

151.293 Certificates of inspection.

- (1) Within sixty (60) days of completion of an on-site inspection of an existing dam, the cabinet may either grant a certificate of inspection, or deny the certificate of inspection and notify the owner in writing, stating the reasons for denial.
- (2) In deciding whether or not a certificate of inspection should be issued, the cabinet shall take into account all pertinent facts and conditions, but shall not issue a certificate unless the following conditions have been met:
 - (a) The proposed action in the judgment of the cabinet will be conducted in such a way that the safety of the public is adequately provided for;
 - (b) All information requested by the cabinet has been provided; and
 - (c) The changed flow of the stream or level of the reservoir will not significantly interfere with a beneficial use by other water users.
- (3) In granting a certificate of inspection, the cabinet may impose such conditions relating to the inspection, operation, maintenance, alteration, repair, use, or control of a dam or reservoir as it determines are necessary for the protection of public health, safety or welfare.
- (4) The cabinet may establish hazard categories for dams based on downstream floodplain use, size, or type of dam, or other criteria, and may impose different conditions or types of conditions on the approval of dams or reservoirs in the different categories. The hazard categories in all cases shall be based only on the actual risk imposed by the dam.
- (5) The cabinet may utilize the results and information provided by or for the United States Army Corps of Engineers pursuant to the provisions of Public Law 92-367 if the information is not more than one (1) year old at the time of use.
- (6) Certificates of inspection shall be for a definite period of time, not to exceed five (5) years, as determined by the cabinet and stated on the certificate. In determining the period of inspection, the cabinet may take account of any circumstances pertinent to the situation, including, but not limited to, the size and type of dam, topography, geology, soil conditions, hydrology, climate, use of the reservoir, the lands lying in the floodplain downstream from the dam, and the hazard category of the dam.
- (7) The cabinet may modify a certificate of inspection or the conditions attached to it. Such modification shall become effective ninety (90) days following issuance by the cabinet of a revised certificate, except when the cabinet finds that a state of emergency exists and that life or property would be endangered by delay. In case of an emergency declared by the cabinet, the new conditions shall be effective immediately.
- (8) Specific guidelines for issuance and renewal of certificate of inspection for earth embankment dams shall be provided by administrative regulations which shall address at least the following areas:
 - (a) The hydraulic capacity requirements for each category of dam shall be provided. The probable maximum precipitation as determined by the United States Weather Service shall be used only where it can be clearly demonstrated that failure of the dam by overtopping would result in greater

loss of life than would occur if the dam did not exist and only for small watersheds, since such large rainfall events are not expected to occur over large areas. The cabinet shall provide a table of factors that reduce this rainfall appropriately for larger watersheds;

- (b) Minimum criteria for the embankment stability of the dam, including consideration of such factors as steepness of slopes, strength of materials, and earthquake loadings shall be specified;
- (c) Variance procedures for applicable hydraulic and stability considerations shall be included for, but not limited to, variances to hydraulic criteria where only a small number of persons are at risk and where a reliable, effective emergency preparedness system will be installed; where a risk analysis demonstrates that at rainfall levels less than that specified in the administrative regulation there is no risk that actually results from the dam; where an owner can demonstrate that the dam substantially conforms to the criteria in the administrative regulation; and, for dams that pose a risk of economic damages only, where the owner provides indemnification against potential damages;
- (d) Before any variance is issued, the affected public shall be notified of the cabinet's intended action and allowed to make known any objections or concerns that it might have;
- (e) Whenever the owner of a dam has requested a variance and the request has not been granted or has not been granted in the manner requested, the owner or aggrieved party may petition the cabinet to have the variance request and the cabinet's preliminary decision on it reviewed by an unbiased, three (3) person panel of qualified experts to be named by the Environmental Quality Commission in consultation with the Kentucky Water Research Institute. The panel shall make nonbinding recommendations to the cabinet with regard to these matters. After reviewing the recommendations, the cabinet will make a final determination on the variance. If not satisfied by the finding of the panel or the determination of the cabinet, the party may seek administrative remedy from the cabinet under the provisions of KRS 151.182;
- (f) Items of general maintenance of a dam shall include provisions for at least the following: dams shall be mowed regularly; dams shall be free of trees and brush; animal burrows shall not be allowed on dams; slides, erosion and cracks that could pose problems to dams shall be properly repaired; action shall be taken to alleviate excessive wetness and abnormal seepage; appurtenances that are necessary for the proper operation and maintenance of the dam shall be kept in proper working condition;
- (g) Provisions shall be made whereby the cabinet will allow for staged renovation of dams that do not meet the criteria of the administrative regulations and shall clearly identify the circumstances under which staging is allowable and set a maximum time limit that may be allowed for bringing the dam into compliance. Other provisions shall require the owner to develop and maintain an emergency action plan, to provide interim insurance, bonding or other indemnification, and on a frequent basis as specified by the cabinet, to inspect

the dam and report to the cabinet the status of any facilities or conditions of concern; and

- (h) If the cabinet has previously required a dam to be upgraded to meet a certain dam safety standard, it shall not require that the dam be upgraded again because of a change in the administrative regulation with regard to that same standard. However, if the owner proposes substantial construction on the dam or if the dam must be repaired due to indications of distress or to partial failure, the cabinet may require the owner to bring the dam into full compliance with current standards.
- (9) The cabinet shall establish guidelines on a case-by-case basis for gravity dams and other types of dams that are unusual to the Commonwealth, and shall follow recognized engineering practice.
- (10) Plans and specifications submitted to the cabinet shall be the responsibility of and signed by an engineer licensed by the Commonwealth and experienced in the design and construction of dams, as determined by the cabinet.

Effective: July 15, 1988

History: Amended 1988 Ky. Acts ch. 405, sec. 2, effective July 15, 1988. -- Amended 1978 Ky. Acts ch. 206, sec. 1, effective June 17, 1978. -- Created 1974 Ky. Acts ch. 285, sec. 8.