Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 561—Chapter 9
"Groundwater Hazard Documentation"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 558.69(5) and 558.69(6)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 558.69(5) and 558.69(6)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Contact Bradley Adams at bradley.adams@dnr.iowa.gov for meeting information.

September 25, 2024 1 p.m.	Via video/conference call

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 no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Bradley Adams
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Des Moines, Iowa 50321
Email: bradley.adams@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 9 benefits the public by standardizing the process by which groundwater hazard statements are completed, submitted to county recorders for recording, and transmitted to the Department. This process provides clarity and consistency for county recorders, real estate professionals, and members of the public. This chapter has been reviewed consistent with Executive Order 10. The new chapter omits unnecessary and redundant language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There are no costs associated with this rule.

- Classes of persons that will benefit from the proposed rulemaking:

County recorders, real estate professionals and members of the public who buy and sell real estate will benefit.

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:

Chapter 9 requires those who need to file a groundwater hazard statement to use the groundwater hazard statement form provided by the Department, or something substantially similar in form. This rule does not increase costs to any entity since the submission of a groundwater hazard statement is required by the Iowa Code.

- Qualitative description of impact:

Chapter 9 provides a standard form statewide for the groundwater hazard statement, which allows county recorders and real estate professionals to provide a consistent approach when fulfilling their duties and functions. Additionally, the chapter allows (but does not require) county recorders to submit a copy of a recorded groundwater hazard statement to the Department, as required by the Iowa Code, via an online interface.

3. Costs to the State:

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

The only ongoing costs to the agency are those associated with answering questions related to the chapter or the form.

- Anticipated effect on state revenues:

The anticipated effect on state revenues is neutral since this chapter has already been implemented.

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

This chapter provides a consistent form for real estate professionals to engage with, and for county recorders to use in the performance of their duties. Prescribing this form ensures all statutory requirements in Iowa Code section 558.69 concerning contamination at a property are met for every real estate transaction in the state.

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 intrusive methods to accomplish the benefit.

6. Alternative methods considered by the agency:

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

No alternatives were considered.

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

Not applicable.

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?

The rule does not have an impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 561—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
GROUNDWATER HAZARD DOCUMENTATION

561—9.1(558) Authority, purpose and application.

9.1(1) *Authority.* Iowa Code section 558.69 directs the department to adopt rules regarding a statement to be submitted to county recorders when they record instruments transferring real property. The statement must disclose the existence and location of wells, disposal sites, underground storage tanks, and hazardous wastes on the property.

9.1(2) *Purpose.* These rules provide the necessary forms, instructions, and explanation of this requirement. The statute's purpose is to give real property transferees notice of the condition of any wells, disposal sites, underground storage tanks, hazardous waste disposal, and private burial sites existing on the real estate.

9.1(3) *Applicability.* These rules apply to all persons, corporations, and other legal entities who are transferors or transferees of real property within the state of Iowa and all county recorders who are called upon to record instruments transferring real property in Iowa.

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 only when required by Iowa Code section 558.69 or when otherwise required by Iowa law.

561—9.2(558) Form.

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

a. When a groundwater hazard statement is required pursuant to 9.1(4), the transferor or the transferor's agent or attorney shall complete and present Form 542-0960. The transferor's agent or attorney may sign the form on behalf of the transferor, but in doing so the agent or attorney represents that the transferor made a good-faith effort to accurately provide the information requested by the form.

b. For real estate transactions where a groundwater hazard statement is required pursuant to 9.1(4) and where the real estate transaction is dated after February 1, 2023, county recorders shall only accept the currently adopted form. Any person may reproduce Form 542-0960 through photocopying or electronic means so long as the general format and wording are not altered.

9.2(2) The form shall be submitted to the county recorder, in the manner prescribed by the recorder, at the time required by 9.1(4).

9.2(3) County recorders shall return or present the statement with the recorded instrument when the instrument is returned or presented to the transferee or the transferee's designee.

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

a. Pursuant to a 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 via a browser interface provided through the county land record information system for the duration of such an agreement. Any agreement shall include but not be limited to terms requiring each form to be posted on the system within 15 days of recording, and 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 a digital copy of each recorded groundwater hazard statement to the department via email within 15 days of its recording. All emails shall be directed to the department's records division. The department shall retain custody of such forms for at least five years.

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.

These rules are intended to implement Iowa Code section 558.69.