

**IN THE CIRCUIT COURT FOR CECIL COUNTY**

**PETITION OF:**

CHESAPEAKE BAY FOUNDATION, INC.  
6 Herndon Avenue  
Annapolis, MD 21403

STEVEN R. LAY  
1110 Bern Drive  
Havre de Grace, MD 21078

BLAIR BALTUS  
502 Katherine Avenue  
Essex, MD 21221

**FOR JUDICIAL REVIEW OF THE  
DECISION OF THE:**

Maryland Department of the Environment  
Water and Science Administration  
1800 Washington Boulevard  
Baltimore, MD 21230

**IN THE MATTER OF:**

Final Determination to Issue Discharge Permit to  
AquaCon Maryland, LLC  
NPDES Permit No. MD0068209;  
State Discharge Permit No. 24-DP-3895

CIVIL ACTION  
C-07-CV-25-000167  
No. \_\_\_\_\_

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**PETITION FOR JUDICIAL REVIEW**

Pursuant to Maryland Rule 7-202 and Md. Code Ann., ENVIR. §§ 1-601 and 1-605,  
Petitioners Chesapeake Bay Foundation, Inc., Steven R. Lay, and Blair Baltus (collectively,  
“Petitioners”), file this Petition for Judicial Review requesting review of the Final Determination  
of the Maryland Department of the Environment Water and Science Administration (the  
“Department”) to issue State Discharge Permit 24-DP-3895/National Pollutant Discharge  
Elimination System Permit MD0068209 (the “Permit”) to AquaCon Maryland, LLC. The Permit  
authorizes the discharge of salmon raceway purge water from the AquaCon land-based salmon

rearing facility (“Facility”) to be located at Commodore Boulevard, Port Deposit, Maryland, to the Susquehanna River.

In support of this Petition for Judicial Review, Petitioners state the following:

1. The Permit authorizes the Facility to discharge up to 1.9 million gallons per day of waste “purge” water, sets limits for certain pollutants in the discharge, and requires monitoring, reporting, and other conditions.
2. The Facility will discharge to the Susquehanna River, which is designated under COMAR 26.08.02.02 as a Class (or Use) II-P (“Tidal Fresh Water Estuary”) waterway protected for water contact recreation, fishing, aquatic life, wildlife, shellfish harvesting, and public water supply.
3. The Department published its Notice of Tentative Determination and Public Hearing for the Permit in the *Cecil Whig* newspaper on or about November 15 and 22, 2024.
4. The Department conducted a public hearing on the draft version of the Permit on December 16, 2024.
5. The Department held a comment period for the draft version of the Permit which ended December 23, 2024.
6. On or about March 12 and 19, 2025, the Department published its Notice of Final Determination on the Permit in the *Cecil Whig* newspaper. The Department set a deadline of April 21, 2025 to request judicial review of its Final Determination on the Permit.
7. Petitioners aver that the Department did not comply with Maryland law or federal law or both in rendering the Final Determination to issue the Permit which will result in harm to their various interests.

8. Petitioners further aver that the Permit itself does not conform with Maryland law or federal law or both and will result in harm to their various interests.

9. Petitioners' various interests depend upon the Susquehanna River and its tributaries, and downstream waterbodies including the Chesapeake Bay meeting water quality standards intended to protect water contact recreation, fishing, aquatic life, wildlife, and other uses. Petitioners aver that the Final Determination and Permit do not ensure compliance with water quality standards and will allow amounts of nutrients, sediment, and other pollution that will cause or contribute to water quality problems in the Susquehanna watershed and downstream, including, but not limited to, low dissolved oxygen levels, increased turbidity, and algal blooms. These water quality impairments interfere with, degrade, diminish, prevent, or otherwise harm the various interests of Petitioners.

10. Petitioner Chesapeake Bay Foundation, Inc. ("CBF") has standing to seek judicial review of this decision because it participated in the public participation process by submitting written or oral comments on the draft version of the Permit and meets the threshold standing requirements under federal law. Md. Code Ann., ENVIR. § 1-601(c).

11. The interests that CBF seeks to protect are germane to the organization's purposes.

12. While CBF's members could file a petition in their own right to redress their injuries, neither the claims asserted nor the relief requested require the participation of CBF's individual members in this action.

13. CBF is a nonprofit corporation organized under the laws of the State of Maryland and located at 6 Herndon Avenue, Annapolis, Maryland 21403. CBF also maintains regional

offices. It is the largest conservation organization dedicated solely to protecting the Chesapeake Bay and its tributaries throughout Maryland, including Cecil County.

14. On behalf of the organization and CBF's approximately 70,000 Maryland members, including approximately 821 in Cecil County, CBF submitted comments to the Department on the draft version of the Permit.

15. CBF is vitally interested in protecting water quality in Cecil County through education, restoration, and advocacy. CBF runs the Susquehanna Watershed Environmental Education Program where students travel by canoe on local creeks and rivers in the Susquehanna watershed, including the Susquehanna River itself. CBF members engage in a wide array of activities in the Susquehanna River watershed and downstream waterbodies, including fishing, crabbing, kayaking, boating, swimming, and oyster-gardening (growing oysters in cages attached to a dock). In this way, CBF and its members rely on healthy water quality in the Susquehanna watershed for economic, recreational, and aesthetic interests.

16. CBF avers that the organization and its members' interests will be injured by the Department's Final Determination to issue the Permit because the Permit will allow amounts of nutrients and other pollution that will cause or contribute to water quality problems in the Susquehanna watershed and downstream, including, but not limited to, low dissolved oxygen levels, increased turbidity, algal blooms, and failure to meet water quality standards. These water quality impairments interfere with, degrade, diminish, prevent, or otherwise harm the various interests of CBF's members, CBF's restoration projects, and CBF's education trips and programs. The injury is directly traceable to the permitted discharge from the Facility.

17. This Court is capable of redressing CBF's and its members' injuries by ordering that the Permit be remanded to MDE to include terms that ensure any discharges from the

Facility will conform to Maryland and federal law, including but not limited to compliance with water quality standards.

18. Petitioner Steven R. Lay resides at 1110 Bern Drive, Havre de Grace, Maryland. He has lived in Havre de Grace his entire life. Mr. Lay has worked as a waterman for the past fifty (50) years.

19. Mr. Lay works out of Havre de Grace and fishes in the Susquehanna River for white perch, yellow perch, blue catfish, and striped bass or rockfish. He fishes for American eels in the region of the upper Chesapeake Bay known as the “Susquehanna Flats,” downstream of the Facility. The Susquehanna Flats is renowned for its vibrant submerged aquatic vegetation (SAV) beds. This area provides habitat not only for eels, but for American and hickory shad, blueback herring, and alewife. It is also a popular hunting and recreation area. Mr. Lay maintains a hunting blind on the western side of the Susquehanna Flats.

20. Mr. Lay’s livelihood is directly impacted by the Department’s Final Determination to issue the Permit because it will allow amounts of nutrients and other pollution that will cause or contribute to water quality problems in the Susquehanna watershed and downstream, including, but not limited to, low dissolved oxygen levels, increased turbidity, algal blooms, and failure to meet water quality standards.

21. These water quality impairments interfere with, degrade, diminish, prevent, or otherwise harm Mr. Lay’s ability to make a living and have a source of income. For example, a health closure resulting from an upset at the Facility that prevents his harvest of fish would put him out of business. This is a direct, negative impact and the injury is directly traceable to the permitted discharge from the Facility.

22. Such impacts would not only affect Mr. Lay, but the entire community of watermen who work the upper Chesapeake Bay. Mr. Lay has direct knowledge of these impacts since he is the Chairman of the Tidal Fish Advisory Commission. He is also an honorary member of the Board of Directors for the Maryland Waterman's Association.

23. This Court is capable of redressing Mr. Lay's injuries by ordering that the Permit be remanded to MDE to include terms that ensure any discharges from the Facility will conform to Maryland and federal law, including but not limited to compliance with water quality standards.

24. Petitioner Blair Baltus resides at 502 Katherine Avenue, Essex, Maryland. He is the President of the Baltimore County Watermen's Association and serves on the Board of Directors of the Maryland Watermen's Association.

25. Mr. Baltus worked for decades as a waterman fishing crabs out of the upper Chesapeake Bay. He continues to fish recreationally and maintains his commercial fishing license. Mr. Baltus has direct and intimate knowledge of the fragile ecological balance in the upper Chesapeake Bay and Susquehanna Flats.

26. As Mr. Baltus stated in his comments to the Department on the draft version of the Permit, the Baltimore County Watermen's Association is opposed to the Permit. Additional inputs of nutrients and sediment and other pollutants, on top of other discharges from polluted runoff and upstream point sources including Conowingo Dam, directly impact the livelihood of watermen working the upper Chesapeake Bay and Susquehanna River.

27. The Department's Final Determination to issue the Permit will allow amounts of sediment and nutrients and other pollutants that will cause or contribute to water quality problems in the Susquehanna watershed and downstream, including, but not limited to, low

dissolved oxygen levels, increased turbidity, algal blooms, and failure to meet water quality standards.

28. These water quality impairments interfere with, degrade, diminish, prevent, or otherwise harm the economic interests of Baltimore County watermen as well as Mr. Baltus' own recreational and aesthetic interests. These are direct, negative impacts and the injuries are directly traceable to the permitted discharge from the Facility.

29. This Court is capable of redressing Mr. Baltus' injuries by ordering that the Permit be remanded to MDE to include terms that ensure any discharges from the Facility will conform to Maryland and federal law, including but not limited to compliance with water quality standards.

WHEREFORE, Petitioners respectfully ask this Court to grant judicial review in this case, reverse the decision of the Maryland Department of the Environment, remand the Permit to the Department for revisions necessary to conform with Maryland and federal law, and for all other just and proper relief.

**Dated: April 21, 2025**

Respectfully submitted,

/s/ Paul W. Smail  
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