maryland Department of Natural Resources

Enclosure

cc: The Maryland Congressional Delegation
The Honorable Brian E. Frosh, Attorney General, Maryland

