

to waive, preempt, or otherwise avoid compliance by the Licensee with the requirements of and regulations under the North Carolina Sedimentation Pollution Control Act of 1973, N. C. Gen. Stat. §§113A-50 et seq.

Article 403. The Licensee shall operate the Project so that the reservoir surface water elevation, as measured immediately upstream of the Project dam, does not fall below elevation 2232 feet NGVD. The Licensee shall not be found in violation of this requirement unless the surface water elevation, as measured immediately upstream of the Project dam, falls below 2232 feet NGVD for more than 120 hours in any one calendar year, below 2232 feet NGVD for more than 30 hours during any one seven-day period, or below 2228 feet NGVD at any time. The Licensee may also temporarily operate the Project so that the reservoir surface water elevations do not meet the requirements specified herein if: required by operating emergencies beyond the control of the Licensee at the Project or on the Licensee's power system; required as a result of unusual weather conditions; or permitted or ordered to do so by the Commission. Any request by the Licensee for such permission from the Commission to operate the Project so that the reservoir elevation does not meet the requirements of this Article shall be made in writing and shall set forth the basis for a finding that such operation is clearly in the public interest. Prior to making such a request to the Commission, the Licensee shall notify the North Carolina Department of Environment, Health

and Natural Resources (NCDEHNR) and the Tennessee Wildlife Resources Agency (TWRA) of its intention to make such a request. Before granting any such request the Commission shall provide notice to and an opportunity for NCDEHNR and TWRA to be heard. The Licensee may also operate the Project so that the reservoir surface water elevations do not meet the requirements specified herein for short periods upon agreement between the Licensee, NCDEHNR, and TWRA. If the Project is operated so that the reservoir surface water elevations do not meet the requirements specified herein pursuant to the provisions of this article, the Licensee shall notify the Commission, and, as appropriate, NCDEHNR, and/or TWRA, in writing as soon as possible, but no later than 10 days after each such incident. The Licensee shall provide an annual report to the Commission by February 15 of each year detailing the elevations at which the Project was operated during the preceding calendar year. Copies of the report shall be provided to NCDEHNR and TWRA, or their successor agencies.

Article 404. Unless ordered to do so by the Commission or unless it receives an agreement in writing from the North Carolina Department of Environment, Health and Natural Resources and the Tennessee Wildlife Resources Agency and the prior approval of the Commission, the Licensee shall not operate the Johnson valve located on the Project's low-level maintenance drawdown structure.