

TITLE III
WITHDRAWAL, DIVERSION, STORAGE AND USE OF WATER
DIVISION A
WATER WELL CONSTRUCTION: GENERAL STANDARDS AND REGISTRATION OF CONTRACTORS

CHAPTER 38
PRIVATE WATER WELL CONSTRUCTION PERMITS

567—~~49.238.1~~(455B) Definitions.

~~“Abandoned well” means a water well which is no longer in use or which is in such a state of disrepair that continued use for the purpose of accessing groundwater is unsafe or impracticable.~~

~~“Agreement” means a signed document between the department and the county board of supervisors with which the department delegates the authority to issue private well drilling permits to the county board of supervisors or its designee.~~

~~“Construction” means the physical act or process of making a water well including, but not limited to, siting, excavation, construction and installation of equipment and materials necessary to maintain and operate the well.~~

~~“Contiguous” means any number of parcels of land that physically touch one another, including tracts of land separated by roads, railroads or streams, except that for the purpose of reporting on other existing wells on the property, the radius of a contiguous piece of land shall be limited to one mile from the site of the new well constructed.~~

~~“Contractor” is defined in Iowa Code section 455B.171(3) means a person engaged in the business of well construction or reconstruction. For the purposes of this chapter, the term also may include a corporation, partnership, sole proprietorship, association or any other business entity, and as well as any employee or officer of the entity.~~

~~“Department” means the Iowa department of natural resources.~~

~~“Director” means the director of the department or a designee.~~

~~“Groundwater” means any water below the surface of the earth.~~

~~“Inactive water well” means a water well which is not currently in use and is capped or sealed to prevent the entrance of contaminants into the well, but is in such a condition that it can be activated to produce a safe supply of water.~~

~~“Landowner” means an individual, trust, partnership, corporation, government or governmental subdivision or agency, association or other legal entity that has legal or equitable title to a piece of land.~~

~~“Landowner’s agent” means a person who acts for or in place of the landowner by authority from the landowner.~~

~~“Private water well” means a well that does not supply a public water supply system.~~

~~“Protected source” means a surface water or groundwater source recognized by rule as deserving special protection in order to ensure its long-term availability, in terms of either quality or quantity, or both, to preserve the public health and welfare.~~

~~“Public water supply system” means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. The term includes (1) any collection, treatment, storage, and distribution facilities under control of the supplier of water and used primarily in connection with the system; and (2) any collection (including wells) or pretreatment storage facilities not under the control which are used primarily in connection with the system.~~

~~“Water well” means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer. Water well does not include an open ditch or drain tiles or an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried.~~

567—38.2(455B) Forms. The following application form is currently in use:
Application for Private Water Well Construction Permit. 12/98. 542-0988

Commented [1]: Definitions that are being kept are in new 49.2.

Commented [2]: Abandoned well - Defined in 455B.171.

Commented [3]: Construction - Defined in 455B.171.

Commented [4]: Department - Defined in 455B.190.

Commented [5]: Director - Defined in 455B.101.

Commented [6]: Groundwater - Defined in 455B.190A(1)(c) and 455E.2(7).

Commented [7]: Defined in Chapter 50.

Commented [8]: Public water supply system - Defined in 455B.171.

Commented [9]: Water well - Defined in 455B.171.

Commented [10]: Old 38.2 - no longer needed.

~~567—38.3(455B) Permit requirement.~~

~~38.3(1) When Construction permit required. In accordance with Iowa Code section 455B.187(2), A, a landowner or landowner’s agent shall not drill or construct a new private water well without first obtaining a well construction permit from issued by the department or by a County board of supervisors or the board’s designee authorized to issue permits pursuant to this chapter. Examples of private water wells requiring well construction permits include, but are not limited to: domestic wells, livestock wells, irrigation wells, recreational-use wells, monitoring wells, heat pump wells, horizontal and lateral geothermal wells 20 feet or greater in depth, industrial wells, and dewatering wells, except that dewatering wells shall be exempt from the construction standards of 567—Chapter 49 (nonpublic water wells). With the exception of driven, direct push, sandpoint, and dewatering wells, water wells that do not have a minimum of 20 feet of solid casing are not permitted.~~

Commented [11]: Old 38.3 - see new 49.3(3).
Commented [12]: Old 38.3(1) - moved to new 49.3(3)"a".

~~38.3(2) Exemptions. The following types of excavations do not need private water well construction permits: are not required for: temporary test holes or wells that are in place for seven consecutive days or less and are used to assess groundwater; soil borings; percolation test holes; mineral, rock, gas, and other non-groundwater wells or exploration boreholes; sand and gravel and limestone exploration holes; excavations for storing and extracting natural gas or other products, gravel pits and quarries and all monitoring wells required as part of a permit or a construction approval issued by the department. Test holes, used to determine the availability, quality or depth of groundwater are also exempt provided that all the following conditions are met:~~
~~a. The use of the test hole is limited to the conduct of the test only.~~
~~b. The duration of the test is not more than seven consecutive days.~~
~~c. The test hole is properly closed immediately after the test is completed in accordance with 567—Chapter 39 “Requirements for Properly Plugging Abandoned Wells.”~~

Commented [13]: Old 38.3(1), "Except that dewatering..." - moved to new 49.3(4)"b".

Commented [14]: Old 38.3(2) - moved to new 49.3(4)"c".

~~38.3(3) Caveat. Nothing in these rules shall be construed as exempting public water supply wells from the construction permit and water withdrawal permit provisions of the environmental protection commission rules, 567—Iowa Administrative Code.~~

~~567—49.538.4(455B) Form of Construction permit applications.~~

~~49.5(1) Application forms.~~

~~a. An application for a private water well construction permit Application shall be made on forms provided supplied by the department. However, counties that have active delegation of authority to issue new private well construction permits pursuant to rule 567—38.15(455B) may develop and use their own application forms, subject to departmentthe approval of the department.~~

Commented [15]: New 49.5(1) - was old 38.4.

~~b. Each application shall list all wells, including non-plugged abandoned wells, on the applicant’s property contiguous to the well site described in the application and shall describe the location of each well site. The location shall be given asin the form of a legal land description (section, township and range) to the nearest quarter of a quarter of a quarter of a section, or as a latitude and longitude in degrees to four decimal accuracy. The list of wells to be registered shall include but is not limited to abandoned wells, inactive wells, agricultural drainage wells, irrigation wells, domestic wells and livestock wells.~~

~~c. A proper application shall consist of a fully and properly completed form and nonrefundable fee.~~

Commented [16]: Moved sentence from the end of the fees section below.

~~[Editorial change: IAC Supplement 4/20/22]~~

~~567—38.5(455B) Fees.~~

~~49.5(2)38.5(1) Application fees payment. This paragraph is in effect through June 30, 2003. Each application shall be accompanied by a nonrefundable fee of \$25 in the form of a check or money order payable to the Department of Natural Resources, unless a county board of supervisors or the board’s designee is authorized to issue private well construction permits pursuant to rule 567—38.15(455B). In cases where the permitting authority is delegated to the county, the county board of supervisors may set a different fee and shall designate the terms for fee payment. More than one proposed well for the same use on one contiguous piece of property of less than ten acres may be listed on one application and only one fee need be paid irrespective of the number of wells listed on the application form. Additional wells on the same property at a later time require another permit. A proper application shall consist of a fully and properly completed form and nonrefundable fee.~~

Commented [17]: Old 38.5(1) - now new 49.5(2).

~~a. Effective July 1, 2003, eEach application for a private water well construction permit shall be accompanied by a nonrefundable fee of \$125 in the form of a check or money order payable to the Department~~

Commented [18]: Strike; this is no longer in effect.

of Natural Resources, unless a county board of supervisors or the board's designee is authorized to issue private well construction permits pursuant to **rule 567—38.15(455B)**.

b. In cases where the permitting authority is delegated to the county, the county board of supervisors may set a different fee and shall designate the terms for fee payment, and shall submit to the department a permit fee of \$25 per application. **This \$25 fee shall be submitted quarterly by the counties in a manner provided by the department.**

c. More than one proposed well for the same use on one contiguous piece of property of less than ten acres may be listed on one application and only one fee need be paid irrespective of the number of wells listed on the application form. Additional wells on the same property at a later time shall require another permit. **Separate permits are required for individual wells and geothermal systems that are not interconnected and supply or will supply separate domestic dwellings. A proper application shall consist of a fully and properly completed form and nonrefundable fee. The \$25 fee collected by the counties for each permitted well shall be submitted quarterly by the counties to the department on forms and in a manner as provided by the department.**

38.5(2)-d. Exemption. The department is exempt from the fee payment requirements to the counties. The department shall remit fees directly to the department's private well permit program fund.
[Editorial change: IAC Supplement 4/20/22]

567—38.6(455B) Well maintenance and reconstruction. A private well construction permit is required for all replacement wells and a private well construction permit is required for modification of the to a well such as changes in physical dimensions of a well, including, but not limited to, deepening the well and changing the diameter or length of the casing or the screen. A private well construction permit is not required for the repair, maintenance, or rehabilitation of an existing well that does not change its physical dimensions.

567—38.7(455B) Emergency permits. Contracting counties must have policies and procedures in place to accommodate the issuance of permits on an emergency basis for the immediate replacement or reconstruction of water wells in response to the sudden and unforeseen loss or serious impairment of a well for its intended use.

567—49.638.8(455B) Permit issuance, and conditions, expiration, and denial.

49.638.8(1) When Issued. Upon receipt of a complete application, the department or contracting county shall issue a private water well construction permit to the landowner or landowner's agent, except as provided in **subrule 49.6(6), 567—38.12(455B).**

49.638.8(2) Not a water withdrawal permit. Each permit shall include notification that a private well construction permit is not a water withdrawal permit and does not eliminate the necessity of obtaining any water withdrawal permits required in **567—Chapters 50, and 53-55 through 54 for water withdrawal in excess of.** A water withdrawal permit is required before an applicant can withdraw more than 25,000 gallons of water per day from any source or combination of sources in the state of Iowa.

49.638.8(3) Construction by certified well contractor. Each well construction permit shall require that each well be constructed by a certified well contractor in compliance with **this chapter 567—Chapters 49 and 567—Chapter 82.** However, temporary dewatering wells at construction sites shall be exempt from the construction standards of **567—Chapter 49.**

49.6(4) Transferability. A private well construction permit is not transferable.

49.6(5) Expiration. A private well construction permit shall expire one calendar year from the date of issuance. If construction of the proposed well is not started prior to the expiration date, a new application plus a new nonrefundable fee must be filed with the department or the county board of supervisors pursuant to **subrule 49.5(2).**

49.6(6) Permit denial. The department or contracting county may deny a private well construction permit in the following circumstances:

a. If granting the permit would lead to the violation of state law, could result in groundwater contamination, or would lead to withdrawal from a protected source;

b. If the well could threaten public health or the environment; or

c. If the well would be an underground injection well, except as provided in **567—subrule 50.6(4).**

49.6(7) Appeal of permit denial. Any applicant aggrieved by a decision issued under the provisions of this

Commented [19]: Moved up from the end of the old paragraph.

Commented [20]: Clarifies rules for subdivision wells & geothermal systems that aren't interconnected, so that each dwelling that has its own well or GHEX system needs its own permit.

Commented [21]: Moved to new 49.5(1)"c".

Commented [22]: Old 38.5(2) - moved to new 49.5(2)"d".

Commented [23]: Old 38.6 - moved to new 49.3(3)"b".

Commented [24]: Old 38.7 - moved to new 49.7(6).

Commented [25]: Old 38.8 is now new 49.6.

Commented [26]: Already stated in 38.3(1) (new 49.3(3)"a").

Commented [27]: New 49.6(4) - moved from old 38.11.

Commented [28]: New 49.6(5) - moved from old 38.10.

Commented [29]: New 49.6(6) - moved from old 38.12.

Commented [30]: New 49.6(7) - moved from old 38.13.

chapter may file a notice of appeal with the director. The notice of appeal must be filed within 30 days of the date of the permit decision. The form of the notice of appeal and appeal procedures are governed by ~~561~~ **Chapter 7**. Appeal of a permit denied by a county which has been delegated authority to issue private water well construction permits shall be administered by the county in accordance with its appeal or judiciary review process. Appeal to the department is possible only when the appeal involves well design or construction variances or if delegation to the county is suspended, rescinded, or revoked.

[Editorial change: IAC Supplement 4/20/22]

~~567—49.29~~~~38.9~~(455B) **Noncompliance.** Violations of any of the provisions of this chapter may be addressed by the department pursuant to **Iowa Code sections 455B.109, 455B.110, 455B.175 and 455B.191**.

Commented [31]: Old 38.9 is now new 49.29.

~~567—38.10~~(455B) **Expiration of a permit.** A private well construction permit shall expire one calendar year from the date of issuance. If construction of the proposed well is not started prior to the expiration date, a new application plus a new nonrefundable fee must be filed with the department or the county board of supervisors pursuant to rule ~~567—38.15~~(455B).

[Editorial change: IAC Supplement 4/20/22]

Commented [32]: Old 38.10 - moved to 49.6(5).

~~567—38.11~~(455B) **Transferability.** A private well construction permit is not transferable.

Commented [33]: Old 38.11 - moved to 49.6(4).

~~567—38.12~~(455B) **Denial of a permit.** The department or contracting county may deny a private well construction permit if granting the permit would lead to the violation of state law, could result in groundwater contamination, would lead to withdrawal from a protected source, or the well could threaten public health or the environment, and. Examples of wells that could threaten public health or the environment and, therefore, may be denied construction permits include, but are not limited to: in situ mining wells, wells which may result in a negative impact on an identified point source of groundwater contamination and cause leachate plume to spread or migrate, underground injection wells, except as provided in subrule ~~567—50.6~~(4) and ~~567—62.9~~(455B).

Commented [34]: Old 38.12 - moved to 49.6(6).

~~567—38.13~~(455B) **Appeal of a permit denial.** Any applicant aggrieved by a decision issued under the provisions of this chapter may file a notice of appeal with the director. The notice of appeal must be filed within 30 days of the date of the permit decision. The form of the notice of appeal and appeal procedures are governed by ~~567—Chapter 7~~. Appeal of a permit denied by a county which has been delegated authority to issue private water well permits shall be administered by the county in accordance with the county's appeal or judiciary review process. Appeal to the department is possible only when the appeal involves well design or construction variances or if delegation to the county is suspended, rescinded or revoked.

[Editorial change: IAC Supplement 4/20/22]

Commented [35]: 62.9 is being struck.

Commented [36]: Old 38.12 - moved to 49.6(7).

~~567—38.14~~ **Reserved.**

~~567—49.7~~~~38.15~~(455B) **Delegation of construction permitting authority to the eCounty to county board of supervisors.**

Commented [37]: Old 38.15 is now new 49.7.

~~49.7~~~~38.15~~(1) **Application by board.** A county board of supervisors, board of health, or the board's designee, hereafter referred to as a "County," requesting the authority to issue private well construction permits shall enter into an intergovernmental (28E) service agreement apply to with the department in accordance with **Iowa Code chapter 28E**. The agreement shall must be signed by the department and the County and application shall include statements of agreement to complying with this chapter and ~~567—Chapter 38, 567—Chapter 39~~. Additional information supporting an application may be requested by the department. The department may contract for all or part of the private well permitting services in those counties that do not receive or maintain delegation authority or for permit authorities retained by the department.

~~38.15~~(2) **County standards.** The county board of supervisors may impose additional standards as local conditions dictate, but the standards cannot be less stringent than those required by the provisions of this chapter.

~~49.7~~(2)~~38.15~~(3) **Information to the department.** The delegation agreement shall provide for the method, format, and frequency of reporting all permit application information and remission of fees to the department.

Commented [38]: Not needed; in Iowa Code 455B.172(3).

~~49.7(3)38.15(4)~~ ~~A~~~~Board~~ authority. After delegation of authority to ~~at~~ ~~the County~~ county board of supervisors, all applications in that county shall be made to the board or its designee, except that all new private well construction permit applications by state or federal agencies shall be made to the department.

~~49.7(4)38.15(5)~~ ~~Term of~~ ~~Delegation~~ term. ~~A~~The delegation of authority may be for up to five years and may be redelegated at the discretion of the department.

~~49.7(5)38.15(6)~~ Permit number. Each permit shall be given a unique number as prescribed by the department. This numbering system shall be consistent throughout the state.

~~49.7(6)~~ ~~Emergency~~ permits. ~~Contracting counties must have policies and procedures in place to accommodate the issuance of permits on an emergency basis for the immediate replacement or reconstruction of water wells in response to the sudden and unforeseen loss or serious impairment of a well for its intended use.~~

~~49.7(7)~~ ~~Delegation agreement~~ revocation. ~~The department may revoke a County delegation agreement if the board of supervisors or its designee failed or refused to carry out the provisions of this chapter in a timely manner or violated any of the provisions of the delegation agreement with the department.~~

~~38.15(7)~~ ~~Well~~ tag. ~~The department may require that an identification tag be applied to each well. Counties with delegated permitting authority and certified water well contractors are responsible for ensuring that the tags are properly attached to the wells. The department may supply the numbered tags.~~

~~567 38.16(455B)~~ ~~Concurrent~~ authority of the department. ~~Notwithstanding the delegation of permit granting authority pursuant to rule 567 38.15(455B), the department reserves the right to exercise concurrent authority. In cases where the board or its designee fails to act on an application, or the director determines that a particular application cannot be appropriately evaluated by the board or its designee, the department may review such an application without invoking the provisions of rule 567 38.17(455B).~~

[Editorial change: IAC Supplement 4/20/22]

~~567 38.17(455B)~~ ~~Revocation of~~ delegation agreement. ~~The department may revoke the delegation to issue private well construction permits if the board of supervisors or its designee failed or refused to carry out the provisions of this chapter in a timely manner; or violated any of the provisions of the delegation of authority agreement with the department.~~

~~These rules are intended to implement Iowa Code sections 455B.105(11), 455B.172, and 455B.187.~~

~~[Filed 4/29/88, Notice 1/13/88 published 5/18/88, effective 7/1/88]~~

~~[Filed without Notice 4/23/93 published 5/12/93, effective 7/1/93]~~

~~[Filed 10/25/02, Notice 5/15/02 published 11/13/02, effective 12/18/02]~~

~~[Editorial change: IAC Supplement 4/20/22]~~

Commented [39]: Moved from old 38.7.

Commented [40]: Moved from old 38.17.

Commented [41]: Not needed; well tags are no longer being used.

Commented [42]: No longer needed; in 455B.187(2) and 455B.172(5)(a).

Commented [43]: Old 38.17 - moved to last subrule in the delegation rule; new 49.7(7).

Commented [44]: Included in reference to all of 455B at the end of new Chapter 49.