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(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2009-10

(session year)

### Joint

(Assembly, Senate or Joint)

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\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

State of Wisconsin  
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS  
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

**Board Order Number:** WT-21-09

**Clearinghouse Number:** 10-032

**Subject of Rules:** ch. NR 335 – Municipal Dam Grant Program and ch. NR 336 – Dam Removal Grant Program

**Date of Transmittal:** July 9, 2010

Send a copy of any correspondence or notices pertaining to the rule to:

Michael Scott  
DNR Bureau of Legal Services  
LS/8, 101 South Webster

Linda Haddix, Department Rules Coordinator  
DNR Bureau of Legal Services  
LS/8, 101 South Webster

An electronic copy of the proposed rule submittal may be obtained by contacting Julia Riley at [Julia.Riley@wisconsin.gov](mailto:Julia.Riley@wisconsin.gov)  
608-264-9244

## 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 that 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.

**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 (table), 335.09 (note), 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 (note), 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 (note), 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 (note), 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), 335.05(1)(a) to (1)(c), 335.05(2) 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 (note), 335.07 (note), 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 for 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.

**Agency contact:**

Meg Galloway  
Phone: (608) 266-7014  
Email: [Meg.Galloway@Wisconsin.gov](mailto:Meg.Galloway@Wisconsin.gov)

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**Remainder is Dam Grant info:**

SECTION 1. NR 335 (title) is amended to read:

**CHAPTER 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, Stats.

(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 (such as annual, sick, court or military leave). These contributions and expenses shall 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), NR 335.05(1)(a) to NR 335.05(1)(c), and NR 335.05(2) to NR 335.05(3) are created to read:

NR 335.05(1) For dam repair, reconstruction or maintenance projects the following cost share provisions shall apply:

(1)(a) 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.

(1)(b) The dam owner ~~must~~ shall 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.

(1)(c) 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 ~~must~~ 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 shall be delivered to the department location identified in the application materials. Acceptable delivery methods shall be identified in the application materials. Applications received or postmarked on the same day shall be randomly assigned an 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 shall 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, sponsors of unfunded projects shall 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 the application deadline for that year. The date that the last materials, required for a complete application, were received by the department shall 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) No grant may 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) No grant may 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 is 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 Require 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 may 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 shall 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 or municipalities 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 shall 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 (note) is created after renumbered NR 335.07(2)(e)3. to read:

NR 335.07 (note) 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 (note) is created after renumbered NR 335.07(2)(f)4. to read:

NR 335.07 (note) 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 (note) is amended to read:

NR 335.07 (note) 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 shall 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 is 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 shall 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 (TABLE) and NR 335.09 (NOTE) after NR 335.09(3), are 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 rates~~ 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:

#### CHAPTER 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 of~~ 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 shall be delivered to the department at the address specified on the application materials. Acceptable delivery methods shall 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 (note) is amended to read:

NR 336.06 (note) **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 shall 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(4) is created to read:

NR 336.10(4) A grant award may 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 May 26, 2010.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

(SEAL)

By \_\_\_\_\_  
Matthew J. Frank, Secretary

**Fiscal Estimate — 2009 Session**

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number WT-21-09

**Subject**

Changes to NR 335, Dam Maintenance, Repair, Modification, Abandonment and Removal Grant Program; and NR 336, Small and Abandoned Dam Removal Grant Program

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation     Increase Existing Revenues  
 Decrease Existing Appropriation     Decrease Existing Revenues  
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.  
 Yes     No  
 Decrease Costs

Local:  No Local Government Costs

1.  Increase Costs  
     Permissive     Mandatory  
 2.  Decrease Costs  
     Permissive     Mandatory

3.  Increase Revenues  
     Permissive     Mandatory  
 4.  Decrease Revenues  
     Permissive     Mandatory

5. Types of Local Governmental Units Affected:  
 Towns     Villages     Cities  
 Counties     Others Lake Dist., Tribes  
 School Districts     WTCS Districts

Fund Sources Affected

- GPR     FED     PRO     PRS     SEG     SEG-S

Affected Chapter 20 Appropriations

**Assumptions Used in Arriving at Fiscal Estimate**

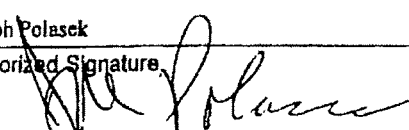
**Rule Summary:**

The 2009-11 Biennial Budget included \$4.0 million in new bonding authority for the Dam Safety Grants. Funds are available to dam owners for maintenance, repairs, and removal. These proposed rule changes will improve the Department's ability to provide grants for these purposes and incorporate statutory language changes made in the budget bill. This will allow Wisconsin dam owners to 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. The changes can be divided into two broad categories:

1.) 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.; and allows for cost effective, non-construction activities that increase the safety of a dam.

2.) Facilitate distributing the bonding for the program: moves grant application cycle for NR 335 to the fall to better match the municipal budget process; adjusts other code timelines and application requirements to address past implementation difficulties and assure more applications can be deemed complete; allows for the ability to adjust the priority ranking process outside the code, making it easier to improve the scoring process based on experience; better defines application requirements; allows for the addition of a variance clause which would facilitate the implementation and administration of NR 335; makes it easier for applicants to NR 335 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; and 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.

**Long-Range Fiscal Implications**

Prepared By:	Telephone No.	Agency
Joseph Polasek	266-2794	Department of Natural Resources
Authorized Signature:	Telephone No.	Date (mm/dd/ccyy)
	266-2794	01/21/2010



**Fiscal Estimate — 2009 Session**

**Page 2 Assumptions Narrative  
Continued**

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number WT-21-09

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**Assumptions Used in Arriving at Fiscal Estimate – Continued**

**State Fiscal Effect:** The 2009-2011 Budget Bill, 2009 Wisconsin Act 28, did not provide additional staff or funding for administering the dam grant programs, therefore, the costs associated with handling the additional demand for dam grants will be absorbed with existing staff and within the existing budget. It is assumed that the \$4 million in bonding will be allocated as soon as possible. Assuming an 8% annual amortization rate, the allocation of the bonding will result in an annualized costs of \$320,000 in bonding repayments. However, these costs will occur regardless of the action on this rule package, so these costs are included in this fiscal note for information purposes only.

**Local Fiscal Effect:** The rule package makes it easier for municipalities, lake districts, and persons who own the dam to leverage grant funds and thus provides a greater financial incentive to apply for grants.





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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE **10-032**

AN ORDER to ..., relating to grants for dam maintenance, repair, modification, or abandonment and removal.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

03-15-2010 RECEIVED BY LEGISLATIVE COUNCIL.

04-12-2010 REPORT SENT TO AGENCY.

RNS:REL

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES  NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES  NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES  NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached YES  NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES  NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES  NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES  NO



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 10-032

#### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### 1. Statutory Authority

a. Section NR 335.03 (18) provides that a municipality means any town, village, city, county, or tribe in this state. Section 31.01 (4), Stats., provides that a municipality means any town, village, city, or county in the state. What is the source of the department's authority to expand the definition of municipality to include a tribe?

b. Section NR 335.05 (1) provides that 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. Section 31.385 (2) (a) 1. a. and b., Stats., provides that the financial assistance for a dam safety project is limited to the sum of the following:

- (1) No more than 50% of the first \$400,000 of costs of the project.
- (2) No more than 25% of the costs of the project that exceed \$400,000.

It appears that the rule requires a choice between two provisions instead of the sum of the two provisions. Is that the department's intent? If so, what is the statutory authority for this?

c. In s. NR 335.08 (1) (e), the department may reimburse the 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 31.385 (2) (bm), Stats., provides that the department may provide financial assistance for an activity other than the 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, or removal of the dam. What is the source of the department's authority for the provision in the rule?

d. In ss. NR 335.03 (6) and 336.03 (4), the definition of "dam safety project" is different than the definition provided in s. 31.385 (1b), Stats. The statute uses "or" while the rules use "and." Why are these definitions different?

## **2. Form, Style and Placement in Administrative Code**

a. In s. NR 335.03 (10), the notation "i.e." should be removed and replaced with "such as". Also, the parentheses should be removed. [See s. 1.01 (9) Manual.]

b. In s. NR 335.06 (1), "will" should be changed to "shall." This problem also occurs in sub. (8). The entire rule should be checked for this problem. Also in sub. (1), "must" should be changed to "shall."

c. In s. NR 335.06 (11), "can" should be changed to "may". The entire rule should be checked for this problem.

d. In s. NR 335.07 (2) (b), "municipality(s)" should be changed to "municipality or municipalities."

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. NR 335.03 (5), "Stat." should be changed to "Stats."

b. In s. NR 335.06 (1), it appears that the last instance of the word "and" should be changed to "an."

c. In s. NR 335.06 (2), it appears that "April 1" should be deleted. Subsections (3) (a) and (b) should be removed from SECTION 11 and inserted after the appropriate material in SECTION 10.

d. In s. NR 335.07 (1) (c), it appears that "A" should not be stricken through and "Requires a" should be deleted.

e. In the introductory material in SECTION 19, "ANNOT." should be deleted and replaced with "Note." The same problem occurs in the introductory material in SECTIONS 20, 21, and 44. In the Note after s. NR 335.07, the first semi-colon should be changed to a colon. This problem also occurs in the second Note to s. NR 335.07 created in SECTION 20.

f. In s. NR 335.09 (5), the first semi-colon should be deleted.

g. In SECTION 27, does the department intend to delete the material in the table following s. NR 335.09 (3)? If so, the introductory material of the rule should be changed.