

ENVIRONMENTAL PROTECTION COMMISSION[567]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 55
“Aquifer Storage and Recovery”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.103(2), 455B.105(3), 455B.263(8) and 455B.265(4)

State or federal law(s) implemented by the rulemaking: Iowa Code sections 455B.261, 455B.265 and 455B.269

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 24, 2024
1 to 2 p.m.

Virtual via Zoom – see www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Rulemaking for meeting information

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Chad Fields
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Des Moines, Iowa 50321
Email: chad.fields@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 55 regulates aquifer storage and recovery (ASR) wells. The programs in this chapter are intended to allow for the beneficial use of water resources, protect public health and safety, and protect the public interest in water resources. This chapter does this by defining the affected area within the aquifer, creating a permit program with technical criteria for evaluating ASR projects, and incorporating technical additions for the practice of treated water recovery. Proposed Chapter 55 also includes definitions of legal rights and obligations affecting ASR permit holders. This chapter has been reviewed and edited consistent with Executive Order 10.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Permit applicants or permit holders of aquifer storage and recovery permits will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Permit applicants or permit holders of aquifer storage and recovery permits, water use permit holders, citizens, businesses and industries of Iowa will benefit.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:

Costs to the regulated public are limited. The fee established in 567—Chapter 50 for an ASR permit application is \$700. Costs to comply with the chapter include costs to complete an application, produce an engineering report, conduct regular reporting and keep records associated with an ASR well.

- Qualitative description of impact:

As a result of proposed Chapter 55, an aquifer storage and recovery permitting program promotes the beneficial use of ground water resources; ensures that waters of the state are put to beneficial use, waste or unreasonable use is limited, and unreasonable methods of use are prevented; and conserves and protects water resources in the interest of the citizens of Iowa. This is accomplished through aquifer storage and recovery permitting, reporting requirements associated with aquifer storage and recovery wells, and the implementation of permit conditions as necessary.

3. Costs to the State:

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

Agency costs are limited to staff time required to implement the aquifer storage and recovery permitting program. The costs incurred are offset by the general funds and by fees collected through the water use and allocation programs.

- Anticipated effect on state revenues:

A neutral impact on state revenues is expected, as this chapter was previously in effect. The fees collected through these rules are used for the administration of the water use and allocation programs.

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

Costs of the proposed rulemaking are not new costs and are limited to costs necessary to administer an aquifer storage and recovery permitting program. Application fees are unchanged, and reflect staff time and resources necessary for staff to review and process such applications.

Benefits of proposed Chapter 55 include the establishment of a permitting program for aquifer storage and recovery wells that is actively in use, and the provision of a clear application process and procedures for the Department to review and process such permit applications. Additionally, Chapter 55 allows for the beneficial use of water resources through the establishment of a permitting program for aquifer storage and recovery wells. This chapter protects public health and safety through criteria established for aquifer storage and recovery wells. These rules establish that existing nearby water users shall not be restricted as a result of an aquifer storage and recovery well's construction and operation.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less costly or less intrusive methods to accomplish the benefit. The regulations included in these rules implement state law.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

As proposed, the new Chapter 55 is specific and limited to application requirements and Department procedures for aquifer storage and recovery well permits. Such a permitting program is authorized in Iowa Code section 455B.265. The proposed Chapter 55 introduces efficiencies in the rule language.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This rulemaking will not have a substantial impact on small businesses, as the current rules have been in place for a substantial period of time.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 55 and adopt the following **new** chapter in lieu thereof:

CHAPTER 55
AQUIFER STORAGE AND RECOVERY

567—55.1(455B) Statutory authority and purpose.

55.1(1) The authority for the Department of Natural Resources to permit persons to inject, store, and recover treated water for potable use is given by Iowa Code sections 455B.261, 455B.265 and 455B.269. This permit requirement applies to any aquifer storage and recovery (ASR) system. An entity seeking an ASR permit must review the permit criteria and contact the department if a permit is required.

55.1(2) The ASR rules are intended to describe aquifer storage and recovery, including defining the affected area within the aquifer, creating a permit program with technical criteria for evaluating ASR projects, incorporating the practice of treated water recovery, and defining legal rights and obligations affecting ASR permit holders.

567—55.2(455B) Definitions. The following definitions apply to this chapter:

“*Aquifer storage and recovery*” or “*ASR*” means the injection and storage of treated water in an aquifer through a permitted well during times when treated water is available and withdrawal of the treated water from the same aquifer through the same well during times when treated water is needed.

“*Contiguous*” means directly adjacent along all or part of one side of a legally defined piece of property. Tracts of land involved in the same water supply and separated only by separators such as roads, railroads, or bike trails are deemed contiguous tracts.

“*Displacement zone*” means the three-dimensional area of dispersion into which treated water is injected for storage, subject to later recovery.

“*Limited registration*” means a two-year written authorization for a nonrecurring use of water for the purpose of forecasting and testing an ASR well system, including cyclic test pumping as necessary.

“*Mechanical integrity*” means any structural or material defect in an ASR well, well casing, or appurtenance that will prevent or materially impair the injection or pumping of water within an aquifer or contribute to aquifer contamination.

“*Permit*” means a written department authorization issued to a permittee for the storage of treated water in an existing aquifer or the subsequent withdrawal of treated water from an existing aquifer. A permit specifies the quantity, duration, location, and instantaneous rate of this storage or withdrawal.

“*Permittee*” means a water supply system that obtains a permit authorizing the injection of and possession by storage of treated water in an aquifer, the withdrawal of this water at a later date, and the actual beneficial use of the water.

“*Receiving aquifer*” means the aquifer into which treated water is injected under the terms of an ASR permit.

“*Recovered water*” means water that is recovered from storage within a displacement zone under the terms of an ASR permit.

“*Stored water*” means injected, treated potable water that is stored in a receiving aquifer within the displacement zone under the terms of an ASR permit.

“*Treated water*” means water that has been physically, chemically, or biologically treated to meet national drinking water standards and is fit for human consumption as defined in 567—Chapters 40 through 43.

“*Zone of influence*” means a circular area surrounding a pumping water well where the water table has been measurably lowered due to the action of the pump.

567—55.3(455B) ASR project application processing.

55.3(1) Applications.

a. Initial application. An ASR permit shall be required for the storage of all treated water in an aquifer for later recovery for potable uses. An initial ASR permit application (a request for a new permit) shall be made on a form obtained from the department. An application must be submitted by or on behalf of the water system owner, lessee, or option holder of the area where the water is to be stored and recovered.

- (1) An application must be accompanied by a map portraying:
 1. The points of injection and withdrawal;
 2. The immediate vicinity of the receiving aquifer;
 3. Any production, test, or other observation wells within the aquifer; and
 4. The area of water storage.

(2) An application must include a description of the land where wells are located and water will be injected, withdrawn, and used, oriented as quarter-section, section, township, and range.

(3) One application will be adequate for all uses on contiguous tracts of land.

(4) A PWS construction permit issued pursuant to 567—Chapter 43 is also required for all injection/recovery wells.

b. Limited registration. In response to an initial application, the department will issue a limited registration to initiate an ASR pretesting program pursuant to 55.4(1)“*a.*” The department will only issue an ASR permit after approval and completion of an ASR pretesting program, with appropriate public notification pursuant to 55.3(3) and evaluation of the test results.

c. Modification or renewal. An ASR permit modification or renewal request shall be made in a manner similar to an initial application. A modification or renewal request does not need to reiterate map and location information unless the information has changed. The limited registration requirement for aquifer pretesting does not apply to modified or renewed ASR permit requests unless required by the department.

55.3(2) Application fee. A nonrefundable fee of \$700 in the form of a credit card, check, electronic payment, or money order made payable to “Iowa Department of Natural Resources” must accompany any ASR permit application, modification request, or renewal request.

55.3(3) Published notice—limited registration. Prior to receiving a limited registration, an applicant shall publish a notice of intent to test the injection and water pumpage/recovery equipment. Publication shall be in a manner acceptable to the department and in the newspaper of largest circulation in the county where the ASR project is located. Proof of publication shall be submitted to the department. After the publication, the department will issue a limited registration allowing the applicant to conduct test pumping pursuant to 55.4(1)“*a.*” and the applicant shall notify contiguous landowners by mail of receipt of the limited registration and the intent to test an ASR site.

55.3(4) *Published notice—departmental notice of proposed decision.* Before issuance of a final ASR permit, the department shall publish notice of proposed decision to issue an ASR permit or deny an ASR application. Publication shall be in the newspaper of largest circulation in the county where the ASR project is located.

a. A notice of proposed decision shall summarize the department's findings on whether an application conforms to relevant criteria as outlined in 55.4(1). An engineering or hydrogeological summary report prepared by the department may be attached to the notice.

b. The notice of proposed decision shall be mailed to the applicant, any person who commented, and any other person who requests a copy of a proposed decision. The notice shall be accompanied by a certification of the mailing date.

c. A proposed decision becomes the final department decision unless a timely notice of appeal is filed in accordance with 55.3(6).

55.3(5) *Department decision.* The department's decision on an application shall be an ASR permit or denial letter. Each ASR permit shall include appropriate standard and special conditions consistent with Iowa Code sections 455B.261 through 455B.274 and 455B.281 and 567—Chapters 50 through 55. The decision may incorporate the summary report described in 55.3(4). Each decision shall include the following:

a. Determinations as to whether the project satisfies all relevant criteria not addressed in an attached summary report;

b. An explanation of each special condition; and

c. An explanation of consideration given to all comments submitted pursuant to subrules 55.3(3) and (4), unless comments are addressed in the attached summary report.

55.3(6) *Appeal of department decision.* Any person aggrieved by an initial ASR permit decision may appeal the action. An appeal request must be submitted in writing to the director within 30 days of the date of issuance of the final department decision. The director's decision on an appeal may be further appealed to the commission. The form of appeal and appeal procedures are governed by 567—Chapter 7. The department shall mail a copy of the notice of appeal to each person who commented on the application.

567—55.4(455B) ASR technical evaluation criteria.

55.4(1) *Requirements.* Injections into aquifers for the purpose of treated water storage and subsequent withdrawals from the receiving aquifers intended for potable uses shall be subject to the following requirements:

a. Aquifer pretesting.

(1) A limited registration for aquifer pretesting as described in 55.3(1) "b" shall be for the period of two years and may be renewed for two additional one-year periods, for a total cumulative registration time not to exceed four years, should pretesting completion require more than one year.

(2) A limited registration shall allow aquifer pretesting for determining the feasibility of ASR, including placement of pumping and storage/extraction equipment. The pretesting program shall be designed to provide the information to evaluate the ultimate capacity anticipated for the ASR project and provide assurance that the ASR site shall not restrict other uses of the aquifer. The pretesting program shall include injection rates and schedules, water storage volumes, recovery rates and schedule, and a final testing report.

b. Engineering report. An engineering report evaluating the technical feasibility of the proposed water injection and the probable percentage of recovery of treated water when pumped for recovery shall be submitted to the department.

(1) The engineering report shall include preliminary information from conceptual evaluations and aquifer pretesting, such as:

1. Injection rates and schedules;
2. Water storage volumes;
3. The length of time the injected water will be stored;

4. The projected recovery rate;
5. Water quality data necessary to demonstrate that the water meets national drinking water standards;
6. Water level monitoring data, including the location of observation wells, if any;
7. A plan detailing what will be done with the recovered water if the intended use is not possible; and

8. A final testing protocol.

(2) If the report can demonstrate, by field test results or by conceptual or mathematical hydrogeologic modeling, that the injection, storage, and subsequent recovery will not adversely affect nearby users, an ASR project may be permitted after department review.

(3) A displacement zone containing the stored volume of water will not be allowed if it adversely affects another user's zone of influence. If the department finds, through hydrogeologic modeling or during pretesting, that the proposed displacement zone may impact the zone of influence of another user's existing well, additional testing will be required. The department may require the applicant to construct observation wells between the ASR site and nearby wells and may designate project-specific monitoring and reporting requirements at the observation wells.

(4) A hydrogeologic site investigation that evaluates potential quantitative and qualitative impacts to the aquifer, including changes to localized aquifer geochemistry, shall be part of the engineering report. Preliminary hydrogeologic information shall include:

1. The local geology;
2. A hydrogeologic flow model of the area flow patterns;
3. A description of the aquifer targeted for storage;
4. The estimated flow direction and rate of movement;
5. Locations of both permitted and private wells within the area affected by ASR wells, including best estimates of respective zones of influence;
6. A basis for estimating the displacement zone; and
7. Potable water quantity recovery estimates.

c. Protection of nearby existing water uses. An ASR permit applicant shall demonstrate that an ASR site will not restrict other uses of the aquifer by nearby water use permittees.

(1) An applicant shall conduct an inventory of nearby wells and submit it to the department with an ASR permit application. The department, after considering the rate and amount of the ASR injections and withdrawals and the aquifer characteristics, will determine the inventory's extent and the appropriate radius from the proposed ASR site.

(2) An applicant shall make a good-faith effort to obtain information from public records to identify nearby landowners and occupants and information from drilling contractors identified by a landowner or occupant who responds to the inventory.

(3) An applicant shall immediately notify the department of all objections raised by nearby landowners or other on-site problems.

(4) Well interference conflicts arising from the proposed ASR site or project shall be resolved as outlined in 567—Chapter 54 or as otherwise specified by the department.

567—55.5(455B) ASR permits.

55.5(1) *Water use restriction.* Water recovery from an ASR site will not be permitted to any user other than the ASR permittee.

55.5(2) *MCL exceedance limitation.* Contaminant levels in water injected in accordance with an ASR permit shall not exceed the maximum contaminant levels (MCLs) established by the department in 567—Chapters 40 through 43. Chemicals associated with disinfection of the water may be injected into the aquifer up to the standards established under 567—Chapters 40 through 43 or as otherwise specified by the department.

55.5(3) Reporting and recordkeeping. Permittees shall maintain a monthly record of injection and recovery, including the total number of hours of injection and recovery and the total metered quantity injected and recovered. These records must be submitted to the department annually.

a. Applicants shall keep project records, including water quality monitoring records, for a period of five years. Water quality monitoring shall be performed at the frequency required by 567—Chapters 40 through 43 and as identified in the system’s PWS operation permit.

b. Applicants shall keep records for a period of three years after ASR project termination and recovery well closure(s).

55.5(4) Vacating a permit.

a. The department may vacate an ASR permit if:

(1) An applicant fails to construct injection and water pumpage/recovery and ancillary equipment within three years of permit issuance, or the term of subsequent permit modifications or renewals

(2) An applicant does not use the storage system within three years of permit acquisition.

b. If a permit is vacated, the permittee must submit a site abandonment plan that includes the physical removal of injection and water recovery equipment and the abandonment of all injection/recovery and observation wells, pursuant to 567—Chapter 39.

c. A permittee whose permit is vacated may request a formal review of the action. The permittee must submit a review request in writing to the director within 30 days of notification of the final department decision. The director’s decision in a formal review case may be further appealed to the commission.

55.5(5) Mechanical integrity conditions. Other conditions necessary to ensure adequate protection of water supplies may be imposed in a permit for mechanical integrity checks of the injection and treated water recovery well.

55.5(6) Permit modification or revocation. The department may revoke or modify a permit to prevent or mitigate injury to other water users or otherwise protect aquifer water quality. The department may, based upon valid scientific data, further restrict certain chemicals in the injection source water if the department finds the constituents will interfere with or pose a threat to the maintenance of Iowa’s water resources for present or future beneficial uses.

55.5(7) Permit duration and conditions, permittee property rights, and well restrictions.

a. Term. ASR permits shall be issued for 20 years.

b. Permit conditions. ASR permits will specify the maximum allowable injection rate at each well, the maximum allowable annual quantitative storage volume, and the maximum allowable instantaneous water withdrawal rate at each well.

c. Permittee property.

(1) The department shall not authorize withdrawals of treated water from an ASR site by anyone other than the permittee while the permit or subsequent renewal permits are in effect.

(2) Stored water and recovered water are the property of the permittee.

(3) If a permit is revoked or otherwise surrendered, the ownership of the injected water within the aquifer (the water considered as “property”) reverts to the State of Iowa.

d. Restrictions on wells within displacement zone.

(1) No new private water wells, injection/withdrawal wells, observation wells, or PWS wells shall be permitted by any governmental entity within the ASR displacement zone while an ASR permit is in effect. Existing wells within a permitted displacement zone shall be plugged pursuant to 567—Chapter 39.

(2) ASR permits shall be filed with the appropriate county recorders to provide notice to present and future landowners of all permit conditions or requirements, including the well prohibition condition.

These rules are intended to implement Iowa Code sections 455B.261, 455B.265 and 455B.269.