

CHAPTER 64 EO10 DRAFT - V.2, 11/16/2023**CHAPTER 64
WASTEWATER CONSTRUCTION AND OPERATION PERMITS**

[Prior to 7/1/83, DEQ Ch 19]

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

567—64.1(455B) Construction permits.**64.1(1) Construction permit requirement.**

a. No person shall construct, install or modify any wastewater disposal system or part thereof or extension or addition thereto without, or contrary to any condition of, a construction permit issued by the director or by a local public works department authorized to issue such permits under **Iowa Code section 455B.183**, nor shall any connection to a sewer extension in violation of any special limitation specified in a construction permit pursuant to **subrule 64.1(10)** be allowed by any person subject to the conditions of the permit.

b. Exemptions to the requirement to obtain a construction permit are listed in the Iowa Wastewater Facilities Design Standards, effective *Month 2024*, located on the department's website; hereafter referred to as the IWFDS.

64.1(2) Construction sites.

a. The site for each new wastewater treatment plant, plant expansion, or upgrade of existing facilities must be inspected and approved by the department prior to submission of plans and specifications. Site survey applications must be submitted in accordance with this rule.

b. Site approval under this subrule shall be based on the criteria contained in:

(1) The IWFDS;

(2) The Recommended Standards for Wastewater Facilities, 2014 Edition, a report of the Great Lakes - Upper Mississippi Board of State and Provincial Public Health and Environmental Managers, available on their website at: www.health.state.mn.us/communities/environment/water/tenstates/standards.html; hereafter referred to as the **Ten States Standards**,

(3) Applicable federal guidelines and standards, and

(4) Other design documents, including standard textbooks, current technical literature and applicable safety standards.

c. The separation distances listed in **subparagraphs "1" through "6"** of this paragraph shall apply to treatment works unless a separation distance exception is provided in the IWFDS. The separation distance from lagoons shall be measured from the water surface.

(1) 1000 feet from the nearest inhabitable residence, commercial building, or other inhabitable structure. If the inhabitable or commercial building is the property of the owner of the proposed treatment facility, or there is written agreement with the owner of the building, the separation criteria shall not apply. Any such written agreement shall be submitted to the department and filed with the county recorder for abstract of title purposes.

(2) 1000 feet from public shallow wells.

(3) 400 feet from public deep wells.

(4) 400 feet from private wells.

(5) 400 feet from lakes and public impoundments.

(6) 25 feet from property lines and rights-of-way. A separation distance of at least 300 feet from property lines and rights-of-way is recommended where treatment works may be expanded in the future. When the above separation distances cannot be maintained for the expansion, upgrading or replacement of existing facilities, the separation distances shall be maintained at no less than 90 percent of the existing separation distance on the site, providing no data is available indicating that a problem has existed or will be created.

(7) In addition to the separation distances required in **subparagraphs "1" through "6"** of this paragraph, the following separation distances shall apply to all anaerobic lagoons that are used in connection with industrial wastewater treatment or pretreatment. These distances do not apply to controlled discharge or aerated facultative pond systems.

1. Where the average rated flow is 100,000 gpd or less, an anaerobic lagoon shall be at least 1,250 feet from the nearest inhabitable residence, commercial building, or other inhabitable structure not owned by the owner of the lagoon; or from a public use area other than a public road.

2. Where the average rated flow is greater than 100,000 gpd, an anaerobic lagoon shall be at least 1,875 feet from the nearest inhabitable residence, commercial building, or other inhabitable structure not owned by the owner of the lagoon; or from a public use area other than a public road.

3. A person may build or expand an anaerobic lagoon closer to an inhabitable residence, commercial

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building, or other inhabitable structure not owned by the owner of the anaerobic lagoon, or to a public use area, if the affected landowners enter into a written agreement with the anaerobic lagoon owner to waive the separation distances under such terms the parties negotiate. Any such agreement shall be submitted to the department and filed with the county recorder for abstract of title purposes.

4. When the separation distances in this subparagraph cannot be maintained for the expansion, upgrade, or replacement of existing anaerobic lagoon facilities, the separation distance may be reduced to 1,000 feet provided all of the following criteria are met:

- The anaerobic lagoon will be completely covered and provided with approved off gas treatment throughout its entire operation life;
- An operation and maintenance manual shall be prepared and submitted to the department in accordance with the IWFDS; and
- No data is available indicating that a problem has existed or will be created.

64.1(3) Construction permit applications - general requirements.

a. General. All applications for a construction permit required under this rule shall be made in accordance with the requirements in the IWFDS and on forms provided by the department. The applicant will be promptly notified if the application is incomplete or improperly filled out, and an application will not be reviewed until it is complete. A wastewater construction permit will be denied when the application does not meet all requirements for permit issuance. For a system with permits conditioned by limitations on additional loads under subrule 64.1(4), paragraphs “a,” “b” or “d,” construction permit applications must be accompanied by an accounting of connections and additional loading since the time the initial conditioned permit was issued.

b. Submission date. Applications for a construction permit must be submitted to the director at least 120 days in advance of the construction start date.

c. Site surveys.

(1) For new or expanded wastewater treatment facilities, an application for a site survey must be submitted by the applicant’s engineer in advance of a full application for construction permit. An applicant should allow 60 days from the submission date of the site survey application for preliminary approvals.

(2) A site survey application must include the following minimum information:

1. A preliminary engineering report or a cover letter which contains a brief description of the proposed treatment process and assurance that the project is in conformance with the long-range planning of the area.
2. The general information, treatment project site selection, and treatment project design data portions of the construction permit application forms, as provided by the department.

(3) If a site survey application is incomplete, it will be returned to the engineer for completion. When a site survey application is complete, it will be reviewed as follows:

1. If the data submitted indicates on its face that the site would be unsuitable for its intended purpose, a letter of rejection will be sent to the applicant and the engineer. Clarifications and additional data may be requested of the applicant and the engineer.

2. If the data submitted indicates on its face that the site may be suitable, a site survey will be conducted by department staff.

d. Fee. A single construction permit application fee of \$100, as specified in Iowa Code subsection 455B.197(2), is due at the time of construction permit application submission.

e. Director action. The director shall act upon the application within 60 days of receipt of a complete application by either issuing a construction permit or denying the construction permit in writing unless a longer review period is required and the applicant is so notified in writing.

f. Modification after construction permit issuance. Applicants seeking a modification to plans and specifications after having been issued a construction permit shall submit an addendum to plans and specifications, a change order, or revised plans and specifications, along with the reasons for the proposed changes, to the department. A supplemental written permit or approval will be issued when the changes submitted by the applicant meet department requirements. Construction shall not proceed until such changes have been approved.

64.1(4) Additional requirements for sanitary sewer extension construction permit applications. Applications for sanitary sewer extension construction permits shall conform to the IWFDS. If a sanitary sewer extension construction permit application does not provide sufficient information on which to make a determination to grant or deny a sewer system construction permit, additional information may be requested and evaluated. Sanitary sewer extension approval shall be subject to the following:

- a.* A sanitary sewer extension construction permit may be denied if, at the time of application, the treatment

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facility treating wastewater from the proposed sewer is not in substantial compliance with its operating permit or if the treatment facility receives wastes in volumes or quantities that exceed its design capacity and interfere with its operation or performance. If the applicant is operating under a compliance schedule which is being adhered to that will lead to resolution of the substantial compliance issues or if the applicant can demonstrate that the problem has been identified, the planning completed, and corrective measures initiated, then the construction permit may be granted.

b. A sanitary sewer extension construction permit may be denied if bypassing has occurred at the treatment facility, except when any of the following conditions are being met:

(1) The bypassing is due to a combined sewer system, and the facility is in compliance with a department-approved long-term CSO control plan.

(2) The bypassing occurs as a result of a storm with an intensity or duration greater than that of a storm with a return period of five years, according to the National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Point Precipitation Frequency Estimates.

(3) The department determines that timely actions are being taken to eliminate the bypassing.

c. A sanitary sewer extension construction permit may be denied if an existing downstream sewer is or will be overloaded or surcharged, resulting in bypassing, flooded basements, or overflowing manholes, unless:

(1) The bypassing or flooding is the result of a precipitation event with an intensity or duration greater than that of a storm with a return period of two years, according to the NOAA Atlas 14 Point Precipitation Frequency Estimates; or

(2) The system is under full-scale facility planning and the applicant provides a schedule that is approved by the department for rehabilitating the system to the extent necessary to handle the additional loadings.

64.1(5) Application *review*.

a. Review of construction permit applications shall be based on the criteria listed in paragraph 64.1(2) "b", and on the Iowa Antidegradation Implementation Procedure, effective August 12, 2016. In any conflict between the criteria, the IWFDS shall prevail.

b. IWFDS *waivers*.

(1) Waivers from the IWFDS which provide, in the judgment of the department, substantially equivalent or improved effectiveness, may be requested when there are unique circumstances not found in most projects. Waiver requests shall be submitted and reviewed in accordance with 567—Chapter 13.

(2) Waivers may be issued or denied at the discretion of the director. Waiver denial may be appealed to the commission.

(3) When reviewing a waiver request, the director:

1. Shall use the criteria in 561—Chapter 10, and

2. May consider the unique circumstances of the project, direct or indirect environmental impacts, the durability and reliability of the alternative, and the purpose and intent of the rule or standard in question.

(4) Circumstances that warrant waiver consideration may include the following:

1. The utilization of new equipment or new process technology that is not explicitly covered by the design standards.

2. The application of established and acceptable technologies in an innovative manner not covered by the IWFDS.

3. The conditions and circumstances which were considered in the adoption of the design standard are not applicable for the project in question.

64.1(6) Notwithstanding the 120-day requirement in subrule 64.1(4), construction of the approved system may commence immediately after the issuance of a construction permit.

64.1(7) The construction permit shall expire if construction thereunder is not commenced within one year of the date of issuance thereof. The director may grant an extension of time to commence construction if it is necessary or justified, upon showing of such necessity or justification to the director.

64.1(8) The director may modify or revoke a construction permit for cause, including, but not limited to, the following:

a. Failure to construct said wastewater disposal system or part thereof in accordance with the approved plans and specifications.

b. Violation of any term or condition of the permit.

c. Obtaining a permit by misrepresentation of facts or failure to disclose fully all material facts.

d. Any change during construction that requires material changes in the approved plans and specifications.

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64.1(9) Certification of completion. Within 30 days after completion of construction, installation or modification of any wastewater disposal system or part thereof or extension or addition thereto, the construction permit holder shall submit a certification by a registered professional engineer that the project was completed in accordance with the approved plans and specifications.

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 2695C, IAB 8/31/16, effective 8/12/16; ARC 6191C, IAB 2/9/22, effective 3/16/22]

567—64.2(455B) Operation Permits.

64.2(1) Except as otherwise provided in this subrule, in 567—Chapter 65, and in 567—Chapter 69, no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the director. An operation permit is not required for the following:

a. A private sewage disposal system, a semipublic sewage disposal system, or a pretreatment system, as noted in Iowa Code section 455B.183.

b. A discharge from a geothermal heat pump which does not reach a navigable water.

c. Water well construction and well services related discharge that does not reach a water of the United States (WOTUS) as defined in 40 CFR § 122.2.

d. Discharges from the application of biological pesticides and chemical pesticides where the discharge does not reach a WOTUS as defined in 40 CFR § 122.2. Aquatic pesticides may be applied to any WOTUS in accordance with this chapter and NPDES General Permit No. 7, “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides.”

e. Agricultural stormwater discharges. This exclusion applies only to the operation permit requirement set forth in this rule and does not alter other requirements of law, including but not limited to any applicable requirements of Iowa Code chapters 459 and 459A.

f. Dewatering discharge from the installation, repair, or maintenance of agricultural drainage systems that does not reach a water of the state. This activity is not considered operation of a wastewater disposal system.

g. A wastewater discharge from a water treatment plant that does not reach a water of the state.

64.2(2) Applications.*a. Individual permit applications.*

(1) *Application Forms.* Except as provided in paragraph 64.2(2) “b,” applications for operation permits required under this paragraph shall be made on forms provided by the department.

*(2) Application Submission.**1. Application due dates.*

- Applications for an individual permit for a new discharge of stormwater associated with construction activity as defined in 40 CFR § 122.26(b)(14) under “stormwater discharge associated with industrial activity” must be submitted at least 60 days before the date on which construction is to commence.

- The due date for a new application is 180 days prior to the date the operation is scheduled to begin, unless a shorter period is approved by the director.

- The due date for a renewal application is 180 days prior to the expiration date of the current permit. For a POTW, permission to submit an application at a later date may be granted by the director.

2. Complete applications. A permit application is complete and approvable when all necessary questions on the application have been completed and the application is signed pursuant to this subrule, and when all applicable portions of the application, including the application fee, treatment agreement forms, and required attachments, have been submitted. The director may require the submission of an antidegradation alternatives analysis or other additional information deemed necessary to evaluate the application.

3. Incomplete applications. Incomplete applications may be returned to the applicant for completion. Authorization to discharge will be suspended if a complete application is not submitted to the department before the expiration date of the current permit. In the case of new applications, no discharge will be allowed until an operation permit is issued. In the case of existing discharges, if a permit application is incomplete or has not been submitted, the department shall notify the applicant of a violation of this rule and may proceed administratively on the violation or may request that the Environmental Protection Commission refer the matter to the attorney general for legal action.

4. Other information. If a permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application, the permittee shall promptly submit such facts or information.

(3) Application Receipt. Upon completion of a tentative determination with regard to a permit application,

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as described in paragraph 64.4(1) "a," the director shall issue operation permit for applications filed pursuant to this subrule within 90 days of the receipt of a complete application unless the application is for an NPDES permit or unless a longer period of time is required and the applicant is notified.

b. General permit applications. A Notice of Intent (NOI) for coverage under a general permit shall be completed on forms provided by the department and in accordance with rule 567—64.5(455B). An NOI must be submitted for any of the following:

- (1) Stormwater discharge associated with industrial activity.
- (2) Stormwater discharge associated with small construction activity.
- (3) Private sewage disposal systems that discharge to a Water of the United States.
- (4) Discharges, except a stormwater only discharge, from a mining or processing facility.
- (5) Discharges from hydrostatic testing, tank ballasting and water lines, if required to be submitted by General Permit No. 8.
- (6) Discharges from dewatering or residential geothermal systems, if required to be submitted by General Permit No. 9.

c. Application fees. Required fees shall be submitted with all permit applications pursuant to Iowa Code subsection 455B.197(3).

d. Signatories of permit applications. Permit applications for operation and NPDES permits shall be signed in accordance with 40 CFR § 122.22.

64.2(3) Indirect discharger requirements.

a. Information requirement. The director may require an indirect discharger to submit information similar to that required in an application for an operation permit, but no operation permit is required for such discharge.

b. Treatment agreement (TA). A POTW intending to accept waste from a SIU as defined in 40 CFR § 403.3(v) must submit a treatment agreement (TA) which:

- (1) Is on the TA form provided by the department;
- (2) Identifies and limits the monthly average and daily maximum flows, and identifies and limits all other pollutants or pollutant parameters necessary to ensure that the discharge will be in accordance with the applicable standards and requirements in 567—Chapter 62; and
- (3) Is signed and dated by the SIU and the owner of the POTW accepting the wastewater.

c. TA submittal timelines. A POTW receiving waste from an existing or proposed SIU shall submit a complete TA form to the department in accordance with the following timelines:

- (1) For an existing SIU with an existing TA, 60 days in advance of a proposed expansion, production increase or process modification that may result in discharges of sewage, industrial waste, or other waste in excess of the discharge stated in the existing TA.
- (2) For an indirect discharger that would become a SIU as a result of a proposed expansion, production increase or process modification, 60 days in advance of the proposed expansion, production increase or process modification.
- (3) For a new indirect discharger that will qualify as a SIU, 180 days in advance of a proposed discharge.

d. Construction and operation permit applications - TA submittal.

(1) A construction permit application for the construction or modification of a POTW must include current TA forms for each SIU discharging to the POTW. These TAs will be used in determining the design basis of the new or upgraded system.

(2) An operation permit application from a POTW must include information and current TA forms for each SIU discharging to the POTW, and information on any Non-Significant Categorical Industrial User discharging to the POTW.

64.2(4) NPDES permits may be granted for any period of time not to exceed five years. All other operation permits may be granted for an appropriate period of time as determined by the director, based on the type of wastewater disposal system being permitted. General permits will be issued for a period not to exceed five years. Each permit to be renewed shall be subject to the provisions of all department rules in effect at the time of the renewal.

64.2(5) Operation permits shall contain conditions deemed necessary by the director to ensure compliance with all applicable department rules, including monitoring and reporting conditions, to protect the public health and beneficial uses of state waters, and to prevent water pollution from waste storage or disposal operations.

64.2(6) The director may amend, revoke and reissue, or terminate in whole or in part any permit for cause, either at the request of any interested person (including the permittee) or upon the director's initiative, according

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to the provisions of this subrule.

a. General permit. The director may revoke and reissue or terminate in whole or in part any general permit or coverage under a general permit for cause. A waiver or amendment of the terms and conditions of a general permit shall not be granted. If a waiver or amendment of a general permit is desired, the permittee must apply for an individual permit following the procedures in **paragraph 64.2(3) "a."**

b. Individual permit. All requests to amend, revoke and reissue, or terminate an individual permit shall be in writing and contain facts or reasons supporting the request.

(1) A permittee shall furnish to the director, within a reasonable time, any information that the director may request to determine whether cause exists for amending, revoking and reissuing, or terminating a permit, including a new permit application.

(2) Required amendment fees shall be submitted in accordance with **subrule 64.13(3).**

(3) The filing of a request by an interested person for an amendment, revocation and reissuance, or termination does not stay any permit condition.

c. Cause. Cause under this subrule includes, but is not limited to, the following:

(1) Violation of any term or condition of the permit.

(2) Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.

(3) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(4) Failure to submit records and information the director requires, both generally and as a condition of the permit, in order to ensure compliance with the discharge conditions specified in the permit.

(5) Failure or refusal of an NPDES permittee to carry out the requirements of **paragraph 64.6(7) "c."**

(6) Failure to provide all the required application materials or appropriate fees.

(7) Causes listed in **40 CFR § 122.62 and 122.64.**

d. Individual permit compliance schedule amendments.

(1) A request to amend an interim date in a compliance schedule shall be made at least 30 days prior to the next scheduled date which the permittee contends it is unable to meet. The request shall include proposed changes to the existing compliance schedule and documentation supporting the need for an extension.

(2) A request to amend a final date in a compliance schedule shall be made at least 120 days prior to the final compliance date. An extension of the final date may be granted by the department for cause, including unusually adverse weather conditions, equipment shortages, labor strikes, federal grant regulation requirements, or any other extenuating circumstances beyond the control of the requesting party. Cause does not include economic hardship, profit reduction, or failure to proceed in a timely manner.

e. Reduction of individual permit minimum monitoring requirements. The minimum monitoring requirements in an existing or reissued individual permit, as established in **567—Chapter 63**, may be modified or reduced at the director's discretion or when requested by the permittee.

(1) A request to modify or reduce the minimum monitoring requirements in an existing individual permit is considered a waiver request. A request shall include a written description of the proposed modification or reduction, monitoring results which are frequent enough to reflect variations in wastewater characteristics over a period of time and are consistent in results from sample to sample, and a completed **Petition for Waiver form**, available on the department's website.

(3) Any request to modify or reduce minimum monitoring requirements must adequately justify that the modified or reduced monitoring will accurately reflect actual wastewater characteristics and will not adversely impact facility operations.

(4) The department will evaluate a request to modify or reduce the minimum monitoring requirements in an existing permit based upon whether or not less frequent sample results would accurately reflect actual wastewater characteristics and whether operational control could be maintained.

(5) All reductions or modifications of monitoring incorporated into an individual operation or NPDES permit by amendment or upon reissuance are only effective until the expiration date of that permit.

f. Requests to amend, revoke and reissue, or terminate

(1) *Individual permit requests.*

1. If the director tentatively decides to amend or revoke and reissue an individual permit, a draft permit shall be prepared according to **subrule 64.4(1)**. When an individual permit is amended under this subrule, only those conditions to be amended shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the permit. If an amendment falls under the definition of "minor

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amendment”, the individual permit may be amended without a draft permit or public notice.

2. If the director decides to terminate an individual permit, a termination decision shall be prepared and transmitted to the permittee. The permittee will have 60 days to appeal the termination.

(2) *General permit requests.* If the director tentatively decides to revoke and reissue or terminate a general permit, a draft reissuance or termination will proceed in accordance with Iowa Code sections 455B.103A and 455B.173.

(3) When an individual or general permit is revoked and reissued under this subrule, the entire permit is reopened just as if the permit had expired and was being reissued.

(4) During any amendment, revocation and reissuance, or termination proceeding, the permittee or permittees shall comply with all conditions of the existing permit until a new final permit is reissued or the existing permit is terminated.

(5) If the director decides the request is not justified, the director shall deny the request and send the requester a brief written response giving a reason for the decision. Denials of requests for permit amendment, revocation and reissuance, or termination are not subject to public notice, comment, hearings, or appeals.

64.2(7) Prohibitions on permit issuance. 40 CFR § 122.4 is adopted by reference.

64.2(8) Public access to NPDES information. Department records connected with NPDES permits are available for public inspection and copying to the extent provided in 567—Chapter 2.

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 8520B, IAB 2/10/10, effective 3/17/10; ARC 9365B, IAB 2/9/11, effective 3/30/11; ARC 0529C, IAB 12/12/12, effective 1/16/13; ARC 2482C, IAB 4/13/16, effective 5/18/16; ARC 2572C, IAB 6/8/16, effective 5/18/16; ARC 3786C, IAB 5/9/18, effective 7/1/18; ARC 6191C, IAB 2/9/22, effective 3/16/22]

567—64.3(455B) Issuance of NPDES permits.

64.3(1) Individual permit. An individual NPDES permit is required when there is a discharge of a pollutant from any point source into navigable waters. An NPDES permit is not required for the discharges listed in 40 CFR § 122.3.

64.3(2) General permit.

a. The director may issue general permits which are consistent with the requirements specified in this chapter to regulate one or more categories or subcategories of discharges, if the sources within each category or subcategory meet the criteria in 40 CFR § 122.28(a)(2).

b. Each general permit issued by the department must be adopted as an administrative rule in accordance with Iowa Code chapter 17A, the Administrative Procedure Act. Each proposed permit will:

- (1) Be accompanied by a rationale setting forth the principal facts and methodologies considered during permit development,
- (2) Correspond to existing geographic or political boundaries, and
- (3) Be identified in rule 567—64.12(455B).

c. If an NPDES permit is required for an activity covered by a general permit, the applicant may seek either general permit coverage or an individual permit, as provided in this chapter.

64.3(3) Effect of a permit. 40 CFR § 122.5 is adopted by reference.

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 8520B, IAB 2/10/10, effective 3/17/10; ARC 9365B, IAB 2/9/11, effective 3/30/11; ARC 2482C, IAB 4/13/16, effective 5/18/16; ARC 3786C, IAB 5/9/18, effective 7/1/18; ARC 6191C, IAB 2/9/22, effective 3/16/22]

567—64.4(455B) Notice and public participation in the individual permit process.

64.4(1) Formulation of tentative determination. The department shall make a tentative determination to issue or deny an operation or NPDES permit for the discharge described in a permit application in advance of the public notice as described in subrule 64.4(2). If the tentative determination is to:

a. Issue an NPDES permit, the department shall prepare a permit rationale pursuant to subrule 64.4(3) and a draft permit. The draft permit shall include:

- (1) Effluent limitations identified pursuant to rule 567—64.6(455B) for those pollutants proposed to be limited;
- (2) If necessary, a proposed compliance schedule, pursuant to rule 567—64.6(455B), which includes interim dates and requirements for meeting the effluent limitations and other permit requirements; and
- (3) Any other special conditions (other than those required in subrule 64.6(7)) which will have a significant impact upon the discharge described in the permit application.

b. Deny an NPDES permit, the department shall prepare a notice of intent to deny the permit application and place it on public notice as described in subrule 64.4(2).

c. Issue an operation permit (non-NPDES permit), the department shall prepare a final permit and transmit

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it to the applicant. The applicant will have 60 days to appeal the final operation permit.

d. Deny an operation permit (non-NPDES permit), no public notice is required. The department shall send written notice of the denial to the applicant. The applicant will have 60 days to appeal the denial.

64.4(2) Public notice for individual NPDES permits.

a. Prior to the issuance of an NPDES permit, a major NPDES permit amendment, or the denial of a permit application for an NPDES permit, public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the tentative determination to issue or deny an NPDES permit for the proposed discharge.

(1) The public notice shall be transmitted by the department to the persons noted in **40 CFR § 124.10(c)(1)**.

(2) The public notice shall be transmitted by the department to any person upon request. Any person or group may request to receive copies of any public notices concerning the tentative determinations with respect to the permit applications within the state or within a certain geographical area.

(3) The department shall periodically notify the public of the opportunity to receive notices. The director may update the notice distribution list from time to time by requesting written indication of continued interest from those listed. The director may delete from the list the name of any person or group who fails to respond to such a request.

b. The director may publish all notices of activities described in **paragraph "a" of this subrule** to the department's website. If this option is selected for a draft permit, the director must post the draft permit and permit rationale on the website for the duration of the public comment period.

c. The department shall provide a period of not less than 30 days following the public notice date during which time interested persons may submit their written views on the tentative determinations with respect to the permit application and request a public hearing pursuant to **subrule 64.4(4)**. Written comments may be submitted by paper or electronic means. All pertinent comments submitted during the 30-day comment period shall be retained by the department and considered by the director in the formulation of the final determinations with respect to the permit application. The comment period may be extended at the department's discretion. Pertinent and significant comments received during either the original comment period or an extended comment period shall be responded to in a responsiveness summary pursuant to **subrule 64.4(5)**.

d. A public notice of a draft NPDES permit, a major permit amendment, or the denial of a permit application for an NPDES permit shall contain at least the following:

(1) The name, email address, and telephone number of the permit writer.

(2) The name and address of the applicant.

(3) A brief description of the applicants' activities or operations which result in the discharge described in the permit application.

(4) The name of the waterway to which each discharge of the applicant is made.

(5) A statement of the department's tentative determination to issue, amend, or deny an NPDES permit for the discharge or discharges described in the permit application.

(6) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by **paragraph "c" of this subrule**, procedures for requesting a public hearing and any other means by which interested persons may influence or comment upon those determinations.

(7) The address, telephone number, email address, and website of places at which interested persons may obtain further information and request copies of, or inspect and copy the tentative determination, permit rationale, and any associated documents.

e. No public notice is required for a minor permit amendment.

f. No public notice is required when a request for a permit amendment or permit termination is denied. The department shall send written notice of the denial to the requester and the permittee only. No public notice is required if an applicant withdraws a permit application.

64.4(3) Permit rationales and notices of intent to deny.

a. When the department has made a determination to issue or deny an NPDES or operation permit as described in **subrule 64.4(1)**, it shall prepare and send the following information, specific to each determination.

(1) *NPDES permit issuance.* For a determination to issue an NPDES permit, the department shall prepare and, upon request, shall send to any person a permit rationale with respect to the application described in the public notice. Permit rationales shall include at least the following information:

1. For each discharge described in the permit application, a detailed description of the discharge location and a quantitative description of the discharge

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2. A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards applicable to the receiving waters, and of the effluent standards and limitations applicable to the proposed discharge.

3. An explanation of the principal facts and the significant factual, legal, methodological, and policy questions considered in the preparation of the draft permit.

4. Any calculations or other necessary explanation of the derivation of effluent limitations.

(2) *NPDES permit application denial.* For a determination to deny an application for an NPDES permit, the department shall prepare and, upon request, shall send a notice of intent to deny with respect to the application described in the public notice. A notice of intent to deny shall include at least the following information:

1. The location of the discharge; and

2. A description of the reasons supporting the tentative decision to deny the permit application.

(3) *Operation permit issuance.* For a determination to issue an operation permit, the department shall prepare and issue a permit. The reasons supporting the decision to issue an operation permit can be sent to the operation permit applicant upon request.

(4) *Operation permit application denial.* For a determination to deny an application for an operation permit, the department shall prepare and send written notice of the denial to the applicant only. The written denial shall include a description of the reasons supporting the decision to deny the permit application.

b. Upon request, the department shall add the name of any person or group to a distribution list to receive copies of permit rationales and notices of intent to deny and shall make copies of all permit rationales and notices of intent to deny available .

64.4(4) Public hearings on proposed NPDES permits. The applicant, any affected state, the regional administrator, or any interested agency, person or group of persons may request a public hearing with respect to a tentative determination to issue or deny an NPDES permit .

a. Public hearing requests shall:

(1) Clearly state issues and topics to be addressed at the hearing;

(2) Be filed with the director within the 30-day period prescribed in **paragraph 64.4(2) "c"**; and

(3) Indicate the interest of the party filing the request and the reasons why a hearing is warranted.

b. The director shall hold an informal and noncontested case hearing if there is a significant public interest in holding a hearing. Frivolous or insubstantial requests for hearing may be denied by the director. Instances of doubt should be resolved in favor of holding a hearing.

c. Any hearing held pursuant to this subrule shall be held in the geographical area of the proposed discharge when possible, or other appropriate area at the director's discretion. Web-based hearings may also be held at the director's discretion. In addition, any hearing held pursuant to this subrule may, as appropriate, consider related groups of permit applications.

d. Public notice of any hearing held pursuant to this subrule shall be circulated at least as widely as was the notice of the tentative determination with respect to the permit application. Notice pursuant to this paragraph shall be made at least 30 days in advance of the hearing. Notice shall be transmitted to:

(1) All persons and government agencies which received a copy of the notice for the permit application; and

(2) Any person or group upon request.

e. The contents of public notice of any hearing held pursuant to this subrule shall include at least the following:

(1) The name, email address, and telephone number of the permit writer;

(2) The name and address of each applicant whose application will be considered at the hearing;

(3) The name of the waterbody to which each discharge is made;

(4) A brief reference to the public notice issued for each NPDES application, including the date of notice;

(5) Information regarding the time and location for the hearing;

(6) The purpose of the hearing;

(7) A concise statement of the issues raised by the person or persons requesting the hearing;

(8) The address, telephone number, email address, and website where interested persons may obtain further information and request copies of, or inspect and copy the draft NPDES permit, permit rationale, and any associated documents;

(9) A brief description of the nature of the hearing, including the rules and procedures to be followed; and

(10) The final date for submission of comments regarding the tentative determination.

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64.4(5) Response to comments. At the time a final NPDES permit is issued, the director shall issue a response to significant and pertinent comments in the form of a responsiveness summary. A copy of the responsiveness summary shall be sent to the permit applicant and made available on the department's website. The responsiveness summary shall:

- a. Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the changes; and
- b. Briefly describe and respond to all significant and pertinent comments on the draft permit raised during the public comment period provided for in the public notice or during any hearing. Comments on a draft permit may be submitted by paper or electronic means or orally at a public hearing.

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 0529C, IAB 12/12/12, effective 1/16/13; ARC 2482C, IAB 4/13/16, effective 5/18/16; ARC 6191C, IAB 2/9/22, effective 3/16/22]

567—64.5(455B) Completing a Notice of Intent (NOI) for coverage under a general permit.

64.5(1) Contents of a complete NOI. An applicant proposing to conduct activities covered by a general permit shall file a complete NOI by submitting to the department materials required in this subrule, as applicable. An NOI is not required for discharges authorized under General Permit No. 6 or No. 7, for certain discharges under General Permit No. 8, or for certain discharges under General Permit No. 9.

a. *NOI Form.* Electronic NOI forms provided by the department must be completed in full, and may be obtained on the department's website. Paper NOI forms, when provided, must be completed in full.

b. *General permit fee.* The applicable general permit fee according to the schedule in **rule 567—64.13(455B)** is payable to the Iowa Department of Natural Resources.

c. *Public notification for General Permits No. 1, No. 2, and No. 3.* Applicants for General Permits No. 1, No. 2 and No. 3 must publish a public notice in accordance with **Iowa Code section 455B.103A**. The newspaper notice shall, at the minimum, contain the following information:

- (1) A brief description of the applicants' activities or operations which result in the discharge described in the NOI;
- (2) The name of the waterway to which each discharge of the applicant is made and a short description of the location of each discharge of the applicant on the waterway; and
- (3) The address, telephone number, email address, and website of places at which interested persons may obtain further information or inspect and copy the NOI.

64.5(2) Authorization to discharge under a general permit.

a. Upon the submittal of an NOI in accordance with **subrule 64.5(1)** and **paragraph 64.2(2) "b,"** an applicant is authorized to discharge after the department has determined that the contents of the NOI satisfy the requirements of this chapter and of a general permit. The department will notify the applicant of coverage under a general permit. If any of the items required for filing an NOI specified in **subrule 64.5(1)** are missing, the department will consider the NOI incomplete and will notify the applicant of the incomplete items.

b. If the discharge described in the NOI does not meet the requirements of a general permit, an NOI may be denied. The department will notify applicants of denial within 30 days.

c. Authorization to discharge is automatic only for the general permits that do not require an NOI under **paragraph 64.2(2) "b,"** provided the discharge is a covered activity and the permittee complies with all applicable permit requirements.

64.5(3) General permit suspension or revocation. In addition to the causes for suspension or revocation listed in **subrule 64.2(6)**, the director may suspend or revoke coverage under a general permit and require the applicant to apply for an individual NPDES permit in accordance with **paragraph 64.2(2) "a"**. The department will notify the affected discharger and establish a deadline, not longer than one year, for submitting an individual permit application. Coverage may be suspended or revoked for the following reasons:

- a. The discharge would not comply with Iowa's water quality standards pursuant to **567—Chapter 61**,
- b. The department finds that the activities associated with an NOI do not meet the conditions of the applicable general permit, or
- c. The department finds that any discharge covered under a general permit is not consistent with the conditions specified in the applicable general permit.

64.5(4) Eligibility for individual NPDES permit holders. A person holding an individual NPDES permit for an activity covered by a general permit may apply for coverage under a general permit by filing an NOI according to the procedures described in **paragraph 64.2(2) "b"** and this rule. In addition to these requirements, the permittee must submit a written request, with the NOI, to either terminate the individual NPDES permit or to

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amend the individual NPDES permit to remove the general permit-covered activity.

a. Upon receipt of a complete NOI and request for individual NPDES permit termination or amendment, the applicant shall be authorized to discharge under the general permit in accordance with **subrule 64.5(2)**. The applicant will receive notification from the department of coverage under the general permit and of the termination or amendment of the individual permit.

b. Authorization to discharge under a general permit that does not require an NOI will be automatic in accordance with **subrule 64.5(2)** and shall commence upon completion of individual NPDES permit termination or amendment.

c. Individual NPDES permit amendments under this subrule shall follow the applicable public notice procedures in **rule 567—64.4(455B)**.

64.5(5) Filing a Notice of Discontinuation (NOD). A notice to discontinue discharge associated with an activity covered by a general permit shall be made electronically or in writing to the department in accordance with the conditions established in each general permit.

[ARC 8520B, IAB 2/10/10, effective 3/17/10; ARC 9365B, IAB 2/9/11, effective 3/30/11; ARC 1337C, IAB 2/19/14, effective 3/26/14; ARC 2482C, IAB 4/13/16, effective 5/18/16; ARC 3786C, IAB 5/9/18, effective 7/1/18; ARC 6191C, IAB 2/9/22, effective 3/16/22]

567—64.6(455B) Terms and conditions of NPDES permits.

64.6(1) Prohibited discharges. No NPDES permit may authorize any of the discharges prohibited by **rule 567—62.1(455B)**.

64.6(2) Application of effluent, pretreatment, and water quality standards and other requirements. Each NPDES permit shall include any of the following that is applicable:

a. An effluent limitation guideline; a standard of performance for a new source; or an effluent standard, effluent prohibition, or pretreatment standard promulgated by the administrator under **Sections 301, 304, 306, or 307 of the Act** and adopted by reference in **567—Chapter 62**.

b. A water quality based effluent limitation established by the administrator pursuant to **Section 302 of the Act**.

c. Prior to promulgation of applicable effluent and pretreatment standards under **Sections 301, 302, 306, and 307 of the Act**, such conditions as the director determines are necessary to carry out the provisions of the Act.

d. Any other limitation, including those necessary to:

(1) Meet or implement any applicable water quality standards, treatment or pretreatment standards, or compliance schedules established pursuant to any Iowa law or regulation;

(2) Meet any other federal law or regulation;

(3) Implement total maximum daily loads established pursuant to **Section 303(d) of the Act**; or

(4) Comply with the antidegradation policy requirements of **567—subrule 61.2(2)** implemented according to procedures hereby incorporated by reference and known as the Iowa Antidegradation Implementation Procedure, effective August 12, 2016, available on the department's website.

e. Limitations pursuant to **40 CFR § 122.44(d)(1)(i), (ii), and (iii)**.

64.6(3) Effluent limitations in NPDES permits.

a. In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements, pursuant to **subrule 64.6(2)**, the director shall, unless impracticable, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director may, in addition to the specification of daily quantitative limitations by weight, specify other limitations for the level of pollutants authorized in the discharge.

b. The manner in which effluent limitations are expressed will depend upon the nature of the discharge.

(1) Continuous discharges shall be limited by daily loading figures and, where appropriate, may be limited as to concentration or discharge rate (e.g., for toxic or highly variable continuous discharges).

(2) Non-continuous discharges should be more particularly described and limited in accordance with **40 CFR § 122.45(e)**.

64.6(4) Compliance schedules in NPDES permits. The permit may specify a compliance schedule in accordance with **40 CFR § 122.47**. Compliance shall be achieved as soon as possible, consistent with the guidelines and requirements of the **Act** and with the provisions of **Iowa Code subsection 455B.172(2)(b) and (3)(b)**. If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit, such noncompliance shall constitute a violation of the permit for which the director may, pursuant to this chapter and **567—Chapter 7** modify, suspend or terminate the permit or take direct enforcement action. Compliance

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schedules shall not relieve the permittee of the duty to obtain a construction permit pursuant to this chapter.

64.6(5) Compliance schedules in NPDES permits for disadvantaged communities. If compliance with applicable federal or state regulations or an order of the department will result in substantial and widespread economic and social impact (SWESI) to ratepayers and an affected community, the director may establish in an NPDES permit a compliance schedule that will result in an improvement of water quality and reasonable progress toward complying with the applicable requirements but does not result in SWESI.

a. Disadvantaged community status. The director shall find that a regulated entity and the affected community are a disadvantaged community according to **Iowa Code subsection 455B.199B(2)**.

b. Disadvantaged community analysis (DCA). A regulated entity or affected community must submit a DCA to the director to be considered for disadvantaged status.

(1) When new requirements in a proposed or reissued NPDES permit may result in SWESI, a DCA may be submitted by:

1. A POTW or semipublic facility;
2. A wastewater disposal system for the treatment or disposal of domestic sewage which is not a semipublic or private sewage disposal system and which is not owned by a city or sanitary sewer district; or
3. Any other owner of a wastewater disposal system that is not a private sewage disposal system and does not discharge industrial wastes.

(2) A DCA may be submitted prior to the issuance of an initial NPDES permit if the facility does not discharge industrial wastes and is not a new source or new discharger.

c. DCA contents.

(1) A DCA must contain all of the following:

1. Proposed TAPC as defined in **paragraph 64.6(5) "d"**.
2. The number of households or ratepayers in the affected community.
3. A description of the bond rating of the affected community over the last year, if available.
4. The user rates, as follows:
 - For a municipality or other community, the current sewer rate ordinances, including the sewer rates of any industrial users;
 - For a water treatment facility, the water rate schedules or tables; or
 - For any other entity, the monthly ratepayer charge for wastewater treatment.
5. An explanation of why the regulated entity or affected community believes that compliance with the proposed requirements will result in SWESI.

(2) If a DCA is submitted by or for an entity other than a municipality, community, or water treatment facility, the DCA must also contain either:

1. For entities with more than ten households or ratepayers, the MHI or ratepayer income, as determined by an income survey conducted by the regulated entity; or
2. For entities with ten or fewer households or ratepayers, an estimate of MHI or ratepayer income.

d. Definition of total annual project costs (TAPC). "Total annual project costs" means the current costs of wastewater treatment in the community (if any) plus the future costs of proposed wastewater system improvements that will meet or exceed all applicable federal or state regulations or requirements of an order of the department. The TAPC shall include any current and proposed facility operation and maintenance (O&M) costs and any existing and proposed system debt, as expressed in current and proposed sewer rates. The costs shall be amortized for a 30-year loan period at an interest rate equal to the current state revolving fund interest rate. Awarded grant funding must be subtracted from the TAPC.

The TACP formula is: $TAPC = [(Estimated\ costs\ to\ design\ and\ build\ proposed\ project - Awarded\ grant\ funding)\ amortized\ over\ 30\ years] + Current\ annual\ system\ budget,\ including\ O\&M\ and\ existing\ debt\ service + Future\ annual\ O\&M\ costs.$

e. Disadvantaged community matrix (DCM). Upon receipt of a complete DCA, the director shall use the Disadvantaged Community Matrix (DCM) to evaluate the disadvantaged status of an entity or community. A regulated entity or affected community shall be considered a disadvantaged community if the point total derived in the DCM is equal to or greater than 12. The following data sources shall be used to derive the point total in the DCM:

(1) The TAPC, the number of households or ratepayers in a community, and the bond rating of the community, as stated in the DCA;

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(2) The MHI of either:

1. The community, as found in the most recent **American Community Survey** or **United States Census** or as stated in an income survey conducted by the regulated entity or community; or
2. The ratepayer group, as stated in an income survey conducted by the regulated entity; and

(3) The unemployment rate of the local county and of the state as found in the most recent **Iowa Workforce Information Network** unemployment data.

f. Ratio and disadvantaged determination. The ratio of the TAPC per household or per ratepayer to MHI shall be calculated in the DCM as follows: the TAPC shall be divided by the number of households or ratepayers to obtain the costs per household or ratepayer, and the costs per household or ratepayer shall be divided by the MHI to obtain the ratio. If the ratio of compliance costs to MHI is:

- (1) Less than one percent - the entity or community is not considered disadvantaged.
- (2) Greater than or equal to two percent - the entity or community is considered a disadvantaged community.
- (3) Greater than or equal to one percent and less than two percent - the director shall use the point total in the DCM to determine if the entity or community is disadvantaged.

g. Disadvantaged community compliance schedule - first part. A compliance schedule established in an NPDES permit for a disadvantaged community as a result of SWESI may contain one or two parts. The first part of a disadvantaged community compliance schedule shall encompass one five-year NPDES permit cycle and require the permittee to submit an alternatives report, an alternatives implementation compliance plan (AICP), and annual progress reports.

(1) *Alternatives report.* An alternatives report shall be submitted no later than two years after permit issuance, and shall:

1. Detail the alternative pollution control measures that will be investigated and contain an examination of all other appropriate measures that may achieve compliance with applicable federal or state regulations or an order of the department without creating SWESI;

2. Describe which measures will be evaluated for feasibility and affordability during the next portion of the compliance schedule; and

3. Include a plan for pursuing funding options, including grants and low-interest loans.

(2) *Alternatives implementation compliance plan (AICP).* An AICP shall be submitted no later than 4½ years after permit issuance, and shall include:

1. The results of the investigation detailed in the alternatives report,
2. A description of any feasible and affordable alternative(s) that will be implemented,
3. A schedule of the time necessary to implement the alternative(s), and
4. An updated DCA.

h. Disadvantaged community compliance schedule - second part. If the entity or community continues to qualify as disadvantaged according to the DCM evaluation of the DCA submitted with the AICP, the entity or community may receive a second compliance schedule as specified in this subrule.

(1) *AICP implementation schedule.* If the AICP proposes an implementation schedule, the proposed schedule shall be included in the community's NPDES permit.

(2) *Future compliance plan (FCP).* The submittal of an FCP will be necessary only if the AICP concludes that the disadvantaged community cannot feasibly implement any alternatives and if the community is still disadvantaged according to the DCM evaluation of in the DCA submitted with the AICP. An FCP shall be submitted no later than three years after permit issuance. A compliance schedule requiring an FCP shall also require annual progress reports, including an updated DCA. If a DCM evaluation determines that an entity or community is no longer disadvantaged based on the most recent DCA, the NPDES permit may be amended to change the compliance schedule. An FCP shall:

1. Detail how the disadvantaged community will meet the applicable federal or state regulations or an order of the department and the period necessary to do so, and

2. Review the types of technology capable of treating the pollutant of concern and the costs of installing and operating each technology. All technically feasible alternatives shall be explored.

(3) *Schedule extension.* The second part of a disadvantaged community compliance schedule may be extended at the director's discretion.

i. Compliance schedules issued in accordance with this subrule shall comply with **subrule 64.6(4)**.

64.6(6) Disadvantaged unsewered communities. If compliance with applicable federal or state regulations or an order of the department will result in substantial and widespread economic and social impact (SWESI) to

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the ratepayers of an unsewered community, the director may negotiate a compliance agreement that will result in an improvement of water quality and reasonable progress toward complying with the applicable regulations but does not result in SWESI.

a. Disadvantaged unsewered community status. The director shall find that an unsewered community is a disadvantaged unsewered community according to **Iowa Code subsection 455B.199B(3)**.

b. Disadvantaged unsewered community analysis (DUCA).

(1) An unsewered community must submit a DUCA to the director to be considered for disadvantaged unsewered community status. Only unsewered communities may submit a DUCA under this subrule. For the purposes of this subrule, an unsewered community is defined as a grouping of ten or more residential houses with a density of one house or more per acre and with either no wastewater treatment or inadequate wastewater treatment. An entity defined in **567—subrule 60.2(2)** as a private sewage disposal system may not submit a DUCA or qualify for a disadvantaged unsewered community compliance agreement under this subrule.

(2) An unsewered community may submit a DUCA to the director prior to the issuance of or amendment to an administrative order with requirements that could result in SWESI and that are based on applicable federal or state regulations or an order of the department.

c. DUCA contents. A DUCA must contain all of the following:

- (1) Proposed TAPC as defined in **paragraph 64.6(6)“d”**;
- (2) The number of households in the unsewered community and source of household information;
- (3) Total amount of any awarded grant funding;
- (4) MHI or ratepayer income information. If no MHI information is available for the unsewered community, the community should conduct a rate survey to determine the MHI; and
- (5) An explanation of why the unsewered community believes that compliance with the proposed requirements will result in SWESI.

d. Definition of total annual project costs (TAPC). “Total annual project costs” means the future costs of proposed wastewater system installation or improvements that will meet or exceed all applicable federal or state regulations or requirements of an order of the department. The TAPC shall include the proposed facility operation and maintenance (O&M) costs and the proposed debt of the system as expressed in the proposed sewer rates. The costs shall be amortized over a 30-year loan period at an interest rate equal to the current state revolving fund interest rate. Awarded grant funding must be subtracted from the TAPC.

The TAPC formula for an unsewered community is: $TAPC = [(Estimated\ costs\ to\ design\ and\ build\ proposed\ project - Awarded\ grant\ funding)\ amortized\ over\ 30\ years] + Future\ annual\ O\&M\ costs.$

e. Disadvantaged unsewered community matrix (DUCM). Upon receipt of a complete DUCA, the director shall use the Disadvantaged Unsewered Community Matrix (DUCM) to evaluate the disadvantaged status of an unsewered community. An unsewered community shall be considered a disadvantaged unsewered community if the point total derived from the DUCM is equal to or greater than 10. The following data sources shall be used to derive the point total in the DUCM:

- (1) The TAPC and number of households in the unsewered community, as stated in the DUCA;
- (2) The MHI of the unsewered community as found in the most recent **American Community Survey or United States Census** or as stated in an income survey conducted by the unsewered community; and
- (3) The unemployment rate of the local county and of the state as found in the most recent **Iowa Workforce Information Network** unemployment data.

f. Ratio and disadvantaged determination. The director shall not require installation of a wastewater treatment system by an unsewered community if the director determines that such installation would create SWESI, in accordance with **Iowa Code section 455B.199B**.

(1) The ratio of TAPC per household to MHI shall be calculated in the DUCM as follows: the TAPC shall be divided by the number of households to obtain the costs per household, and the costs per household shall be divided by the MHI to obtain the ratio.

(2) If the ratio of compliance costs to MHI is:

1. Less than one percent - the unsewered community is not considered disadvantaged.
2. Greater than or equal to two percent - the unsewered community is considered a disadvantaged unsewered community.
3. Greater than or equal to one percent and less than two percent the director shall use the point total in the DUCM to determine if the unsewered community is disadvantaged.

g. Compliance agreement for a disadvantaged unsewered community. A compliance agreement negotiated

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with a disadvantaged unsewered community as a result of SWESI shall require the unsewered community to submit an alternatives report and an alternatives implementation compliance plan (AICP).

(1) *Alternatives report.* An alternatives report shall be submitted no later than two years after an unsewered community disadvantaged determination, and shall:

1. Detail the alternative pollution control measures that will be investigated and contain an examination of all other appropriate measures that may achieve compliance with the water quality standards without creating SWESI;

2. Describe which measures will be evaluated for feasibility and affordability after the report submittal; and

3. Include a plan for pursuing funding options, including grants and low-interest loans.

(2) *Alternatives implementation compliance plan (AICP).* An AICP shall be submitted no later than 4½ years after an unsewered community disadvantaged determination. An AICP shall include:

1. The results of the investigation detailed in the alternatives report,

2. A description of any feasible and affordable alternative(s) that will be implemented,

3. A schedule of the time necessary to implement the alternative(s), and

4. An updated DUCA.

(3) *AICP implementation schedule.* If the AICP proposes an implementation schedule of one or more feasible alternatives, the proposed schedule shall be included in an administrative order between the department and the unsewered community. If the feasible alternative that will be implemented requires a construction, operation, or NPDES permit, the unsewered community shall comply with the rules regarding those permits in this chapter.

(4) *Future compliance plan (FCP).* The submittal of an FCP will be necessary only if the AICP concludes that the unsewered community cannot feasibly implement any alternatives and if the community is still disadvantaged according to the DUCM evaluation of the DUCA submitted with the AICP. An FCP shall be submitted no later than seven years after an unsewered community disadvantaged determination. An administrative order requiring an FCP shall also require the submittal of biennial progress reports containing an updated DUCA. If the DUCM evaluation determines that an unsewered community is no longer disadvantaged based on the most recent DUCA, the order may be amended at the director's discretion. An FCP shall:

1. Detail how the unsewered community will meet the water quality standards and the period necessary to do so, and

2. Review the types of technology capable of treating the pollutant of concern and the costs of installing and operating each type of technology. All technically feasible alternatives shall be explored.

64.6(7) Other terms and conditions of NPDES permits. Each issued NPDES permit shall provide for and ensure all of the following:

a. That all discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the permit.

b. That facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants must be reported by submission of a new permit application or, if such discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of such new or increased discharges of pollutants.

c. That the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit.

d. That if the terms and conditions of a general permit are no longer applicable to a discharge, the applicant shall apply for an individual NPDES permit.

e. That the permit may be amended, revoked and reissued, or terminated in whole or in part for the causes provided in **paragraph 64.2(6) "c."**

f. That the permittee allows for facility inspection and entry. **40 CFR § 122.41(i)** is adopted by reference.

g. That, if the permit is for a discharge from a POTW, the permittee shall provide notice to the director:

(1) 180 days in advance of any new introduction of pollutants into the POTW from a new source if such source were discharging pollutants;

(2) 60 days in advance of any substantial change in the volume or character of pollutants being introduced into the POTW by a source introducing pollutants into the POTW at the time of permit issuance, and

(3) Pursuant to **paragraph 64.2(3) "c"**.

Such notice shall include information on the quality and quantity of effluent to be introduced into the POTW and any anticipated impact of such change on the quantity or quality of effluent to be discharged from the POTW.

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h. That, if the permit is for a discharge from a POTW, the permittee shall require any industrial user to comply with the requirements of Sections 204(b), 307, and 308 of the Act.

i. That the facility is properly operated and maintained. 40 CFR § 122.41(e) is adopted by reference.

j. That the permit will be modified upon the establishment of a toxic effluent standard or prohibition. 40 CFR § 122.44(b)(1) is adopted by reference.

k. That the permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment.

l. That the need to halt or reduce the permitted activity is not a defense in an enforcement action. 40 CFR § 122.41(c) is adopted by reference.

64.6(8) POTW compliance - plan of action required. The owner of a POTW must prepare and implement a plan of action (POA) to achieve and maintain compliance with final effluent limitations in its NPDES permit, as specified below:

a. The director shall notify a POTW owner of the POA requirement, and of an opportunity to meet with department staff to discuss the plan requirements. The POTW owner shall submit the POA to the appropriate regional DNR Field Office within six months of such notice, unless a longer time is needed and is authorized in writing by the director.

b. A POA must identify the deficiencies and needs of the system, describe the causes of such deficiencies or needs, propose specific measures and a schedule to correct the deficiencies or meet the needs, and discuss the method of financing the proposed improvements. A POA may include the submittal of a disadvantaged community analysis in accordance with subrule 64.6(5), or may provide for a phased construction approach to meet interim and final limitations.

This rule is intended to implement Iowa Code chapter 455B, division III, part 1 (455B.171 to 455B.187).
[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 0529C, IAB 12/12/12, effective 1/16/13; ARC 2482C, IAB 4/13/16, effective 5/18/16; ARC 2695C, IAB 8/31/16, effective 8/12/16; ARC 6191C, IAB 2/9/22, effective 3/16/22]

567—64.7(455B) Reissuance of operation and NPDES permits.

64.7(1) Individual operation and NPDES permit reissuance. Any operation or NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance pursuant to subrule 64.2(2).

64.7(2) Renewal of coverage under a general permit. A permittee authorized to discharge under a general permit is subject to the permit terms until coverage is obtained under an individual permit or the permitted discharge has ceased, and if required, a Notice of Discontinuation is submitted in accordance with the general permit.

a. If a permittee continues the activity beyond the expiration date of a general permit and the permit will be reissued, the conditions of the expired general permit will remain in effect until the effective date of the reissued permit.

b. If a permittee continues the activity beyond the expiration date of a general permit and the permit will not be reissued or renewed, the discharge must be permitted with an individual NPDES permit according to the procedures in paragraph 64.2(3) "a."

64.7(3) Continuation of expiring operation and NPDES permits.

a. The conditions of an expired operation or NPDES permit will continue in force until the effective date of a new permit if:

(1) The permittee has submitted a timely and complete application under subrule 64.2(3); and

(2) The department does not issue a new permit with an effective date on or before the expiration date of the previous permit.

b. Operation and NPDES permits continued under this subrule remain fully effective and enforceable.

c. If a permittee is not in compliance with the conditions of the expiring or continued permit, the department may choose to do any of the following:

(1) Initiate enforcement action on a permit which has been continued or reissued;

(2) Issue a notice of intent to deny a permit under paragraph 64.4(1) "b";

(3) Reissue a permit with appropriate conditions in accordance with this subrule; or

(4) Take other actions authorized by this chapter.

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 9365B, IAB 2/9/11, effective 3/30/11; ARC 2482C, IAB 4/13/16, effective 5/18/16; ARC 6191C, IAB 2/9/22, effective 3/16/22]

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567—64.8(455B) Monitoring, record keeping and reporting by operation permit holders. Operation permit holders are subject to any applicable requirements and provisions specified in the operation permit issued by the department and to the applicable requirements and provisions specified in **567—Chapter 63**.

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 2482C, IAB 4/13/16, effective 5/18/16]

567—64.9(455B) Silvicultural activities. The following is adopted by reference: **40 CFR Section 122.27**.

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 6191C, IAB 2/9/22, effective 3/16/22]

567—64.10(455B) Stormwater discharges.

64.10(1) The following are adopted by reference: **40 CFR § 122.26, 122.32, 122.33, 122.34, and 122.35**.

64.10(2) Small municipal separate storm sewer systems.

a. The following municipal separate storm sewer systems (MS4s) that are not qualified as medium or large MS4s, in accordance with **40 CFR § 122.26**, are considered regulated small MS4s:

(1) All MS4s located in urban areas with a population of at least 50,000 people as defined by the latest decennial census, and

(2) All MS4s located outside urbanized areas which serve 10,000 people or more where the average population density is 1,000 people/square mile or more.

b. *NPDES permit applications for small MS4s.* An NPDES permit application shall be submitted for any discharge from a regulated small MS4 designated under this subrule. The first permit application submitted by a small MS4 shall demonstrate how the applicant will develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from the small MS4 to the maximum extent practicable, in order to protect water quality and to comply with the **Clean Water Act**. Renewal applications shall demonstrate how the existing stormwater management program is being implemented and enforced. An application shall:

(1) Discuss the manner in which the permittee will or has addressed:

- public education and outreach on stormwater impacts,
- public involvement and participation,
- illicit discharge detection and elimination,
- construction site stormwater runoff control,
- post construction stormwater management in new development and redevelopment, and
- pollution prevention for municipal operations.

(2) Include measurable goals which the applicant intends to meet and dates by which the goals will be accomplished.

c. *Permit coverage waivers for small MS4s.*

(1) Permit coverage for small MS4s located in urbanized areas which serve 1,000 people or more and fewer than 10,000 people may be waived if the following requirements are met:

1. Where the small MS4 discharges any pollutants of concern that have been identified as a cause of an impairment of any waterbody to which the MS4 discharges; the department has determined that stormwater controls are not needed based on a wasteload allocation that is part of an EPA approved total maximum daily load (TMDL) that addresses the pollutants of concern.

2. Where the small MS4 discharges any pollutants of concern to an unimpaired waterbody or to a waterbody for which a TMDL has not been approved; the department has determined that stormwater controls are not needed based on an analysis equivalent to a TMDL that determines sources and allocations for the pollutants of concern. The pollutants of concern are biochemical oxygen demand, sediment, a parameter that addresses sediment, pathogens, or oil and grease.

3. The department has determined that future discharges from the small MS4 do not have the potential to result in exceedances of water quality standards, including impairments or other significant water quality impacts.

(2) Permit coverage for small MS4s located in urbanized areas which serve fewer than 1,000 people may be waived if the following requirements are met:

1. Where the small MS4 discharges any pollutants of concern that have been identified as a cause of an impairment of any waterbody to which the MS4 discharges; the department has determined that stormwater controls are not needed based on a wasteload allocation that is a part of an EPA approved TMDL that addresses the pollutants of concern.

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2. The system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated under this rule.

(3) Permit coverage for small MS4s located outside of urbanized areas which serve 10,000 people or more where the average population density is 1,000 people/square mile or more may be waived if the MS4 is not discharging pollutants which are the cause of an impairment of any a waterbody to which the MS4 discharges.

(4) Should conditions under which a waiver was granted change, the waiver may be rescinded by the department and permit coverage may be required.

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 6191C, IAB 2/9/22, effective 3/16/22]

567—64.11(455B) Transfer of title and owner or operator address change.

64.11(1) If title to any disposal system or part thereof for which a permit has been issued under this chapter is transferred, the new owner or owners shall be subject to all terms and conditions of the permit. Whenever title to a disposal system or part thereof is changed, the department shall be notified in writing of such change within 30 days of the occurrence. No transfer of the authorization to discharge from the facility represented by the permit shall take place prior to notification of the department of the transfer of title.

64.11(2) Whenever the address of the owner is changed, the department shall be notified in writing within 30 days of the address change.

[ARC 7625B, IAB 3/11/09, effective 4/15/09; ARC 9553B, IAB 6/15/11, effective 7/20/11; ARC 2482C, IAB 4/13/16, effective 5/18/16; ARC 6191C, IAB 2/9/22, effective 3/16/22]

Rules 567—64.2(455B) to 567—64.11(455B) are intended to implement Iowa Code section 455B.173.

567—64.12(455B) General permits issued by the department. The following is a list of general permits adopted by the department through the **Administrative Procedure Act, Iowa Code chapter 17A**, and the term of each permit.

64.12(1) Storm Water Discharge Associated with Industrial Activity, NPDES General Permit No. 1, effective March 1, 2023, to February 29, 2028.

64.12(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2, effective March 1, 2023, to February 29, 2028.

64.12(3) Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants, and Construction Sand and Gravel Facilities, NPDES General Permit No. 3, effective March 1, 2023, to February 29, 2028.

64.12(4) “Discharge from Private Sewage Disposal Systems,” NPDES General Permit No. 4, effective March 1, 2023, to February 29, 2028.

64.12(5) “Discharge from Mining and Processing Facilities,” NPDES General Permit No. 5, effective July 1, 2023, to June 30, 2028.

64.12(6) “Discharge Associated with Well Construction Activities,” NPDES General Permit No. 6, effective July 1, 2023, to June 30, 2028.

64.12(7) “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States from the Application of Pesticides,” NPDES General Permit No. 7, effective July 1, 2023, to June 30, 2028.

64.12(8) “Discharge from Hydrostatic Testing, Tank Ballasting and Water Lines,” NPDES General Permit No. 8, effective July 1, 2023, to June 30, 2028.

64.12(9) “Discharge from Dewatering and Residential Geothermal Systems,” NPDES General Permit No. 9, effective July 1, 2023, to June 30, 2028.

[ARC 7569B, IAB 2/11/09, effective 3/18/09; ARC 8520B, IAB 2/10/10, effective 3/17/10; ARC 9365B, IAB 2/9/11, effective 3/30/11; ARC 9553B, IAB 6/15/11, effective 7/20/11; ARC 0261C, IAB 8/8/12, effective 10/1/12; ARC 1337C, IAB 2/19/14, effective 3/26/14; ARC 1912C, IAB 3/18/15, effective 3/1/15; ARC 2054C, IAB 7/8/15, effective 8/12/15; ARC 2572C, IAB 6/8/16, effective 5/18/16; ARC 2571C, IAB 6/8/16, effective 7/20/16; ARC 3584C, IAB 1/17/18, effective 3/1/18; ARC 3585C, IAB 1/17/18, effective 3/1/18; ARC 3786C, IAB 5/9/18, effective 7/1/18; ARC 4609C, IAB 8/14/19, effective 3/1/20; ARC 5283C, IAB 11/18/20, effective 7/20/21; ARC 5284C, IAB 11/18/20, effective 5/18/21; ARC 6493C, IAB 9/7/22, effective 7/1/23; ARC 6734C, IAB 12/14/22, effective 3/1/23]

567—64.13(455B) Fees.**64.13(1) Fee Types.***a. Application and NOI fees.*

(1) For individual non-storm water NPDES and operation permits, an application fee must be submitted with the application, as specified in this rule.

(2) For authorization under General Permits Nos. 1, 2, 3 and 5, an applicant has the option of paying an annual permit fee or a multiyear permit fee when the NOI is submitted, as specified in this rule.

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(3) For municipal separate storm sewer system (MS4) permits and individual stormwater permits, a one-time, multiyear permit fee must be submitted at the time of application, as specified in this rule.

(4) If a facility needs coverage under more than one NPDES or operation permit, fees for each permit must be submitted appropriately.

b. Annual fees. Certain individual non-storm water facilities covered by NPDES and operation permits are required to submit annual fees on a yearly basis, as specified in this rule.

c. Fees are nontransferable. Failure to submit the appropriate fee at the time of application renders the application incomplete, and the department shall suspend application processing until the fee is received. Failure to submit the appropriate annual fee may result in permit revocation or suspension as noted in **subrule 64.2(8)**.

64.13(2) Fee payment. Fees shall be paid by check, credit card, electronic payment, or money order made payable to the “Iowa Department of Natural Resources.” For facilities needing coverage under more than one permit (e.g., general, individual stormwater, individual non-stormwater), separate payments shall be made according to the fee schedule in this rule.

64.13(3) Fee schedule. The following fees have been adopted:

a. General permit fees. No fees shall be assessed for coverage under general permits not listed in this paragraph. The following fees are applicable to the described general permits:

(1) Storm Water Discharges Associated with Industrial Activity, NPDES General Permit No. 1; Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2; and Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, and Rock Crushing Plants, NPDES General Permit No. 3.

Annual Permit Fee	\$175 (per year)
or	
Five-year Permit Fee	\$700
Four-year Permit Fee	\$525
Three-year Permit Fee	\$350

All fees are to be submitted with the NOI.

(2) Discharge from Mining and Processing Facilities, NPDES General Permit No. 5.

Annual Permit Fee	\$125 (per year)
or	
Five-year Permit Fee	\$500
Four-year Permit Fee	\$400
Three-year Permit Fee	\$300

New facilities seeking General Permit No. 5 coverage shall submit fees with the NOI. Maximum coverage is for five years. Coverage may also be obtained for four years, three years, or one year, as shown in the fee schedule above. Existing facilities shall submit annual fees by August 30 of every year, unless a multiyear fee payment was received in an earlier year. In the event a facility is no longer eligible to be covered under General Permit No. 5, the remainder of the fees previously paid by the facility shall be applied toward its individual permit fees.

b. Individual NPDES and operation permit fees. The following fees are applicable for the described individual permits:

(1) For individual stormwater permits, the following fees are due at the time of application:

1. Where the discharge will not reach an Outstanding Iowa Water identified in the Iowa Antidegradation Implementation Procedure, a five-year permit fee of \$1,250

2. Where the discharge will reach an Outstanding Iowa Water identified in the Iowa Antidegradation Implementation Procedure, a two-year permit fee of \$500.

(2) For permits that authorize the discharge of only stormwater from MS4s and any allowable non-stormwater, a five-year permit fee of \$1,250 must accompany the application.

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(3) For individual non-stormwater NPDES and operation permits, a single application fee of \$85 as established in **Iowa Code section 455B.197** is due at the time of a new application, renewal application, or amendment application.

1. The \$1,250 fee in **subparagraphs (1) and (2)** is not required for individual non-stormwater permits that authorize stormwater discharges along with other wastewater discharges.

2. Before an approved amendment request submitted by a facility holding a non-stormwater NPDES or operation permit can be processed by the department, the \$85 fee must be submitted, except when an amendment is initiated by the director, when the requested amendment will correct an error in the permit, when the amendment is for a disadvantaged community compliance schedule or nutrient reduction strategy, or when there is a transfer of title or change in the address of the owner as noted in **rule 567—64.11(455B)**.

(4) For individual non-stormwater NPDES and operation permits, the following annual fees, as established in **Iowa Code subsection 455B.197(3)** are due by August 30 of each year:

1. Major municipal facility: \$1,275.

2. Minor municipal facility: \$210. For a city with a population of 250 or less, the maximum fee shall be \$210 regardless of how many individual non-storm water NPDES permits the city holds.

3. Semipublic facility: \$340.

4. Major industrial facility: \$3,400.

5. Minor industrial facility: \$300.

6. Facilities that hold an operation permit: \$170.

7. Animal feeding operations covered by a non-storm water NPDES permit: \$340.

(5) For a municipal water treatment facility with an individual non-stormwater NPDES permit, no fees shall be assessed.

(6) For a new facility covered by an individual non-stormwater NPDES or operating permit, a prorated annual fee, calculated by taking the annual fee amount multiplied by the number of months remaining before the next annual fee due date divided by 12, is due 30 days after the new permit is issued.

64.13(4) Fee refunds.

a. Individual and general permit application, permit, and annual fees may be refunded, completely or in part, at the director's discretion. Permittees who wish to receive fee refunds should notify the department electronically or in writing. Fees may be refunded under various circumstances, including, but not limited to:

(1) A duplicate fee was submitted.

(2) A fee was overpaid.

(3) A fee was submitted but is not required.

(4) An application is returned to the applicant by the department without decision.

b. Fees shall not be refunded under any of the following conditions:

(1) If the permit or permit coverage is suspended, revoked, or modified, or if the activity is discontinued or ceased.

(2) If a permit is amended.

(3) If a permit application is withdrawn by the applicant or denied by the department pursuant to **paragraph 64.4(1)“d.”**

Rule 567—64.13(455B) is intended to implement **Iowa Code section 455B.197**.

[Editorial change: IAC Supplement 2/11/09; **ARC 7625B**, IAB 3/11/09, effective 4/15/09; **ARC 8520B**, IAB 2/10/10, effective 3/17/10; **ARC 9365B**, IAB 2/9/11, effective 3/30/11; **ARC 9553B**, IAB 6/15/11, effective 7/20/11; **ARC 2482C**, IAB 4/13/16, effective 5/18/16; **ARC 3786C**, IAB 5/9/18, effective 7/1/18; **ARC 6191C**, IAB 2/9/22, effective 3/16/22]

567—64.14(455B) Nutrient reduction exchange. The department shall maintain a registry of nonpoint source nutrient reduction practices installed by permittees. Practices listed in the registry may be eligible for future regulatory incentives.

[**ARC 6191C**, IAB 2/9/22, effective 3/16/22]

567—64.15(455B) Validity of rules. If any section, paragraph, sentence, clause, phrase or word of these rules, or any part thereof, be declared unconstitutional or invalid for any reason, the remainder of said rules shall not be affected thereby and shall remain in full force and effect.

[**ARC 6191C**, IAB 2/9/22, effective 3/16/22]

567—64.16(455B) Applicability. This chapter shall apply to all waste disposal systems treating or intending to treat sewage, industrial waste, or other waste except waste resulting from livestock or poultry operations. All

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livestock and poultry operations constituting animal feeding operations as defined in 567—Chapter 65 shall be governed by the requirements contained in 567—Chapter 65. However, the provisions of this chapter concerning NPDES permits which relate to notice and public participation, permit terms and conditions , permit reissuance, and monitoring, reporting and record-keeping activities shall apply to animal feeding operations which are required to apply for and obtain an NPDES permit to the extent that such requirements are not inconsistent with 567—Chapter 65.

[ARC 1627C, IAB 9/17/14, effective 10/22/14; ARC 6191C, IAB 2/9/22, effective 3/16/22]

These rules are intended to implement Iowa Code chapter 455B, division III, part 1.

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¹ Effective date of 64.2(9) "c" delayed 70 days by the Administrative Rules Review Committee. The 70-day delay of effective date of 64.2(9) "c" was lifted by the Administrative Rules Review Committee on 7/31/86.