

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1236
93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Offered April 18, 2006.

Senate Substitute adopted, April 18, 2006.

Taken up for Perfection April 18, 2006. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

5486S.04P

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,
2 236.440, 236.445, 236.460, 236.465, and 236.500, RSMo, are repealed and eleven
3 new sections enacted in lieu thereof, to be known as sections 236.400, 236.410,
4 236.415, 236.420, 236.425, 236.435, 236.440, 236.445, 236.460, 236.465, and
5 236.500, to read as follows:

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

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

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

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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

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

31 (6) "Dam and reservoir safety council", as designated by sections 236.400
32 to 236.500 and referred to as the "council" shall consist of seven members
33 appointed by the governor according to the provisions of sections 236.400 to
34 236.500;

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

37 [(7)] (8) "Director", the director of the department of natural resources
38 of the state of Missouri;

39 [(8)] (9) "Enlargement", any change in or addition to an existing dam or
40 reservoir which raises the height of a dam, increases the watershed for a
41 reservoir, or raises the water storage elevation of the water impounded by a dam
42 or reservoir;

43 [(9)] (10) "Experienced professional engineer", an engineer registered in
44 the state of Missouri and experienced in hydraulics, hydrology and civil
45 engineering as applied to dam design and construction;

46 [(10)] (11) "High hazard", loss of human life is probable or
47 expected if the dam were to fail;

48 (12) "Low hazard", any dam that is not high or significant hazard;

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

53 [(11)] (14) "Natural physical changes", those changes not directly or
54 indirectly caused by man which affect the safety of the dam or reservoir;

55 [(12)] (15) "Operation", the physical changes, natural or manmade that
56 occur or are made to a dam or reservoir, or operation of the mechanisms or
57 appurtenances of the dam or reservoir, which affect or may affect public safety,
58 life or property;

59 (16) "Operation or operating permit", a permit issued to the
60 owner of a high or significant hazard dam for a period of up to five
61 years by the council indicating that the dam meets the requirements of
62 sections 236.400 to 236.500 and the guidelines, standards, rules, and
63 regulations issued under sections 236.400 to 236.500, and containing
64 such conditions as to operations, maintenance, and repair as are
65 necessary to protect public safety, life, and the dam or reservoir
66 adequately;

67 [(13)] (17) "Owner", a person who owns, controls, operates, maintains,
68 manages, or proposes to construct a dam or reservoir including:

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

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

72 (c) A district;

73 (d) A public utility;

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

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

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

78 [(14)] (18) "Permit", a construction[, safety or registration] or operating
79 permit;

80 [(15)] (19) "Permit applicant", an owner who applies for a construction[,
81 safety or registration] or operating permit;

82 [(16)] **(20)** "Reduction", any decrease in the height of a dam, watershed
83 size, or water storage elevation of the water impounded by a dam or reservoir;

84 [(17)] "Registration permit", a permit issued for a period not to exceed five
85 years by the council to the owner of a dam or reservoir in existence on September
86 28, 1979, or which becomes subject to the provisions of sections 236.400 to
87 236.500 for such dams and reservoirs which are in a properly maintained
88 condition or which have made and complied with recommendations for corrections
89 of observed defects of the dam or reservoir and have been examined and approved
90 in accordance with sections 236.400 to 236.500 and standards, rules and
91 regulations and guidelines issued pursuant to sections 236.400 to 236.500;

92 **(18)] (21) "Registration", a written statement submitted to the**
93 **chief engineer on forms provided by the department, by the owner of**
94 **a dam or reservoir, including the name of the legal owner, a contact**
95 **person, the address of the legal owner and contact person, the height**
96 **of the dam, the estimated reservoir storage volume at the dam crest**
97 **elevation, and the general location of the dam;**

98 **(22)** "Reservoir", any impoundment which results from a dam as defined
99 in sections 236.400 to 236.500;

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

106 **(20)] (23) "Significant hazard", no loss of human life expected if**
107 **the dam were to fail, but significant economic losses or substantial**
108 **damage to public services or infrastructure are probable or expected**
109 **if the dam were to fail;**

110 **(24)** "Water", water, other liquid or tailings;

111 [(21)] **(25)** "Water storage elevation", that elevation of water surface at
112 the principal spillway which could be obtained by the dam or reservoir were there
113 no outflow and were the reservoir full of water;

114 [(22)] **(26)** "Watershed", the area, usually expressed in acres of square
115 miles, that contributes or may contribute surface water to a reservoir.

116 **2. Any dam or reservoir with a lake surface area of ten acres or**
117 **less at the water storage elevation that will be used primarily for**

118 **fireclay quarry reclamation under the provisions of the land**
119 **reclamation commission will be exempt from all provisions of sections**
120 **236.400 to 236.500.**

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

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

236.415. 1. The council considering recommendations of the chief
2 engineer shall, subsequent to a public meeting, adopt, subject to the approval of
3 the director, the general technological guidelines and the standards, guidelines,
4 rules and regulations applicable to permits, **hazard classification**, the design,
5 construction, maintenance, operation, alteration, repair, enlargement, reduction,
6 removal or natural physical changes that may occur to a dam or

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

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

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

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

36 5. **The council shall by affirmative vote establish the fees for**
37 **permits required in this section by rule or regulation for the cost of**
38 **renewal, design review, and inspection of high and significant hazard**
39 **dams and shall review the fees at least once every three years. In no**
40 **event shall the fees established for design review of high and**
41 **significant hazard dams exceed one percent of the total estimated cost**
42 **of the dam or reservoir.**

43 **6. Beginning on June 1, 2007, there shall be convened a joint**
44 **committee appointed by the president pro tem of the senate and the**
45 **speaker of the house of representatives to consider and review the fees**
46 **established by the council under subsection 5 of this section. The**
47 **committee shall examine the department's fee structure designed to**
48 **support the dam and reservoir safety program and evaluate the costs**
49 **to the state for maintaining the program. The committee shall prepare**
50 **and submit a report, including any recommendations made to consider**
51 **restructuring the fees established under subsection 5 of this section, to**
52 **the governor, the senate, and the house of representatives no later than**
53 **January 1, 2008.**

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

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

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

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

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

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

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

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

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

6 2. The application for a construction permit shall bear the seal and
7 signature of an experienced professional engineer registered in Missouri [or
8 employed by a qualified engineering division of a state or federal agency regularly
9 engaged in dam construction for soil and water conservation, or irrigation or
10 relating to wildlife conservation] and shall be accompanied by the design report
11 and plans and [specification] **specifications** of the proposed design, alteration,
12 enlargement, reduction, repair or removal of the dam or reservoir.

13 3. Any person constructing or owning a **high or significant hazard** dam
14 or reservoir, or living or owning property in an area affected, or whose safety may
15 be affected by such dam or reservoir may consult with the chief engineer

16 concerning such dam or reservoir.

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

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

31 6. A landowner who now owns or proposes to construct an agricultural
32 dam or reservoir which will be used primarily for agricultural purposes will be
33 exempt from all provisions of sections 236.400 to 236.500. If the council with the
34 advice of the chief engineer, determines that the dam or reservoir is no longer
35 used primarily for agricultural services, it shall become subject to the provisions
36 of sections 236.400 to 236.500.

37 7. [Dams or their construction, alterations, enlargements, reductions or
38 removals designed by, and their construction, alteration, enlargement, reduction
39 or repair or removal monitored by, a qualified engineer regularly engaged in dam
40 construction for soil and water conservation or irrigation or relating to wildlife
41 conservation are for the purposes of such construction or other listed actions
42 exempt from the provisions of this section except that the plans for the dam shall
43 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
45 listed action if there have been significant deviations from the previously filed
46 plans.] **A landowner who owns an agricultural dam or reservoir that will**
47 **be used primarily for agricultural purposes as of the effective date of**
48 **this section, or a landowner who proposes to construct an agricultural**
49 **dam or reservoir that will be used primarily for agricultural purposes,**
50 **may choose to have such dam regulated by the dam and reservoir safety**
51 **council upon proper notification to the department of such a**

52 request. For the purposes of this section, proper notification shall
53 mean a written request asking to be included in the council's
54 regulation of dams and reservoirs, mailed by certified letter to the
55 council. After such a request has been made, any subsequent request
56 from a landowner to remove an agricultural dam or reservoir from
57 regulation shall be decided solely by the director. Nothing in this
58 section shall be construed to require any landowner who owns or
59 proposes to construct an agricultural dam or reservoir that will be used
60 primarily for agricultural purposes to choose regulation by the council
61 as a condition for doing business.

62 8. In the event the department believes an agricultural dam or
63 reservoir that is or will be used primarily for agricultural purposes and
64 that is not regulated by the dam and reservoir safety council poses a
65 high hazard, the department shall initiate an engineering study to
66 determine whether or not the agricultural dam or reservoir in question
67 satisfies the high hazard standard established in section 236.400. Upon
68 completion of the engineering study and in the event that the
69 department finds that the agricultural dam or reservoir in question
70 satisfies the high hazard standard, the department shall submit their
71 findings and subsequent recommendations for regulation to the
72 appropriate soil and water district board that encompasses the
73 property on which the agricultural dam or reservoir sits. If a majority
74 of the soil and water district board agrees, based on section 236.400 and
75 any subsequent rules adopted under that section, that such agricultural
76 dam or reservoir poses a high hazard, then such agricultural dam or
77 reservoir shall be subject to the provisions of sections 236.400 to
78 236.500. If the soil and water district board does not agree that such
79 agricultural dam or reservoir meets the engineering requirements of
80 section 236.400, then the agricultural dam or reservoir in question shall
81 maintain the exemption provided for in subsection 6 of section
82 236.435. The department shall not initiate an engineering study on any
83 agricultural dam or reservoir that has been studied by the department
84 and considered by a soil and water district board for a period of no less
85 than one year after such a recommendation by a soil and water district
86 board has been rejected. After one year, the department may again
87 initiate an engineering study for an agricultural dam or reservoir that
88 has been previously studied and ruled upon by a soil and water district

89 **board. If a soil and water district board does not render a decision**
90 **within sixty days from the department's submission, the department's**
91 **findings shall be considered agreed to and the dam or reservoir shall**
92 **be subject to regulation under sections 236.400 to 236.500.**

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

8 2. Upon receipt of complete and proper application for [a safety] **an**
9 **operating** permit, including notification of completion by the owner and
10 certification by an experienced professional engineer that the new construction,
11 alteration, enlargement or reduction has been completed in accordance with the
12 provisions of the construction permit and sections 236.400 to 236.500, the council
13 shall upon receipt of the application issue [a safety] **an operating** permit. The
14 council upon advice of the chief engineer may deny the application if it
15 determines that violations of the construction permit or sections 236.400 to
16 236.500 exist. If revisions have been made which vary substantially from the
17 provisions of the construction permit, it must be shown that the revisions do not
18 endanger public safety, life or property. The [safety] **operating** permit for dams
19 constructed pursuant to a construction permit issued under sections 236.400 to
20 236.500, may contain conditions the council upon advice of the chief engineer
21 determines are necessary for the protection of public safety, life and property and
22 a schedule and timetable for the dam and reservoir to achieve compliance with
23 the construction permit and provisions of sections 236.400 to 236.500, standards,
24 rules and regulations promulgated hereunder, but such conditions shall not be
25 more stringent or restrictive than those contained in the construction permit.

26 3. [Owners of dams and reservoirs in existence on September 28, 1979,
27 shall obtain registration permits for dams of fifty to seventy feet in height within
28 four years, and for dams up to fifty feet in height within six years of September
29 28, 1979, or as otherwise required by the provisions of sections 236.400 to 236.500
30 and rules and regulations adopted hereunder. A registration] **An operating**
31 permit shall be issued by the council upon the advice of the chief engineer for
32 dams and reservoirs only after it is determined that the **high or significant**

33 **hazard** dam meets the standards of sections 236.400 to 236.500 and rules and
34 regulations hereunder, and any recommendations made by the inspecting
35 engineer pursuant thereto.

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

44 5. **Owners of a dam or reservoir licensed and operating under**
45 **the Federal Power Act shall apply for an operating permit no later than**
46 **three months after the effective date of this act.**

47 6. Upon complete and proper application for [a registration] an
48 **operating** permit, on forms provided by the department of natural resources, by
49 the owner of a **high or significant hazard** dam [in existence upon September
50 28, 1979, including a certification by an experienced professional engineer or an
51 engineering division of a state or federal agency regularly engaged in dam
52 construction for soil or water conservation, irrigation, or relating to wildlife
53 conservation,] that the dam has been inspected in accordance with sections
54 236.400 to 236.500, standards, rules and regulations and guidelines promulgated
55 hereunder, and that the owner has complied with the inspecting engineer's [or
56 agency's] recommendations necessary to correct observed defects of the dam or
57 reservoir, the council shall, upon receipt of the application, issue [a registration]
58 **an operating** permit. The council upon hearing the recommendations of the
59 chief engineer may deny the application if it determines that the owner has not
60 complied with the inspecting engineer's [or agency's] recommendations.

61 [5.] 7. For **high or significant hazard** dams for which construction was
62 completed prior to the effective date of the construction permit requirements
63 hereunder, the [registration] **operating** permit may contain conditions the
64 council upon hearing recommendations of the chief engineer determines to be
65 necessary to bring the dam and reservoir into compliance with sections 236.400
66 to 236.500 and standards, rules and regulations promulgated hereunder.

67 [6.] 8. If a **high or significant hazard** dam or reservoir has been
68 removed by the owner, the council shall issue a final approval upon notification

69 by the owner and receipt of certification by an experienced professional engineer
70 that the removal has been carried out in accordance with the provisions of the
71 construction permit issued for such removal. Failure to obtain final approval
72 shall be a violation of sections 236.400 to 236.500.

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

82 8.] 9. The owner of a high or significant hazard dam or reservoir
83 shall apply for renewal of [a safety or registration] **an operating** permit not less
84 than sixty days prior to expiration of the previously issued permit. The chief
85 engineer shall determine if the dam and reservoir are essentially as described in
86 the latest permit issued for that dam and reservoir, whether they satisfy the
87 requirements of sections 236.400 to 236.500 and any rules, regulations, standards
88 and guidelines adopted pursuant to sections 236.400 to 236.500 and whether any
89 inspection conducted in connection with the permit renewal reveals any defect in
90 the dam or reservoir which would threaten public safety, life or property. Unless
91 the chief engineer determines that the dam and reservoir are not properly
92 maintained, do not satisfy the requirements of the permit, act or rules,
93 regulations, standards and guidelines promulgated hereunder, or that defects
94 revealed by the inspection are not corrected, the council upon hearing the
95 recommendations of the chief engineer shall issue or renew the [safety or
96 registration] **operating** permit upon forty-five days of the receipt of a complete
97 and proper application. The council may require the owner to furnish a
98 certification, as a part of an application to renew a permit hereunder, by an
99 experienced professional engineer [or a qualified engineering division of a state
100 or federal agency regularly engaged in dam construction for water conservation,
101 irrigation or relating to wildlife conservation] that the dam is in a properly
102 maintained condition and that any recommendation for correction of defects
103 which violate sections 236.400 to 236.500, guidelines, rules, regulations and
104 standards hereunder or which threaten public safety, life or property have been

105 complied with and that the engineer detected no other such defects which have
106 not been corrected.

107 [9.] 10. If a barrier or water impoundment becomes a dam or reservoir
108 through alteration or enlargement as defined herein, it shall be subject to the
109 provisions of sections 236.400 to 236.500, **and the owner shall register the**
110 **dam with the council immediately.**

111 11. **If downstream conditions change the hazard classification of**
112 **any dam or reservoir, it shall be immediately subject to the provisions**
113 **of sections 236.400 to 236.500 for that new class, and the owner shall**
114 **notify the council of changed conditions within three months of that**
115 **event.**

116 [10.] 12. Failure to obtain and comply with a permit as required in this
117 section is a violation of sections 236.400 to 236.500.

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

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

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

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

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

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

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

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

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

26 (5) The dam shall be inspected by an experienced professional engineer
27 registered in the state of Missouri as required to renew the [safety permit or
28 registration] **operating** permit at five-year intervals unless safety of the public,

29 life and property require a shorter period of time;

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

32 [(7) Where it is shown that a tailings, slime and settling pond, or other
33 similar water retention structure is subject to inspection for safety, using
34 standards at least as stringent as those required under sections 236.400 to
35 236.500, by a federal or state agency and the owner notifies the council that the
36 structure is subject to such inspection, such structures shall be exempt from the
37 provisions of sections 236.400 to 236.500.]

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

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

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

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

✓