

§ 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. This subsection shall not apply to a professionally supervised dam removal.

(b) When emergency repairs are necessary to safeguard life and property they may be started immediately but the Department shall be notified of the proposed repairs and of the work underway as soon as possible, but not later than 24 hours after first knowledge of the necessity for the emergency repairs, and the emergency repairs shall be made to conform to the Department's orders.

(c) A professionally supervised dam removal is not subject to the procedures set forth in subsection (a) of this section, provided that the dam removal complies with all of the following:

- (1) A qualified engineer determines, based on good engineering practices, that the removal of the dam can be accomplished safely, certifies that the dam is a low or intermediate hazard dam, and the removal plan reflects (i) the geomorphology of the streambed upriver and downriver from the dam site and (ii) the most desirable longitudinal profile for the post-removal stream channel that will minimize physical impacts on riparian landowners.
- (2) The person who proposes to remove the dam notifies the director of the Division of Energy, Mineral, and Land Resources of the Department of the proposed removal no less than 60 days prior to removal. The notice shall include information identifying the dam, including the stream and county where the dam is located, the dam's height and impoundment capacity, a map showing the dam location and vicinity, the qualified engineer's name and North Carolina license number, and a notarized certification from the owner of the dam that the dam is a low or intermediate hazard dam not currently operated for the purposes of flood control or hydroelectric power generation. The notification and certification required by this subdivision may be provided electronically.
- (3) The person who proposes to remove the dam notifies the North Carolina Floodplain Mapping Program of the Department of Public Safety, the North Carolina Department of Transportation, adjacent property owners of the dam and reservoir, and all impacted local governments of the proposed removal no less than 60 days prior to removal. The notice shall include a qualified engineer's determination that (i) the removal plan for the dam is based on the criteria set forth in subdivision (1) of this subsection and (ii) the removal will lower or maintain water levels above the location of the dam and will not cause an increase in the risk of flood damage or impacts to downstream bridges or road crossings. For purposes of the notice required by this subdivision, an "impacted local government" shall mean any unit of local government that could experience changes to its base floodplain, as defined in G.S. 143-215.52, as a result of the dam removal.

(d) The Division of Water Resources of the Department of Environmental Quality shall develop a water quality general certification under section 401 of the Clean Water Act for short-term sediment releases associated with the construction phase of a dam removal when all of the following occur:

- (1) The removal meets the definition and requirements of a professionally supervised dam removal under this section.
- (2) The applicant for the water quality general certification demonstrates that the sediment to be released has similar or lower level of contamination than sediment sampled from downstream of the dam.

(e) The Department shall not withhold approval of an application for repair or alteration of a phased compliance eligible dam based solely on the fact that the proposed repair or alteration will not bring the dam into full compliance with the requirements of the Dam Safety Law of 1967 (Law) and rules adopted to implement the Law, provided the applicant meets all of the following conditions with respect to its proposed repair or alteration project:

- (1) The project will not increase the height or impoundment capacity of the dam.
- (2) The project will not increase the risk to human life or property.

(f) Nothing in this section shall be construed to restrict the Department's authority to approve applications to repair or modify dams that do not meet the criteria of a phased compliance eligible dam. (1967, c. 1068, s. 5; 1979, c. 55, s. 1; 2014-122, s. 7; 2017-145, ss. 1(b), 2(b); 2023-131, s. 1(b).)