



## Scott County Health Department

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September 21, 2021

To: Mahesh Sharma, County Administrator

From: Amy Thoreson, Director

Subject: 28E Agreement with Iowa Department of Natural Resources for Permitting Private Water Wells

### Background

Per Iowa Administrative Code 567-38.15(455B), the Scott County Board of Supervisors must have a 28E Agreement with the Iowa Department of Natural Resources (DNR) for the Scott County Health Department to issue construction permits for private water wells. The specific code language follows:

**IAC 567-38.15(455B)** Delegation of authority to county board of supervisors.

**38.15(1)** Application by board

A county board of supervisors requesting the authority to issue private well construction permits shall apply to the department in accordance with Iowa Code Chapter 28E. The application shall include statements of agreement to comply with 567-Chapter 38. Additional information may be requested by the department. The department may contract for all or part of the private well permitting services in those counties that do not receive or maintain delegation authority or for permit authorities retained by the department.

**38.15(2)** County standards.

The county board of supervisors may impose additional standards as local conditions dictate, but the standards cannot be less stringent than those required by the provisions of this chapter.

**38.15(3)** Information to department.

The delegation agreement shall provide for the method, format and frequency of reporting all permit application information and remission of fees to the department.

**38.15(4)** Board authority.

After delegation of authority to a county board of supervisors, all applications in that county shall be made to the board or its designee except that all new private well permit applications by state or federal agencies shall be made to the department.

**38.15(5)** Term of delegation.

The delegation of authority may be for up to five years and may be redelegated at the discretion of the department.

It has been some time since Scott County signed an agreement with DNR for these services. However, water well permits have continued to be issued based upon Scott County Code Chapter

24, Nonpublic Water Supply Wells. This was most recently updated in 2017 and is based on State Code.

At their September 16, 2021 meeting, the Scott County Board of Health unanimously approved the 28E Agreement. Staff and I will be at the September 28, 2021 Committee of the Whole meeting to answer any questions. The Scott County Attorney's Office has reviewed and approved the language included in the 28E Agreement.

**IOWA DNR AGREEMENT ID 21ESDWQBEDAY0001  
INTERGOVERNMENTAL (28E) AGREEMENT BETWEEN  
THE IOWA DEPARTMENT OF NATURAL RESOURCES  
AND  
SCOTT COUNTY, IOWA**

**THIS INTERGOVERNMENTAL (28E) AGREEMENT** (Agreement) is entered into by the Iowa Department of Natural Resources (Department), the Scott County Board of Supervisors (County Board), and the designated County private water well permitting entity (Permitting Agency) (jointly referred to as the County.)

- I. Authority: This agreement is entered into pursuant to the authority in Iowa Code sub-sections 455B.172(3) and (9) and section 455B.187; 567 Iowa Administrative Code (IAC) sections 38.15-17; and Iowa Code chapter 28E.
- II. Statement of Purpose: The purpose of this agreement is to establish the terms and conditions for delegation to designated county Permitting Agencies of the Department’s permit-issuing authority with respect to private water well construction and reconstruction (hereafter, jointly, “construction”), as provided in Iowa Code subsections 455B.172(3) and (9), section 455B.187 and administrative rules in Chapters 38 and 49 (IAC) applicable to county delegation. The agreement specifies the extent and manner of cooperation between the two agencies in conducting programs for the evaluation and issuance of private water well construction and reconstruction permits. This agreement places emphasis on assuring the County well program meets or exceeds the minimum standards required by the Department.
- III. Entire Agreement: This Agreement, its amendments, and its attachments shall constitute the entire agreement between the Department and the County with respect to delegation of the Department’s authority to issue and ensure compliance with private water well construction permits. To the extent that the terms of this Agreement conflict with an act of the Iowa Legislature or with 567 IAC Chapters 38 and 49, (hereafter jointly referred to as Chapter 38 and Chapter 49 (IAC)), that act or those Chapters shall control.
- IV. A. Concurrent Jurisdiction: The Department retains concurrent jurisdiction with the County over the permitting for the construction and reconstruction of private water wells as provided in Iowa Code section 455B.187. Nothing in this Agreement or its attachments shall be construed as limiting the power of the Department to issue or deny private water well construction permits or to take any other action, including taking enforcement action in any manner and against any person, consistent with the provisions of Chapter 38 (IAC) and Chapter 49 (IAC), or any other rules established or to be established under Division III of Chapter 455B, which the Department and/or the Environmental Protection Commission deem necessary for the continued proper implementation of Iowa Code section 455B.187 or related sections of the Iowa Code.

B. No Defense Created: Nothing in this Agreement shall be construed as creating a defense for any person except the County in any action by or against the Department, and no person except the County may use the terms of this Agreement as a defense against the Department in any action by or against the Department.

V. Review for Compliance: This section of this Agreement shall apply in the event that any of the following items are either rescinded, declared invalid or improper by a court of law, a final administrative action, or an act of the Iowa Legislature, or are rendered moot and/or void for any reason: all or part of this Agreement; and/or all or part of the applicable County ordinances, regulations, and/or resolutions referred to in this agreement; and/or all or part of said Chapters 38 and 49 (IAC). In such an event, the remaining rules, ordinances, and/or resolutions shall remain in full force and effect. Upon notice of such an event, the Department shall promptly review the remaining rules, ordinances, and/or resolutions to determine this Agreement's continuing compliance with Iowa Code subsections 455B.172(3) and (9) and section 455B.187 and any rule enacted under the authority of those sections.

VI. Certification of Authority: The County certifies it has lawfully adopted private well construction and reconstruction permitting ordinances or enforceable regulations in accordance with Iowa Code section 455B.172(3) that satisfy one of the following standards:

- The ordinances or regulations adopt by reference Chapters 38 and 49 (IAC); or
- The ordinances or regulations adopt Chapters 38 and Chapter 49 (IAC) in their entirety; or
- The ordinances or regulations are consistent with and no less stringent than Chapters 38 and 49 (IAC); or
- The ordinances and regulations grant express authority to the Permitting Agency to implement Chapters 38 and 49 (IAC) as provided in Iowa Code subsections 455B.172(3) and (9).

The County further certifies these ordinances and regulations grant the county authority to enforce violations of the above ordinances and regulations, or the authority to enforce violations of Chapters 38 and 49 (IAC) as provided in Iowa Code subsections 455B.172(3) and (9). The Department may periodically review the county ordinances and regulations to determine that they are consistent with and no less stringent than Chapters 38 and 49 (IAC), and that the County has adequate authority to enforce their local ordinances or regulations, or has the authority to enforce Chapters 38 and 49 (IAC) as provided in Iowa Code subsections 455B.172(3) and (9).

VII. Duties:

A. Duties of the County

1. Personnel: The County represents that it either has, or will acquire no later than the date of signing this agreement, all personnel required for the performance of the work specified under this Agreement.
2. Continued Employment: The County shall continue to employ sufficient personnel to perform the services of this Agreement for the duration of the Agreement.

3. Documentation: Prior to or immediately upon the signing of this Agreement, the County shall submit the following information to the Department:
  - i. The name(s), title(s), and all relevant work contact information of the employee(s) and/or the division(s) designated within the Permitting Agency that will be responsible for implementing the provisions of this agreement and the delegation authorities specified in Section VI above.
  - ii. A copy of the County regulations and/or County ordinance(s) and/or adopting resolutions authorizing the County to implement and enforce the water well construction permit rules of Chapters 38 and 49 (IAC) pursuant to the County's certification under Section V of this Agreement.
4. Compliance with Administrative Rules: The County shall comply with all applicable administrative rules in Chapter 38 and 49 (IAC).
5. Permit Application Review and Permit Issuance:
  - i. The Permitting Agency shall review all private water well construction permit applications for requests to construct private water wells (which shall include all applications to modify, repair, or upgrade existing private wells) on property or portions of property located within the County in accordance with the provisions of County ordinances, regulations, and the provisions of Chapters 38 and 49 (IAC), except as provided in subrule 567 IAC 38.15(4) and rule 567 IAC 38.16.
  - ii. In its review, the Permitting Agency shall determine:
    - 1) If the proposed well location falls within an area that is regulated by federal, state, or local institutional controls.
    - 2) If the proposed well will withdraw less than 500 gallons per minute and the proposed location is known to be within 1000 feet of a previous or current known contaminated site or leaking underground storage tank (LUST) site as shown on the Department's Facility Explorer tool.
    - 3) If the proposed well will withdraw 500 gallons or more per minute and the proposed location is known to be within 2,500 feet of a previous or current known contaminated site or LUST site as shown on the Department's Facility Explorer tool.
    - 4) If the water well construction permit is submitted for a project requesting 10 or more boreholes.
    - 5) If the proposed well location falls within an area where the well is also regulated by a local governing body through the use of municipal ordinances or local covenants.

When proposed water well construction application meets any of the criteria stated in section VII.A.5.ii.1, VII.A.5.ii.2, VII.A.5.ii.3, VII.A.5.ii.4, or VII.A.5.ii.5 of this Agreement, the Permitting Agency shall consult with the Department before the issuance of a well construction permit. The Department will perform an environmental review that is expected to last, but is not limited to, 14-28 days, after which the Department will notify the Permitting Agency if the private well construction permit will be issued, and what, if any, additional construction standards will be required.

- iii. If after the review of an application, the Permitting Agency determines that the proposed construction of a private water well complies with all applicable laws, rules, and county ordinances, and is pursuant to the authority granted to the County by this Agreement, the Permitting Agency shall issue a private well construction permit in a timely manner to the applicant.
  - iv. If the review by the Permitting Agency determines that an application should be denied, the Permitting Agency shall provide a written explanation to the applicant stating the reasons for the denial and shall include notice of the right to appeal the denial.
6. Compliance, Inspections and Monitoring: The County has the primary responsibility for enforcing its laws and regulations relating to the private water well construction permit program as long as this delegation agreement is in force.
  7. Monitoring for Compliance: It is expected that the County and/or Permitting Agency will monitor compliance with issued well construction permits by initiating full or partial on-site inspection and monitoring of permitted wells. The Department shall be allowed access to any reports of such or similar inspections or monitoring activities.
  8. Enforcement Action by the Permitting Agency: Should the Permitting Agency take enforcement action against permits issued by the Permitting Agency for applicable violations of Chapters 38 and 49 (IAC), as well as County rules, ordinances, and/or regulations, such enforcement action shall be handled in accordance with the noncompliance provisions of the County ordinances and regulations or any other applicable County ordinance, resolution, rules and/or regulations.
  9. Intergovernmental Cooperation: The County shall submit such information as the Department may require to show compliance with the private water well construction rules and the adequate implementation of the permitting authority delegated to the County.
  10. Reporting: Pursuant to 567 IAC 38.15(3), the Permitting Agency shall enter all new permit information on the internet access program called Private Well Tracking System (PWTS) before the well is constructed. The Permitting Agency shall ensure that well construction log information has also been entered in the PWTS within 90 days after well construction.
  11. State Permit Fees: Pursuant to subrule 567 IAC 38.5(1), the County shall submit to the Department a fee of \$25 for each well permit issued. These fees shall be submitted within 90 days of well permit issuance. Fees must be submitted along with DNR form 542-8073.

#### B. Duties Of The Department

1. Administrator: The Department shall be the administrator of this Agreement for purposes of Iowa Code section 28E.6(1) to ensure its terms are properly carried out.
2. Review of County Program: The Department shall periodically review the rules, policies and procedures of the County and/or Permitting Agency to ensure consistency with Chapters 38 and 49 (IAC). The Department shall advise the County and Permitting Agency of its findings in writing. Such reviews shall not be more frequent than once a year unless the Department provides prior written notice. The Department shall conduct at least one review within the 12 months prior to the expiration date of this agreement.

3. Technical Assistance: The Department shall provide technical assistance and well program information to the County programs.
4. Areas of Contamination: The Department shall make available the technical resources to help the Permitting Agency determine the boundaries of known sources of contamination so that the Permitting Agency can determine if additional Department consultation and authorization is required by the applicant relating to the potential for groundwater contamination.
5. Water Allocation Permits: If the use of a proposed well intends to withdraw greater than 25,000 gallons per day, the Department shall, through its normal water allocation procedures under 567 IAC Chapters 50-54, provide the applicant a review of the proposed withdrawal prior to the use of the proposed well.
6. Compliance: The Department states its intention to limit its involvement in compliance activities or enforcement actions related to the Permitting Agency or private well construction permits issued by the Permitting Agency to:
  - i. Audits of the County and/or Permitting Agency's compliance with this Agreement; and
  - ii. Review and comment on any proposed changes in the County and/or Permitting Agency's rules, ordinances, policies, and/or procedures related to this Agreement; and
  - iii. Compliance activities or enforcement actions against any person where:
    - 1) The County specifically requests the Department's involvement and the Department agrees to accept responsibility; or
    - 2) The Department determines that the County program's enforcement response is inappropriate or untimely, after providing notice to the County and Permitting Agency in writing and allowing the County and/or Permitting Authority a reasonable opportunity to act prior to initiating any Department compliance activities or enforcement actions; or
    - 3) The Department is enforcing the provisions of 567 IAC 38.15(4), 38.16 and 38.17.
7. Intergovernmental Cooperation: In addition to the assistance and cooperation noted regarding specific issues above, the Department will keep the County informed of state and federal developments which may affect the private water well construction program in the County.

VIII. Amendments: This Agreement may be amended at a later date by mutual agreement of the parties. Additionally, this Agreement expressly includes "Attachment A: Memoranda of Understanding," which shall include all memorandums of understanding between the County and the Department that are entered into before or after the signing of this Agreement that provide for specific procedures to be used by those parties in the implementation of this Agreement.

IX. Period of Agreement: This Agreement is valid for an initial period of up to five years, beginning upon approval and signature of the County and the Department, and shall end five years after the signed date. This Agreement may be renewed by amendment for up to an additional five years. Such an amendment may expressly include a duplication of this section of the Agreement to allow

for future extensions. This Agreement may remain in effect up to a period of one month after the expiration date through a memorandum of understanding between the County and the Department if renewal negotiations are in progress and additional time is required.

- X. Legal or Administrative Entity Created: No new legal or administrative entity is created by this agreement.
  
- XI. Manner of Financing: The functions to be performed by the County, under the provisions of this agreement, are to be financed by the County at no obligation to the Department. The County may use permitting fees charged to all eligible applicants pursuant to 567 IAC 38.5. However, the County is not necessarily limited to the funding source referenced above.
  
- XII. Acquiring, Holding, or Disposing of Real Property: The functions of this Agreement do not require the acquisition, holding, or disposal of real property. In the event that an amendment to this Agreement or a memorandum of understanding included in Attachment A requires the acquisition, holding, or disposal of real property, this Agreement shall be amended to detail a manner of acquiring, holding, or disposing of real property.
  
- XIII. Termination: The Department or the County may terminate this agreement by providing to the other party a written notice of intent to terminate this agreement at least 60 days prior to the intended date of termination. The notice shall specify the reasons for termination, and shall be delivered by sending the notice to the person listed below via U.S. Certified Mail.

Chairperson  
Scott County Board of Supervisors  
Administrative Center  
600 W 4<sup>th</sup> St  
Davenport, IA 52801

Director  
Department of Natural Resources  
502 E 9<sup>th</sup> St  
Des Moines IA 50319-0034

Upon termination, the County shall transfer to the Department all private water well construction permit program records in its possession, including file copies of permits, permittee files, unused application forms, all pending applications and pending fees, and all other documents generated as a result of this program. No later than 30 days following the stated termination date, the County shall deliver the above materials to the Department at the following address: Iowa DNR - Water Supply Section, 502 E 9<sup>th</sup> St, Des Moines IA 50319-0034.

- XIV. Filing and Recording: The Department shall file a copy of this agreement electronically with the Iowa Secretary of State in accordance with Iowa Code section 28E.8.



**ATTACHMENT A: Memoranda of Understanding**

None.

**IN WITNESS THEREOF**, the Department and the County have executed two copies of this agreement that include, each of which shall be considered an original.

**IOWA DEPARTMENT OF NATURAL RESOURCES**

\_\_\_\_\_  
Iowa Department of Natural Resources

Date: \_\_\_\_\_

**SCOTT COUNTY IOWA**

\_\_\_\_\_  
(Signature)

Ken Beck \_\_\_\_\_ Chairperson  
(Type or print name)

County Board of Supervisors

County Authorized Permitting Agency  
\_\_\_\_\_  
Scott County Health Department  
(Entity Name)

\_\_\_\_\_  
(Authorized Signature)

Amy Thoreson \_\_\_\_\_ Health Director  
(Type or print name) (Title)

THE COUNTY AUDITOR'S SIGNATURE CERTIFIES  
THAT THIS RESOLUTION HAS BEEN FORMALLY  
APPROVED BY THE BOARD OF SUPERVISORS ON

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SCOTT COUNTY AUDITOR

## R E S O L U T I O N

### SCOTT COUNTY BOARD OF SUPERVISORS

September 30, 2021

#### APPROVAL OF SIGNATURE OF 28E AGREEMENT WITH IOWA DEPARTMENT OF NATURAL RESOURCES

BE IT RESOLVED BY the Scott County Board of Supervisors as follows:

- Section 1. That Scott County enter into a five-year 28E Agreement with the Iowa Department of Natural Resources for the purpose of permit-issuing authority with respect to private water well construction and reconstruction according to Iowa Code and Scott County Code.
- Section 2. The Scott County Health Department be designated by the Scott County Board of Supervisors as the designated County private water well permitting entity.
- Section 3. That the chairman is hereby authorized to sign said agreement.
- Section 4. This resolution shall take effect immediately.