



# STATE OF IOWA

CHESTER J. CULVER, GOVERNOR  
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DEPARTMENT OF NATURAL RESOURCES  
RICHARD A. LEOPOLD, DIRECTOR

June 18, 2009

TO: County Recorders, abstractors, realtors, and attorneys.

RE: Private sewage disposal system inspections and Groundwater Hazard Statements.

The Iowa Department of Natural Resources continues to receive many questions about the private sewage disposal system inspection law that will take effect on July 1, 2009. This letter is intended to provide information in regard to some of the more frequent questions.

## **Issue #1 – Recording of inspections documents.**

This question has arisen from Iowa Code section 455B.172(11)“i” which states:

- i. An inspection is valid for a period for two years for any ownership transfers during that period. Title abstracts to property with private sewage disposal systems shall include documentation of the requirements in this subsection.

The law does not require the recording of the inspection form but the underlined portion of the law does require the abstract to contain this information. This has led to the presumption that the inspection must be recorded. Furthermore, it would seem that when a binding acknowledgement accompanies the Groundwater Hazard Statement and the inspection is done at a later date then the inspection would need to be recorded at that later date and tied back to the originally-filed document.

Ultimately, this is not an issue to be decided by the Department. We can not require recording where the Code of Iowa does not so require. The County Recorders and the abstractors are going to have to examine the best methods to comply with the abstracting requirement and decide how to proceed. If the County Recorders refuse to record the inspection forms then the abstractors will need to find another method to obtain and include this information. If the parties agree that recording of the inspections is the appropriate method to achieve this objective, permission of the Department is not required for that decision.

## **Issue #2 – Initial applicability of the inspection law.**

The Code of Iowa simply states that the inspections are required for transfers beginning July 1, 2009. The Department recognized the difficulty or uncertainty arising from this requirement. Therefore, by rule, we have determined that the inspections must accompany transfer documents dated July 1, 2009 or later. The determining factor is the date on the deed or contract or lease. This means that deeds dated in June and filed after July 1<sup>st</sup>, or deeds dated earlier and held in escrow, are not covered. We felt this was the simplest method to transition the law into effect.

## **Issue #3 – Forms for inspection documents.**

### **a. The inspection form.**

The Department has developed a required form for the inspection of private sewage disposal systems. The DNR form number is 542-1091. This form is available in a paper format and electronically. These two formats look slightly different but contain the same information. If you are in doubt, check the form number. As long as the form number is right, the Department supports the acceptance of the form.

### **b. The binding acknowledgement.**

The Department has not developed a form which must be used for the binding acknowledgements in regard to inspections to be performed at a later date or buildings that will be demolished. We have produced examples, but no specific form is required. The important thing is to see that the County and some other party have signed it. Recorders do not need to review or approve the content or form of these documents. The County Sanitarian or whoever signs on behalf of the County has already determined that the form is acceptable by signing it. The recorder just needs to check and see that a form is attached.

## **Issue #4 – Exemptions.**

There have been a lot of questions in regard to the exemptions from the private sewage disposal system inspection requirement.

## **Do not confuse the exemptions from the submission of the Groundwater Hazard Statement and the exemptions from the inspection requirement.**

A Groundwater Hazard Statement is required whenever a declaration of value is required and for:

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

b. Any voluntary transfer or receipt of real property by governmental entities if title to that property was voluntarily acquired by the governmental entity. Governmental transactions which are exempted from the filing of a groundwater hazard statement include sheriff's deeds, tax deeds, and any other transaction for which the governmental entity did not voluntarily acquire title. A groundwater hazard statement is not required to accompany a clerk's change of title.

A private sewage disposal system must be inspected for all transfers of ownership except transfers of properties with more than four dwelling units and except:

(1) A transfer made pursuant to a court order, including but not limited to a transfer under chapter 633 or 633A, the execution of a judgment, the foreclosure of a real estate mortgage pursuant to chapter 654, the forfeiture of a real estate contract under chapter 656, a transfer by a trustee in bankruptcy, a transfer by eminent domain, or a transfer resulting from a decree for specific performance.

(2) A transfer to a mortgagee by a mortgagor or successor in interest who is in default, or a transfer by a mortgagee who has acquired real property at a sale conducted pursuant to chapter 654, a transfer back to a mortgagor exercising a right of first refusal pursuant to section 654.16A, a nonjudicial voluntary foreclosure procedure under section 654.18 or chapter 655A, or a deed in lieu of foreclosure under section 654.19.

(3) A transfer by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

(4) A transfer between joint tenants or tenants in common.

(5) A transfer made to a spouse, or to a person in the lineal line of consanguinity of a person making the transfer.

(6) A transfer between spouses resulting from a decree of dissolution of marriage, a decree of legal separation, or a property settlement agreement which is incidental to the decree, including a decree ordered pursuant to chapter 598.

(7) A transfer for which consideration is five hundred dollars or less.

(8) A deed between a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company as defined in section 428A.2, subsection 15, and its stockholders, partners, or members for the purpose of transferring real property in an incorporation or corporate dissolution or in the organization or dissolution of a partnership, limited partnership, limited liability partnership, or limited liability company under the laws of this state, where the deed is given for no actual consideration other than for shares or for debt securities of the family corporation, partnership, limited partnership, limited liability partnership, or limited liability company.

The Department has attempted to answer questions about the applicability of these exemptions to various fact scenarios. Ultimately, the buyers and sellers and their agents must make these determinations on a case by case basis. County Recorders should consult their local County Attorney if necessary to resolve any questions. The exemptions are as stated in the law. The Department's understanding or interpretation of these exemptions does not change the actual language in the statute and are binding only to the extent they conform to that language.

It is apparently possible for a transfer to be exempt from the inspection requirement but still require a declaration of value. If that is the case, then the Groundwater Hazard Statement is still required in those cases where a declaration of value is required.

**Issue #5 – Changes to the Groundwater Hazard Statement and inspection rules.**

The Department acknowledges that changes are needed to address exempt properties, the existence of a newly constructed septic system, or the existence of a prior inspection. There are sure to be other changes required. The Department's intent is to get this process up and running, identify all issues that need to be addressed and then address those issues with rule revisions. It is likely those revisions will be proposed in 2010. It is our belief that attempting to make changes at this time would only cause additional confusion and difficulty with the process of implementing these new requirements.

Sincerely,

Jon C. Tack  
Attorney  
Legal Services Bureau