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Details: Emergency Rule extension requests by Department of Natural Resources.

(FORM UPDATED: 08/11/2010)

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

## 2009-10

(session year)

## Joint

(Assembly, Senate or Joint)

## Committee for Review of Administrative Rules ...

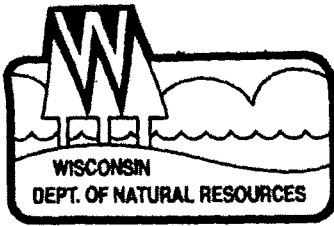
### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

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



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

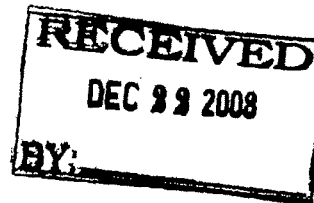
Jim Doyle, Governor  
Matthew J. Frank, Secretary

101 S. Weber  
Box  
Madison, Wisconsin 53707-1  
Telephone 608-266-21  
FAX 608-267-35  
TTY Access via relay - 711

December 17, 2008

Honorable Bob Jauch, Chair  
Joint Committee for Review of Administrative Rules  
118 South  
State Capitol

Honorable Daniel LeMahieu, Chair  
Joint Committee for Review of Administrative Rules  
17 North  
State Capitol



Re: Extension of Emergency Order No. WT-10-08(E) (EmR0809)

Gentlemen:

The Department of Natural Resources, under s. 227.24, Stats., is requesting the Joint Committee for Review of Administrative Rules to extend Natural Resources Board Emergency Order No. WT-10-08(E) (EmR0809) for 60 days. This emergency order pertaining to grants for the control of aquatic invasive species took effect on April 7, 2008 and was set to expire on November 28, 2008. A 60 extension was granted by your committee on October 14, 2008 and the rule is now set to expire on January 26, 2009.

The extension of this emergency rule is needed so that the department can continue to process the grants under these rules while the permanent rule is being promulgated.

A copy of the emergency order is attached. If you have any questions, please contact Carroll Schaal of the Bureau of Watershed Management at 261-6423.

Sincerely,

Matthew J. Frank  
Secretary

Attach.

cc: Presiding Officers  
Carroll Schaal - WT/4  
Marney Hoefler - LS/8  
Carol Turner - LS/8  
Julia Riley - WT/3

**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 198.15(2), to **renumber** NR 198.12(6) to (10), to **amend** NR 198.11, 198.14(1)(e) and (f) 2, 198.23 (5) to (7), 198.33 (5), and 198.44(5) and to **create** NR 198.12(6) and (7), 198.33(6) and NR 198, subch. V relating to grants for the control of aquatic invasive species.

**WT-10-08(E)**

Analysis Prepared by the Department of Natural Resources

**Statutes interpreted:** s. 23.22(2)(c) and 23.24, Stats.

**Statutory authority:** ss. 23.22(2)(c), 227.11(2)(a) and 227.24(1)(a), Stats.

**Explanation of agency authority:** This order implements s. 23.22(2)(c), Stats., which directs the department to promulgate rules to establish a procedure to award cost-sharing grants to control invasive species. The rules must establish the criteria for determining eligible projects and eligible public and private grant recipients, allow cash and non-cash contributions as eligible costs share and consider the recommendations of the Invasive Species Council. Amendments under Act 20 of 2007 increased the state cost-share rate from 50% to 75% and eliminated a priority for grants awarded to units of local government. The Act also increased the annual appropriation from \$1.5 million in FY06, to 3.3 \$million in FY07 to \$4.3 million in FY08 and each fiscal year thereafter.

**Related statute or rule:** The rule's general provisions and structure are similar to the Department's lake and river grant programs rules, chs. NR 190, 191 and 195 which is intended to provide consistency in grant administration. This rule will also assist the department in achieving the statutory goals of s. 23.24, Stats., which designates invasive plants and provides the authority to regulate how these plants are controlled.

**Plain language analysis:** The objectives of the order for ch. NR 198 are to:

1. Implement changes in enabling legislation that increase the maximum state cost share rate from 50% to 75% and eliminate priority for local government sponsored projects.
2. Increase the maximum amount of the state funds available for projects.
3. Increase the value of donated, non-professional labor that can be used as local match from \$8 to \$12.
4. Allow for a cash advance for early detection and rapid response projects
5. Expand sponsorship to include universities, colleges and technical schools, hydro-electric corporations and other branches of state and federal government that manage lands or natural resources.
6. Broaden the definition of the nonprofit conservation organization.
7. Create a new subch. V that allows the department to disburse funds to sponsors who are successfully and ecologically containing established infestations under a department approved plan to help offset the costs of permit application and required monitoring and reporting.

Increasing the cost share rate and maximum amount of a grant award will improve efficiency and allow the scope and scale of the projects to be commensurate with the scale at which aquatic invasive species prevention and control issues need to be approached.

funds are spent is a biennial appropriation, meaning that any unspent funds at the end of the biennium automatically lapse back to the Water Resources Account of the Conservation Fund, an emergency rule will help to minimize or eliminate the amount of funds that are lapsed. The Bureau will be promulgating these changes and additional proposals as a permanent rule for public hearing at the next Board meeting.

**Agency contact:**

Carroll Schaal  
Phone: (608) 261-6423  
Email: [carroll.schaal@wisconsin.gov](mailto:carroll.schaal@wisconsin.gov)

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**SECTION 1.** NR 198.11 is amended to read:

NR 198.11 **Applicability and eligible sponsors.** This chapter applies to all counties, cities, towns, villages, tribes, public inland lake protection and rehabilitation districts, and town sanitary districts and other local governmental units as defined in s. 66.0131(1)(a), Stats., qualified lake associations as defined in s. 281.68 (1) (b), Stats., that charge an annual membership fee of not less than \$5 and not more than \$50, qualified school districts as defined in s. 281.68 (3m) (c), Stats., private and public colleges, universities and technical schools, qualified nonprofit conservation organizations as defined in s. 23.0965 (1), Stats., and river management organizations, as defined in s. NR 195.02(2), state and federal natural resource or land management agencies and FERC-licensed hydroelectric corporations, applying for financial assistance under s. 23.22(2)(c), Stats., for an aquatic invasive species prevention or control project for any waters of the state including lakes, rivers, streams, wetlands and the Great Lakes.

**SECTION 2.** NR 198.12(6) to (10) are renumbered NR 198.12(8) to (12).

**SECTION 3.** NR 198.12(6) is created to read:

NR 198.12 (6) "Natural resource agency" means a government agency that is charged with the responsibility for the management of lakes, rivers, streams, wetlands, forests, plants, soils or agricultural lands.

**SECTION 4.** NR 198.12(7) is created to read:

NR 198.12(7) "Nonprofit conservation organization" means a nonprofit corporation, a charitable trust or other nonprofit association whose purposes includes the acquisition or management of property for conservation purposes including the control of aquatic invasive species and that is described in section 501 (c) (3) of the internal revenue code and is exempt from federal income tax under section 501 (a) of the internal revenue code.

**SECTION 5.** NR 198.14(1)(e) is amended to read:

NR 198.14(1)(e) Reasonable costs necessary to complete an application and comply with a permit application required to implement a project awarded a grant ~~if the costs are incurred within 12 months prior to the application deadline.~~ Costs up to 12 months prior to the application deadline are eligible for reimbursement.

**SECTION 6.** NR 198.14(1)(f)2 is amended to read:

NR 198.14(1)(f)2. The maximum value of donated non-professional labor shall be ~~\$8~~ \$12 per hour.

**SECTION 7.** NR 198.15(2) is repealed.

**SECTION 8.** NR 198.23(5) to (7) are amended to read:

(3) The department shall review the claim and may approve it for a grant award.

(4) The standard state share of the cost for a maintenance and control project will be determined by the department based on the application fee and specified monitoring and reporting in the permit or the department approved plan.

SECTION 13. STATEMENT OF EMERGENCY. The substantial increase in grant funding is a strong message from the Legislature that concern over the welfare of our public waters is growing, along with the expectation that these additional funds be put to work as soon as possible. The appropriation from which these funds are spent is a biennial appropriation, meaning that any unspent funds at the end of the biennium automatically lapse back to the Water Resources Account of the Conservation Fund. The timeline for permanent rule promulgation and the lack of staff to provide support to eligible sponsors may impede the Department's ability to fully and responsibly invest the authorized spending by the end of the biennium because of the current rule's limitations. An emergency rule will help to minimize or eliminate the amount of funds that are lapsed.

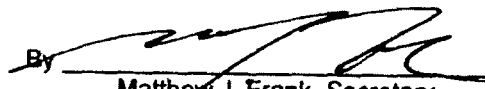
SECTION 14. EFFECTIVE DATE. This rule shall take effect on July 1<sup>st</sup>, 2008 as provided in s. 227.24(1)(d), Stats.

SECTION 15. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on March 26, 2008.

Dated at Madison, Wisconsin March 31, 2008

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By

  
Matthew J. Frank, Secretary

(SEAL)



SENATOR JIM HOLPERIN  
CO-CHAIR

PO Box 7882  
MADISON, WI 53707-7882

(608) 266-2509



REPRESENTATIVE JOSH ZEPNICK  
CO-CHAIR

PO BOX 8953  
MADISON, WI 53707-8953

(608) 266-1707

January 6, 2009

Matthew Frank, Secretary  
Wisconsin Department of Natural Resources  
P.O. Box 7921  
Madison, WI 53707

Dear Secretary Frank:

Re: NR 198 Invasive Species Grants – WT-10-08 (EmR0809) – Request for Rule Extension

The Joint Committee for the Review of Administrative Rules met in Executive Session on January 6, 2009 and adopted the following motion:

Moved by Representative Hebl, seconded by Senator Lehman to combine the three rule extension requests and vote on them en masse, with the outcome applied to each of the respective requests, be granted a 60-day emergency rule extension from the date of the proceedings of this committee.

Motion Passed 10-0.

Pursuant to s. 227.24(2)(c), stats., we are notifying the Legislative Reference Bureau of the Committee's action through copies of this letter.

Sincerely,

Handwritten signature of Jim Holperin in black ink.

Senator Jim Holperin  
Senate Co-Chair

Handwritten signature of Josh Zepnick in black ink.

Representative Josh Zepnick  
Assembly Co-Chair

cc: Bruce Hoesly, Legislative Reference Bureau  
Ron Sklansky, Legislative Council





# Joint Committee for Review of Administrative Rules

January 6, 2009

Testimony DNR Board Emergency Order WT-10-08(E)  
Emergency Order pertaining to grants for the control of aquatic invasive species  
Carroll Schaal, Lake Partnership Team Leader

NR 198 describes eligible sponsors, projects and the procedures for receiving applications and awarding grants for controlling aquatic invasive species. The three types of grant activities are 1) Planning, Prevention and Education, 2) Rapid Response (to new infestations) and 3) Established Population Control. There are two grant cycles, August 1<sup>st</sup> and February 1<sup>st</sup>, each fiscal year.

The original rule was created in 2004 when the annual appropriation was \$500,000. In 2008 the annual appropriation was increased to \$4.3 million. The current rule was deemed inadequate to efficiently and effectively administer the increased funding. In short the program needed to be "scaled -up" commensurate with the increased level of funding.

We sought an emergency rule because we were concerned that the timeline for permanent rule promulgation would impede our ability to fully invest the large increase in funding by the end of the current biennium when any unspent balance would automatically lapse. We interpreted the substantial increase in AIS grant funding as a strong message from the Legislature that concern over the welfare of our public waters is growing, along with the expectation that these additional funds be put to work as soon as possible.

The emergency rule expands the maximum grant awards; increases the state cost share rate and the value of sponsor's donated labor; expands the number of eligible sponsors; and creates a new grant category for long term maintenance and containment projects.

In July and August, we held hearings on a companion permanent rule that encompassed all the changes in the emergency rule. After that input we prepared a final proposal that addressed the public's concerns that some of the changes were too broad. The Natural Resources Board approved the final rule at its December meeting. The report to the legislature should be completed next week and a hearing scheduled here within the next two months. If approved, the permanent rule is projected to be in effect in May 2009 for grant awards made in the next fiscal year.

The emergency rule is still needed to ensure that projects that have been planned for the February 2009 deadline will be reviewed and awarded consistent with the rules that were in place this August and the permanent rule that will be in place next August. This second extension request will take the emergency rule through the Feb. 1<sup>st</sup> 2009 application deadline. Not extending the emergency rule will mean that sponsors applying in February will be under limitations that they did not plan for and that were not imposed on their counterparts this August or will be in the future.



**State of Wisconsin**  
**DEPARTMENT OF REGULATION AND LICENSING**  
**CORRESPONDENCE / MEMORANDUM**

**DATE:** January 6, 2009

**TO:** Joint Committee for Review of Administrative Rules

**FROM:** Jeff Scanlan

**SUBJECT:** Request for 2nd Emergency Rule Extension – Changes to RL 161.04 Examinations for Substance Abuse Counselors

The Department of Regulation & Licensing is requesting its second extension of 60 days to emergency rules relating to changes to RL 161.04 Examinations for Substance Abuse Counselors. The first extension of the emergency rule order is due to expire on January 13, 2009.

The request for extension is to cover the period between promulgation and the date by which the permanent rule making order is effective. The Department anticipates that the Department shall submit the order for the permanent rule (CR 08-094) for review by legislative committee the week of January 5<sup>th</sup>, 2009 or early the following week.

The Department promulgated the emergency rule due to changes to national examination requirements standards. In 2007, the International Certification & Reciprocity Consortium (IC&RC) eliminated the “Case Presentation Method” oral examination used for certification of AODA/substance abuse counselors. To replace the oral exam, the IC&RC updated their written counselor examination to include test elements for measurement of practice competencies that were previously tested for by the oral exam. The new examination was implemented in June 2008.

The IC&RC had determined that for those states with reciprocal AODA/substance abuse counselor certification, such as Wisconsin, those counselors who wish qualify for reciprocal certification that already passed the written counselor examination prior to June, 2008, but have never successfully completed the oral exam, were to take the updated written counselor exam or pass the oral examination offered by the jurisdictions.

As Wisconsin clinical substance abuse counselors have reciprocity status with other IC&RC states, to maintain reciprocal standards, Wisconsin amended via emergency rule. The changes provided the following conditions for those attempting to obtain certification as a clinical substance abuse counselor:

- › Counselors who have taken and passed the IC&RC written counselor examination before June 2008, but have never passed the oral examination, are required to retake the written counselor examination or pass the oral examination

- › For counselors who have successfully completed the IC&RC written counselor examination and the oral examination, there are no further examination requirements
- › For those first applying for certification that take and pass the IC&RC written counselor examination offered after June 1, 2008, there will be no additional examination requirements for clinical substance abuse counselor certification
- › The emergency rule allows those applicants who choose to take the oral examination rather than retake the written counselor exam to do so until December 01, 2008 The Department will no longer offer the oral exam after December 1, 2008.

Motion

That the Joint Committee for Review of Administrative Rules, pursuant to s. 227.24 (2), Stats., extend the effective period of an emergency rule of the Department of Health Services, relating to defibrillation (EmR0825), for a period of 60 days through March 29, 2009.

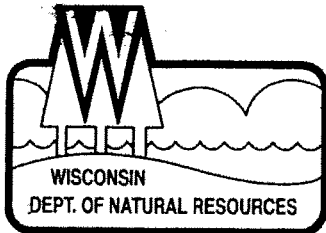
Motion

That the Joint Committee for Review of Administrative Rules, pursuant to s. 227.24 (2), Stats., extend the effective period of an emergency rule of the Department of Natural Resources, relating to invasive species (EmR0824), for a period of 60 days through March 27, 2009.

Motion

That the Joint Committee for Review of Administrative Rules, pursuant to s. 227.24 (2), Stats., extend the effective period of an emergency rule of the Department of Regulation and Licensing, relating to substance abuse professionals (EmR0819), for a period of 60 days through March 13, 2009.





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Matthew J. Frank, Secretary

101 S. Webster St.  
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FAX 608-267-3579  
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January 15, 2010

Honorable Josh Zepnick, Co-Chair  
Joint Committee for Review of Administrative Rules  
Room 219 North  
State Capitol

\* \$4 million dam repair + removal  
Act 28  
\* Aug 31... emer. rule... starting  
aps (30 so far)

✓ Honorable Jim Holperin, Co-Chair  
Joint Committee for Review of Administrative Rules  
Room 409  
South State Capitol

Re: Extension of Emergency Order No. WT-22-09(E) (EmR0915)

Gentlemen:

The Department of Natural Resources, under s. 227.24, Stats., is requesting the Joint Committee for Review of Administrative Rules to extend Natural Resources Board Emergency Order No. WT-22-09(E) (EmR0915) for 60 days. This emergency order relating to grants for dam maintenance, repair, modification, or abandonment and removal took effect on August 28, 2009 and is to expire on January 24, 2010.

The extension of this emergency rule is needed for the following reasons:

1. 2009 Wisconsin Act 28 provided an increase in bonding for Wisconsin's dam grant program. Because of a growing public safety risks from unsafe dams, the known likelihood of future flooding, and the immediate opportunity to provide this financial assistance, these additional funds were put to work as soon as possible. The emergency rules allowed immediate implementation of modifications that allowed a grant application cycle to be conducted last fall which will allow most dam safety projects to be undertaken during the 2010 construction season.
2. While department efforts remain underway to promulgate a permanent rule, an extension is necessary to allow the department to continue to process the grants under these rules while the permanent rule is being processed. We anticipate going to the February Natural Resources Board Meeting with permanent rule for hearing authorization, and expect the permanent rule to take effect sometime this summer.


Unfortunately, the department was unable to submit this extension request 30 days prior to the expiration date of January 24, 2010. With applications pouring in and various deadlines looming under the emergency rule, staff dedicated their time working to help communities with applications and make final funding decisions to meet a critical December deadline in the emergency rule. The deadline to request the extension was December 24; Department staff only this week realized the situation with the 30-day extension. We regret and apologize for the oversight and hope, despite the error, our extension request is given your full attention and support, as it is vital that assistance continue uninterrupted.

is given your attention and support, so that vital financial assistance to communities can continue uninterrupted.

If you have any questions, please contact Meg Galloway of the Bureau of Watershed Management at 266-7014.

A copy of the emergency order and fiscal estimate is attached.

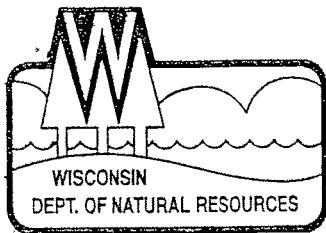
Sincerely,



Matthew J. Frank  
Secretary

Attach.

cc: Presiding Officers  
Meg Galloway - WT/3  
Eileen Trainor - CF/2  
Michael D. Scott - LS/8



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Matthew J. Frank, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
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August 18, 2009

Mr. Bruce Hoesly  
Code Editor  
Legislative Reference Bureau  
1 East Main Street – Suite 200  
Madison, WI

Dear Mr. Hoesly:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WT-22-09(E) for filing as required by s. 227.20, Stats.

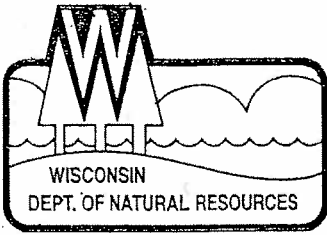
These are emergency rules adopted pursuant to s., 227.24, Stats., and will be effective on the day of publication in the official state paper which will be August 28, 2009

Sincerely,

Matthew J. Frank  
Secretary

Enclosures





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Matthew J. Frank, Secretary

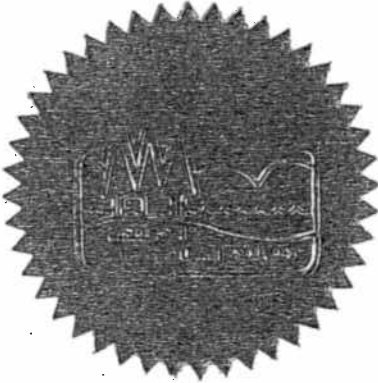
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STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

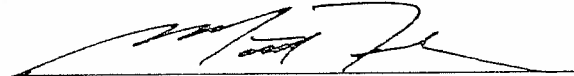
TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Matthew J. Frank, Secretary of the Department of Natural Resources and custodian of the official records, do hereby certify that the annexed copy of Natural Resources Board Order No. WT-22-09(E) has been compared by me with the original order on file in this office of the Department of Natural Resources, Madison, Wisconsin, and that the same is a true copy thereof, and of the whole of such original order; that said order was duly passed and published as set forth therein.



(SEAL)

IN TESTIMONY WHEREOF, I have hereunto set my hand  
and affixed the official seal of the Department this 20th day  
of August, 2009

  
Matthew J. Frank, Secretary

**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 335.08(2)(f), NR 336.02(1)(a) and (1)(b), 336.02(2)(a) and (2)(b), 336.03(12) and (14), and 336.08(1) and (2), to **renumber** NR 335.03(5) to (23), 335.08(2)(g) and 336.03(13), to **amend** NR 335 TITLE, 335.04, renumbered 335.03(14), renumbered 335.03(18), renumbered 335.03(21), 335.05, 335.06(1) to (4), 335.06(6) to (7), 335.07(1)(a) and (1)(b), 335.07(2)(a)3. and (2)(b)1., 335.07 – ANNOT., 335.08(1)(c) to (1)(d), 335.03(2)(e), 335.09-ANNOT., 335.14(1)(b)1., NR 336 TITLE, 336.02(1) and (2), 336.03(1) and (9), renumbered 336.03(12), 336.05(11), 336.06 –ANNOT., 336.08, and 336.10(1), and to **create** NR 335.03(5) and (6), 335.05(1) to (3), 335.06(8) and (9), 335.08(1)(e), 335.15, 335.16, 335.16(1) to (3), and NR 336.10(5) relating to grants for dam maintenance, repair, modification, or abandonment and removal.

**WT-22-09(E)**

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 provide \$4 million in bonding for dam safety grants, the first substantial increase in bonding since 1999.

**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 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 for the fall of 2009*
  - *adjusts other code timelines and application requirements to address past implementation difficulties and assure more applications can be deemed complete*
  - *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 immediate 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. Without the emergency rule revisions, the ability for eligible entities to apply for and receive funding will be delayed 6 to 12 months and the general public that lives or recreates near an unsafe dam will remain at risk.

The emergency rule revisions are designed to be non-controversial. Any proposed rule changes that may be controversial were not included in the emergency rules and will be vetted through the public hearing process for permanent rule revisions. The permanent rule process is anticipated to start this fall with a request to go to public hearing at the October Natural Resources Board meeting.

**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 finding 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.

**Emergency rule:** The Department is interpreting the substantial increase in dam grant funding as a strong message from the Legislature that concern for public welfare from unsafe dams is growing, as well as the desire to help dam owners, including the owners of the many dams damaged during the flooding in 2007 and 2008. In order to protect the public and provide this financial assistance, these additional funds should be put to work as soon as possible. The timeline for permanent rule promulgation will impede the Department's ability to accept applications and commit funding to dam safety projects until at least June

2010, which would delay most projects until late 2010 or 2011. The emergency rules will allow immediate implementation of modifications that will allow a grant application cycle to be conducted yet this fall and allow most projects to be constructed during the 2010 construction season or before. Only the changes necessary to implement statutory changes and quickly and effectively conduct a grant application cycle will be included in the emergency rule. The Bureau will be promulgating these changes and additional proposals as a permanent rule for public hearing at the October Board meeting.

**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:

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

SECTION 2. NR 335.03(4) is amended to read:

NR 335.03(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.

SECTION 3. NR 335.03(5) and NR 335.03(6) 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.

NR 335.03(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.

SECTION 4. NR 335.03(5) to (23) are renumbered to NR 335.03(7) to (25) and NR 335.03(14), NR 335.03(18) and NR 335.03(21) as renumbered, are amended to read:

NR 335.03(14) "Large dam" means a dam that has either a structural height of more than 6 feet and a maximum storage capacity of ~~more than~~ 50 acre-feet or more, or a structural height of 25 feet or more and a maximum storage capacity of more than 15 acre-feet.

NR 335.03(18) "Municipality" means any town, village, city, ~~or county,~~ or tribe in this state.

NR 335.03(21) "Owner" means any municipality or lake district which has title 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 5. 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 6. NR 335.05(1), NR 335.05(2) and 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.

- (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 7. NR 335.06(1) NR 335.06(2) NR 335.06(3), NR 335.06(4), NR 335.06(6) and NR 335.06(7) are amended to read:

NR 335.06(1) All applications for a grant under this chapter shall be received by the department no later than ~~April 1~~ October 15 of each year, unless otherwise noted on the application materials.

(2) The department shall establish a priority list ~~by June 1 of each year~~ which within 45 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.

(3) 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.

(4) 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.

(6) All complete applications received 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.

(7) 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.

SECTION 8. NR 335.06(8) and NR 335.06(9) are created to read:

NR 335.06(8) 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.

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

SECTION 9. NR 335.07(1)(a), NR 335.07(1)(b), NR 335.07(2)(a)3. and NR 335.07(2)(b)1. are amended to read:

NR 335.07(1)(a) 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 a dam in any year.

(1)(b) The department shall review each application received for completeness and 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 by ~~April 1~~ the application deadline for that year.

(2)(a)3. Proof of receipt of a letter sent by certified mail, from the dam owner to the municipality(s) responsible for the implementation of land use controls within the hydraulic shadow, informing the municipality(s) that a change in the land use controls may be necessary to secure the hazard rating for the dam.

(2)(b)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 development.

SECTION 10. 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 11. NR 335.08(1)(c), NR 335.08(1)(d) and NR 335.08(2)(e) are amended to read:

NR 335.08(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 during critical stages of construction; ~~and~~

(2)(e) Costs of equipment necessary for routine maintenance of the dam;

SECTION 12. 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 13. NR 335.08(2)(f) is repealed.

SECTION 14. NR 335.08(2)(g) is renumbered to NR 335.08(2)(f).

SECTION 15. NR 335.09 - ANNOT. is amended to read:

NR 335.09 - ANNOT. \* Based on ~~the most recent department of revenue publication, Long Term Indebtedness of Wisconsin Political Subdivisions and Taxes, Aids and Shared Taxes and confirmation of its applicability by department investigation references provided in the application materials.~~

When determining financial need points for lake districts, the point totals are to equal the weighted average of the income and indebtedness figures for the individual municipalities making up the district, based on the percent of the district lying within each municipality.

SECTION 16. NR 335.14(1)(b)1. is amended to read:

NR 335.14(1)(b)1. Any consultant, construction or service contract ~~totaling~~ 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.

SECTION 17. NR 335.15 is created to read:

NR 335.15 **Variances.** The department may approve variances from nonstatutory requirements of this chapter upon the request of a sponsor when the department determines that variances are essential to effect necessary grant actions or program objectives, and where special circumstances make such variances 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 18. NR 335.16, NR 335.16 (1), NR 335.16 (2) and 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 19. NR 336 Title is amended to read:

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

SECTION 20. 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.~~

SECTION 21. NR 336.02(1)(a), NR 336.02(1)(b), NR 336.02(2)(a) and NR 336.02(2)(b) are repealed.

SECTION 22. NR 336.03(1) and 336.03(9) 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.

(9) "Project" means ~~an abandoned or small dam~~ removal project.

SECTION 23. NR 336.03(12) and NR 336.03(14) are repealed.

SECTION 24. NR 336.03(13) is renumbered NR 336.03(12) and amended to read:

NR 336.03(12) "~~Small dam~~ Dam removal project" means the activities associated with removal of a ~~small dam and associated stream restoration.~~

SECTION 25. NR 336.05(11) is amended to read:

NR 336.05(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 26. 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 27. 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 28. NR 336.08(1) and NR 336.08(2) are repealed.

SECTION 29. 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 30. NR 336.10(5) is created to read:

NR 336.10(5) 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 31. STATEMENT OF EMERGENCY. The substantial increase in bonding for the dam grant programs is a strong message from the legislature that that concern for public welfare from unsafe dams is growing, as well as the desire to help dam owners, including the owners of the many dams damaged during the flooding in 2007 and 2008. In order to protect the public and provide this financial assistance, these additional funds should be put to work as soon as possible. The timeline for permanent rule promulgation will impede the Department's ability to accept applications and commit funding to dam safety projects until at least June 2010, which would delay most projects until late 2010 or 2011. The emergency rules will allow immediate implementation of modifications that will allow a grant application cycle to be conducted yet this fall and allow most projects to be constructed during the 2010 construction season or before.

SECTION 32. EFFECTIVE DATE. This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.

SECTION 15. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 12, 2009.

Dated at Madison, Wisconsin August 20, 2009.



STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By   
Matthew J. Frank, Secretary



**Fiscal Estimate — 2009 Session**

Original       Updated  
 Corrected     Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number WT-22-09(E)

**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 Districts  
 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:**

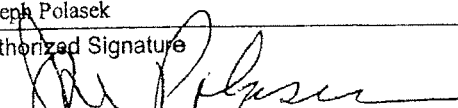
The 2009-11 Biennial Budget included \$4.0 million in new bonding authority for the Dam Safety Grants. Funds are available to dam owners for maintenance, repairs and removal. These proposed rule changes will expedite the Department's ability to provide grants for these purposes and incorporate some statutory language changes made in the budget bill into code. 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 \$4 million allocation of bonding for the program: grants greater flexibility for implementation of a grant application cycle for the fall of 2009; adjusts other code timelines and application requirements to address past implementation difficulties and assure more applications can be deemed complete; 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	07/10/2009

**Fiscal Estimate — 2009 Session**

**Page 2 Assumptions Narrative  
Continued**

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number WT-22-09(E)

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Assumptions Used in Arriving at Fiscal Estimate – Continued

**State Fiscal Effect:** The 2009-2011 Budget Bill, 2009 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.

**Fiscal Estimate Worksheet — 2009 Session**  
 Detailed Estimate of Annual Fiscal Effect

Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number WT-22-09(E)

**Subject**

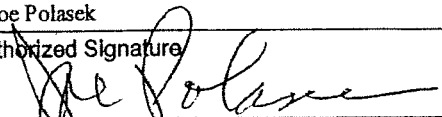
Changes to NR 335, Dam Maintenance, Repair, Modification, Abandonment and Removal Grant Program; and NR 336, Small and Abandoned Dam Removal Grant Program.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

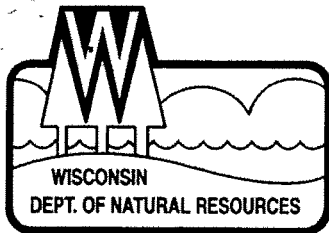
Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
State Operations — Salaries and Fringes		\$	\$ -
(FTE Position Changes)		( FTE )	( FTE )
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
<b>Total State Costs by Category</b>		\$	\$ -
<b>B. State Costs by Source of Funds</b>			
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
<b>Total State Revenues</b>		\$	\$ -

**Net Annualized Fiscal Impact**

	State	Local
Net Change in Costs	\$ _____	\$ _____
Net Change in Revenues	\$ _____	\$ _____

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 07/10/2009





**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

Jim Doyle, Governor  
Matthew J. Frank, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
FAX 608-267-3579  
TTY Access via relay - 711

February 23, 2010

Honorable Josh Zepnick, Co-Chair  
Joint Committee for Review of Administrative Rules  
Room 219 North  
State Capitol

Honorable Jim Holerpin, Co-Chair  
Joint Committee for Review of Administrative Rules  
Room 409  
South State Capitol

Re: Extension of Emergency Order No. WT-22-09(E) (EmR0915)

Gentlemen:

The Department of Natural Resources, under s. 227.24, Stats., is requesting the Joint Committee for Review of Administrative Rules to extend Natural Resources Board Emergency Order No. WT-22-09(E) (EmR0915) for another 60 days. An extension was approved to this emergency order relating to grants for dam maintenance, repair, modification, or abandonment and removal. The emergency rule originally took effect on August 28, 2009; the first extension is set to expire on or about March 24, 2010.

Another 60-day extension of this emergency rule is needed for the following reasons:

1. 2009 Wisconsin Act 28 provided an increase in bonding for Wisconsin's dam grant program. Because of a growing sense of concern for public welfare from unsafe dams and to protect the public and provide this financial assistance, these additional funds were put to work as soon as possible. The emergency rules allowed immediate implementation of modifications that allowed a grant application cycle to be conducted last fall which will allow most dam safety projects to be undertaken during the 2010 construction season.
2. While department efforts remain underway to promulgate a permanent rule, another extension is necessary to allow the department to continue to process the grants under these rules while the permanent rule is being processed. On February 24, 2010, the Natural Resources Board will consider a request to go to hearing with the permanent rule to take effect sometime this summer.

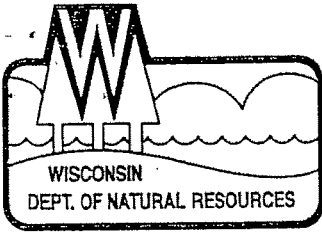
If you have any questions, please contact Meg Galloway of the Bureau of Watershed Management at 266-7014.

A copy of the emergency order and fiscal estimate is attached.

Sincerely,

Matthew J. Frank  
Secretary  
Attach.

cc: Presiding Officers  
Meg Galloway - WT/3; Eileen Trainor - CF/2; Michael D. Scott - LS/8



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Matthew J. Frank, Secretary

101 S. Webster St.  
Box 7921  
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TTY Access via relay - 711

August 18, 2009

Mr. Bruce Hoesly  
Code Editor  
Legislative Reference Bureau  
1 East Main Street - Suite 200  
Madison, WI

Dear Mr. Hoesly:

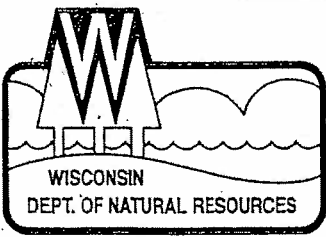
Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WT-22-09(E) for filing as required by s. 227.20, Stats.

These are emergency rules adopted pursuant to s., 227.24, Stats., and will be effective on the day of publication in the official state paper which will be August 28, 2009

Sincerely,

Matthew J. Frank  
Secretary

Enclosures



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Matthew J. Frank, Secretary

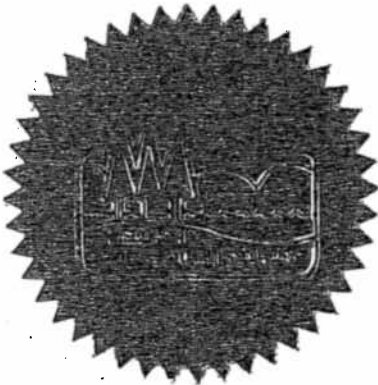
101 S. Webster St.  
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FAX 608-267-3579  
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STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Matthew J. Frank, Secretary of the Department of Natural Resources and custodian of the official records, do hereby certify that the annexed copy of Natural Resources Board Order No. WT-22-09(E) has been compared by me with the original order on file in this office of the Department of Natural Resources, Madison, Wisconsin, and that the same is a true copy thereof, and of the whole of such original order; that said order was duly passed and published as set forth therein.



(SEAL)

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department this 20th day of August, 2009

Matthew J. Frank, Secretary

**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 335.08(2)(f), NR 336.02(1)(a) and (1)(b), 336.02(2)(a) and (2)(b), 336.03(12) and (14), and 336.08(1) and (2), to **renumber** NR 335.03(5) to (23), 335.08(2)(g) and 336.03(13), to **amend** NR 335 TITLE, 335.04, renumbered 335.03(14), renumbered 335.03(18), renumbered 335.03(21), 335.05, 335.06(1) to (4), 335.06(6) to (7), 335.07(1)(a) and (1)(b), 335.07(2)(a)3. and (2)(b)1., 335.07 – ANNOT., 335.08(1)(c) to (1)(d), 335.03(2)(e), 335.09-ANNOT., 335.14(1)(b)1., NR 336 TITLE, 336.02(1) and (2), 336.03(1) and (9), renumbered 336.03(12), 336.05(11), 336.06 – ANNOT., 336.08, and 336.10(1), and to **create** NR 335.03(5) and (6), 335.05(1) to (3), 335.06(8) and (9), 335.08(1)(e), 335.15, 335.16, 335.16(1) to (3), and NR 336.10(5) relating to grants for dam maintenance, repair, modification, or abandonment and removal.

WT-22-09(E)

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 provide \$4 million in bonding for dam safety grants, the first substantial increase in bonding since 1999.

**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 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 for the fall of 2009*
  - *adjusts other code timelines and application requirements to address past implementation difficulties and assure more applications can be deemed complete*
  - *allows for the addition of a variance clause which would facilitate the implementation and administration of NR 335*



- o *makes it easier applicants to the Municipal Dam Grant program to pair the grant with other, outside funding sources.*
- o *corrects incorrect definitions and statute citations*
- o *clarifies that state agencies may use the grants to remove abandoned dams*
- o *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 immediate 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. Without the emergency rule revisions, the ability for eligible entities to apply for and receive funding will be delayed 6 to 12 months and the general public that lives or recreates near an unsafe dam will remain at risk.

The emergency rule revisions are designed to be non-controversial. Any proposed rule changes that may be controversial were not included in the emergency rules and will be vetted through the public hearing process for permanent rule revisions. The permanent rule process is anticipated to start this fall with a request to go to public hearing at the October Natural Resources Board meeting.

**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 finding 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.

**Emergency rule:** The Department is interpreting the substantial increase in dam grant funding as a strong message from the Legislature that concern for public welfare from unsafe dams is growing, as well as the desire to help dam owners, including the owners of the many dams damaged during the flooding in 2007 and 2008. In order to protect the public and provide this financial assistance, these additional funds should be put to work as soon as possible. The timeline for permanent rule promulgation will impede the Department's ability to accept applications and commit funding to dam safety projects until at least June

2010, which would delay most projects until late 2010 or 2011. The emergency rules will allow immediate implementation of modifications that will allow a grant application cycle to be conducted yet this fall and allow most projects to be constructed during the 2010 construction season or before. Only the changes necessary to implement statutory changes and quickly and effectively conduct a grant application cycle will be included in the emergency rule. The Bureau will be promulgating these changes and additional proposals as a permanent rule for public hearing at the October Board meeting.

**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:

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

SECTION 2. NR 335.03(4) is amended to read:

NR 335.03(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.

SECTION 3. NR 335.03(5) and NR 335.03(6) 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.

NR 335.03(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.

SECTION 4. NR 335.03(5) to (23) are renumbered to NR 335.03(7) to (25) and NR 335.03(14), NR 335.03(18) and NR 335.03(21) as renumbered, are amended to read:

NR 335.03(14) "Large dam" means a dam that has either a structural height of more than 6 feet and a maximum storage capacity of ~~more than~~ 50 acre-feet or more, or a structural height of 25 feet or more and a maximum storage capacity of more than 15 acre-feet.

NR 335.03(18) "Municipality" means any town, village, city, ~~or county~~, or tribe in this state.

NR 335.03(21) "Owner" means any municipality or lake district which has title 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 5. 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 6. NR 335.05(1), NR 335.05(2) and 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.

- (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 7. NR 335.06(1) NR 335.06(2) NR 335.06(3), NR 335.06(4), NR 335.06(6) and NR 335.06(7) are amended to read:

NR 335.06(1) All applications for a grant under this chapter shall be received by the department no later than ~~April 1~~ October 15 of each year, unless otherwise noted on the application materials.

(2) The department shall establish a priority list ~~by June 1 of each year which~~ within 45 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.

(3) 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.

(4) 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.

(6) All complete applications received 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.

(7) 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.

SECTION 8. NR 335.06(8) and NR 335.06(9) are created to read:

NR 335.06(8) 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.

(9) 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.

SECTION 9. NR 335.07(1)(a), NR 335.07(1)(b), NR 335.07(2)(a)3. and NR 335.07(2)(b)1. are amended to read:

NR 335.07(1)(a) 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 a dam in any year.

(1)(b) The department shall review each application received for completeness and 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 by ~~April 1~~ the application deadline for that year.

(2)(a)3. Proof of receipt of a letter sent by certified mail, from the dam owner to the municipality(s) responsible for the implementation of land use controls within the hydraulic shadow, informing the municipality(s) that a change in the land use controls may be necessary to secure the hazard rating for the dam.

(2)(b)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 development.

SECTION 10. 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 11. NR 335.08(1)(c), NR 335.08(1)(d) and NR 335.08(2)(e) are amended to read:

NR 335.08(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 during critical stages of construction; and

(2)(e) Costs of equipment necessary for routine maintenance of the dam;

SECTION 12. 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 13. NR 335.08(2)(f) is repealed.

SECTION 14. NR 335.08(2)(g) is renumbered to NR 335.08(2)(f).

SECTION 15. NR 335.09 - ANNOT. is amended to read:

NR 335.09 - ANNOT. \* Based on ~~the most recent department of revenue publication, Long Term Indebtedness of Wisconsin Political Subdivisions and Taxes, Aids and Shared Taxes and confirmation of its applicability by department investigation references provided in the application materials.~~

When determining financial need points for lake districts, the point totals are to equal the weighted average of the income and indebtedness figures for the individual municipalities making up the district, based on the percent of the district lying within each municipality.

SECTION 16. NR 335.14(1)(b)1. is 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.

SECTION 17. NR 335.15 is created to read:

NR 335.15 Variances. The department may approve variances from nonstatutory requirements of this chapter upon the request of a sponsor when the department determines that variances are essential to effect necessary grant actions or program objectives, and where special circumstances make such variances 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 18. NR 335.16, NR 335.16 (1), NR 335.16 (2) and 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 19. NR 336 Title is amended to read:

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

SECTION 20. 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.~~

SECTION 21. NR 336.02(1)(a), NR 336.02(1)(b), NR 336.02(2)(a) and NR 336.02(2)(b) are repealed.

SECTION 22. NR 336.03(1) and 336.03(9) 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.

(9) "Project" means ~~an abandoned or small dam removal project.~~

SECTION 23. NR 336.03(12) and NR 336.03(14) are repealed.

SECTION 24. NR 336.03(13) is renumbered NR 336.03(12) and amended to read:

NR 336.03(12) "~~Small dam~~Dam removal project" means the activities associated with removal of a ~~small dam~~ and associated stream restoration.

SECTION 25. NR 336.05(11) is amended to read:

NR 336.05(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 26. 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 27. 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 28. NR 336.08(1) and NR 336.08(2) are repealed.

SECTION 29. 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 30. NR 336.10(5) is created to read:

NR 336.10(5) 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 31. STATEMENT OF EMERGENCY. The substantial increase in bonding for the dam grant programs is a strong message from the legislature that that concern for public welfare from unsafe dams is growing, as well as the desire to help dam owners, including the owners of the many dams damaged during the flooding in 2007 and 2008. In order to protect the public and provide this financial assistance, these additional funds should be put to work as soon as possible. The timeline for permanent rule promulgation will impede the Department's ability to accept applications and commit funding to dam safety projects until at least June 2010, which would delay most projects until late 2010 or 2011. The emergency rules will allow immediate implementation of modifications that will allow a grant application cycle to be conducted yet this fall and allow most projects to be constructed during the 2010 construction season or before.

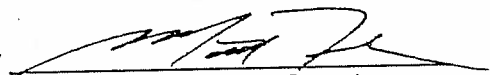
SECTION 32. EFFECTIVE DATE. This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.

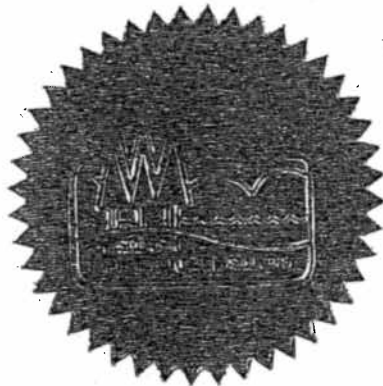
SECTION 15. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 12, 2009.

Dated at Madison, Wisconsin August 20, 2009.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By

  
Matthew J. Frank, Secretary



**Fiscal Estimate — 2009 Session**

<input 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-22-09(E)

**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.

- |                                                          |                                                     |
|----------------------------------------------------------|-----------------------------------------------------|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation        |                                                     |

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

Local:  No Local Government Costs

- |                                                                                                                                            |                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| 1. <input checked="" type="checkbox"/> Increase Costs<br><input checked="" type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |
| 2. <input type="checkbox"/> Decrease Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory                       | 4. <input type="checkbox"/> Decrease Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |

5. Types of Local Governmental Units Affected:

- Towns  Villages  Cities  
 Counties  Others Lake Districts  
 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**

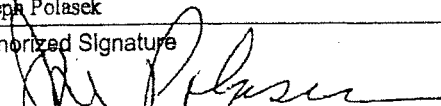
**Rule Summary:**

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 expedite the Department's ability to provide grants for these purposes and incorporate some statutory language changes made in the budget bill into code. 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 \$4 million allocation of bonding for the program: grants greater flexibility for implementation of a grant application cycle for the fall of 2009; adjusts other code timelines and application requirements to address past implementation difficulties and assure more applications can be deemed complete; 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	07/10/2009

**Fiscal Estimate — 2009 Session**

**Page 2 Assumptions Narrative  
Continued**

LRB Number	Amendment Number If Applicable
Bill Number	Administrative Rule Number WT-22-09(E)

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Assumptions Used in Arriving at Fiscal Estimate – Continued

**State Fiscal Effect:** The 2009-2011 Budget Bill, 2009 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.



**Fiscal Estimate Worksheet — 2009 Session**  
 Detailed Estimate of Annual Fiscal Effect

Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number WT-22-09(B)

**Subject**

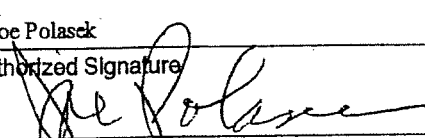
Changes to NR 335, Dam Maintenance, Repair, Modification, Abandonment and Removal Grant Program; and NR 336, Small and Abandoned Dam Removal Grant Program.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
State Operations — Salaries and Fringes		\$	\$ -
(FTE Position Changes)		( FTE )	( FTE )
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
<b>Total State Costs by Category</b>		\$	\$ -
<b>B. State Costs by Source of Funds</b>			
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
<b>Total State Revenues</b>		\$	\$ -

**Net Annualized Fiscal Impact**

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ _____	\$ _____
Net Change in Revenues	\$ _____	\$ _____

Prepared By: Joe Polasck	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 07/10/2009