

Report From Agency

REPORT TO LEGISLATURE

NR 335 & NR 336 , Wis. Adm. Code

Board Order No. WT-21-09
Clearinghouse Rule No. 10-032

Basis and Purpose of the Proposed Rule

This rule package implements statutory changes to the dam grant rules (ch. NR 335 and ch. NR 336) that were part of the 2009-11 Biennial Budget (2009 Wisconsin Act 28). The rules 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.

The 2009-11 Biennial Budget included \$4.0 million in new bonding authority for the Dam Safety Grants. 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.

Summary of the rule

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.*

Summary of Public Comments

The rule revisions were posted on the department website for public comment from March 15 through April 16. Notice of this posting was sent out to the distribution list from the Dam Grants website as well as all other parties that had expressed interest in the grant program. Two comments were received during the comment period.

Comment 1 - I received the rule revisions for NR 335. As a dam owner we certainly welcome the 4 million dollars in funding and project grant award maximum increase from \$200,000 to \$400,000. (No changes were necessary to address the comment)

Comment 2 - I'd like to see some added provisions in the ranking that rewards owners who have IOM's and who follow them for dam improvement grants and for the dam removals it would be nice if we could give greater weight to removal projects based on stream classification. (The rule draft was already changed to allow these type of factors to be considered in the ranking criteria. The specific ranking process will be developed outside of the rules process. These comments will be saved for the workgroup that develops the final ranking process.)

Modifications Made

No modifications to the rule package were necessary to address public comments.

Appearances at the Public Hearing

A public hearing was held on April 15, 2010 at 1:30 pm in room 413 of the DNR Building in Madison, Wisconsin. No members of the public appeared at the hearing.

Changes to Rule Analysis and Fiscal Estimate

No modifications to the Rule Analysis or Fiscal estimate were necessary based on public comments.

Response to Legislative Council Rules Clearinghouse Report

The Administrative Rules Clearinghouse provided a page of comments on the rule package. The majority of the comments related to form, style, clarity, grammar and punctuation. These have all been addressed, where appropriate, in the final draft of the rule.

The Clearinghouse provided 4 comments related to statutory authority.

- Comment 1 – Statutory authority to include tribes as an eligible applicant NR 335.03(18). (S 20.002(13) states “**Indian grants**. Notwithstanding any statute to the contrary, wherever any law authorizes a grant of state funds to be made by a state agency to any county, city, village or town for any purpose, funds may also be granted by that state agency to any federally recognized tribal governing body for the same purpose. The grants are subject to the same conditions and restrictions as apply to grants to counties and municipalities, if any. This subsection shall not be construed to require any grant of state funds to be made to any federally recognized tribal governing body.” Therefore, the definition of municipality was broadened to include tribes as a eligible applicant.)
- Comment 2 – Provisions for cost share in the code appeared to be different than what is in the statute. (This section was checked carefully to make sure the code would provide the cost share identified in statute. Some minor changes were made to the code section, NR 335.05(1) to improve readability and potential confusion.)
- Comment 3 – Questioned whether the provision in the statute that allows reimbursement for an activity other than maintenance, repair, modification, abandonment or removal of the dam only if the cost of that activity will be less than the cost of the maintenance, repair, modification, abandonment or removal of the dam is adequately reflected in NR 335.08(1)(e). (NR 335.08(1)(e) repeats the statutory language except it uses the term “structural alternative” for maintenance, repair, modification, abandonment, or removal of the dam. NR 335.08 identifies that those activities are structural alternatives.)
- Comment 4 – Asked why the definition of dam safety project in NR 335.03(6) and NR 336.03(4) is slightly different than the definition provided in the statute, the statute using “or” between abandonment and removal while the codes places “or” before abandonment and “and” between abandonment and removal. (In practice, abandonment and removal are part of the same activity, the owner abandons the permit for the dam and then removes the dam from the waterway. The way it is stated in the code makes it more clear that they are both parts of the same activity.)

Final Regulatory Flexibility Analysis

The rule package will not have a significant economic impact on small business. The rules do not directly affect small businesses 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 was 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.

No small businesses provide comments on the rule package during the public comment period.