

ENVIRONMENTAL PROTECTION COMMISSION[567]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 54
“Water Use Permit Restrictions or Compensation by Permitted Users
to Nonregulated Users Due to Well Interference”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.103(2), 455B.105(3), 455B.262(3), 455B.263(8), 455B.281(1) and 455B.281(2)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455B.171 and 455B.281

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 24, 2024
1 to 2 p.m.

Virtual via Zoom – see [www.iowadnr.gov/
Environmental-Protection/Water-Quality/Water-
Quality Rulemaking](http://www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking) for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
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Purpose and Summary

Proposed Chapter 54 provides a framework for resolving well interference conflicts in situations where an existing or proposed permitted use causes or will cause well interference in a non-regulated well and informal negotiation between the parties has failed. This framework is intended for situations in which an adequate groundwater supply is available from the utilized aquifer but withdrawal for a permitted use causes, or will cause, a water level decline in a non-regulated well such that it does not, or will not, provide a sufficient water supply. This framework is limited to conflicts in which the non-regulated well provides sufficient water prior to the interference. Proposed Chapter 54 allows for either a settlement or continued use of water resources in the event that well interference is experienced by a non-regulated water user within the state. This chapter has been reviewed and edited consistent with Executive Order 10.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Water use permit holders and non-regulated well owners involved in a well interference conflict, now or in the future are affected.
 - Classes of persons that will benefit from the proposed rulemaking:
Water use permit holders and non-regulated well owners involved in a well interference conflict, citizens of Iowa, public water supplies, and businesses and industries in Iowa are affected.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Costs to the public to comply with this chapter are limited. Any costs related to complying with Chapter 54 for non-regulated water users would include any costs incurred to pursue a well interference complaint, of which eligible costs may be reimbursed or managed with a settlement. Any costs related to complying with Chapter 54 for water use permit holders would include settlement or other costs associated with resolving the well interference complaint, which may include water usage or water pumping restrictions.

- Qualitative description of impact:

Chapter 54 provides a transparent and clear procedure for the resolution of certain water well interference conflicts. This benefits water users in the state and the public by providing a process that either compensates or re-establishes water availability for water well owners. These rules also allow for wells to remain in use with certain restrictions, which allows for continued and future use of Iowa's groundwater resources by both parties.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs incurred by the Department of Natural Resources include the staff time and necessary tools required to implement this chapter. It is noted that staff that implement this chapter have other assigned duties.

- Anticipated effect on state revenues:

A neutral impact on state revenues is expected, as this chapter was previously in effect. Funding of the program implemented in Chapter 54 is drawn from fees collected by the Department as authorized in Iowa Code sections 455B.265 and 455B.265A.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Costs of the proposed rulemaking are not new costs and are limited to costs necessary to implement a process for resolution of certain water well interference complaints in Iowa. The costs to implement Chapter 54 are covered by fees collected by the Department as authorized in Iowa Code sections 455B.265 and 455B.265A.

Benefits of proposed new Chapter 54 include a process providing for compensation for well interference, which benefits non-regulated water users, such as private well owners, and allows for their continued use of Iowa's water resources now and into the future. This process also benefits regulated water use permit holders by providing a framework to resolve any such conflicts with options that allow for their use of Iowa's groundwater resources. The costs to Department to implement this chapter are justified as these rules provide a process for resolving well interference conflicts in a consistent manner, and managing such conflicts protects the availability of Iowa's groundwater sources now and in the future.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less costly or less intrusive methods to accomplish the benefit. The regulations included in these rules implement state law.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

As proposed, the new Chapter 54 narrowly and concisely provides a process for well interference compensation. There are no less restrictive alternatives to accomplish this benefit because this chapter is necessary to implement Iowa Code sections 455B.171 and 455B.281.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This rulemaking will not have a substantial impact on small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 54 and adopt the following **new** chapter in lieu thereof:

CHAPTER 54

WATER USE PERMIT RESTRICTIONS OR COMPENSATION BY PERMITTED USERS TO
NONREGULATED USERS DUE TO WELL INTERFERENCE

567—54.1(455B) Definitions. The following definitions apply to this chapter:

“Adequate groundwater supply” means an aquifer that is capable of providing enough water to satisfy the demands that have been placed on it.

“Apparent well interference” means well interference in a nonregulated well resulting from a permitted use is likely but has not been verified.

“Compensation” means payment to the owner of a nonregulated well for damages caused by a lowered water level in the well due to withdrawal of water for a permitted use.

“Complainant” means the owner of a nonregulated well who is suspected of being or has been shown to be adversely affected by well interference.

“Complaint” means the formal allegation against a permitted water user who is suspected of causing well interference.

“Informal negotiations” means discussion between a complainant and permittee or applicant regarding settlement of a well interference conflict.

“Informal settlement” means a resolution of a well interference conflict by informal negotiations between a complainant and permittee or applicant without formal action by the department.

“Suspect permittee” means a party possessing a water use permit when the permitted use is suspected of causing well interference in a nonregulated well.

“Technical Bulletin No. 23” means “Technical Bulletin No. 23, Guidelines for Well Interference Compensation,” Iowa Department of Natural Resources, April 1986, available on the department’s website at www.iowadnr.gov.

“Test pumping” means a controlled aquifer test for verification of well interference using the existing wells and pumping systems of the complainant and suspect permittee.

567—54.2(455B) Requirements for informal negotiations.

54.2(1) The complainant and permittee or applicant must attempt to negotiate an informal settlement prior to the department becoming involved in the verification and settlement procedures

described in rules 567—54.6(455B) and 567—54.7(455B). If informal negotiations fail, a letter stating the reasons for the failure to achieve a settlement, signed by all parties to the complaint or identifying those parties who refuse to sign, shall be sent to the department. Verbal notification will be accepted if followed by written confirmation.

54.2(2) Guidelines for informal negotiations are provided in Technical Bulletin No. 23. Settlements which result from informal negotiations may be registered with the department for consideration in subsequent conflicts.

567—54.3(455B) Failure to cooperate. If any party refuses to cooperate, fails to provide the required information, or fails to meet the specified deadlines, the complaint may be dismissed, a permanent permit modification or termination may be issued pursuant to 567—subrule 50.14(1) or an application may be conditioned or denied.

567—54.4(455B) Well interference by proposed withdrawals. If the department, using supporting data provided by the applicant pursuant to rule 567—50.5(455B), determines that a proposed withdrawal will cause verified well interference in a nonregulated well(s), the applicant will be given options for resolving the imminent conflict(s) in accordance with 567—subrule 50.7(1). If the applicant selects an option involving compensation to the nonregulated well owner(s), the applicant and nonregulated well owner(s) must attempt to negotiate an informal settlement in accordance with rule 567—54.2(455B). If informal negotiations fail, the department shall pursue administrative resolution of the conflict, pursuant to rule 567—54.7(455B). The applicant will remain liable for future well interference that is proven to be greater than the amount resolved in the original settlement and for other well interference that was not previously verified.

567—54.5(455B) Well interference by existing permitted uses. If a complaint is made to the department by the owner of a nonregulated well regarding suspected well interference, the following procedures will be followed.

54.5(1) *Initial notification of complaint.* The complainant shall provide the department with the following information:

- a. The complainant's name, address, email address, and telephone number;
- b. A description of the nonregulated well, including location, depth, construction data, and other pertinent information, as available;
- c. A description of the problem; and
- d. The suspected cause of well interference.

54.5(2) *Initial department response.* The department will provide the complainant with a description of procedures, guidelines for resolving well interference complaints, and information from department files on permitted uses in the area. The department will also notify any permitted user who is suspected of causing well interference of a possible well interference complaint.

54.5(3) *Well inspection.* It is the complainant's responsibility to have the affected well inspected by a certified well contractor, to have the contractor complete Appendix C (Well Inspection Form) from Technical Bulletin No. 23, and to submit the document to the department. Well inspection costs are eligible for compensation if well interference is subsequently verified.

54.5(4) *Corrective work prior to a settlement.*

a. The complainant may proceed with corrective measures prior to a settlement and remain eligible for compensation if well interference is subsequently verified. However, there will be no assurance of compensation. To be eligible for compensation, conditions prior to the corrective work must be documented using Appendix C (Well Inspection Form) from Technical Bulletin No. 23.

b. The department and suspect permittee(s) should be notified, given opportunity to inspect the nonregulated well, and consider alternative means for resolving the possible conflict prior to proceeding with any corrective work.

c. Determination of apparent well interference, verified well interference, and compensation, if any, will proceed in accordance with this chapter.

54.5(5) *Determination of apparent well interference.*

a. The department will determine that a complaint appears valid if all of the following criteria are met:

- (1) The well inspection found no mechanical or structural reason for well failure;
- (2) A permitted use can be identified as an apparent cause of well interference;
- (3) The nonregulated well was in use when the permitted use began or the suspect permitted use changed significantly while the nonregulated well was still active;
- (4) The suspect permittee and complainant withdraw water from the same aquifer or sources likely to be in close hydraulic connection;
- (5) The suspect permittee was withdrawing water during the period when well interference was claimed;
- (6) Well interference is reasonably possible with known conditions (i.e., pumping rates, separation distances, aquifer properties, and relative water levels in the wells); and
- (7) Other obvious causes of water level decline are not apparent.

b. The department may identify permitted uses, in addition to those identified by the complainant, as apparent causes of well interference and will so notify the complainant and each suspect permittee. The department or a suspect permittee may identify other nonregulated wells that may also be affected by well interference caused by the suspected permittee(s), and the department will so notify the suspect permittee(s) and each potential complainant who has been identified.

c. If the department determines that apparent well interference exists, it will immediately notify the complainant and suspect permittee(s) of the situation, procedures, and required informal negotiations. If the department determines that apparent well interference does not exist, the complaint will be dismissed and the complainant and each suspect permittee will be so notified. A dismissal may be appealed by the complainant as provided in 54.9(2).

54.5(6) *Emergency withdrawal suspension or restrictions.* If the complainant's well is not able to deliver a sufficient water supply due to apparent well interference, the department may immediately suspend or restrict withdrawal by the suspect permittee(s) pursuant to 567—subrule 50.14(2). Restrictions may include but are not limited to scheduling withdrawals or reducing withdrawal rates. If approved by the department, the permittee(s) may elect to provide a temporary water supply to the complainant or take other appropriate measures as an alternative to withdrawal suspension or restrictions.

567—54.6(455B) Verification of well interference.

54.6(1) *Test pumping.* Test pumping of the complainant's and permittee's wells may be required for verification of well interference. A permittee may perform test pumping to verify well interference even if it is not required by the department.

a. Test pumping shall be authorized by the department and supervised by a certified well contractor, registered professional engineer, or other department designee. The test pumping shall be performed within 30 days of department notification to the permittee and the complainant that test pumping is to be conducted. The permittee and complainant shall each be responsible for all costs associated with test pumping their own wells, although the complainant's costs may be eligible for compensation.

b. The complainant shall provide access to the nonregulated well for water level measurements during test pumping by the permittee. The permittee may be required to provide the complainant with a temporary water supply during test pumping. Test pumping shall be performed in accordance with Technical Bulletin No. 23.

54.6(2) *Determination of verified well interference.* The department will evaluate the occurrence of well interference based on data from the test pumping or other available hydrologic information and notify the affected parties of the results.

a. If test pumping was not performed under critical conditions (e.g., pumping rate less than maximum permitted rate, pumping duration less than critical duration, recharge more than minimum, etc.), the department will adjust the test pumping results accordingly and qualify estimations when reporting the results.

b. The evaluation results will be used by the department to determine if well interference is verified in accordance with Technical Bulletin No. 23. Generally, well interference will be verified if it causes the water in a nonregulated well to drop to a level below the pump suction, or it is shown to significantly diminish well performance.

c. If well interference is verified, the settlement procedures in 567—54.7(455B) will be followed. If well interference is not verified, the complaint will be dismissed and any emergency order will be removed. The department will notify the complainant and permittee of its decision regarding the complaint, and either party may appeal pursuant to 54.9(2).

567—54.7(455B) Settlement procedures.

54.7(1) Settlement options.

a. At the same time as notification prescribed in 54.6(2)“c” or upon notice to the applicant of verified well interference according to 567—subrule 50.14(2), the department will also advise the permittee or applicant of available settlement options, including the following:

- (1) Permanent permit modifications (e.g., reduced pumping rate or scheduled pumping).
- (2) Compensation to the complainant (see 54.7(3) and Technical Bulletin No. 23).

b. In situations where verified well interference occurs due to an existing permitted use, the permittee shall notify the department of the selected option within 30 days of notification.

54.7(2) Compensation offer requirements. If the compensation option is selected, the applicant or permittee shall submit a notarized offer to the complainant and the department. This offer shall be submitted by a permittee within 30 days of the notification prescribed in 54.6(2) and 54.7(1). An offer must include the following:

- a.* Written comments by a certified well contractor or licensed professional engineer detailing well improvements needed in order to provide the complainant with a sufficient water supply;
- b.* Itemized costs of the improvements by a certified well contractor with a breakdown of costs eligible for compensation (see 54.7 and Technical Bulletin No. 23);
- c.* A water quality analysis of the existing well water, if a new well is proposed. The analysis shall include, at minimum, determination of levels of nitrate, bacteria, iron, and hardness; and
- d.* A statement of what is being offered to the complainant and terms of the offer (e.g., timing, who will perform the work, or a completed work settlement).

54.7(3) General criteria for cost liability. The nonregulated well owner’s costs for well inspection and test pumping are eligible for compensation. All costs for remedial work necessary to resolve a verified well interference problem are eligible for compensation, except as noted below. Technical Bulletin No. 23 includes additional details on cost liability. The following costs are not eligible for compensation:

- a.* When the existing well does not comply with applicable well construction standards (567—Chapter 49), costs required to bring the well up to standards;
- b.* Costs for work requested by the nonregulated well owner that result in upgrading the nonregulated water supply;
- c.* Legal fees;
- d.* Operation and maintenance costs of the water supply system;
- e.* Well rejuvenation costs, unless the well still fails to provide a sufficient water supply after the well rejuvenation requested by the permittee is completed; and
- f.* Costs due to temporary loss of water for such things as hauling water or going to a laundromat, unless the permittee refuses to comply with an emergency order by the department.

54.7(4) Complainant’s response to the compensation offer. The complainant shall respond in writing to the department within 15 days of an offer receipt and indicate acceptance or rejection of the

offer. If the offer is rejected, the complainant shall submit a counteroffer with the response. The counteroffer shall contain supporting information including an itemized cost estimate of needed improvements by a certified well contractor or licensed professional engineer, if appropriate.

54.7(5) *Department review of compensation offer and counteroffer.* The department will review the offer and counteroffer and determine if the offer is reasonable in accordance with Technical Bulletin No. 23.

a. If the offer is determined to be reasonable but is rejected by the complainant, the complainant will be given 15 days to reconsider the offer, after which the complaint will be dismissed and any suspension or restrictions on withdrawals by the permittee will be removed or, in the case of an application, the permit process will be continued. The complainant may appeal a dismissal as provided in 54.9(2).

b. If the offer is not found to be reasonable, the permittee will be given one opportunity to revise the offer in accordance with department determinations. If a revised offer is not received within 15 days or the department determines the revised offer is not reasonable, the department will determine appropriate compensation or withdrawal restrictions to resolve the well interference. This determination will be enforced through either the imposition of permit conditions, permit termination, or permit denial. For an existing permit, the department will modify or terminate the permit as provided in 567—subrule 50.14(1). For a pending permit application, the department will either deny the application or approve it with appropriate conditions, pursuant to 567—50.8(455B).

567—54.8(455B) Recurring complaints.

54.8(1) If a complainant accepts compensation from a permittee for settlement of a well interference conflict, any future complaint by the complainant against the same permittee will not be considered unless either a significant change in the permitted withdrawal occurs; the permittee utilized simplified test pumping procedures or other less than optimal verification methods, as described in Technical Bulletin No. 23; or the permittee provided compensation to resolve less than the estimated worst-case well interference. A complainant who accepts compensation from an applicant is still eligible for compensation if subsequent well interference is proven to be greater than that resolved in the original settlement.

54.8(2) If a previous complaint was dismissed or settled without compensation, a new complaint must include justification for reconsideration. Justification may include a significant change in withdrawals by the suspect permittee or water level measurements from the complainant's well which indicate more well interference than found in the previous complaint. A physical change to withdrawal facilities may be considered a significant change to a permitted use (e.g., moving the withdrawal location, installing a new well, or installing a higher-capacity pump).

54.8(3) A complaint that was dismissed due to failure to cooperate, as provided in 567—54.3(455B), will be reconsidered when the required cooperation is demonstrated. However, it will be treated as a new complaint.

567—54.9(455B) Waivers and appeals.

54.9(1) *Waiver procedures.* Waivers to these rules may be granted by the department provided just cause can be demonstrated. Waiver requests and supporting information shall be submitted in writing to the department.

54.9(2) *Appeal procedures.* Department determinations under 54.5(5), 54.6(2) and 54.7(4) may be appealed by following the procedure in 561—Chapter 7.

These rules are intended to implement Iowa Code sections 455B.171 and 455B.281.