

- 1 c. The exemptions conferred by items a and b of this subdivision
2 shall cease when the supervising federal agency relinquishes
3 authority for the operation and maintenance to a local entity.
- 4 d. Any dam licensed by the Federal ~~Power~~-Energy Regulatory
5 Commission, or for which a license application is pending with
6 the Federal ~~Power~~-Energy Regulatory Commission, or for use in
7 connection with electric generating facilities to be constructed
8 pursuant to a certificate of public convenience and necessity
9 from the North Carolina Utilities Commission, provided that
10 small power producers as defined in G.S. 62-3(27a) shall be
11 subject to the provisions of this Part even though certified by
12 the North Carolina Utilities Commission.
- 13 e. Any dam under a single private ownership, providing protection
14 only to land or other property under such ownership, and posing
15 no threat to life or property below the property under such
16 single ownership.
- 17 f. Any dam less than 15 feet in height (~~measured from original~~
18 ~~stream bottom to crest of dam~~) or whose impoundment capacity is
19 less than 10 ~~acre-feet~~-acre-feet, unless failure of the dam would
20 cause: (i) loss of life; (ii) property damage in excess of two
21 hundred thousand dollars (\$200,000); or (iii) serious
22 downstream environmental damage in the case of dams
23 impounding industrial or municipal wastes."

24 Sec. 3. G.S. 143-215.25(4) reads as rewritten:

25 "(4) 'Minimum stream flows' or 'minimum flows' means stream flows of a
26 quantity and quality sufficient in the judgment of the Department to
27 meet and maintain stream classifications and water quality standards
28 established by the Department under G.S. 143-214.1 and applicable to
29 the waters affected by the project under ~~consideration~~-consideration,
30 and to maintain adequate aquatic habitat for the length of the stream
31 affected. In order to ensure that such ~~classifications and standards~~
32 classifications, standards, and habitat requirements shall be met and
33 maintained, the Department may impose such conditions and
34 requirements in orders and written approvals issued under this Part as,
35 in its judgment, may be necessary to this end, including conditions and
36 requirements relating to the release or discharge of designated flows
37 from impoundments, the location or design of water outlets for
38 impoundments and of water intakes, the amount and timing of
39 withdrawal of water from a reservoir, and the construction of
40 submerged weirs or other devices designed to satisfy minimum stream
41 flow requirements."

42 Sec. 4. G.S. 143-215.26 reads as rewritten:

43 "§ 143-215.26. **Construction of dams.**

1 (a) No person shall begin the construction of any dam until at least 10 days after
2 filing with the Department a statement concerning its height, impoundment capacity,
3 purpose, location and other information required by the Department. Persons proposing
4 construction described in G.S. 143-215.25, ~~subparagraphs~~ sub-subdivisions (2)e and f
5 ~~will~~ shall comply with malaria control requirements of the Department. If on the basis
6 of this information the Department is of the opinion that the proposed dam is not
7 exempt from the provisions of this Part, it shall so notify the applicant, and construction
8 shall not be commenced until a full application is filed by the applicant and approved as
9 provided by G.S. 143-215.29. The Department may also require of applicants so
10 notified the filing of such additional information as it deems necessary, including, but
11 not limited to, streamflow and rainfall data, maps, plans and specifications. Every
12 applicant for approval of a dam subject to the provisions of this Part shall also file with
13 the Department the certificate of an engineer or contractor legally qualified in the State
14 of North Carolina that he is responsible for the design of the dam, and that said design is
15 safe and adequate. Should the applicant have a professional engineering staff the
16 certificate of a registered professional engineer member of that staff legally qualified in
17 the State of North Carolina ~~will~~ shall constitute compliance.

18 (b) When an application has been completed pursuant to the preceding
19 subsection, the Department shall refer copies of the completed application papers to ~~the~~
20 ~~State Health Director, the Wildlife Resources Commission, the Board of Transportation, and~~
21 ~~such other~~ State and local agencies as it deems appropriate for review and comment."

22 Sec. 5. G.S. 143-214.28A reads as rewritten:

23 "**§ 143-215.28A. Application fees.**

24 (a) In accordance with G.S. 143-215.3(a)(1a), the Commission may establish a
25 fee schedule for processing applications for approvals of ~~construction, repair, alteration,~~
26 construction or removal of dams issued under this Part. In establishing the fee schedule,
27 the Commission shall consider the administrative and personnel costs incurred by the
28 Department for processing the applications and for related compliance activities. The
29 total amount of fees collected in any fiscal year may not exceed one-third of the total
30 personnel and administrative costs incurred by the Department for processing the
31 applications and for related compliance activities in the prior fiscal year. An approval
32 fee may not exceed the larger of two hundred dollars (\$200.00) or two percent (2%) of
33 the actual cost of construction or removal of the applicable dam. The provisions of G.S.
34 143-215.3(a)(1b) do not apply to these fees.

35 (b) The Dam Safety Account is established. The Dam Safety Account shall be a
36 nonreverting account within the Department and shall be administered by the State
37 Treasurer. The Dam Safety Account shall be treated as a special trust fund and shall be
38 credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-
39 69.3. Fees collected under this section shall be credited to the Account and shall be
40 applied to the costs of administering this Part."

41 Sec. 6. G.S. 143-215.33 reads as rewritten:

42 "**§ 143-215.33. Administrative hearing.**

43 A person to whom a ~~decision or dam safety~~ order is issued under this Part may
44 contest the ~~decision or dam safety~~ order by filing a contested case petition ~~for a contested~~

1 ease in accordance with G.S. 150B-23 within 10 days after receiving notice, by personal
2 service or by registered or certified mail, of the Commission's decision or order. receipt of the
3 dam safety order."

4 Sec. 7. G.S. 143-215.36(b) reads as rewritten:

5 "(b) Civil Penalties. –

6 (1) The Secretary may assess a civil penalty of not less than one hundred
7 dollars (\$100.00) nor more than ~~two~~ five hundred ~~fifty~~ dollars (~~\$250.00~~)
8 (\$500.00) against any person who violates any provisions of this Part,
9 a rule implementing this Part, or an order issued under this Part.

10 (2) If any action or failure to act for which a penalty may be assessed
11 under this Part is willful, the Secretary may assess a penalty not to
12 exceed ~~two~~ five hundred ~~fifty~~ dollars (~~\$250.00~~) (\$500.00) per day for
13 each day of violation.

14 (3) In determining the amount of the penalty, the Secretary shall consider
15 the factors set out in G.S. 143B-282.1(b). The procedures set out in
16 G.S. 143B-282.1 shall apply to civil penalty assessments that are
17 presented to the Commission for final agency decision.

18 (4) The Secretary shall notify any person assessed a civil penalty of the
19 assessment and the specific reasons therefor by registered or certified
20 mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested
21 case petitions shall be filed in accordance with G.S. 150B-23 within 30
22 days of receipt of the notice of assessment.

23 (5) Requests for remission of civil penalties shall be filed with the
24 Secretary. Remission requests shall not be considered unless made
25 within 30 days of receipt of the notice of assessment. Remission
26 requests must be accompanied by a waiver of the right to a contested
27 case hearing pursuant to Chapter 150B and a stipulation of the facts on
28 which the assessment was based. Consistent with the limitations in
29 G.S. 143B-282.1(c) and (d), remission requests may be resolved by the
30 Secretary and the violator. If the Secretary and the violator are unable
31 to resolve the request, the Secretary shall deliver remission requests
32 and his recommended action to the Committee on Civil Penalty
33 Remissions of the Environmental Management Commission appointed
34 pursuant to G.S. 143B-282.1(c).

35 (6) If any civil penalty has not been paid within 30 days after notice of
36 assessment has been served on the violator, the Secretary shall request
37 the Attorney General to institute a civil action in the Superior Court of
38 any county in which the violator resides or has his or its principal place
39 of business to recover the amount of the assessment, unless the
40 violator contests the assessment as provided in subdivision (4) of this
41 subsection, or requests remission of the assessment in whole or in part
42 as provided in subdivision (5) of this subsection. If any civil penalty
43 has not been paid within 30 days after the final agency decision or
44 court order has been served on the violator, the Secretary shall request

- 1 the Attorney General to institute a civil action in the Superior Court of
2 any county in which the violator resides or has his or its principal place
3 of business to recover the amount of the assessment. Such civil
4 actions must be filed within three years of the date the final agency
5 decision was served on the violator. Any sums recovered under this
6 subsection shall be used to carry out the purposes and requirements of
7 this Article.
- 8 (7) The Secretary may delegate his powers and duties under this section to
9 the Director of the Division of Land Resources of the Department."
10 Sec. 8. This act is effective upon ratification.