

DEPARTMENT OF NATURAL RESOURCES [561]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 558.69, the Department of Natural Resources hereby amends Chapter 9, "Groundwater Hazard Documentation," Iowa Administrative Code.

The emergency amendments have two purposes. The first is to improve the implementation of the septic tank time-of-transfer requirements adopted by the Iowa Legislature in 2008. The second purpose is to simplify for County Recorders the determination of when a Groundwater Hazard Statement is required.

Pursuant to Iowa Code section 17A.4(3), the Department has determined that the provision of notice and comment would be contrary to the public interest. Pursuant to Iowa Code section 455B.172(11), as enacted at Chapter 1033 of the 2008 Iowa Acts, the private sewage disposal inspection requirements take effect on July 1, 2009. The Department adopted revisions to IAC 561-- Chapter 9 on April 1, 2009, to assist in the implementation of the statutory inspection requirement. Comments received from county recorders, the Iowa Bar Association, the Iowa Land Title Title Association, realtors, and other impacted parties indicate that immediate action is necessary to revise Chapter 9 and the associated Groundwater Hazard Statement. These amendments are designed to address the concerns raised.

Pursuant to Iowa Code section 17A.5(2)(b)(2) this rule shall be effective upon filing. The Department has determined, after comment from interested parties, that the amendments will

confer a benefit or remove a restriction on the public or some segment thereof. The benefits conferred or restrictions removed include:

- The elimination of the filing of a groundwater hazard statement for all leases and governmental transactions unless a private sewage disposal system inspection is required.
- The addition of categories on the groundwater hazard statement to acknowledge instances when a private sewage disposal system inspection is not required.
- The provision of additional clarifying information for instances in which a private sewage disposal system will be filed at a later date.

Although the Department is filing these amendments emergency, effective upon filing, the requirement that only the new form be used will be delayed until September 1, 2009 to allow a period of transition and to allow for the dissemination of the form.

Information in regard to these amendments may be obtained from Jon C. Tack, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034; fax (515)281-8895; E-mail: jon.tack@dnr.iowa.gov.

These amendments are intended to implement Iowa Code section 455B.172 as amended by 2008 Iowa Acts, Senate File 261, and section 558.69 of the Code of Iowa.

These amendments shall become effective upon filing.

The following amendments 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 ~~a declaration of value is required to be submitted pursuant to Chapter 428A of the Code of Iowa.~~ Additionally, a Groundwater Hazard Statement shall be presented at the time of recording of the following real estate transaction documents which are exempt from the filing of a declaration of value either of the following circumstances exist:

a. ~~Any recorded lease of land which has a term of five years or more, except leases related to the construction or maintenance of cell phone, television, radio or similar electronics towers and leases related to the construction or maintenance of electricity generating wind turbines. Leases or easements reserving rights to the future construction of the tower and wind turbine structures exempted by this subrule are similarly exempted. A lease of land does not include a lease of a portion of a building such as an apartment least or business location within a mall or other multitenant building~~ A declaration of value is required to be submitted pursuant to Chapter 428A of the Code of Iowa.

b. ~~Any voluntary transfer or receipt of real property by governmental entities if title to that property was voluntarily acquired by the governmental entity. Governmental transactions which are exempted from the filing of a Groundwater Hazard Statement include sheriff's deeds, tax deeds, and any other transaction for which the governmental entity did not voluntarily acquire title. A Groundwater Hazard Statement is not required to accompany a clerk's change of title.~~ A private sewage disposal system inspection is required pursuant to Iowa Code section 455B.172(11). 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 which do not require a declaration of value.

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

9.2(1) The transferor, their agent or attorney shall sign department Form 542—0960 “Groundwater Hazard Statement,” which may be obtained from the department or the local county recorder. An agent or attorney may sign the form for 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 it is correct. The department hereby adopts by reference Form 542-0960 “Groundwater Hazard Statement”, as amended through ~~April 1, 2009~~ June 26, 2009. For all real estate transactions dated July 1, 2009, or later, a county recorder shall accept only the amended and revised form, as adopted by reference on April 1, 2009. Beginning September 1, 2009, a county recorder shall accept only the amended and revised form as amended through June 26, 2009, as adopted by reference. From July 1, 2009 through August 31, 2009, either of the above-referenced forms may be used. 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.

Date

Richard A. Leopold, Director

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