

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 159

94TH GENERAL ASSEMBLY

Reported from the Special Committee on Energy and Environment February 20, 2007 with recommendation that House Committee Substitute for House Bill No. 159 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

Reported from the Committee on Rules March 15, 2007 with recommendation that House Committee Substitute for House Bill No. 159 Do Pass.

Taken up for Perfection April 4, 2007. House Committee Substitute for House Bill No. 159 ordered Perfected and printed, as amended.

D. ADAM CRUMBLISS, Chief Clerk

0717L.03P

AN ACT

To repeal sections 236.400, 236.410, 236.415, 236.420, 236.425, 236.435, 236.440, 236.445, 236.460, 236.465, and 236.500, RSMo, and to enact in lieu thereof eleven new sections relating to dam and reservoir safety, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 236.400, 236.410, 236.415, 236.420, 236.425, 236.435, 236.440, 236.445, 236.460, 236.465, and 236.500, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 236.400, 236.410, 236.415, 236.420, 236.425, 236.435, 236.440, 236.445, 236.460, 236.465, and 236.500, to read as follows:

236.400. As used in sections 236.400 to 236.500, standards, rules and regulations promulgated hereunder, unless the context otherwise requires the following words and terms mean:

(1) "Agricultural dam", any dam constructed to impound water for use in irrigation, livestock watering, or commercial fish rearing and sale;

(2) "Alterations", "repairs", or either of them, such alterations or repairs as affect the safety of a dam or reservoir, or public safety, life or property;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

8 (3) "Chief engineer", the head of the dam and reservoir safety program of the department
9 of natural resources or his representative;

10 (4) "Construction permit", a written authorization issued by the council giving the owner
11 **of a high hazard or significant hazard dam** the right to construct, alter, enlarge, reduce, repair
12 or remove a dam or reservoir or appurtenances thereto, with such conditions as are necessary to
13 adequately protect the public safety, life, property, the dam or reservoir;

14 (5) "Dam", any artificial or manmade barrier, **including appurtenant works**, which
15 does or may impound water, and [which impoundment has or may have a surface area of fifteen
16 or more acres of water at the water storage elevation, or which is thirty-five feet or more in
17 height from the natural bed of the stream or watercourse measured at the downstream toe of the
18 barrier or dam, if it is not across a streambed or watercourse, together with appurtenant works.
19 Sections 236.400 to 236.500 shall not apply to any dam which is not or will not be in excess of
20 thirty-five feet in height or to any dam or reservoir licensed and operated under the Federal
21 Power Act] **is thirty-five feet or more in height with a storage volume of at least fifty acre-**
22 **feet of water. For purposes of this definition, the height of the dam is measured either from**
23 **the natural bed of the stream or watercourse at the downstream toe of the barrier or dam**
24 **or the lowest point on the downstream toe of the dam, whichever is lower, up to the dam**
25 **crest elevation. The storage volume is the amount of water stored in the reservoir below**
26 **the dam crest elevation;**

27 (6) "Dam and reservoir safety council", as designated by sections 236.400 to 236.500 and
28 referred to as the "council" shall consist of seven members appointed by the governor according
29 to the provisions of sections 236.400 to 236.500;

30 (7) **"Dam crest elevation", the lowest elevation of the top surface of the dam**
31 **exclusive of the spillway;**

32 (8) "Director", the director of the department of natural resources of the state of
33 Missouri;

34 (9) **"Downstream environment zone", the area downstream of a dam that would**
35 **be affected by inundation in the event the dam failed with the water level in the lake being**
36 **at the dam crest level. Inundation is water two feet or more deep around the impacted**
37 **structure;**

38 [(8)] (10) "Enlargement", any change in or addition to an existing dam or reservoir which
39 raises the height of a dam, increases the watershed for a reservoir, or raises the water storage
40 elevation of the water impounded by a dam or reservoir;

41 [(9)] (11) "Experienced professional engineer", an engineer registered in the state of
42 Missouri and experienced in hydraulics, hydrology and civil engineering as applied to dam
43 design and construction;

44 [(10)] (12) **"High hazard"**, loss of human life is probable or expected if the dam
45 were to fail. Loss of life is assumed to occur if the dam fails and permanent dwellings or
46 any public building, campground with permanent water and electrical services, or
47 industrial buildings exist within the downstream environment zone;

48 (13) **"Industrial building"**, a permanent, enclosed structure used by groups of
49 workers usually involved in some type of manufacturing, processing, or industrial related
50 process;

51 (14) **"Low hazard"**, any dam that is not high hazard or significant hazard;

52 (15) **"Maintenance"**, the proper keeping of all aspects of a dam or reservoir and
53 appurtenances thereto, that pertain to safety, in a state of repair and working order as necessary
54 to comply with sections 236.400 to 236.500, any permit hereunder, and protect public safety, life
55 and property;

56 [(11)] (16) **"Natural physical changes"**, those changes not directly or indirectly caused
57 by man which affect the safety of the dam or reservoir;

58 [(12)] (17) **"Operation"**, the physical changes, natural or manmade that occur or are made
59 to a dam or reservoir, or operation of the mechanisms or appurtenances of the dam or reservoir,
60 which affect or may affect public safety, life or property;

61 [(13)] (18) **"Operation or operating permit"**, a written authorization issued by the
62 council giving the owner the right to operate and maintain a high hazard or significant
63 hazard dam for a period of up to five years and indicating that the dam meets the
64 requirements of sections 236.400 to 236.500 and the guidelines, standards, rules, and
65 regulations issued under sections 236.400 to 236.500. The permit shall contain such
66 conditions as to operations, maintenance, and repair as are necessary to protect public
67 safety, life, and the dam or reservoir adequately;

68 (19) **"Owner"**, a person who owns, controls, operates, maintains, manages, or proposes
69 to construct a dam or reservoir including:

70 (a) The state and its departments, institutions, agencies, and political subdivisions, but
71 not the United States government;

72 (b) A municipal or quasi-municipal corporation;

73 (c) A district;

74 (d) A public utility;

75 (e) A natural person, firm, partnership, association, corporation, political subdivision,
76 or legal entity;

77 (f) The duly authorized agents, lessees, or trustees of any of the foregoing;

78 (g) Receivers or trustees appointed by any court for any of the foregoing;

79 (20) **"Permanent dwelling"**, a dwelling occupied at least ninety days a year;

80 [(14)] (21) "Permit", a construction[, safety or registration] **or operating** permit;

81 [(15)] (22) "Permit applicant", an owner who applies for a construction[, safety or
82 registration] **or operating** permit;

83 (23) **"Public building", a permanent, enclosed structure used by the general public
84 but not necessarily owned by the public;**

85 (24) **"Public utility", a drinking water reservoir, drinking water and wastewater
86 treatment facilities, and electrical power plants;**

87 [(16)] (25) "Reduction", any decrease in the height of a dam, watershed size, or water
88 storage elevation of the water impounded by a dam or reservoir;

89 [(17) "Registration permit", a permit issued for a period not to exceed five years by the
90 council to the owner of a dam or reservoir in existence on September 28, 1979, or which
91 becomes subject to the provisions of sections 236.400 to 236.500 for such dams and reservoirs
92 which are in a properly maintained condition or which have made and complied with
93 recommendations for corrections of observed defects of the dam or reservoir and have been
94 examined and approved in accordance with sections 236.400 to 236.500 and standards, rules and
95 regulations and guidelines issued pursuant to sections 236.400 to 236.500;

96 (18)] (26) **"Registration", a written statement submitted to the chief engineer on
97 forms provided by the department, by the owner of a dam or reservoir, including the name
98 of the legal owner, a contact person, the address of the legal owner and contact person, the
99 telephone number of the legal owner and contact person, the height of the dam, the
100 estimated reservoir storage volume at the dam crest elevation, and the general location of
101 the dam;**

102 (27) "Reservoir", any impoundment which results from a dam as defined in sections
103 236.400 to 236.500;

104 [(19) "Safety permit", a permit issued to the owner for a period of five years, or less if
105 safety considerations so require, by the council indicating that the dam meets the requirements
106 of sections 236.400 to 236.500 and the guidelines, standards, rules and regulations issued
107 pursuant to sections 236.400 to 236.500, and containing such conditions as to operations,
108 maintenance and repair as are necessary to adequately protect public safety, life and the dam or
109 reservoir;

110 (20)] (28) **"Significant hazard", no loss of human life expected if the dam were to
111 fail, but significant damage, to public services or infrastructure are probable or expected
112 if the dam were to fail, including, but not limited to, loss of public drinking water supply
113 impounded by such dam or reservoir. Public services and infrastructure are defined as
114 state numbered highways, interstate highways, or public utilities;**

115 (29) "Water", water, other liquid or tailings;

116 [(21)] (30) "Water storage elevation", that elevation [of] or water surface at the principal
117 spillway which could be obtained by the dam or reservoir were there no outflow and were the
118 reservoir full of water;

119 [(22)] (31) "Watershed", the area, usually expressed in acres of square miles, that
120 contributes or may contribute surface water to a reservoir.

236.410. 1. There is hereby created a "Dam and Reservoir Safety Council", whose
2 domicile for the purposes of sections 236.400 to 236.500 shall be the department of natural
3 resources of the state of Missouri, for the regulation of dam and reservoir safety. The council
4 shall consist of seven members, no more than four of whom shall be members of the same
5 political party, appointed by the governor with the advice and consent of the senate.

6 2. The members of the council shall have a background of academic training or
7 professional experience directly related to the design of dams and reservoirs. At least two
8 members of the council shall be professional engineers registered in the state of Missouri, one
9 of whom shall represent the general public; at least one member shall be [an engineering] a
10 geologist **registered in the state of Missouri whom also has professional geological practice**
11 **experience relating to dam safety**; at least one member, in addition to the professional
12 engineer, shall be a representative of the general public; two members shall be from industry, one
13 of whom shall be earthmoving contractors; and one member shall be the owner of a **regulated**
14 **high hazard or significant hazard** dam or reservoir. The members shall serve for a term of two
15 years; except, of the first appointments three shall be appointed for one year. The governor shall
16 fill any vacancy on the council and may remove any appointed member for cause. The council
17 shall annually elect a chairman and vice chairman from among its members. The council shall
18 meet regularly but not less than quarterly. Special meetings and hearings may be called upon
19 delivery of written notice to each member of the council signed by the director, the chief
20 engineer, the council chairman or four of the council members. Four members of the council
21 shall constitute a quorum to transact the business of the council. The council shall decide all
22 questions by a majority vote of those present and constituting a quorum. The members of this
23 council shall not receive any compensations other than for actual travel and subsistence when
24 acting officially as members of the council.

236.415. 1. The council considering recommendations of the chief engineer shall,
2 subsequent to a public meeting, adopt, subject to the approval of the director, the general
3 technological guidelines and the standards, guidelines, rules and regulations applicable to
4 permits, **hazard classification**, the design, construction, maintenance, operation, alteration,
5 repair, enlargement, reduction, removal or natural physical changes that may occur to a dam or
6 reservoir. Violations of guidelines, standards, rules and regulations are violations of sections
7 236.400 to 236.500 permitting the revocation, suspension, or refusal to issue any permit required

8 by sections 236.400 to 236.500. No standards, guidelines, rules, or regulations shall be adopted,
9 or any amendment or repeal thereof shall be effective, except after a public hearing to be held
10 after thirty days' prior notice by advertisement or press release, and publication as required in
11 chapter 536, RSMo, of the date, time and place of the hearing and opportunity given to the public
12 to be heard.

13 2. At the hearing, opportunity to be heard by the council with respect to the subject
14 thereof shall be afforded any interested person upon written request to the council, addressed to
15 the chief engineer, received not later than seven days prior to the hearing and may be afforded
16 to other persons if convenient. In addition, any interested person, whether or not heard, may
17 submit, within seven days subsequent to the hearings, a written statement of his views. The
18 council may solicit the views, in writing, of persons who may be affected by, or interested in,
19 proposed rules and regulations, standards or guidelines. Any person heard or represented at the
20 hearing or making written request for notice shall be given written notice of the action of the
21 council with respect to the subject thereof.

22 3. The council upon hearing the recommendations of the chief engineer and reviewing
23 the application for a construction or [registration] **operating** permit shall approve or deny the
24 permit application. The council may delegate authority to approve or deny permit applications
25 to the chief engineer, whose actions shall be subject to appeal to the council as provided in
26 subsection 2 of section 236.425.

27 4. No standard, rule or regulation or guideline, or amendment or repeal thereof, adopted
28 by the council shall be in force and effect until it has been approved in writing by the director and
29 the requirements of chapter 536, RSMo, are satisfied. The affirmative vote of at least four
30 members of the council shall be required for adoption.

31 **5. The inspection fee for dams not licensed and operated under the Federal Power**
32 **Act shall be four hundred fifty dollars per dam per year for high hazard dams and two**
33 **hundred fifty dollars per dam per year for significant hazard dams. An application fee for**
34 **new high hazard or significant hazard dams constructed after August 28, 2007, and not**
35 **licensed or operated under the Federal Power Act shall be assessed a permit application**
36 **review fee of three thousand dollars or one percent of the actual total cost for construction**
37 **of the dam, whichever is lower. Inspection fees and construction permit application review**
38 **fees for dams licensed and operated under the Federal Power Act shall be established by**
39 **the council. All of the above fees shall be adjusted on July first of every year according to**
40 **the Engineering News Record inflation factor index for professional engineering services.**
41 **Inspection fees and construction permit application renewal fees will be due to the**
42 **department within ninety days of receipt of an invoice, but no later than the thirtieth of**
43 **June of each year. The state treasurer shall deposit all fees related to dam inspection and**

44 construction permits in the state treasury and moneys received by gifts, bequests, or
45 contributions, to the credit of the Dam & Reservoir Fee subaccount in the Natural
46 Resources Protection Fund established by section 640.220, RSMo. Moneys in the
47 subaccount shall, subject to appropriation, be expended for the administration and
48 enforcement of sections 236.400 to 236.500 by the department of natural resources. Any
49 balance in the subaccount at the end of the biennium shall remain in the fund and shall not
50 be subject to the provisions of section 33.080, RSMo. Notwithstanding any other provision
51 of law, the Taum Sauk dam shall be overseen twenty four hours a day by an operator who
52 shall take all appropriate measures to monitor the dam and its pumps. All agricultural
53 dams shall be exempt from the inspection fee. If the council with the advice of the chief
54 engineer determines that the dam or reservoir is no longer used for agricultural services,
55 it shall become subject to the inspection fee.

236.420. The council, with the advice and assistance of the chief engineer, shall carry
2 out a state program of inspection of dams and reservoirs in accordance with regulations adopted
3 by the council. All **high hazard and significant hazard** dams and reservoirs in this state shall
4 be inspected on a periodic basis to determine if they constitute a threat to public safety, life or
5 property. **High hazard dams shall be inspected at least every three years, and significant**
6 **hazard dams shall be inspected at least every five years. Dams licensed and operated**
7 **under the Federal Power Act shall be inspected yearly.** The chief engineer shall submit
8 reports to the director and the council concerning the condition of each dam or reservoir
9 inspected, and recommendations as to any alterations or repairs needed.

236.425. 1. The chief engineer shall administer the provisions of sections 236.400 to
2 236.500 by:

3 (1) Recommending [general] technological guidelines that pertain to the design,
4 construction, maintenance, operation, use, alteration, repair, enlargement, reduction, or natural
5 physical changes of, or that may occur to, a dam or reservoir including their removal[]; except
6 that, detailed technical specifications shall not be promulgated to regulate the design,
7 construction, operation, maintenance, use, alteration, repair or removal of a dam or reservoir[].
8 Such guidelines shall not be effective until adopted by the council and approved by the director
9 at a public meeting, after notice requirements set forth in subsection 1 of section 236.415 herein
10 have been satisfied;

11 (2) Making recommendations concerning the issuing, continuing in effect, revoking,
12 modifying, suspending, or denying, under such conditions as prescribed by sections 236.400 to
13 236.500 and such rules as may be adopted to protect public safety, life, property, dams and
14 reservoirs, construction permits for the construction, alteration, enlargement, reduction, repair
15 or removal of **high hazard and significant hazard** dams or appurtenances thereto, and [safety

16 and registration] **operating** permits to [insure] **ensure** continuing protection of public safety, life,
17 property, dams and reservoirs, for all **high hazard and significant hazard** dams subject to the
18 provisions of sections 236.400 to 236.500;

19 (3) Making such investigations, including hearings, as are proper to protect public safety,
20 life and property from an unsafe dam or reservoir, and to determine whether any permits should
21 be issued, continued, revoked, modified, suspended, or denied or whether any violations of
22 sections 236.400 to 236.500, standards, or rules or regulations have occurred or are occurring;

23 (4) Entering, at any reasonable time, any private or public premises as necessary to make
24 an investigation or inspection of a dam or reservoir, or records kept, pertaining thereto, and such
25 inspection shall follow reasonable notice to the owner given prior to such investigation or
26 inspection except in the case of an emergency threatening public safety, life or property, in which
27 case such inspection or investigation may be made without prior notice. A suitably restricted
28 search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by
29 any judge having jurisdiction, to the chief engineer or his representative for the purpose of
30 enabling him to make the inspection.

31 2. The council shall meet with or hear the appeal of a permit applicant and his
32 representative upon request of the permit applicant if the chief engineer has rejected the
33 application for a construction[, safety or registration] **or operating** permit.

236.435. 1. Prior to the commencement of the construction, alteration, enlargement,
2 reduction or removal of a **high hazard or significant hazard** dam or reservoir, the owner shall
3 apply to the council and upon satisfying the requirements of sections 236.400 to 236.500 and the
4 rules, regulations and standards promulgated pursuant hereto, obtain a construction permit.

5 2. The application for a construction permit shall bear the seal and signature of an
6 experienced professional engineer registered in Missouri [or employed by a qualified engineering
7 division of a state or federal agency regularly engaged in dam construction for soil and water
8 conservation, or irrigation or relating to wildlife conservation] and shall be accompanied by the
9 design report and plans and [specification] **specifications** of the proposed design, alteration,
10 enlargement, reduction, repair or removal of the dam or reservoir. **Geological investigation,**
11 **interpretation, and report writing done in support of a construction permit application for**
12 **a high hazard dam shall bear the seal and signature of a geologist or a professional**
13 **engineer registered in the state of Missouri whom also has professional geological practice**
14 **experience relating to dam safety.**

15 3. Any person constructing or owning a dam or reservoir, or living or owning property
16 in an area affected, or whose safety may be affected by such dam or reservoir may consult with
17 the chief engineer concerning such dam or reservoir.

18 4. The council upon hearing the recommendation of the chief engineer shall approve or
19 deny an application for a construction permit within forty-five days after its receipt or the
20 completion of any hearings in connection with such application, whichever is later. The permit
21 shall be issued upon the receipt of the application if, in the judgment of the council, requirements
22 of sections 236.400 to 236.500 and all standards, rules and regulations hereunder are satisfied
23 and the design will be adequate to protect the public safety, life and property.

24 5. The council upon hearing the recommendation of the chief engineer may reject the
25 application if it decides that there is insufficient information to determine the safety of the
26 proposed construction, alteration, enlargement, reduction or removal of the dam or reservoir or
27 that the construction, alteration, enlargement, reduction or removal of the dam or reservoir would
28 endanger public safety, life or property, or otherwise not comply with sections 236.400 to
29 236.500 and any rules, standards, guidelines and regulations adopted hereunder.

30 6. A landowner who now owns or proposes to construct an agricultural dam or reservoir
31 which will be used primarily for agricultural purposes will be exempt from all provisions of
32 sections 236.400 to 236.500. If the council with the advice of the chief engineer, determines that
33 the dam or reservoir is no longer used primarily for agricultural services **or is a high or**
34 **significant hazard dam or reservoir**, it shall become subject to the provisions of sections
35 236.400 to 236.500. **Dams with a significant hazard downstream environment zone**
36 **classification shall be exempt from the permitting requirements as long as the storage**
37 **volume of the reservoir at the dam crest elevation is less than one hundred acre-feet.**

38 7. [Dams or their construction, alterations, enlargements, reductions or removals
39 designed by, and their construction, alteration, enlargement, reduction or repair or removal
40 monitored by, a qualified engineer regularly engaged in dam construction for soil and water
41 conservation or irrigation or relating to wildlife conservation are for the purposes of such
42 construction or other listed actions exempt from the provisions of this section except that the
43 plans for the dam shall be filed with the chief engineer prior to construction, or other listed
44 action. Amended plans shall be filed at the completion of construction or other listed action if
45 there have been significant deviations from the previously filed plans.] **Any dam or reservoir**
46 **with a surface area of five acres or less at the water storage elevation that will be used**
47 **primarily for fireclay quarry reclamation under the provisions of the land reclamation**
48 **commission shall be exempt from all provisions of sections 236.400 to 236.500;**

49 8. **Any dam or reservoir providing thirty or less megawatts that, in the event of**
50 **catastrophic failure, would emit water that is fully contained on federal property where**
51 **no permanent structures are located shall be exempt from all provisions of sections 236.400**
52 **to 236.500.**

236.440. 1. The owner shall notify the council upon completion of construction, alteration, enlargement, or reduction of the **high hazard or significant hazard** dam or reservoir. This notification shall bear the seal and signature of an experienced professional engineer and shall be accompanied by an application for [a safety] **an operating** permit. The owner of any **high hazard or significant hazard** dam or reservoir subject to the provisions of sections 236.400 to 236.500 shall obtain [a safety] **an operating** permit following completion of construction.

2. Upon receipt of complete and proper application for [a safety] **an operating** permit, including notification of completion by the owner and certification by an experienced professional engineer that the new construction, alteration, enlargement or reduction has been completed in accordance with the provisions of the construction permit and sections 236.400 to 236.500, the council shall upon receipt of the application issue [a safety] **an operating** permit. The council upon advice of the chief engineer may deny the application if it determines that violations of the construction permit or sections 236.400 to 236.500 exist. If revisions have been made which vary substantially from the provisions of the construction permit, it must be shown that the revisions do not endanger public safety, life or property. The [safety] **operating** permit for dams constructed pursuant to a construction permit issued under sections 236.400 to 236.500, may contain conditions the council upon advice of the chief engineer determines are necessary for the protection of public safety, life and property and a schedule and timetable for the dam and reservoir to achieve compliance with the construction permit and provisions of sections 236.400 to 236.500, standards, rules and regulations promulgated hereunder, but such conditions shall not be more stringent or restrictive than those contained in the construction permit.

3. [Owners of dams and reservoirs in existence on September 28, 1979, shall obtain registration permits for dams of fifty to seventy feet in height within four years, and for dams up to fifty feet in height within six years of September 28, 1979, or as otherwise required by the provisions of sections 236.400 to 236.500 and rules and regulations adopted hereunder. A registration] **An operating** permit shall be issued by the council upon the advice of the chief engineer for dams and reservoirs only after it is determined that the **high hazard or significant hazard** dam meets the standards of sections 236.400 to 236.500 and rules and regulations hereunder, and any recommendations made by the inspecting engineer pursuant thereto.

4. **Owners of all dams in existence on or constructed after August 28, 2007, who do not have a current registration or safety permit issued prior to August 28, 2007, shall register the existence of their dam with the chief engineer no later than six months after August 28, 2007, and the owners of high hazard or significant hazard dams shall apply for an operating permit no later than one year after August 28, 2007, or at such other future time as the council shall adopt by rule.**

37 **5. Owners of a dam or reservoir licensed and operating under the Federal Power**
38 **Act, 16 U.S.C. Section 791a, et Seq., as amended, shall apply for an operating permit no**
39 **later than three months after August 28, 2007.**

40 **6.** Upon complete and proper application for [a registration] **an operating** permit, on
41 forms provided by the department of natural resources, by the owner of a **high hazard or**
42 **significant hazard** dam [in existence upon September 28, 1979, including a certification by an
43 experienced professional engineer or an engineering division of a state or federal agency
44 regularly engaged in dam construction for soil or water conservation, irrigation, or relating to
45 wildlife conservation,] that the dam has been inspected in accordance with sections 236.400 to
46 236.500, standards, rules and regulations and guidelines promulgated hereunder, and that the
47 owner has complied with the inspecting engineer's [or agency's] recommendations necessary to
48 correct observed defects of the dam or reservoir, the council shall, upon receipt of the
49 application, issue [a registration] **an operating** permit. The council upon hearing the
50 recommendations of the chief engineer may deny the application if it determines that the owner
51 has not complied with the inspecting engineer's [or agency's] recommendations.

52 **[5.] 7. For high hazard or significant hazard** dams for which construction was
53 completed prior to the effective date of the construction permit requirements hereunder, the
54 [registration] **operating** permit may contain conditions the council upon hearing
55 recommendations of the chief engineer determines to be necessary to bring the dam and reservoir
56 into compliance with sections 236.400 to 236.500 and standards, rules and regulations
57 promulgated hereunder.

58 **[6.] 8. If a high hazard or significant hazard** dam or reservoir has been removed by
59 the owner, the council shall issue a final approval upon notification by the owner and receipt of
60 certification by an experienced professional engineer that the removal has been carried out in
61 accordance with the provisions of the construction permit issued for such removal. Failure to
62 obtain final approval shall be a violation of sections 236.400 to 236.500.

63 **[7.** The council shall issue safety permits for dams or their construction, alterations,
64 enlargements, reductions or removals designed by, and their construction or other listed actions
65 monitored by, a state or federal agency engaged in dam construction for soil and water
66 conservation, irrigation or relating to wildlife conservation provided the owners obtain from such
67 agency and file with the chief engineer a statement upon completion of the construction or other
68 listed actions and at not greater than five year intervals, and with every application for renewal
69 of a safety permit, that the dam conforms to the plans on file with the chief engineer and is in a
70 safe, properly maintained condition.

71 **8.] 9.** The owner shall apply for renewal of [a safety or registration] **an operating** permit
72 not less than sixty days prior to expiration of the previously issued permit. The chief engineer

73 shall determine if the dam and reservoir are essentially as described in the latest permit issued
74 for that dam and reservoir, whether they satisfy the requirements of sections 236.400 to 236.500
75 and any rules, regulations, standards and guidelines adopted pursuant to sections 236.400 to
76 236.500 and whether any inspection conducted in connection with the permit renewal reveals
77 any defect in the dam or reservoir which would threaten public safety, life or property. Unless
78 the chief engineer determines that the dam and reservoir are not properly maintained, do not
79 satisfy the requirements of the permit, act or rules, regulations, standards and guidelines
80 promulgated hereunder, or that defects revealed by the inspection are not corrected, the council
81 upon hearing the recommendations of the chief engineer shall issue or renew the [safety or
82 registration] **operating** permit upon forty-five days of the receipt of a complete and proper
83 application. The council may require the owner to furnish a certification, as a part of an
84 application to renew a permit hereunder, by an experienced professional engineer [or a qualified
85 engineering division of a state or federal agency regularly engaged in dam construction for water
86 conservation, irrigation or relating to wildlife conservation] that the dam is in a properly
87 maintained condition and that any recommendation for correction of defects which violate
88 sections 236.400 to 236.500, guidelines, rules, regulations and standards hereunder or which
89 threaten public safety, life or property have been complied with and that the engineer detected
90 no other such defects which have not been corrected.

91 [9.] **10.** If a barrier or water impoundment becomes a dam or reservoir through alteration
92 or enlargement as defined herein, it shall be subject to the provisions of sections 236.400 to
93 236.500, **and the owner shall register the dam with the council immediately.**

94 **11. If downstream conditions change the hazard classification of any dam or**
95 **reservoir, it shall be immediately subject to the provisions of sections 236.400 to 236.500**
96 **for that new class.**

97 [10.] **12.** Failure to obtain and comply with a permit as required in this section is a
98 violation of sections 236.400 to 236.500.

236.445. 1. If it is found that a **high hazard or significant hazard** dam or reservoir
2 presents a threat to public safety, life or property, or that the safety of the dam or reservoir is
3 threatened, the permit for the dam or reservoir shall be suspended and shall be reinstated only
4 when the owner at his expense has completed the necessary alteration or has established such
5 operational procedures as the council upon hearing the recommendations of the chief engineer
6 deems necessary for protection of the public safety, life, property, the dam or reservoir. If
7 necessary for such protection, the council may require the owner at his expense to remove the
8 dam or reservoir, or if the owner refuses or neglects to act, the state may alter or remove the dam
9 or reservoir, and the chief engineer may recover the costs of such action as provided in section
10 236.450.

11 2. If the owner refuses to alter or remove a dam or reservoir as directed when found to
12 be a threat as set forth in sections 236.400 to 236.500, he shall be in violation of sections
13 236.400 to 236.500 and the permit requirements hereunder, and such action shall subject the
14 owner to the enforcement provisions contained herein and revocation of the permit.

236.460. **1.** The owner shall notify the chief engineer upon the sale or other transfer of
2 interest in a dam or reservoir, either existing or under construction, alteration or removal. The
3 construction[, safety or registration] **or operating** permit shall be transferred to the successive
4 owner, **along with notification of the current hazard classification of the dam**, upon receipt
5 of this notification and upon determination that such transfer will not endanger public safety, life,
6 property, the dam or reservoir.

7 **2. Failure to notify the chief engineer of the transfer shall result in the prior owner**
8 **retaining the obligations imposed by sections 236.400 to 236.500 until such time as the chief**
9 **engineer is notified. In the event that the prior owner is a corporation and the corporation**
10 **fails to transfer ownership or interest because of the dissolution or bankruptcy of the**
11 **corporation, then the officers, directors, and stockholders, if any, individually shall have**
12 **all obligations imposed by sections 236.400 to 236.500.**

236.465. Irrespective of any other provisions of sections 236.400 to 236.500, the
2 following provisions shall apply to the construction, alteration or enlargement of tailing, slime
3 and settling ponds and to other similar industrial water retention structures included within the
4 definitions of dam or reservoir in section 236.400:

5 (1) Applications for construction[, safety or registration] **and operating** permits shall
6 be submitted as provided in section 236.435 and section 236.440 except that design plans and
7 specifications which outline any anticipated enlargement of the industrial water retention
8 structure shall be included;

9 (2) It shall not be necessary to reapply for a permit each time the structure is enlarged
10 if the enlargement plans have been submitted in and approved with the original application, and
11 the provisions of subdivision (3) of this section have been satisfied;

12 (3) Upon notification of the chief engineer, bearing the seal and signature of an
13 experienced professional engineer, that the initial phase of construction has been completed in
14 accordance with the provisions of the construction permit and sections 236.400 to 236.500, or
15 if [a registration] **an operating** permit has been issued as provided in subdivision (1) of this
16 section, and before any enlargement is begun, and if no violation of sections 236.400 to 236.500
17 can be shown, [a safety permit or a registration] **an operating** permit with special provisions that
18 authorize the planned enlargement to the initially constructed structure shall be issued, on
19 application, if enlargement plans were included and approved in the original application;

20 (4) It is not necessary to retain continuously a professional engineer after the initial stage
21 of construction;

22 (5) The dam shall be inspected by an experienced professional engineer registered in the
23 state of Missouri as required to renew the [safety permit or registration] **operating** permit at
24 five-year intervals unless safety of the public, life and property require a shorter period of time;

25 (6) The chief engineer shall make inspections of these structures as necessary to insure
26 adequate protection for public safety, life and property[;

27 (7) Where it is shown that a tailings, slime and settling pond, or other similar water
28 retention structure is subject to inspection for safety, using standards at least as stringent as those
29 required under sections 236.400 to 236.500, by a federal or state agency and the owner notifies
30 the council that the structure is subject to such inspection, such structures shall be exempt from
31 the provisions of sections 236.400 to 236.500].

236.500. 1. Any person who willfully violates any of the provisions of sections 236.400
2 to 236.500 is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not
3 less than five hundred dollars nor more than ten thousand dollars, or by confinement in the
4 county jail for a term of not less than thirty days nor more than one year, or by both such fine and
5 confinement.

6 2. In the event of a continuing violation, each day that the violation continues shall
7 constitute a separate and distinct offense.

8 3. Any person who willfully obstructs, hinders or prevents the council, the chief engineer
9 or his agents or employees from performing the duties imposed by sections 236.400 to 236.500
10 and rules and regulations promulgated hereunder or who willfully resists the council, the chief
11 engineer or his agents in the performance of the duties imposed on them by sections 236.400 to
12 236.500 and rules and regulations promulgated hereunder is guilty of a misdemeanor and, upon
13 conviction, shall be punished as provided in subsection 1 of this section.

14 4. Any owner who willfully engages in the construction, repair, alteration or removal of
15 any **high hazard or significant hazard** dam or reservoir without a construction permit or in
16 violation of a construction permit or willfully violates the requirements of or for [a safety or
17 registration] **an operating** permit is guilty of a misdemeanor and, upon conviction, shall be
18 punished as provided in subsection 1 of this section.

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