



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

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

CLEARINGHOUSE RULE 02-048

AN ORDER to create chapter NR 336, relating to the small and abandoned dam removal grant program.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

04-08-02 RECEIVED BY LEGISLATIVE COUNCIL.

05-06-02 REPORT SENT TO AGENCY.

RNS:MCP:ksm;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

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

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO



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Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

"Dam grant inventory" is defined in s. NR 336.03 (3) as a list of dams with two elements: requirement of a dam safety project and filing of a grant application. However, s. 31.385 (4) (a), Stats., only requires that the inventory of dams contain those dams that require a dam safety project. Application for a grant is not required under the statute in order for a dam to be listed on the inventory. Is the rule consistent with the statute?

2. Form, Style and Placement in Administrative Code

- a. In s. NR 336.02 (1) (a) and (2) (a), ",", and" should be replaced by a period.
- b. In s. NR 336.02 (7), "means" should replace "are."
- c. The title to s. NR 336.05 (1) should be deleted since none of the other subsections have titles.
- d. The note regarding applications, which is at the end of s. NR 336.05, should be placed at the end of s. NR 336.06.
- e. In s. NR 336.09 (1) (intro.), ",", as follows:" should replace the period.

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

a. Section NR 336.02 (2) (b) refers to dams “abandoned under” s. 31.187, Stats. Section NR 336.03 (1) refers to declarations of abandonment “using the process under” s. 31.187, Stats. However, this statute does not relate to declarations of abandonment, but rather is a procedure for the department to remove dams. An example of a more appropriate reference to this statute is found in current s. 30.121 (4), Stats.

b. The term “sponsor” is used in s. NR 336.03 (7) and a number of other places in the rule. However, the rule does not include a direct statement of who is eligible to be a sponsor.

c. The definition of “sponsor match” in s. NR 336.03 (14) refers to cash from the sponsor. However, the rule also allows the sponsor match to include in-kind contributions. [See s. NR 336.09 (1) (c).]

d. In the note after s. NR 336.07, it should apparently be applicants, rather than projects, that may begin construction. Also, the note should state that the department may rescind “its” notification of eligibility. Finally, the time frame should be stated as six months “after” the application date.

e. In s. NR 336.08 (intro.), “the” should be inserted before “following.”

f. In the note after s. NR 336.09 (1), “formulated” should be replaced by “promulgated.”

g. The reference to “contract” in s. NR 336.09 (2) (e) is apparently the first use of this term in the rule. Can it be clarified how this term relates to the remainder of the rule? Also, in that provision, “this projects” should be replaced by “the project.”

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The State of Wisconsin Natural Resources Board proposes an order to create ch. NR 336 relating to the small and abandoned dam removal grant program.

WT-31-02

Analysis Prepared by the Department of Natural Resources

Statutory Authority: ss. 31.385(1m) and 227.11(2)(a), Stats.

Statutes Interpreted: s. 31.385, Stats.

This order establishes procedures to implement a grant program for removal of small dams and abandoned dams. Applications for small dam removal grants may be made by any municipality, public inland lake protection district or private individual, which owns a dam. The grant will fund 50 percent of these eligible project costs up to a maximum state contribution of \$50,000. Applications for abandoned dam removal grants can be made by any person who has legal access to the property containing the dam for the purpose of removal. The grant will fund 100 percent of these eligible project costs.

SECTION 1. Chapter NR 336 is created to read:

Chapter NR 336

SMALL AND ABANDONED DAM REMOVAL GRANT PROGRAM

- NR 336.01 Purpose
- NR 336.02 Applicability
- NR 336.03 Definitions
- NR 336.04 Variances
- NR 336.05 General provisions
- NR 336.06 Applications
- NR 336.07 Determination of project eligibility
- NR 336.08 Project priority list
- NR 336.09 Eligible and ineligible costs for dam safety projects
- NR 336.10 Grant awards

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

NR 336.02 Applicability. This chapter applies to:

- (1) In the case of small dam removal:
 - (a) Counties, cities, townships, villages, public inland lake protection and rehabilitation districts or private dam owners, and
 - (b) Small dams.

(2) In the case of abandoned dam removal:

(a) Any person who has obtained legal access to property containing the dam for the purpose of removing the dam, and

(b) Dams of any size declared abandoned under s. 31.187, Stats.

*not subject this
does - sb
30.121(4)*

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) "Abandoned dam removal project" means the activities associated with removal of an abandoned dam.

(3) "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.

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

*just as per
30.121(4)
only 1st
part
See also
336.05
(1)(a)*

(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) "Hydraulic height" means the difference of the water elevation upstream and downstream of a dam under normal conditions.

(7) "Indirect costs" ^{means} are those ordinary operating expenses of the sponsor not directly related to a specific dam safety project.

*what is this
no def?*

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.

(8) "In-kind contribution" means the non-cash contributions of materials, equipment, services or labor provided to the sponsor that are reasonable and necessary for carrying out the project and meet the same test of eligibility as any other cost item.

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

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

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

(12) "Small dam", for this chapter, means a dam that is less than 15 feet high and that creates an impoundment of 100 surface acres or less of water. Height is measured as the hydraulic height.

(13) "Small dam removal project" means the activities associated with removal of a small dam.

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

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 circumstances 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.

title none for other rules.

NR 336.05 General provisions. (1) Dam grant inventory and hearing process. (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. *extensions?*

(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. *(11) any 50% of this*
what is?
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 audit.

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

(11) Total grant assistance provided under this chapter shall be limited to a maximum of 50% of eligible project costs unless otherwise provided by law.

Note: Applications may be obtained by contacting the Department of Natural Resources, Dam Safety Program, WT/2, 101 South Webster Street, Box 7921, Madison, WI 53707-7921, (608) 266-8030.

NR 336.06 Applications. (1) Applications shall be made on department provided forms.

(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.

(3) Applications may be submitted the first business day of the third month following the effective date of this rule ... [revisor insert date]. Thereafter, applications may be submitted at any time.

(4) Applications may be withdrawn at any time.

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.

not projects -
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Note: Eligible projects may not begin construction until all applicable state, federal and local permits and approvals have been obtained. The department may rescind their 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 of the application date.

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 following 2 factors:

(1) The date when the department receives the application. Applications received on the same date will be randomly selected and ranked within that day.

(2) Small dam removal applications shall be separated from abandoned dam removal applications for purposes of assuring the allocations prescribed by statute.

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.

(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 necessary to complete a project may be eligible. Engineering costs incurred prior to the project period may be eligible if specifically provided for in the grant award.

(c) The substantiated value of in-kind contributions of materials, equipment, services or labor donated, or donations of money, for the project may be used as all or part of the sponsor's match of the project cost subject to all of the following:

1. All known sources of the sponsor's share of project costs shall be indicated when the grant application is submitted.

2. The maximum value of donated, non-professional labor shall be equal to prevailing federal minimum wage requirements.

3. The value of donated materials and donated professional services shall conform to market rates and be established by invoice.

4. The value of donated equipment use shall conform to the Wisconsin department of transportation highway rates for equipment for the year in which the grant is awarded.

W.C. [unclear]

Note: The county highway rates for equipment are formulated under s. 84.07, Stats., and can be found in chapter 5 of the State Highway Maintenance Manual published by the Wisconsin Department of Transportation, 4802 Sheboygan Ave., Madison 53705.

(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 this projects 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.

NR 336.10 Grant awards. (1) The grant award for a small dam removal project is 50% of the eligible project cost not to exceed \$50,000 and may be limited by availability of grant funding.

2. The grant award for an abandoned dam removal project is 100% of the eligible project cost and is not limited except by availability of grant funding.

3. An awarded grant may be terminated by the department for violation of any term or condition of the award.

4. Grant recipients may terminate the grant for any reason and at any time.

*1 to 4
Contract
Contract*

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on _____.

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)