

NATURAL RESOURCES DEPARTMENT[561]

Adopted and Filed

Rule making related to the recording and submission of groundwater hazard statements

The Natural Resources Department hereby amends Chapter 9, “Groundwater Hazard Documentation,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 558.69.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 558.69.

Purpose and Summary

The purpose of this rule making is to align the groundwater hazard statement rules with recent changes in Iowa law. Minor cleanups of rule language are adopted.

2022 Iowa Acts, House File 2343, was signed into law on April 21, 2022. This legislation has amended Iowa Code section 558.69 in two ways relevant to this rule making. First, it removes the requirement to record a groundwater hazard statement if no relevant conditions are present on the property. In these circumstances, prescribed statutory language must be included on the first page of the transferring document. Second, this legislation allows county recorders to submit groundwater hazard statements to the Department through the use of a web browser interface provided by the county land record information system or through other electronic means. More specifically, the amendments:

- Remove the requirement to record groundwater hazard statements in circumstances that now conflict with the Iowa Code.
- Reference a new groundwater hazard statement form. This form is made part of this rule making as a rule-referenced document. The form can be found at www.iowadnr.gov/Portals/idnr/uploads/forms/5420960%20Proposed.pdf. The form clarifies when a condition is present or not present and provides clear instructions on when to submit the form versus when to include the statutory language. This form replaces the current form in its entirety.
- Require the Department to enter into an agreement with the custodian of the county land record information system prior to the submission of groundwater hazard statement forms through the system’s web browser interface. This rule will ensure efficient and transparent submissions, particularly in future years. Additionally, to account for unforeseen circumstances, the Department adopts rules that allow for the easy digital transmission of groundwater hazard statements in the unlikely event the county land record information system is inoperable.
- Ensure that the Department does not receive documents that transfer property when no conditions are present on the property.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 2, 2022, as **ARC 6629C**. A public hearing was held on November 22, 2022, at 12 noon via Zoom. No one attended the public hearing.

The Department received one written public comment from Denise D. Baker, Wright County Recorder. Ms. Baker requested the Department provide a colored highlight behind the “Stop Here” phrases in the Groundwater Hazard Statement form. This will ensure the form complies with the Americans with Disabilities Act. The Department agreed with the suggestion and updated the form. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on December 8, 2022.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on February 15, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 9.1(4) as follows:

9.1(4) *When groundwater hazard statement is required.* A groundwater hazard statement shall be presented to the county recorder along with the real estate transaction documents ~~for any real estate transaction in which either of the following circumstances exists:~~ only when required by Iowa Code section 558.69 or when otherwise required by Iowa law.

~~a. A declaration of value is required to be submitted pursuant to Iowa Code chapter 428A.~~

~~b. A private sewage disposal system inspection is required pursuant to 2008 Iowa Acts, chapter 1033, section 1. It shall be the duty of the transferor to determine whether an inspection is required and to include the groundwater hazard statement and certified inspector's report when filing transfer documents that do not require a declaration of value.~~

ITEM 2. Amend subrule 9.2(1) as follows:

9.2(1) The department hereby adopts by reference Form 542-0960, "Groundwater Hazard Statement" (February 1, 2023), which may be obtained from the department or local county recorder.

a. When a groundwater hazard statement is required to be presented to a county recorder pursuant to subrule 9.1(2), the transferor or the transferor's agent or attorney shall complete and sign department present Form 542-0960, "Groundwater Hazard Statement," which may be obtained from the department or local county recorder. An ~~An~~ The transferor's agent or attorney may sign the form for on behalf of the transferor, but in doing so the agent or attorney represents that a good-faith inquiry of the transferor has been made regarding the information contained in the form and that the information is correct. The department hereby adopts by reference Form 542-0960, "Groundwater Hazard Statement," as amended through July 18, 2012.

b. For all real estate transactions where a groundwater hazard statement is required to be submitted to a county recorder pursuant to subrule 9.1(4) and where the real estate transaction is dated ~~July 18, 2012, or later~~ after February 1, 2023, a county recorder shall accept only the currently adopted form. The department authorizes the reproduction of Form 542-0960 by any person through photocopying or electronic means so long as the general format and wording are not altered in the reproduction thereof.

ITEM 3. Amend subrule 9.2(3) as follows:

9.2(3) In all cases, the county recorder shall return ~~the original of~~ or present the statement to ~~the transferee when~~ with the recorded instrument ~~when the instrument is returned or presented to the transferee or the transferee's designee.~~ If the statement submitted reveals that there is a well, a disposal site, an underground storage tank, or hazardous waste on the property, a copy of the form shall be submitted to the department within 15 days after the close of each month. If a standardized electronic format is established by agreement between the Iowa County Recorders Association and the department, then the department's copy may be submitted electronically in the manner established by the agreement. Forms on which a private burial site is the sole matter disclosed and which do not reveal the existence of a well, disposal site, underground storage tank, or hazardous waste on the property shall not be submitted to the department. Forms shall be retained by the department for a period of five years.

ITEM 4. Rescind subrule 9.2(4) and adopt the following **new** subrule in lieu thereof:

9.2(4) When a county recorder accepts a groundwater hazard statement for recording, the county recorder shall transmit the groundwater hazard statement form to the department through one of the following methods:

a. Upon written agreement between the department and the custodian of the county land record information system, recorded groundwater hazard statement forms shall be presented to the department through a browser interface provided through the county land record information system for so long as such an agreement remains in place. Any agreement shall include, but not be limited to, a requirement that each form be posted to the system within 15 days of recording and a requirement that each form remain on the system for at least five years.

b. In the absence of such an agreement, or if the county land record information system is inoperable, a county recorder shall submit to the department via email a scanned or digital copy of each groundwater hazard statement form within 15 days of its recording. All emails shall be directed to the department's records division. Forms in the custody of the department shall be retained for a period of at least five years.

ITEM 5. Adopt the following **new** subrule 9.2(5):

9.2(5) Nothing in these rules shall be construed as requiring any party to submit to the department the first page of any document that transfers a property on which no conditions are present.

[Filed 12/14/22, effective 2/15/23]

[Published 1/11/23]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/11/23.