

CHAPTER 54
CRITERIA AND CONDITIONS FOR PERMIT RESTRICTIONS OR COMPENSATION BY
PERMITTED USERS TO NONREGULATED USERS DUE TO WELL INTERFERENCE

[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—54.1(455B) Scope of chapter. This chapter provides an administrative means for resolving well interference conflicts in situations where an existing or proposed permitted use causes or will cause well interference in a nonregulated well. While administrative resolution is available, informal negotiations between affected parties must first be attempted and are encouraged throughout the procedure. This chapter applies only to situations in which an adequate groundwater supply is available from the utilized aquifer, but withdrawal for a permitted use causes or will cause such a water level decline in a nonregulated well that it does not provide a sufficient water supply. Situations with inadequate groundwater supply in the utilized aquifer will be managed according to Iowa Code section 455B.266 regarding priority allocation. Resolution of well interference conflicts is predicated on the nonregulated well providing a sufficient water supply prior to well interference. These rules do not apply to situations in which the permitted use existed prior to construction of the nonregulated well, unless a significant change in the permitted use occurs.

567—54.2(455B) Requirements for informal negotiations. 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 54.6(455B) and 54.7(455B). If good faith negotiations fail, a letter stating the reasons for the failure to achieve a settlement and 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.

Guidelines for informal negotiations are provided in 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 cancellation order may be issued pursuant to 567—subrule 52.7(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—50.6(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(2). 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 54.2(455B). If informal negotiations fail, administrative resolution of a well interference conflict will be taken pursuant to rule 54.7(455B). The applicant will remain liable for future well interference which is proven to be greater than the amount resolved in the original settlement and for other well interference which 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. Name, address, and telephone number.
- b. Description of the nonregulated well, including: location, depth, construction data and other pertinent information, as available.
- c. Description of the problem.
- d. Suspected cause of well interference.

54.5(2) *Initial response by the department.* 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 responsibility of the complainant to have the affected well inspected by a certified well contractor, to have the contractor complete Form 122: Water Well Inspection Report, and to submit the report to the department. Costs for a well inspection are eligible for compensation if well interference is subsequently verified.

54.5(4) *Corrective work prior to a settlement.* 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 on Form 122: Water Well Inspection Report.

The department and suspect permittee(s) should be notified and given opportunity to inspect the nonregulated well and consider alternative means for resolving the possible conflict prior to proceeding with the corrective work. If not, and well interference is subsequently verified but a reasonable settlement other than compensation is available, no compensation will be awarded.

Determination of apparent well interference, verified well interference and compensation, if any, will proceed in accordance with subrule 54.5(5) and rules 54.6(455B) and 54.7(455B).

54.5(5) *Determination of apparent well interference.* The department will determine that the complaint appears valid if all of the following criteria are met:

- a. The well inspection found no mechanical or structural reason for well failure.
- b. A permitted use can be identified as an apparent cause of well interference.
- c. 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.
- d. The suspect permittee and complainant withdraw water from the same aquifer or sources likely to be in close hydraulic connection.
- e. The suspect permittee was withdrawing water during the period when well interference was claimed.
- f. Well interference is reasonably possible with known conditions (i.e., pumping rates, separation distances, aquifer properties and relative water levels in the wells).
- g. Other obvious causes of water level decline are not apparent.

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 which 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 so identified.

If the department determines that apparent well interference exists, the department 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 rule 54.10(455B).

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 52.7(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. A temporary water supply must meet the needs of the intended use in terms of both quantity and quality.

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. Test pumping shall be authorized by the department and supervised by a certified well contractor, registered professional engineer or other designee of the department. The test pumping shall be performed within 30 days of notification by the department 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.

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 by the permittee. Test pumping shall be performed in accordance with procedures specified in 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. If the 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 test pumping results accordingly and qualify estimations in reporting the test pumping results.

The results of this evaluation will be used by the department to determine if well interference is verified in accordance with guidelines in Bulletin No. 23. In general, 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.

If well interference is verified, settlement procedures according to rule 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 rule 54.10(455B).

567—54.7(455B) Settlement procedures.

54.7(1) Settlement options. At the same time as notification prescribed in subrule 54.6(2) or upon notice to the applicant of verified well interference according to 567—subrule 50.7(2), the department will also advise the permittee or applicant of available settlement options including:

- a. Permanent permit modifications (i.e., reduced pumping rate or scheduled pumping).
- b. Compensation to the complainant (see subrule 54.7(3) and guidelines in Bulletin No. 23).

In situations in which verified well interference has occurred 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 subrules 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 subrule 54.7(3) and guidelines in 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 nitrate, bacteria, iron and hardness.
- d. A statement of what is being offered to the complainant and terms of the offer (timing, who will do the work, cash or completed work settlement, etc.).

54.7(3) General criteria for cost liability. The nonregulated well owner's cost 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.)

a. When the existing well does not comply with applicable well construction standards (567—Chapter 49), costs which are required to bring the well “up to standards” are not eligible for compensation.

b. Costs for work requested by the nonregulated well owner which result in upgrading the nonregulated water supply are not eligible for compensation.

c. Costs for legal fees are not eligible for compensation.

d. Operation and maintenance costs of the water supply system are not eligible for compensation.

e. Costs of the well rejuvenation, unless the well still fails to provide a sufficient water supply after well rejuvenation requested by the permittee is completed, are not eligible for compensation.

f. Costs due to temporary loss of water for such things as hauling water and going to a laundromat are not eligible for compensation, unless the permittee refuses to comply with an emergency order by the department.

54.7(4) *Complainant’s response to the offer.* The complainant shall respond in writing to the department within 15 days of receipt of the offer. The response shall 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 offer and counteroffer.* The department will review the offer and counteroffer and determine if the offer is reasonable in accordance with criteria given in Bulletin No. 23. 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. A dismissal may be appealed by the complainant as provided in rule 54.10(455B).

If the offer is not found to be reasonable, the permittee will be given one opportunity to revise the offer in accordance with determinations of the department. If a revised offer is not received within 15 days or the revised offer is determined by the department not to be reasonable, the department will determine the amount of compensation or withdrawal restrictions to resolve the well interference. This determination will be enforced through the imposition of permit conditions, or permit revocation or denial. In the case of an existing permit the department will modify or revoke the permit as provided in 567—subrule 52.7(1). For a pending permit application the department will render an initial decision pursuant to rule 567—50.8(455B) which denies the application or subjects the permit to appropriate conditions.

567—54.8(455B) *Recurring complaints.* 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: 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 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.

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).

A complaint which was dismissed due to failure to cooperate, as provided in rule 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) Variances. Variance to these rules may be granted by the department provided just cause can be demonstrated. Requests for variances and supporting information shall be submitted in writing to the department.

567—54.10(455B) Appeal procedures. Determinations of the department under subrules 54.5(5), 54.6(2) and 54.7(4) may be appealed by following the procedure in 567—subrule 7.5(1).

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

[Filed 5/2/86, Notice 1/1/86—published 5/21/86, effective 6/25/86]

[Filed emergency 11/14/86—published 12/3/86, effective 12/3/86]

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

[Filed 5/17/06, Notice 3/15/06—published 6/7/06, effective 7/12/06]