

Dam Safety Law

§ 143-215.23. Short title.

This Part shall be known and may be cited as the Dam Safety Law of 1967. (1967, c. 1068, s. 1.)

§ 143-215.24. Declaration of purpose.

It is the purpose of this Part to provide for the certification and inspection of dams in the interest of public health, safety, and welfare, in order to reduce the risk of failure of dams; to prevent injuries to persons, damage to downstream property and loss of reservoir storage; and to ensure maintenance of minimum stream flows of adequate quantity and quality below dams. (1967, c. 1068, s. 2; 1977, c. 878, s. 1; 1993, c. 394, s. 1.)

§ 143-215.25. Definitions.

As used in this Part, unless the context otherwise requires:

- (1) "Dam" means a structure and appurtenant works erected to impound or divert water.
- (2) "Minimum stream flow" or "minimum flow" means a stream flow of a quantity and quality sufficient in the judgment of the Department to meet and maintain stream classifications and water quality standards established by the Department under G.S. 143-214.1 and applicable to the waters affected by the project under consideration, and to maintain aquatic habitat in the length of the stream that is affected. (1967, c. 1068, s. 3; 1973, c. 1262, ss. 23, 38; 1977, c. 771, s. 4; c. 878, ss. 2, 4; 1983, c. 306; 1987, c. 827, ss. 154, 175; 1993, c. 394, s. 2.)

§ 143-215.25A. Exempt dams.

(a) Except as otherwise provided in this Part, this Part does not apply to any dam:

- (1) Constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or another agency of the United States government, when the agency designed or approved plans for the dam and supervised its construction.
- (2) Constructed with financial assistance from the United States Soil Conservation Service, when that agency designed or approved plans for the dam and supervised its construction.
- (3) Licensed by the Federal Energy Regulatory Commission, or for which a license application is pending with the Federal Energy Regulatory Commission.
- (4) For use in connection with electric generating facilities regulated by the Nuclear Regulatory Commission.
- (5) Under a single private ownership that provides protection only to land or other property under the same ownership and that does not pose a threat to human life or property below the dam.
- (6) That is less than 25 feet in height or that has an impoundment capacity of less than 50 acre-feet, unless the Department determines that failure of the dam could result in loss of human life or significant damage to property below the dam. (2011)
- (7) Constructed for the purpose of providing water for agricultural use, when a person who is licensed as a professional engineer under Chapter 89C of the General Statutes designed or approved plans for the dam, supervised its construction, and registered the dam with the Division of Land Resources of the Department. This exemption shall not apply to dams that are determined to be high-hazard by the Department. (2011)

- (b) The exemption from this Part for a dam described in subdivisions (1) and (2) of subsection (a) of this section does not apply after the supervising federal agency relinquishes authority for the operation and maintenance of the dam to a local entity. (1993, c. 394, s. 3; 2009-390, s. 3(a); 2011-394, s. 10(a).)

§ 143-215.26. Construction of dams.

- (a) No person shall begin the construction of any dam until at least 10 days after filing with the Department a statement concerning its height, impoundment capacity, purpose, location and other information required by the Department. A person who constructs a dam, including a dam that is otherwise exempt from this Part under subdivisions (4) or (5) of G.S. 143-215.25A(a), shall comply with the malaria control requirements of the Department. If on the basis of this information the Department is of the opinion that the proposed dam is not exempt from the provisions of this Part, it shall so notify the applicant, and construction shall not be commenced until a full application is filed by the applicant and approved as provided by G.S. 143-215.29. The Department may also require of applicants so notified the filing of any additional information it deems necessary, including, but not limited to, streamflow and rainfall data, maps, plans and specifications. Every applicant for approval of a dam subject to the provisions of this Part shall also file with the Department the certificate of an engineer legally qualified in this State. The certificate shall state that the person who files the certificate is responsible for the design of the dam and that the design is safe and adequate.
- (b) The Department shall send a copy of each completed application to the State Health Director, the Wildlife Resources Commission, the Department of Transportation, and other State and local agencies it considers appropriate for review and comment. (1967, c. 1068, s. 4; 1973, c. 476, s. 128; c. 507, s. 5; c. 1262, s. 23; 1987, c. 827, s. 176; 1989, c. 727, s. 163; 1993, c. 394, s. 4; 1995, c. 509, s. 80.)

§ 143-215.27. Repair, alteration, or removal of dam.

- (a) Before commencing the repair, alteration or removal of a dam, application shall be made for written approval by the Department, except as otherwise provided by this Part. The application shall state the name and address of the applicant, shall adequately detail the changes it proposes to effect and shall be accompanied by maps, plans and specifications setting forth such details and dimensions as the Department requires. The Department may waive any such requirements. The application shall give such other information concerning the dam and reservoir required by the Department, such information concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When an application has been completed it may be referred by the Department for agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of original construction.
- (b) When repairs are necessary to safeguard life and property they may be started immediately but the Department shall be notified forthwith of the proposed repairs and of the work under way, and they shall be made to conform to its orders. (1967, c. 1068, s. 5; 1979, c. 55, s. 1.)

§ 143-215.28. Action by Commission upon applications.

- (a) Following receipt of agency comments the Commission shall approve, disapprove, or approve subject to conditions necessary to ensure safety and to satisfy minimum stream flow requirements, all applications made pursuant to this Part.
- (b) A defective application shall not be rejected but notice of the defects shall be sent to the applicant by registered mail. If the applicant fails to file a perfected application within 30 days the original shall be canceled unless further time is allowed.

- (c) If the Commission disapproves an application, one copy shall be returned with a statement of its objections. If an application is approved, the approval shall be attached thereto, and a copy returned by registered mail. Approval shall be granted under terms, conditions and limitations which the Commission deems necessary to safeguard life and property.
- (d) Construction shall be commenced within one year after the date of approval of the application or such approval is void. The Commission upon written application and good cause shown may extend the time for commencing construction. Notice by registered mail shall be given the Commission at least 10 days before construction is commenced. (1967, c. 1068, s. 6; 1973, c. 1262, s. 23; 1987, c. 827, s. 154.)

§ 143-215.28A. Application fees.

- (a) In accordance with G.S. 143-215.3(a)(1a), the Commission may establish a fee schedule for processing applications for approvals of construction or removal of dams issued under this Part. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for processing the applications and for related compliance activities. The total amount of fees collected in any fiscal year may not exceed one-third of the total personnel and administrative costs incurred by the Department for processing the applications and for related compliance activities in the prior fiscal year. An approval fee may not exceed the larger of two hundred dollars (\$200.00) or two percent (2%) of the actual cost of construction or removal of the applicable dam. The provisions of G.S. 143-215.3(a)(1b) do not apply to these fees.
- (b) The Dam Safety Account is established as a nonreverting account within the Department. Fees collected under this section shall be credited to the Account and shall be applied to the costs of administering this Part. (1989 (Reg. Sess., 1990), c. 976, s. 1; 1991 (Reg. Sess., 1992), c. 1039, s. 15; 1993, c. 394, s. 5.)

§ 143-215.29. Supervision by qualified engineers; reports and modification during work.

- (a) Any project for which the Commission's approval is required under G.S. 143-215.26, 143-215.27, and 143-215.28, and any project undertaken pursuant to an order of the Commission issued pursuant to this section or G.S. 143-215.32 shall be designed and supervised by an engineer legally qualified in the State of North Carolina.
- (b) During the construction, enlargement, repair, alteration or removal of a dam, the Commission may require such progress reports from the supervising engineer as it deems necessary.
- (c) If during construction, reconstruction, repair, alteration or enlargement of any dam, the Commission finds the work is not being done in accordance with the provisions of the approval and the approved plans and specifications, it shall give written notice by registered mail or personal service to the person who received the approval and to the person in charge of construction at the dam. The notice shall state the particulars in which compliance has not been made, and shall order immediate compliance with the terms of the approval, and the approved plans and specifications. The Commission may order that no further construction work be undertaken until such compliance has been effected and approved by the Commission. A failure to comply with the approval and the approved plans and specifications shall render the approval revocable unless compliance is made after notice as provided in this section. (1967, c. 1068, s. 7; 1973, c. 1262, s. 23; 1977, c. 878, s. 5; 1987, c. 827, s. 154.)

§ 143-215.30. Notice of completion; certification of final approval.

- (a) Immediately upon completion, enlargement, repair, alteration or removal of a dam, notice of completion shall be given the Commission. As soon as possible thereafter supplementary drawings or descriptive matter showing or describing the dam as actually constructed shall be filed with the Department in such detail as the Commission may require.
- (b) When an existing dam is enlarged, the supplementary drawings and descriptive matter need apply only to the new work.
- (c) The completed work shall be inspected by the supervising engineers, and upon finding that the work has been done as required and that the dam is safe and satisfies minimum streamflow requirements, they shall file with the Department a certificate that the work has been completed in accordance with approved design, plans, specifications and other requirements. Unless the Commission has reason to believe that the dam is unsafe or is not in compliance with any applicable rule or law, the Commission shall grant final approval of the work in accordance with the certificate, subject to such terms as it deems necessary for the protection of life and property.
- (d) Pending issuance of the Commission's final approval, the dam shall not be used except on written consent of the Commission, subject to conditions it may impose. (1967, c. 1068, s. 8; 1973, c. 1262, s. 23; 1987, c. 827, ss. 154, 177.)

§ 143-215.31. Supervision over maintenance and operation of dams.

- (a) The Commission shall have jurisdiction and supervision over the maintenance and operation of dams to safeguard life and property and to satisfy minimum streamflow requirements. The Commission may adopt standards for the maintenance and operation of dams as may be necessary for the purposes of this Part. The Commission may vary the standards applicable to various dams, giving due consideration to the minimum flow requirements of the stream, the type and location of the structure, the hazards to which it may be exposed, and the peril of life and property in the event of failure of a dam to perform its function.
- (b) The Department, consistent with rules adopted by the Commission, may impose any condition or requirement in orders and written approvals issued under this Part that is necessary to ensure that stream classifications, water quality standards, and aquatic habitat requirements are met and maintained, including conditions and requirements relating to the release or discharge of designated flows from dams, the location and design of water intakes and outlets, the amount and timing of the withdrawal of water from a reservoir, and the construction of submerged weirs or other devices intended to maintain minimum streamflows.

The Commission shall adopt rules that specify the minimum streamflow in the length of the stream affected.

- (c) The minimum streamflow in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural streambed and where the water is returned to the same stream shall be:
 - (1) The minimum average flow for a period of seven consecutive days that would have an average occurrence of once in 10 years in the absence of the dam, or ten percent (10%) of the average annual flow of the stream in the absence of the dam, whichever is less, if prior to 1 January 1995 the small power producer was either licensed by the Federal Energy Regulatory Commission or held a certificate of public convenience and necessity issued by the North Carolina Utilities Commission.

- (2) The minimum average flow for a period of seven consecutive days that would have an average occurrence of once in 10 years in the absence of the dam, or ten percent (10%) of the average annual flow of the stream in the absence of the dam, whichever is greater, if subdivision (1) of this subsection does not apply.
 - (3) To protect the habitat of the Cape Fear Shiner and other aquatic species, 28 cubic feet per second for any dam that diverts water from 2,500 feet or more of the natural streambed of any stream on which six or more dams operated by small power producers were located on 1 January 1995, notwithstanding subdivisions (1) and (2) of this subsection.
- (d) Subsection (c) of this section establishes the policy of this State with respect to minimum streamflows in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural streambed and where the water is returned to the same stream, whether the dam is subject to or exempt from this Part. In its comments and recommendations to the Federal Energy Regulatory Commission regarding the minimum streamflow in the length of the stream affected by a dam that is operated by a small power producer, as defined in G.S. 62-3(27a), that diverts water from 4,000 feet or less of the natural streambed and where the water is returned to the same stream, the Commission and the Department shall not advocate or recommend a minimum streamflow that exceeds the minimum streamflow that would be required under subsection (c) of this section.
- (e) The minimum streamflow in the length of the stream affected by a dam to which subsections (c) and (d) of this section do not apply shall be established as provided in subsection (b) of this section. Subsections (c) and (d) of this section do not apply if the length of the stream affected:
- (1) Receives a discharge of waste from a treatment works for which a permit is required under Part 1 of this Article; or
 - (2) Includes any part of a river or stream segment that:
 - a. Is designated as a component of the State Natural and Scenic Rivers System by G.S. 113A-35.1 or G.S. 113A-35.2.
 - b. Is designated as a component of the national Wild and Scenic Rivers System by 16 U.S.C. § 1273 and 1274. (1967, c. 1068, s. 9; 1973, c. 1262, s. 23; 1987, c. 827, s. 154; 1993, c. 394, s. 6; c. 553, s. 80; 1995, c. 184, s. 1; c. 439, s. 1.)

§ 143-215.32. Inspection of dams.

- (a) The Department may at any time inspect any dam, including a dam that is otherwise exempt from this Part, upon receipt of a written request of any affected person or agency, or upon a motion of the Environmental Management Commission. Within the limits of available funds the Department shall endeavor to provide for inspection of all dams at intervals of approximately five years.
- (b) If the Department upon inspection finds that any dam is not sufficiently strong, is not maintained in good repair or operating condition, is dangerous to life or property, or does not satisfy minimum streamflow requirements, the Department shall present its findings to the Commission and the Commission may issue an order directing the owner or owners of the dam to make at his or her expense maintenance, alterations, repairs, reconstruction, change in construction or location, or removal as may be deemed necessary by the Commission within a time limited by the order, not less than 90 days from the date of issuance of each order, except in the case of extreme danger to the safety of life or property, as provided by subsection (c) of this section.

- (c) If at any time the condition of any dam becomes so dangerous to the safety of life or property, in the opinion of the Environmental Management Commission, as not to permit sufficient time for issuance of an order in the manner provided by subsection (b) of this section, the Environmental Management Commission may immediately take such measures as may be essential to provide emergency protection to life and property, including the lowering of the level of a reservoir by releasing water impounded or the destruction in whole or in part of the dam or reservoir. The Environmental Management Commission may recover the costs of such measures from the owner or owners by appropriate legal action.
- (d) An order issued under this Part shall be served on the owner of the dam as provided in G.S. 1A-1, Rule 4. (1967, c. 1068, s. 10; 1973, c. 1262, s. 23; 1977, c. 878, s. 3; 1987, c. 827, s. 154; 1993, c. 394, s. 7.)

§ 143-215.33. Administrative hearing.

A person to whom a decision or a dam safety order is issued under this Part may contest the decision or order by filing a contested case petition in accordance with G.S. 150B-23. A person to whom a decision is issued must file a contested case petition within 30 days after the decision is mailed to that person. A person to whom a dam safety order is issued must file a contested case petition within 10 days after the order is served. (1967, c. 1068, s. 11; 1973, c. 1262, s. 23; 1975, c. 842, s. 4; 1977, c. 878, s. 6; 1979, c. 55, s. 2; 1987, c. 827, s. 178, 1993, c. 394, s. 8.)

§ 143-215.34. Investigations by Department; employment of consultants.

The Department shall make such investigations and assemble such data as it deems necessary for a proper review and study of the design and construction of dams, reservoirs and appurtenances, and for such purposes may enter upon private property. The Department may employ or make such agreements with geologists, engineers, or other expert consultants and such assistants as it deems necessary to carry out the provisions of this Part. (1967, c. 1068, s. 12; 1973, c. 1262, s. 23; 1987, c. 827, s. 179.)

§ 143-215.35. Liability for damages.

No action shall be brought against the State of North Carolina, the Department, or the Commission or any agent of the Commission or any employee of the State or the Department for damages sustained through the partial or total failure of any dam or its maintenance by reason of any supervision or other action taken pursuant to or under this Part. Nothing in this Part shall relieve an owner or operator of a dam from the legal duties, obligations and liabilities arising from such ownership or operation. (1967, c. 1068, s. 13; 1973, c. 1262, s. 23; 1987, 827, s. 154.)

§ 143-215.36. Enforcement procedures.

- (a) Criminal Penalties. – Any person who shall be adjudged to have violated this Article shall be guilty of a Class 3 misdemeanor and shall only be liable to a penalty of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000) for each violation. In addition, if any person is adjudged to have committed such violation willfully, the court may determine that each day during which such violation continued constitutes a separate violation subject to the foregoing penalty.
- (b) Civil Penalties. – (1) The Secretary may assess a civil penalty of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) against any person who violates any provisions of this Part, a rule implementing this Part, or an order issued under this Part.

- (2) If any action or failure to act for which a penalty may be assessed under this Part is willful, the Secretary may assess a penalty not to exceed five hundred dollars (\$500.00) per day for each day of violation.
 - (3) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.
 - (4) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed in accordance with G.S. 150B-23 within 30 days of receipt of the notice of assessment.
 - (5) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and G.S. 143-282.1(d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).
 - (6) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subdivision (4) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. A civil action shall be filed within three years of the date the final agency decision was served on the violator.
 - (7) The Secretary may delegate his powers and duties under this section to the Director of the Division of Land Resources of the Department.
 - (8) The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
- (c) Injunctive Relief. – Upon violation of any of the provisions of this Part, a rule implementing this Part, or an order issued under this Part, the Secretary may, either before or after the institution of proceedings for the collection of the penalty imposed by this Part for such violations, request the Attorney General to institute a civil action in the superior court of the county or counties where the violation occurred in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or require corrective action, and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Part for any violation of the same. (1967, c. 1068, s. 14; 1973, c. 1262, s. 23; 1975, c. 842, s. 3; 1977, c. 771, s. 4; 1987, c. 827, ss. 154, 180; 1989 (Reg. Sess., 1990), c. 1036, s. 5; 1991, c. 342, ss. 10, 11; 1993, c. 394, s. 9; c. 539, s. 1021; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 65.)

§ 143-215.37. Rights of investigation, entry, access, and inspection.

The Commission shall have the right to direct the conduct of such investigations as it may reasonably deem necessary to carry out its duties prescribed in this Part, and the Department shall have the right to conduct such investigations, and for this purpose the employees of the Department and agents of the Commission have the right to enter at reasonable times on any property, public or private, for the purpose of investigating the condition, construction, or operation of any dam or associated equipment facility or property, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the construction or operation of any dam: Provided, that no person shall be required to disclose any secret formula, processes or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties. (1967, c. 1068, s. 15; 1973, c. 1262, s. 23.)