

Clearinghouse Rule 10-032

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING, RENUMBERING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 335.03(12) to (14), 335.03(18), 335.03(20), 335.09(1)(a) to (1)(c), 335.09(2)(a) to (2)(d), 335.09(5)(a) and (5)(b), 335.09(6), 335.09(6)(a) and (6)(b), 335.09 – ANNOT., NR 336.02(1)(a) and (1)(b), 336.02(2)(a) and (2)(b), 336.03(2), 336.03(6), 336.03(8), 336.03(12) to (14), and 336.08(1) and (2), 336.09(1)(c), 336.09(1)(c)1. to (1)(c)3., 336.09(1)(d)4., 336.09 – ANNOT., and 336.10(2), to **renumber** NR 335.03(5) to (11), 335.03(15) to (17), 335.03(19), 335.06(2) to (7), 335.07(2)(a)3., 335.07(2)(b), 335.07(2)(b)1. to (2)(b)3., 335.07(2)(c), 335.07(2)(c)1. to (2)(c)4., NR 336.03(3), 336.03(7), 336.07(9) to (11), 336.09(1)(d), and 336.10(3) and (4), to **amend** NR 335 TITLE, 335.02(1), 335.03(1), 335.03(4), renumbered 335.03(14), renumbered 335.03(18), renumbered 335.03(20), 335.03(23), 335.05, 335.06, 335.06(1), renumbered 335.06(3) to (5), renumbered 335.06(7) and (8), 335.07(1), 335.07(1)(b), renumbered 335.07(1)(c), 335.07(2)(a), 335.07(2)(a)1. and (2)(a)2., renumbered 335.07(2)(b), renumbered 335.07(2)(e), renumbered 335.07(2)(e)1. to (2)(e)3., 335.07 – ANNOT., 335.08(1)(a) to (1)(d), 335.08(2)(c) and (2)(f), 335.09, 335.09(1) to (4), 335.09(4)(a) and (4)(b), 335.09(5), 335.14(1)(b)1. and (1)(b)2., NR 336 TITLE, 336.01, 336.02(1) and (2), 336.03(1) and (4), renumbered 336.03(7), 336.05(9) to (11), 336.06(1), 336.06 – ANNOT., 336.08, and 336.10(1), and to **create** NR 335.03(5) and (6), 335.03(9) and (10), 335.03(13) and 335.03(24), 335.05(1) to (3), 335.06(2), 335.06(3)(a) and (3)(b), 335.06(9) to (11), 335.07(1)(a), 335.07(2)(c) and (2)(d), 335.07(2)(g) to (2)(i), 335.07 – ANNOT., 335.07 – ANNOT., 335.08(1)(e), 335.08(4)(c) to (4)(m), 335.14(1)(b)3., 335.15, 335.16, 335.16(1) to (3), NR 336.03(3), 336.06(2)(g) to (2)(i), and 336.10(5) relating to grants for dam maintenance, repair, modification, or abandonment and removal.

WT-21-09

Analysis Prepared by the Department of Natural Resources

Statutes interpreted: ss. 31.385 (1m) and (4)(b), Stats.

Statutory authority: ss. 31.385 (1m), 31.384(4), 227.11(2)(a) and 227.24(1)(a), Stats.

Explanation of agency authority: This order implements s. 31.385(1m), Stats., which directs the department to promulgate rules to administer a financial assistance program for dam safety projects and s. 31.385(4), Stats., which directs the department to promulgate rules to establish a dam grant inventory and notice and hearing procedure to place dams on the inventory. The rules must provide grants to municipalities and Lake Districts for maintenance, repair, reconstruction, and removal of dams, to private dam owners for the removal of their dams and any person for the removal of abandoned dams. Amendments under Act 28 of 2009 provided \$4 million in bonding for dam safety grants.

Related statute or rule: These rules assist the department in achieving the statutory goals of Chapter 31, Stats., which vests the Department with the responsibility to regulate dams and promote safety and protect life and property from unsafe dams. The grant programs provide funding to dam owners to address safety deficiencies at dams. There are no other similar rules that address these issues.

Plain language analysis: The objectives of the order for ch. NR 335 and ch. NR 336 are to implement changes to enabling legislation. The changes can be divided into two broad categories:

- *Incorporate statutory changes into the existing grant codes:*

- *increases the maximum level of state contribution allowed under the grant programs from \$200,000 to \$400,000*
- *varies the state contribution percentage for dam repair and reconstruction projects, depending on the size of the projects*
- *increases the percentage of state contribution to 100% up to the maximum grant award for dam removal projects*
- *eliminates statutory definition of “small dam” for dam removal grants*
- *provides for an inventory of dam safety projects with a notification for dam owners*
- *changes the definition of large dam to match change in s. 31.19, Stats.*
- *allows for cost effective, non construction activities that increase the safety of a dam*

- *Facilitate investing the \$4 million allocation of bonding for the program*
 - *grants greater flexibility for implementation of a grant application cycle*
 - *adjusts code timelines and better defines application requirements to address past implementation difficulties and assure more applications can be deemed complete*
 - *Sets additional criteria for ranking applications and allows for adjustment to the ranking procedures outside of Administrative Code process.*
 - *allows for the addition of a variance clause which would facilitate the implementation and administration of NR 335*
 - *makes it easier applicants to the Municipal Dam Grant program to pair the grant with other, outside funding sources.*
 - *corrects incorrect definitions and statute citations*
 - *clarifies that state agencies may use the grants to remove abandoned dams*
 - *clarifies that an owner can only submit one application at a time per dam for funding under NR 335 and cannot get a grant for the same dam under NR 335 and NR 336 in the same year.*

These proposed changes will provide for an improved process whereby Wisconsin dam owners can address dam safety deficiencies at municipally owned dams and allow the owner of any dam to obtain funding to remove the dam as a means to mitigate safety deficiencies.

Comparison to federal regulations: The U.S. Department of Agriculture, Natural Resource Conservation Service (NRCS) has a cost sharing program for the rehabilitation of dams built under Public Law 566. We anticipate that at least one county which owns PL566 dams will be trying to obtain funding from both the state and federal programs. Funding for the federal program is limited but if a dam owner is successful in obtaining funding from both programs the state grant would help the county pay their 35% local cost share requirement under the federal program. There are also a number of federal programs which fund dam removal and stream restoration, including programs from U.S. Fish and Wildlife Service, NRCS and the National Oceanic and Atmospheric Administration. These programs have been used in conjunction with grants awarded under NR 336 in the past. The programs are complimentary and pairing of the funding sources allows grant funds to go toward more projects.

Comparison with rules in adjacent states: No similar programs in adjacent states.

Summary of factual data and analytical methods: None.

Analysis to determine effect on small business: None.

Anticipated costs incurred by private sector: These rules affect the owners of dams in the state. The majority of the funds will be awarded to municipalities or Lake Districts. The effects are believed to be positive, by providing state cost-sharing to address dam safety deficiencies. While the grant program is voluntary, there will be some increased cost to and effort to dam owners associated with the material required for the application. However, cost sharing is available for these requirements as well. It is believed that these increased costs and effort will be offset by the financial assistance available through the grants.

Effect on small business: Small business is not directly affected unless they own a dam and want to remove the structure, in which case they can apply for funding to accomplish this objective. Therefore, under s. 227.114, Stats., an initial regulatory flexibility analysis is not required. Engineering consultants and companies involved in dam construction and removal should benefit from an increase in project activity resulting from an increase in the supply of money for these kinds of projects.

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Remainder is Dam Grant info:

SECTION 1. NR 335 Title is amended to read:

NR 335, MUNICIPAL DAM MAINTENANCE, REPAIR, MODIFICATION, ABANDONMENT AND REMOVAL AID GRANT PROGRAM

SECTION 2. NR 335.02(1) is amended to read:

NR 335.02(1) This chapter shall apply to ~~all~~ applications for state aid in the form of ~~matching~~ grants for dam maintenance, repair, modification, or abandonment and removal under s. 31.385, Stats.

SECTION 3. NR 335.03(1), NR 335.03(4) and NR 335.03(23) are amended to read:

NR 335.03(1) "Abandonment" means abandonment of the permit or approval of a dam and the removal of a the dam in compliance with ch. 31, Stats.

(4) "Dam" means any artificial barrier in or across a ~~waterway~~ watercourse which has the primary purpose of impounding or diverting water. A dam includes all appurtenant works, such as a dike, canal or powerhouse.

(23) "~~Structural height~~" means ~~the difference in elevation in feet between the point of lowest elevation of a dam before overtopping and the lowest elevation of the natural stream or lake bed at the downstream toe of the dam.~~

"Sponsor" means a dam owner who applies for a grant under this chapter to do a dam safety project at their dam.

SECTION 4. NR 335.03(12) to NR 335.03(14), NR 335.03(18), and NR 335.03(20) are repealed.

SECTION 5. NR 335.03(5) and NR 335.03(6), NR 335.03(7) and NR 335.03(8), NR 335.03(9) to NR 335.03(11), NR 335.03(15) to NR 335.03(17), and NR 335.03(19) are renumbered NR 335.03(7) and NR 335.03(8), NR 335.03(11) and NR 335.03(12), NR 335.03(14) to NR 335.03(16), NR 335.03(17) to NR 335.03(19) and NR 335.03(20).

SECTION 6. NR 335.03(5), NR 335.03(6), NR 335.03(9), NR 335.03(10), NR 335.03(13) and NR 335.03(24) are created to read:

NR 335.03(5) "Dam grant inventory" means the list of dams maintained by the department that require a dam safety project and for which a grant application has been filed under s. 31.385, Stat.

(6) "Dam safety project" means the maintenance, repair, modification, or abandonment and removal of a dam to increase the safety of the dam or any other activity that will increase the safety of the dam.

(9) "Force account" means the performance of a project with the forces and resources of the sponsor, including personal services, equipment and materials.

(10) "Fringe benefits" means employers' contributions or expenses for social security, employee's life and health insurance plans, unemployment insurance coverage, worker's compensation insurance, pension retirement plans, and employee benefits in the form of regular compensation during authorized absences from the job (i.e. annual, sick, court or military leave). These contributions and expenses must be equitably distributed to all employee labor activities.

(13) "Indirect costs" means those costs not directly assignable to a grant, program or project. Such costs are generally administrative in nature, are incurred for a common or joint purpose, or are not readily assignable to a project or program.

(24) "Sponsor match" means the portion of the dam safety project which is not funded by the state. Eligible sources of sponsor match may include cash from the sponsor; in-kind contributions; funds generated by local, state or federal government; grants or contributions from foundations, businesses, private individuals, non-profit organizations, or other local state or federal grants.

SECTION 7. renumbered NR 335.03(14), NR 335.03(18) and NR 335.03(20) are amended to read:

NR 335.03(14) "Investigation" means an inspection performed by or in coordination with the department after the owner has received either directives in an inspection report or an order, to determine whether the owner may be eligible for a grant under this chapter for work that remains to be performed on the dam.

(18) "Municipality" means any town, village, city, ~~or county,~~ or tribe in this state.

(20) "Owner" means any municipality or lake district which has title holds the permit or approval under ch. 31, Stats. to a dam and fee title ownership or permanent legal access for the purposes of operation and maintenance to the specific piece of land on which a dam is physically located.

SECTION 8. NR 335.05 is amended to read:

NR 335.05 **State share.** ~~The state share may not exceed 50% of the total eligible project costs nor exceed \$200,000 for any one dam.~~

SECTION 9. NR 335.05(1) to NR 335.05(3) are created to read:

NR 335.05(1) For dam repair, reconstruction or maintenance projects the state share may not exceed 50% of the first \$400,000 of eligible project costs nor more than 25% of the eligible project costs that exceed \$400,000. The dam owner must provide a sponsor match for 50% of the first \$400,000 of eligible project costs, 75% of the next \$800,000 of project costs and all ineligible cost or eligible costs exceeding \$1,200,000. Sponsor match may come from other sources including another state or federal cost sharing or grant program, from another municipality or any other outside funding source.

(2) For dam removal projects the state share may not exceed 100% of the eligible project costs.

(3) The state share is limited to no more than \$400,000 for each dam safety project.

SECTION 10. NR 335.06 and NR 335.06(1) are amended to read:

NR 335.06 **Application and award procedures.** Aid available under this program shall be awarded to those projects with the highest points on a priority list, as determined by the procedures and criteria in s. NR 335.09, and in accordance with the procedures in this section. Projects on the priority list shall be funded within the limits of available funds. ~~Applications with identical point totals shall be assigned priority based upon the date the complete application was received by the department with highest priority given to the earliest received complete application.~~

(1) All applications for a grant under this chapter shall be received by the department or postmarked no later than April 1 September 15 of each year, unless otherwise noted on the application materials. The signed application and required attachments must be delivered to the department location identified in the application materials. Acceptable delivery methods will be identified in the application materials. Applications received or postmarked on the same day will be randomly assigned and order received within that day.

SECTION 11. NR335.06(2) to NR 335.06(7) are renumbered NR 335.06(3) to NR 335.06(8)

SECTION 12. Renumbered NR 335.06(3), NR 335.06(4), NR 335.06(5), NR 335.06(7) and NR 335.06(8) are amended to read:

NR 335.06(3) The department shall establish a priority list ~~by June 1 of each year which~~ within 60 days of the application deadline, which ranks all complete applications received by the ~~April 1~~ application deadline. Applicants shall be notified of their placement on the priority list and the probability of approval for funding. The ranking of applicants shall be made available upon written request. In developing this list the department shall:

(4) Applicants receiving a commitment for funding shall submit plans and specifications to the department, for approval, ~~prior to October 1 of the same year the application is made~~ within 6 months of the notification on placement on the priority ranking list, unless an extension is requested in writing and approved by the department.

(5) Applicants receiving a commitment for funding shall submit construction bids for the proposed work to the department within ~~60~~ 90 days of department approval of plans and specifications. Following submission to the department, the owner may rebid the project without losing eligibility if the original bid is deemed too high or inappropriate. The applicant shall rebid the project within 60 days of receipt of the original bid. The department shall direct the owner to rebid the project if it deems the bid inappropriate. The applicant shall rebid the project within 60 days of receiving notification from the department that the department deems the bid inappropriate.

(7) All complete applications received ~~or postmarked after April 1~~ the application deadline shall be ~~considered for funding during the next year in which money becomes available. To be considered, any amendment to a late application shall be received by the department no later than the next April 1 application deadline~~ returned to the applicant.

(8) If there are insufficient funds to award aid to all eligible applicants on the priority list, ~~the remaining projects shall be considered for funding during the next year in which money becomes available. To be considered, any amendments to unfunded applications shall be received by the department no later than the next April 1 application deadline~~ their placement on the priority ranking list will be maintained until the next grant application deadline in case a higher ranked project elects not to receive their grant or returns unused funds to the program. As application requirements could change between grant cycles, unfunded projects will need to submit new applications each grant cycle.

SECTION 13. NR 335.06(2), NR 335.06(3)(a), NR 335.06(3)(b), and NR 335.06(9) to NR 335.06(11) are created to read:

NR 335.06(2) The department shall review each application received for completeness and within 15 days of the application deadline shall advise the applicant in writing of any deficiencies, omissions or errors in the application in writing. Incomplete applications may not be considered if all information is not received by the department within 45 days of April 1 the application deadline for that year. The date that the last materials, required for a complete application, were received by the department will be used to break ties on the priority list.

(3)(a) Rank applications with identical point totals based upon the date the complete application was received by the department with highest priority given to the earliest received complete application.

(3)(b) Add a contingency, based on past experience with the grant program to the cost estimates provided in the grant applications to assure adequate funding is available for projects receiving a commitment to funding. If the next project on the list would exceed the available funding the department may choose to reserve those funds until there is adequate funding to fully commit to the next project on the list.

(9) A grant will not be awarded under this program until the owner of the dam provides adequate proof of ownership of the entire dam and a dam failure analysis approvable under the standards of NR 333.05(2), including maps suitable for the purpose of implementing land use controls below the dam.

(10) A grant will not be awarded under this program for a dam project that has already received a grant award through the Dam Removal Grant program administered under NR 336.

(11) For any project that does not adequately advance within one year of funding notification to a point where the grant award can be written, the department's commitment to fund said project may be rescinded. Funds that have been so rescinded may then be committed to the next unfunded project on the priority list.

SECTION 14. NR 335.07(1)(a) is renumbered NR 335.07(1)(c) and amended to read:

NR 335.07(1)(c) A Requires a separate grant application shall be submitted to the department for each individual dam for which financial assistance is requested under this chapter. Only one application under this chapter can be received for any particular dam in any year.

SECTION 15. NR 335.07(1), NR 335.07(1)(b), NR 335.07(2)(a), NR 335.07(2)(a)1. and NR 335.07(2)(a)2. are amended to read:

NR 335.07(1) PROCEDURE. Subject to the availability of funds, the department shall:

(1)(b) ~~The department shall review each application received for completeness and shall advise the applicant of any deficiencies, omissions or errors in the application in writing. Incomplete applications may not be considered if all information is not received by the department by April 1. Distribute to any potential applicant that requests it a copy of the application, instructions for completing the application and guidelines that the department will use to score the project application.~~

(2)(a) Certified copies of ~~the following~~ a resolutions of the governing body of the municipality or lake district that reflects the following information:

(2)(a)1. ~~A resolution designating~~ Designates an authorized representative, and ~~authorizing~~ authorizes the representative to apply for a grant under s. 31.385, Stats., and this chapter, on behalf of the owner.

(2)(a)2. ~~A resolution stating~~ statement that the owner agrees to pay a share of the eligible costs which is equal to the total project cost minus the state share.

SECTION 16. NR 335.07(2)(a)3., NR 335.07(2)(b), NR 335.07(2)(b)1. to NR 335.07(2)(b)3., NR 335.07(2)(c), and NR 335.07(2)(c)1. to NR 335.07(2)(c)4. are renumbered NR 335.07(2)(b), NR 335.07(2)(e), NR 335.07(2)(e)1. to NR 335.07(2)(e)3., NR 335.07(2)(f), and NR 335.07(2)(f)1. to NR 335.07(2)(f)4.

SECTION 17. Renumbered NR 335.07(2)(b), NR 335.07(2)(e), NR 335.07(2)(e)1., NR 335.07(2)(e)2., NR 335.07(2)(f)3. are amended to read:

NR 335.07(2)(b) Proof of receipt of a letter sent by certified mail, from the dam owner to ~~the municipality any county, city or village that may be affected by the hydraulic shadow of the dam responsible for the implementation of land use controls,~~ informing the municipality(s) that a change in the land use controls may be necessary to secure the hazard rating for the dam.

(2)(e) All data and calculations to show that upon completion of the project, dams to be repaired or modified will meet all requirements of ch. NR 333 where applicable. All owners shall provide the following with the application:

(2)(e)1. A dam failure analysis ~~including maps suitable for the purpose of implementing land use controls below the dam sufficient to identify the appropriate hazard of the dam based on current downstream development.~~

(2)(e)2. A project description, conceptual design and detailed cost estimate for the construction phase of the project defining the eligible project costs.

(2)(f)3. A project description, conceptual design and detailed cost estimate for the construction portion of the project defining eligible project costs.

SECTION 18. NR 335.07(1)(a), NR 335.07(2)(c), NR 335.07(2)(d), NR 335.07(2)(g) to NR 335.07(2)(i) are created to read:

NR 335.07(1)(a) Solicit applications on an annual basis for projects to be funded under this chapter by providing notice that the application materials are available upon request.

(2)(c) Information to show that the applicant holds the permit or approval under ch. 31, Stats. for the dam and information indicating who owns the parcels of land under and adjacent to the land. Also, a map showing the dam in relationship to the adjacent land parcels must be provided.

(2)(d) Proof that the applicant requested, in writing, funding assistance under this chapter within 6 months after receiving directives or an order for repair, modification or abandonment of the dam resulting from a department investigation or inspection of the dam.

(2)(g) All sources of funding from outside the owners resources that will be used to meet the sponsors match for the grant.

(2)(h) All information requested in the grant materials to help establish the priority ranking points for the dam.

(2)(i) Any other information required on the application that the department may require to process the applications.

SECTION 19. NR 335.07 – ANNOT. is created after renumbered NR 335.07(2)(e)3. to read:

NR 335.07 – ANNOT. Note: The cost estimates should be broken into the following categories where applicable; dam failure analysis; alternatives analysis and grant application; preparation of plans and specifications and project bidding; construction related services; and preparation of the emergency action plan and inspection, operation and maintenance plan.

SECTION 20. NR 335.07 – ANNOT. is created after renumbered NR 335.07(2)(f)4. to read:

NR 335.07 – ANNOT. Note: The cost estimates should be broken into the following categories where applicable; floodplain analysis; alternatives analysis and grant application; preparation of plans and specifications and project bidding; and construction related services.

SECTION 21. NR 335.07 – ANNOT. is amended to read:

NR 335.07 - ANNOT. Note: Application forms are available from the department by writing to the Wisconsin Department of Natural Resources, Bureau of Water Regulation and Zoning, P.O. Box 7921, Madison, WI 53707 may be obtained from the department's website, <http://dnr.wi.gov/org/caer/cfa/Grants/Dammaint.html>, or from the DNR Bureau of Community Financial Assistance, PO Box 7921, Madison, WI 53707.

SECTION 22. NR 335.08(1)(a) to NR 335.08(1)(d), NR 335.08(2)(c) and NR 335.08(2)(f) are amended to read:

NR 335.08(1)(a) Actual and reasonable engineering costs incurred in preparing the studies and application form required under s. NR 335.07 (2)-(b) (e) and (e) (f);

(b) Actual and reasonable engineering costs incurred in preparing plans and specifications as required in s. NR 335.06 (3) (4), the operation, inspection and maintenance plan, and the emergency action plan;

(1)(c) Actual and reasonable construction costs incurred in the repair, modification or abandonment of the dam, including labor and materials; and

(1)(d) Actual and reasonable engineering costs involved in the on-site inspection of the repair, modification or abandonment of the dam. On-site inspection by an engineer registered in the state of Wisconsin is required, at a minimum, during critical stages of construction and could be required full time for certain projects.

(2)(c) Costs incurred prior to the date of the state grant award except engineering costs as provided in sub. (1) or construction costs for a project that was under department orders, was approved by the department and was undertaken as emergency repairs or modifications to a high or significant hazard dam. Construction work must have started within 1 year prior to the grant application deadline;

(2)(f) Costs for which payment for a dam abandonment and removal project has been or will be received under another state or federal cost sharing or grant program or from another municipality or any other outside funding source; and

SECTION 23. NR 335.08(1)(e) is created to read:

NR 335.08(1)(e) Actual and reasonable costs for activities other than the maintenance, repair or modification of the dam (structural alternative) only if the cost of that activity will be less than the cost of the structural alternative.

SECTION 24. NR 335.09, NR 335.09(1) to NR 335.09(4), NR 335.09(4)(a), NR 335.09(4)(b) and NR 335.09(5) are amended to read:

NR 335.09 **Criteria for priority ranking.** The following criteria shall be used by the department to rank proposed projects for the purpose of determining funding priority:

(1) ~~Dam hazard rating based on current development in the hydraulic shadow:~~ The department shall develop a priority ranking process for the purpose of determining funding priorities for applications under this chapter.

(2) ~~Adequate land use controls currently in effect or dam to be abandoned:~~ The department may use an advisory committee to help develop the priority ranking process.

(3) ~~Financial need (add the points for each column and divide by 2):~~ The priority ranking process shall be reviewed and adjusted, if necessary, based on experience from past grant cycles and public safety priorities, prior to the notice of a new grant cycle.

(4) ~~Total eligible project cost:~~ The following criteria may be used by the department in the priority ranking process. The criteria are not listed in any order of priority:

(4)(a) Total estimated project cost greater than \$50,000, 10 points; or Hazard of the dam based on existing land use downstream.

(4)(b) Total estimated project cost of \$50,000 or less, 0 points. Extent of land use controls currently in effect downstream of the dam to prevent development in the hydraulic shadow of the dam.

(5) Navigability: The department will determine the priority ranking points for an applicant based on; information found on the grant application and in supplemental material; department files, map repositories and databases; on-site inspections or reports from past inspections; and discussion with the owner.

SECTION 25. NR 335.09(1)(a) to NR 335.09(1)(c), NR 335.09(2)(a) to NR 335.09(2)(d), NR 335.09(5)(a), NR 335.09(5)(b), NR 336.09(6), NR 335.09(6)(a) and NR 335.09(6)(b) are repealed.

SECTION 26. NR 335.09(4)(c) to NR 335.09(4)(m) are created to read:

NR 335.09(4)(c) Financial need of the applicant.

(d) Total eligible project costs.

(e) Navigability of the watercourse.

(f) Size classification of the dam.

(g) Extent to which the project improves the safety in the area downstream of the dam.

(h) Severity of the deficiencies of the dam.

(i) Time frame in which the project can start construction.

(j) Presence of approved emergency action plan and inspection, operation and maintenance plan for the dam.

(k) Availability of public access to the impoundment created by the dam.

(l) Extent of effort by the owner to responsibly operate and maintain the dam.

(m) Any other criteria that the department identifies as necessary to improve the ranking process based on past experience with the grant program.

SECTION 27. NR 335.09 - ANNOT., after NR 335.09(3), is repealed.

SECTION 28. NR 335.14(1)(b)1., NR 335.14(1)(b)2. are amended to read:

NR 335.14(1)(b)1. Any consultant, construction or service contract ~~totalling~~ totaling \$10,000.00 or more annually shall be covered by a formal contract or agreement specifying financial terms, contract duration, and services to be rendered.

(1)(b)2. ~~Allowable rates for use of an owner's own equipment~~ Actual cost of force account labor and equipment is allowable. ~~Equipment~~ Equipment rates shall be limited to the county-wide rates established annually by the department of transportation (DOT). Eligibility of the use of specialized equipment for which DOT rates are not available shall be based on the allocable portion of depreciation plus normal and reasonable operation expenses attributable to project activities.

SECTION 29. NR 335.14(1)(b)3. is created to read:

NR 335.14(1)(b)3. Grantee shall comply with applicable state or federal regulation concerning bidding and awarding contracts, wage rates and labor rates.

SECTION 30. NR 335.15 is created to read:

NR 335.15 **Variations**. The department may approve variations from nonstatutory requirements of this chapter upon the request of a sponsor when the department determines that variations are essential to effect necessary grant actions or program objectives, and where special circumstances make such variations in the best interest of the program. Before granting a variance, the department shall take into account such factors as good cause and circumstances beyond the control of the sponsor.

SECTION 31. NR 335.16 and NR 335.16 (1) to NR 335.16(3) are created to read:

NR 335.16 **Dam Grant Inventory**.

(1) Projects will be added to the dam grant inventory after receipt of an application. By signing the application, the applicant is acknowledging they are aware the dam will be placed on the dam grant inventory.

(2) As part of the application, the department shall provide notice to the dam owner stating that it will proceed on the funding request and addition to the dam grant inventory without a hearing unless a request for a hearing is filed with the department by the dam owner.

(3) If a hearing is requested pursuant to notice under this subsection, the department may schedule the matter for hearing using the procedures under s. 31.06 (2), Stats., or may notify the owner that the dam has been removed from the dam grant inventory.

SECTION 32. NR 336 Title is amended to read:

NR 336, ~~SMALL AND ABANDONED~~ DAM REMOVAL GRANT PROGRAM

SECTION 33. NR 336.01 is amended to read:

NR 336.01 Purpose. The purpose of this chapter is to establish procedures to implement a ~~small and abandoned~~ dam removal financial assistance grant program, as provided for in s. 31.385, Stats.

SECTION 34. NR 336.02(1) and NR 336.02(2) are amended to read:

NR 336.02(1) ~~In the case of small dam~~ Counties, cities, townships, villages, public inland lake protection and rehabilitation districts, tribes or private dam owners for the removal of dams they own.

(2) ~~In the case of Any person, including a state agency, who has obtained legal access to property for the purpose of removing a dam declared abandoned dam removal under s. 31.187, Stats. or any structure acting as a dam in a waterway that is affecting the natural function of the stream.~~

SECTION 35. NR 336.02(1)(a), NR 336.02(1)(b), NR 336.02(2)(a) and NR 336.02(2)(b) are repealed.

SECTION 36. NR 336.03(1) and NR 336.03(4) are amended to read:

NR 336.03(1) "Abandoned dam" means a dam declared abandoned using the process under s. ~~30.121(4)~~ 31.187, Stats.

(4) "Dam safety project" means the maintenance, repair, modification, or abandonment ~~or~~ and removal of a dam to increase its safety or any other activity that will increase the safety of a dam.

SECTION 37. NR 336.03(2), NR 336.03(6), NR 336.03(8), and NR 336.03(12) to NR 336.03(14) are repealed.

SECTION 38. NR 336.03(3), NR 336.03(7) and NR 336.06(9) to NR 336.03(11) are renumbered NR 336.03(2), NR 336.03(6) and NR 336.03(7) to NR 336.03(9)

SECTION 39. NR 336.03(3) is created to read:

NR 336.03(3) "Dam removal project" means the activities associated with removal of a dam and related stream restoration.

SECTION 40. Renumbered NR 336.03(7) is amended to read:

NR 336.03(7) "Project" means ~~an abandoned or small~~ a dam removal project.

SECTION 41. NR 336.05(9) to NR 336.05(11) are amended to read:

NR 336.05(9) All claims for payment shall be submitted on forms provided by the department and are contingent upon final ~~audit~~ department review of project expenditures.

(10) All sponsors shall maintain detailed records of grant expenditures to show that grant funds were used for the purposes for which the grant was made. The sponsor shall keep all financial records, including invoices and canceled checks or bank statements that support all project costs claimed by the sponsor, and the records shall be available for inspection by state officials for 3 years after the date of final payment. Sponsors ~~that~~ are required to

shall account for all project funds in conformance with generally accepted accounting principles and practices and shall retain the funds in a separate account.

(11) Total grant assistance provided under this chapter shall be ~~limited to a maximum of 50~~ 100% of eligible project costs up to \$50,000 ~~unless otherwise provided by law~~ or the maximum award amount identified in the application materials.

SECTION 42. NR 336.06(1) is amended to read:

(1) Applications shall be made on department provided forms. The signed application must be delivered to the department at the address specified on the application materials. Acceptable delivery methods will be defined in the application materials.

SECTION 43. NR 336.06(2)(g) to NR 336.06(2)(i) are created to read:

NR336.06(2)(g) Identification of any other funding source that will be used to fund the dam removal project.

(h) A statement of the progress that has been made to obtain necessary permits for the dam removal project.

(i) A description of the project including conceptual design, project sequencing and cost estimate for all cost the applicant expects to be reimbursed under the grant.

SECTION 44. NR 336.06 – ANNOT. is amended to read:

NR 336.06 - ANNOT. **Note: Applications may be obtained by contacting the Department of Natural Resources, Dam Safety Program, WT/2, Bureau of Community Financial Assistance, 101 South Webster Street, Box 7921, Madison, WI 53707-7921, (608) 266-8030 or from the department's website, <http://dnr.wi.gov/org/caer/cfa/Grants/DamRemov.html>.**

SECTION 45. NR 336.08 is amended to read:

NR 336.08 **Project priority list.** The department shall maintain a list containing the order of projects eligible for funding. The order of funding is based on the ~~following 2 factors:~~ date when the department receives the application. Applications received on the same date will be randomly selected and ranked within that day.

SECTION 46. NR 336.08(1) and NR 336.08(2) are repealed.

SECTION 47. NR 336.09(1)(c), NR 336.09(1)(c)1. to NR 336.09(1)(c)3., and NR 336.09(1)(d)4. are repealed.

SECTION 48. NR 336.09(1)(d) is renumbered NR 336.09(1)(c).

SECTION 49. NR 336.09 – ANNOT. is repealed.

SECTION 50. NR 336.10(1) is amended to read:

NR 336.10(1) The grant award for a ~~small~~ dam removal project is ~~50~~ 100% of the eligible project cost not to exceed \$50,000 or the maximum award amount identified in the application materials and may be limited by availability of grant funding.

SECTION 51. NR 336.10(2) is repealed.

SECTION 52. NR 336.10(3) and NR 336.10(4) are renumbered NR 336.10(2) and NR 336.10(3).

SECTION 53. NR 336.10(5) is created to read:

NR 336.10(4) A grant award will not be awarded under this program for a dam project that has already received a grant award through the Municipal Dam Grant program, administered under ch. NR 335, in the same year.

SECTION 54. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.24(2)(intro.), Stats.

SECTION 55. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin February 24, 2010.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

(SEAL)

By _____
Matthew J. Frank, Secretary