

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 45. OKLAHOMA'S WATER QUALITY STANDARDS**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Surface Water Quality Standards

Part 3. Beneficial Uses and Criteria to Protect Uses

785:45-5-12. Fish and wildlife propagation [AMENDED]

785:45-5-13. Agriculture [AMENDED]

785:45-5-19. Aesthetics [AMENDED]

785:45-5-20. Fish consumption [AMENDED]

Appendix A. Designated Beneficial Uses of Surface Waters [REVOKED]

Appendix A. Designated Beneficial Uses of Surface Waters [NEW]

Appendix A.1. Designated Beneficial Uses of Surface Waters Water Quality
Management Basin 1, Middle Arkansas River [REVOKED]

Appendix A.1. Designated Beneficial Uses of Surface Waters Water Quality
Management Basin 1, Middle Arkansas River [NEW]

Appendix A.2. Designated Beneficial Uses of Surface Waters Water Quality
Management Basin 2, Lower Arkansas River Basin [REVOKED]

Appendix A.2. Designated Beneficial Uses of Surface Waters Water Quality
Management Basin 2, Lower Arkansas River Basin [NEW]

Appendix A.3. Designated Beneficial Uses of Surface Waters Water Quality
Management Basin 3, Upper Red River Basin [REVOKED]

Appendix A.3. Designated Beneficial Uses of Surface Waters Water Quality
Management Basin 3, Upper Red River Basin [NEW]

Appendix A.4. Designated Beneficial Uses of Surface Waters Water Quality
Management Basin 4, Lower Red River [REVOKED]

Appendix A.4. Designated Beneficial Uses of Surface Waters Water Quality
Management Basin 4, Lower Red River [NEW]

Appendix A.5. Designated Beneficial Uses of Surface Waters Water Quality
Management Basin 5, Canadian River [REVOKED]

Appendix A.5. Designated Beneficial Uses of Surface Waters Water Quality
Management Basin 5, Canadian River [NEW]

Appendix A.6. Designated Beneficial Uses of Surface Waters Water Quality
Management Basin 6, Upper Arkansas River [REVOKED]

Appendix A.6. Designated Beneficial Uses of Surface Waters Water Quality
Management Basin 6, Upper Arkansas River [NEW]

Appendix A.7. Designated Beneficial Uses of Surface Waters Water Quality
Management Basin 7, Panhandle Region [REVOKED]

Appendix A.7. Designated Beneficial Uses of Surface Waters Water Quality
Management Basin 7, Panhandle Region [NEW]

Appendix G. Numerical Criteria to Protect Beneficial Uses [REVOKED]

Appendix G. Numerical Criteria to Protect Beneficial Uses [NEW]

Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater
[REVOKED]

Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater
[NEW]

SUMMARY:

The Oklahoma Water Resources Board ("OWRB") is proposing to amend, or is considering amending, various provisions of Oklahoma Administrative Code ("OAC") 785:45 as follows:

OAC 785:45-5-12, Fish and wildlife propagation, is proposed to be amended in (f)(1) by clarifying that the appropriate seasonal temperatures prescribed in Table 1 of Appendix G of OAC 785:45 are appropriate for calculating biochemical oxygen demand (BOD) load. The circumstance which created the need for this amendment is that the Oklahoma Department of Environmental Quality (DEQ) has encountered problems implementing the existing language. The intended effect of this amendment is to eliminate the ambiguity that causes problems in the permitting process.

OAC 785:45-5-13, Agriculture, is proposed to be amended in (e) by restoring language regarding default low flow. The circumstance which created the need for this amendment is that revisions to the Oklahoma Water Quality Standards in 1997 removed the default low flow. The intended effect of this amendment is to restore the default low flow such that protection for the Agriculture beneficial use at low flow is consistent with implementation for toxic substances.

OAC 785:45-5-19, Aesthetics, is proposed to be amended by removing the numerical color criterion applicable for permitting purposes. The circumstance which created the need for this amendment is that the U.S. Environmental Protection Agency (EPA), pursuant to its authority to approve water quality standards under the federal Clean Water Act, did not approve previous amendments in 2010 that limited the applicability of the color criterion to discharge permits. The intended effect of this proposed amendment is to eliminate unjustifiable determinations of impaired waters based upon an outdated criterion.

OAC 785:45-5-20, Fish consumption, is proposed to be amended by restoring language that clarifies that the criteria for this beneficial use are applicable only to the subcategories of Warm Water Aquatic Community, Cool Water Aquatic Community, or Trout Fishery. The circumstance which created the need for this amendment is that the applicability language was inadvertently deleted in 2006. The intended effect of this amendment is to restore that deleted language and to eliminate the inconsistency for implementing human health criteria in OAC 785:46.

Appendix A, Designated Beneficial Uses for Surface Waters, is proposed to be revoked and reenacted with the addition of paragraphs (c), Limitations for Additional Protection, and (d), Remarks used in Appendices A.1 through A.7. The circumstance which created the need for this amendment is that these paragraphs were inadvertently omitted in a previous revision of this Appendix. The intended effect of these amendments is to provide state environmental agencies with clear consistent water quality standards.

Appendices A.1, A.2, A.3, A.4, A.5, A.6, and A.7, which cumulatively contain all of the waterbodies throughout the state which have had specific beneficial uses designated, are all proposed to be revoked and reenacted with several Waterbody Identification numbers and names added or changed. The circumstance which created the need for these amendments is that the DEQ has updated its Waterbody ID coverage. The intended effect of these amendments is to list all the proper Waterbody ID's for each segment.

Appendix A.3, Designated Beneficial Uses of Surface Waters Water Quality Management Basin 3, Upper Red River Basin, is also proposed to be revoked and reenacted to make the Warm Water Aquatic Community beneficial use subcategory applicable to a segment of Rush Creek and to edit various waterbody names and identification numbers to be consistent with new GIS coverage. The circumstance which created the need for this action is that review of recent stream data indicate that the proposed revised beneficial use is now an existing use. The intended effect of these amendments is to satisfy Clean Water Act requirements to review and upgrade less than swimmable and fishable uses where new data indicate otherwise.

Appendix A.5, Designated Beneficial Uses of Surface Waters Water Quality

Management Basin 5, Canadian River, is also proposed to be revoked and reenacted to designate the Warm Water Aquatic Community beneficial use subcategory for a segment of Wewoka Creek and to designate the Primary Body Contact Recreation beneficial use for a segment of the Canadian River. The circumstance which created the need for this action is that review of recent stream data indicate that these proposed revised beneficial uses are now existing uses. The intended effect of these amendments is to satisfy Clean Water Act requirements to review and upgrade less than swimmable and fishable uses where new data indicate otherwise.

Appendix G, Numerical Criteria to Protect Beneficial Uses, is proposed to be revoked and reenacted with several revisions. First, the preamble is proposed to be modified with deletion of a contradictory phrase that Table 2 numerical limits "cannot be exceeded". The circumstances the created this need is that many parameters must be implemented as averages. The intended effect is that text in the body will determine implementation of specific parameters rather than the preamble of the Appendix. Second, Table 1, Dissolved Oxygen Criteria to Protect Fish and Wildlife Propagation and All Subcategories Thereof, is proposed to be revised to restore a footnote lost due to a scrivener's error in 2002. The circumstance which created the need for this amendment is the need for clarity in implementing dissolved oxygen criteria. The intended effect of this amendment is to provide state environmental agencies with clear consistent water quality standards. Third, Table 2, Numerical Criteria to Protect Beneficial Uses, and All Subcategories Thereof, is proposed to be revoked and reenacted with several changes. New and revised human health criteria for 25 toxic or carcinogenic chemicals will be added. The circumstance which created the need for these amendments is the absence of current water quality criteria for certain chemicals, and the publication of the new or revised scientific information, guidance documents assisting states in promulgating appropriately protective criteria, and new minimum fish consumption rates required for use in calculating the remaining criteria. The intended effect of these amendments is to provide state environmental agencies appropriately protective criteria for these compounds on which to base decisions pertinent to their individual areas of jurisdictional responsibility.

Appendix H, Beneficial Use Designations for Certain Limited Areas of Groundwater, is proposed to be revoked and reenacted with a several changes. The first change involves modifications requested by the DEQ to the already existing listing in Appendix H identifying special well construction for toxic metals in the Boone shallow groundwater at the Tar Creek Superfund Site. The circumstance which created the need for this amendment is the need for testing groundwater of the Boone aquifer in this location prior to completing a well. The intended effect of these amendments is to restrict future uses of groundwater from the shallower portion of the Boone aquifer used for potable or domestic supply that is impacted with site-related contaminants. The second change is the addition of 36.26 acres of the North-Central Oklahoma aquifer at the former Farmland Feed Mill Site in Enid, Oklahoma, with a remark limiting groundwater use. The circumstance which created the need for this amendment is that this site has a nitrate concentration that is greater than the allowable concentration under the drinking water standards and has been demonstrated to be technically infeasible to remediate further. The intended effect of these amendments is to limit the future uses of groundwater from the North-Central Oklahoma aquifer at this site. The third change requested by the DEQ is the addition of the site at the former Hudson Refinery Superfund Site in Payne County, Oklahoma with the default class and beneficial uses and a remark prohibiting of groundwater use for any purpose. The circumstance which created the need for this amendment is that hydrocarbon contamination of the groundwater has been documented at the site. The intended effect of these amendments is to be consistent with deed notices that have been filed in county land records prohibiting the use of groundwater for any purpose. The fourth change requested by the DEQ is the addition of the former Blackwell Zinc Company Site in Kay County, Oklahoma and a remark prohibiting groundwater well drilling at the site. The circumstance which created

the need for this amendment is cadmium and zinc contamination due to historic smelter operations. The intended effect of these amendments is to be consistent with the City Ordinance No. 2801 passed by the City of Blackwell prohibiting installation of groundwater wells within the groundwater protection area. The fifth change proposed is to provide a Class I designation for the entirety of the Arbuckle-Simpson aquifer. The circumstances which created the need for this amendment is that Class I designations are currently applicable to only small portions of the aquifer, and the organization Citizens for Protection of the Arbuckle Simpson Aquifer and the cities of Tishomingo and Ada have requested this revision. The intended effect of this amendment is to provide a more accurate and appropriate Class designation for this aquifer. The sixth change is addition of a 20 acre site in Dewey County and to provide remarks directing special well completion requirements. The circumstance which created the need for this amendment is that residue remaining at this site, identified by the Oklahoma Corporation Commission after remediation of a petroleum release that occurred prior to 1999, has been demonstrated to be technically infeasible to remediate further. The intended effect of this amendment is to prevent the spread of residual pollution into the Rush Springs aquifer. The last change is addition of a 40 acre site in Oklahoma County and to provide remarks directing special well completion requirements. The circumstance which created the need for this amendment is historic brine spills and pipeline leaks which have been identified by the Oklahoma Corporation Commission at this site. The intended effect of this amendment is to prevent the spread of old oilfield pollution into more of the Garber Wellington aquifer.

Other amendments may be considered as a result of public comments.

AUTHORITY:

Oklahoma Water Resources Board, 82 O.S., §§ 1085.30 and 1085.30a; 27A O.S., § 1-3-101; and 82 O.S., § 1085.2.

COMMENT PERIOD:

Persons wishing to present data, views, or arguments orally or in writing may do so at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 14, 2013.

PUBLIC HEARING:

A public hearing will be held January 15, 2013 during the monthly meeting of the OWRB which will begin at 9:30 A.M. in the Board Room of the OWRB's offices located at 3800 North Classen, Oklahoma City, Oklahoma.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB requests that any business entities affected by these proposed rules provide the OWRB, within the Comment Period from November 15, 2012 through January 14, 2013, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Phillip Moershel at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 14, 2013.

COPIES OF PROPOSED RULES:

Copies of the proposed amendments may be reviewed at the OWRB's office location at 3800 North Classen, Oklahoma City, Oklahoma 73118, or may be obtained from the "Contact Person" identified below upon prepayment of the copying charge. The proposed amendments may also be viewed on the OWRB web site at <http://www.owrb.ok.gov>.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review at the OWRB's office, 3800 North Classen, Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at <http://www.owrb.ok.gov>.

CONTACT PERSON:

Phillip Moershel, Water Quality Standards Section Head, 405/530-8800.