

**567—43.8(455B) Viability assessment.****43.8(1) Definitions specific to viability assessment.***a. For viability assessment purposes:*

“*New system*” includes newly constructed PWSs and systems that do not meet the definition of a PWS, but which expand their infrastructure and thereby grow to become a PWS. Systems not currently meeting the definition of a PWS and that add additional users and thereby become a PWS without constructing any additional infrastructure are not “new systems” for the purposes of this rule.

“*Nonviable system*” means a system lacking the technical, financial, and managerial ability to comply with 567—Chapters 40 through 43 and 81.

“*Viable system*” means a system with the technical, financial, and managerial ability to comply with applicable drinking water standards adopted by the state of Iowa.

*b. “Significant noncompliance” or “SNC” and “viability” are defined in 567—Chapter 40.*

**43.8(2) Applicability and purpose.** These rules apply to all new and existing PWS, including the following: new systems; systems deemed to be in SNC with the primary drinking water standards; DWSRF applicants; and existing systems. The purpose of the viability assessment program is to ensure the safety of the PWS and ensure the viability of new PWS upon commencement of operation. The department may require PN and assess administrative penalties to any PWS that fails to fulfill the requirements of this rule.

**43.8(3) Contents of a viability assessment.** A viability assessment must address the areas of technical, financial, and managerial viability for a PWS. An assessment must include evaluation of the following areas, and the PWS may be required to include additional information as directed by the department.

*a. Technical viability.* Supply sources and facilities, treatment, and infrastructure.*b. Managerial viability.* Operation, maintenance, management, and administration.*c. Financial viability.* Capital and operating costs, revenue sources, and contingency plans.**43.8(4) New systems.***a. Viability assessment submission.*

(1) New PWSs (including CWSs, NTNCs and TNCs) must submit a completed system viability assessment for department review prior to obtaining a construction permit. A viability assessment may be submitted with a construction permit application.

(2) Viability assessment worksheets are available on the department’s website at [www.iowadnr.gov](http://www.iowadnr.gov).

(3) The department may reject receipt or delay review of the construction plans and specifications until an adequate viability assessment is provided.

(4) If the department finds, upon review and approval of the viability assessment, that the PWS will be viable, a construction permit will be issued in accordance with 567—Chapters 40 and 43. Prior to beginning operation, a PWS operation permit must be obtained in accordance with 567—43.2(455B) and 567—40.5(455B).

*b. Viability assessment review.* If the department declines to approve a viability assessment, or if the department finds that a PWS is nonviable, the construction and operation permit applications will be denied. If the viability assessment is conditionally approved, construction and operation permits will be issued, with conditions and a compliance schedule specified in the operation permit.

**43.8(5) Existing systems.**

*a. Definition of existing system.* Any CWS, NTNC, or TNC in operation prior to October 1, 1999 that was regulated as a PWS by the department shall be considered an existing system. Any system that does not currently meet the definition of a PWS, but that expands their infrastructure and thereby grows to become a PWS, is considered a new system. Systems not currently meeting the definition of a PWS and that add additional users and thereby become a PWS without constructing any additional infrastructure are considered existing systems for the purposes of this subrule.

*b. Viability assessment submission.* All PWSs should complete a viability assessment. However, only existing PWSs meeting one or more of the following criteria are required to complete a viability assessment:

(1) Systems applying for DWSRF loan funds.

(2) Systems categorized as being in SNC by the department, due to their history of failure to comply with drinking water standards.

(3) Systems identified by the department via a sanitary survey as having technical, managerial, or financial problems as evidenced by such conditions as poor operational control, a poor state of repair or maintenance, vulnerability to contamination, or inability to maintain adequate distribution system operating pressures.

(4) Systems that have been unable to retain a certified operator in accordance with 567—Chapter 81.

*c. Forms.* Viability assessment worksheets are available on the department's website at [www.iowadnr.gov](http://www.iowadnr.gov).

*d. Review of required viability assessments.*

(1) If the assessment is incomplete and does not include all of the required elements, the system will be notified in writing by the department and will be given an opportunity to modify and resubmit the assessment within the specified time period. If the system fails to resubmit a completed viability assessment as specified, the department may find that the system is nonviable.

(2) If the assessment is complete, the department will either indicate that the system is viable or nonviable after the assessment review process. The system will be notified of the results of the department's evaluation.

*e. Review of voluntarily submitted viability assessments.* All existing systems should complete a viability assessment and submit it to the department. Voluntarily submitted assessments may be reviewed upon request and will be exempt from any requirements to modify the assessment if it is not approved, or from a determination that the system is not viable, providing the system does not meet any of the criteria for mandatory completion of a viability assessment set forth in 43.8(4) "b."

**43.8(6) Nonviable systems.** The following applies to CWSs, NTNCs, and TNCs:

*a.* Systems applying for DWSRF loan funds must be viable, or the loan funds must be used to assist the system in attaining viable status. If a system applying for a loan is found to be nonviable, and loan funds will not be sufficient or available to ensure viability, then the situation must be corrected to the department's satisfaction prior to qualification to apply for loan funds.

*b.* Systems that meet the department's SNC criteria are considered nonviable. The system's viability assessment and the most recent sanitary survey results will be evaluated by the department to assist the system in returning to and remaining in compliance, which would achieve viability. Required corrective actions will be specified in the system's operation permit and will include a compliance schedule. Inspections will be conducted on an as-needed basis to assist the system in implementing the required improvements.

*c.* Systems experiencing technical, managerial, or financial problems as noted by the department in the sanitary survey will be considered nonviable. The system's viability assessment will be evaluated by the department to assist the system in attaining viability, and any required corrective actions will be specified in the system's operation permit.

*d.* Systems unable to retain a certified operator will be considered nonviable. All CWSs and NTNCs, and TNCs denoted by the department, must have a certified operator who meets the requirements of 567—Chapter 81. The system's viability assessment will be used to determine the source of the problem, and required corrective actions will be specified in the system's operation permit.

**43.8(7) Revocation or denial of operation or construction permit.**

*a. Operation permit revocation or denial.* Failure to correct the deficiencies regarding viability, as identified in a compliance schedule set by the department, may result in revocation or denial of a system's operation permit. If the department revokes or denies the operation permit, the system's owner must negotiate an alternative arrangement with the department for providing treatment or water supply services within 30 days of receipt of the notification unless the system's owner appeals the decision. The PWS is required to provide water that continually meets all health-based standards during the appeal process.

*b. Denial of new construction permits for an existing system.* In addition to the criteria provided in 567—Chapters 40 through 44, new construction permits for system improvements may be denied until a system makes the required corrections and attains viable status, unless the proposed project is necessary to attain viability.

*c. Failure to conform or comply.* Failure of a project to conform to approved construction plans and specifications, or failure to comply with 567—Chapters 40 through 44, constitutes grounds for the director

to withhold the applicable construction and operation permits. The system is then responsible for ensuring that the identified problem with the project is rectified so that permits may be issued. Once an agreement for correcting the problem is reached between the department and the system, the department will issue the appropriate permits according to the provisions of the agreement. If an agreement cannot be reached within a reasonable time period, the permits shall be denied.

*d. Contents of denial notification.* The notification of denial or withholding approval of the operation or construction permit will state the department's reasons for withholding or denying permit approval.

**43.8(8) Appeals.**

*a. Request for formal review of viability determination.* A person or entity who disagrees with the decision regarding the viability of a PWS may request a formal review of the action. A request for review must be submitted in writing to the director by the owner or their designee within 30 days of the viability decision.

*b. Appeal of denial of operation or construction permit.* A decision to deny an operation or construction permit may be appealed by the applicant to the commission pursuant to 567—Chapter 7. The appeal must be made in writing to the director within 30 days of receiving the notice of denial by the owner of the PWS.

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