

## Chapter NR 336

## DAM REMOVAL GRANT PROGRAM

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

**History:** CR 02-048: cr. Register October 2003 No. 574, eff. 11-1-03; CR 10-032: am. Register October 2010 No. 658, eff. 11-1-10.

**NR 336.02 Applicability.** This chapter applies to:

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

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

**History:** CR 02-048: cr. Register October 2003 No. 574, eff. 11-1-03; CR 10-032: renum. (1) (intro.) and (2) (intro.) to be (1) and (2) and am., r. (1) (a), (b), (2) (a) and (b) Register October 2010 No. 658, eff. 11-1-10.

**NR 336.03 Definitions.** The following definitions are applicable to this chapter:

(1) "Abandoned dam" means a dam declared abandoned using the process under s. 31.187, Stats.

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

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

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

(5) "Fringe benefits" means an employer's costs for an employee's social security, life and health insurance, unemployment insurance coverage, worker's compensation insurance, retirement plan and authorized absences from the job such as annual, sick, court or military leave. These costs shall be equitably distributed to all employee labor activities.

(6) "Indirect costs" are those ordinary operating expenses of the sponsor not directly related to a specific dam safety project.

**Note:** Indirect costs are generally administrative in nature, and are typically incurred for multiple purposes. Examples of indirect costs include, but are not limited to, utilities, administrative salaries, postage and other expenses that are not supported by time reports or other documentation that identifies the expenditure as directly assignable to a dam safety project.

(7) "Project" means a dam removal project.

(8) "Project priority list" means a list of projects sequenced in the order of funding receipt.

(9) "Project termination date" means the date specified in the grant award by which the project is to be completed.

**History:** CR 02-048: cr. Register October 2003 No. 574, eff. 11-1-03; CR 10-032: am. (1), (4) and (7), r. (2), (6), (8), (12) to (14), renum. (3), (7) and (9) to (11) to be (2), (6) and (7) to (9) Register October 2010 No. 658, eff. 11-1-10.

**NR 336.04 Variances.** The department may approve in writing a variance from a requirement of this chapter if the department determines that a variance is essential to effect necessary grant actions or program objectives and where special circum-

stances make a variance in the best interest of the program. Before approving a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the sponsor, financial hardship and landowner demands. The department may not grant variances from statutory requirements.

**History:** CR 02-048: cr. Register October 2003 No. 574, eff. 11-1-03.

**NR 336.05 General provisions. (1)** (a) Projects may 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.

(b) 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.

(c) For abandoned dams, the department shall provide notice to the dam owner, if he or she can be identified, stating that it will proceed on the funding request and addition to the dam grant inventory without a hearing under this chapter unless a request for a hearing is filed with the department by the dam owner.

(d) 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.

(2) Project work shall be completed prior to the project termination date.

(3) Project work shall be completed prior to submission of a payment request.

(4) Payment requests postmarked more than 90 days after the project termination date will not be honored.

(5) Payment is limited to the eligible reimbursable cost contained in s. NR 336.10 (1) and may not exceed the amount of the grant award. Partial payments will not be made.

(6) Payment may not be made until a department inspection finds that the project has been satisfactorily completed. The inspection will be conducted within 30 calendar days after department receipt of an inspection request or the payment request.

(7) The department may approve a request to extend the project termination date only where special circumstances, good cause and circumstances beyond the control of the applicant make it necessary. The extension request shall be received by the department prior to the project termination date.

(8) Indirect costs are not allowable in the claim for reimbursement.

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

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

years after the date of final payment. Sponsors are required to account for all project funds in conformance with generally accepted accounting principles and practices and shall retain the funds in a separate account.

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

**History:** CR 02-048: cr. Register October 2003 No. 574, eff. 11-1-03; CR 10-032: am. (9) to (11) Register October 2010 No. 658, eff. 11-1-10.

**NR 336.06 Applications. (1)** Applications shall be made on department provided forms. The signed application shall be delivered to the department at the address specified on the application materials. Acceptable delivery methods shall be defined in the application materials.

**(2)** The application shall contain the following information:

(a) The applicant's name, mailing address, person to contact and telephone number.

(b) Identification of the dam to be removed.

(c) Property owners of the dam and underlying property.

(d) Authorization to apply for the grant, if the applicant is not the dam owner.

(e) Signature of the individual or authorized signature of other persons.

(f) The expected project completion date, not to exceed 2 years from the date of application.

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

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

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

**(3)** Applications may be submitted the first business day following November 1, 2003. Thereafter, applications may be submitted at any time.

**(4)** Applications may be withdrawn at any time.

**Note:** Applications may be obtained by contacting the Department of Natural Resources, Bureau of Community Financial Assistance, Box 7921, Madison, WI 53707-7921.

**History:** CR 02-048: cr. Register October 2003 No. 574, eff. 11-1-03; CR 10-032: am. (1), cr. (2) (g) to (i) Register October 2010 No. 658, eff. 11-1-10.

**NR 336.07 Determination of project eligibility. (1)** Within 60 calendar days of application receipt, the department shall notify the applicant in writing of its determination of eligibility.

**(2)** When funds are available, eligible applicants shall receive a grant award specifying terms of the award.

**(3)** Incomplete applications shall be designated as ineligible.

**(4)** Ineligible applicants may submit a new application.

**Note:** Applicants may not begin construction until all applicable state, federal and local permits and approvals have been obtained. The department may rescind its notification of eligibility for funding if the applicant fails to start the formal process to obtain an abandonment permit for the dam and obtain other approvals for its removal within 6 months after the application date.

**History:** CR 02-048: cr. Register October 2003 No. 574, eff. 11-1-03.

**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 date when the department receives the application. Applications received on the same date shall be randomly selected and ranked within that day.

**History:** CR 02-048: cr. Register October 2003 No. 574, eff. 11-1-03; CR 10-032: renum. (intro.) to be NR 336.08 and am., r. (1) and (2) Register October 2010 No. 658, eff. 11-1-10.

**NR 336.09 Eligible and ineligible costs for dam safety projects. (1) ELIGIBLE COSTS.** Reasonable and necessary project costs that are consistent with the project scope and incurred during the project period are eligible for grant funds, as follows:

(a) Eligible costs may include, but are not limited to:

1. Labor costs directly related to and required for completing the project. Costs shall be based on the actual wage paid by the sponsor including salary and fringe benefits.

2. Direct costs for materials and equipment used for project-related purposes or the cost of the portion of materials or equipment time used for the project.

3. The cost of leased or rented equipment used for project-related purposes.

4. All costs shall be supported by time sheets, vouchers or similar documentation reflecting specific assignment to the project.

(b) Engineering or planning fees directly related to designing and carrying out the actual removal of the dam may be eligible. Engineering costs incurred prior to the project period may be eligible if specifically provided for in the grant award.

(c) Restoration and stabilization within the former impoundment, and revision of the 100 year flood plain delineation may also be eligible.

**(2) INELIGIBLE COSTS.** Those costs that the department determines are not directly associated with or necessary to implement the project are ineligible for grant funding. Ineligible costs include, but are not limited to:

(a) Fines and penalties due to violation of, or failure to comply with federal, state or local laws and regulations.

(b) Indirect costs including administrative costs and costs to purchase vehicles or other property not directly related to the project.

(c) Costs for which payment has been or will be received from any other funding source.

(d) Costs associated with operation and maintenance of the property.

(e) Costs incurred in a contract which creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employee of a sponsor participates in the selection, awarding or administration of a contract supported by the project and:

1. The official or employee, or his or her spouse or partner, has an ownership interest in the firm selected for the contract; or

2. A person identified in subd. 1. receives a contract, gratuity or favor from the award of the contract.

(f) Costs associated with determining the fate of the dam, planning alternatives, collecting input through public hearings, and modifying local ordinances.

**History:** CR 02-048: cr. Register October 2003 No. 574, eff. 11-1-03; CR 10-032: r. (1) (c) and (d) 4., renum. (1) (d) to be (1) (c) Register October 2010 No. 658, eff. 11-1-10.

**NR 336.10 Grant awards. (1)** The grant award for a dam removal project is 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.

**(2)** An awarded grant may be terminated by the department for violation of any term or condition of the award.

**(3)** Grant recipients may terminate the grant for any reason and at any time.

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

**History:** CR 02-048: cr. Register October 2003 No. 574, eff. 11-1-03; CR 10-032: am. (1), r. (2), renum. (3) and (4) to be (2) and (3), cr. (4) Register October 2010 No. 658, eff. 11-1-10.