

OKLAHOMA WATER RESOURCES BOARD

RULE IMPACT STATEMENT

for Rule Amendments in OAC 785:46
Proposed for Adoption During 2012

A. A BRIEF DESCRIPTION OF THE PURPOSE OF THE PROPOSED RULES.

The staff of the Oklahoma Water Resources Board ("OWRB") is proposing to amend various provisions of Oklahoma Administrative Code ("OAC") 785:46 as follows:

OAC 785:46-1-6, Determination of regulatory low flow, is proposed to be amended in (b) to be updated to the latest version of the United States Geological Survey (USGS) publication entitled "Statistical Summaries of Streamflow in and near Oklahoma through 2007". The circumstance which created the need for this amendment is that the currently cited version is out of date. The intended effect of this amendment is to allow application of the most current information for implementing the criteria. Section (c)(2) is also proposed to be revised such that if additional daily flow data have been collected, a new regulatory flow may be calculated. The circumstance which created the need for this amendment is that the current rule does not allow update of the regulatory flow when new data are available. The intended effect of this amendment is to allow application of the most current information for implementing the applicable water quality standards.

OAC 785:46-9-3, Regulatory flows, is proposed to be amended in at least two ways: The first is by restoring default regulatory low flows proposed in a corresponding revision to OAC 785:45. 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. The second amendment is to update references to the latest version of the USGS publication entitled "Statistical Summaries of Streamflow in and near Oklahoma through 2007". The circumstance which created the need for this amendment is that the currently cited version is out of date. The intended effect of this amendment is to allow application of the most current information for implementing the criteria.

OAC 785:46-15-7, Assessment of Public and Private Water Supply support, is proposed to be amended in (b) to correct conflicting language between (b)(1) and (b)(2). The intended effect of this amendment is to clarify that data should be evaluated based upon frequency when a criterion is exceeded, rather than duration.

OAC 785:46-19-3, Reasonable potential determination for dissolved oxygen, is proposed to be amended 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 has encountered problems implementing the existing language. The intended effect of this amendment is to eliminate this ambiguity that causes problems in the permitting process.

B. A DESCRIPTION OF THE CLASSES OF PERSONS WHO MOST LIKELY WILL BE AFFECTED BY THE PROPOSED RULES, INCLUDING CLASSES THAT WILL BEAR THE COSTS OF THE PROPOSED RULES, AND ANY INFORMATION ON COST IMPACTS RECEIVED BY THE AGENCY FROM ANY PRIVATE OR PUBLIC ENTITIES.

The OWRB has posted on its web page since November 1, 2012, technical justification documents describing the proposed changes and the technical basis for the revisions. The OWRB also held two informal public meetings to discuss the proposed amendments on September 14 and October 11, 2012. During and since those meetings, the OWRB staff has received some specific information responsive to these issues which are described below. In the absence of any other specific information from other state environmental agencies or other interested persons, the OWRB staff expects the proposals to have little to no new effect on any regulated entity, state agency or the general public except as follows:

Amendments proposed to OAC 785:46-1-6, Determination of regulatory low flow, will update implementation rules to include the latest version of the United States Geological Survey (USGS) publication entitled "Statistical Summaries of Streamflow in and near Oklahoma through 2007". Section (c)(2) is also proposed to be revised such that if additional daily flow data have been collected, a new regulatory flow may be calculated. Dischargers dependent upon the calculated regulatory flow for dilution of their waste stream may be affected by additional treatment costs to comply with the water quality standards where the daily flow data cause a reduced regulatory flow calculation or in the published summary.

Amendments proposed to OAC 785:46-9-3, Regulatory flows, will restore default regulatory low flows proposed in a corresponding revision to OAC 785:45 and update references to the latest version of the USGS publication entitled "Statistical Summaries of Streamflow in and near Oklahoma through 2007". This amendment is not expected to adversely affect any party.

Amendments proposed to OAC 785:46-15-7, Assessment of Public and Private Water Supply support, will correct conflicting language. This amendment is not expected to adversely affect any party.

Amendments proposed to OAC 785:46-19-3, Reasonable potential determination for dissolved oxygen, will clarify 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 revision reinforces current procedures already in place and no permitted municipal or industrial dischargers are expected to be adversely affected.

C. A DESCRIPTION OF THE CLASSES OF PERSONS WHO WILL BENEFIT FROM THE PROPOSED RULES.

Amendments proposed to OAC 785:46-1-6, Determination of regulatory low flow, will update implementation rules to include the latest version of the United States Geological Survey (USGS) publication entitled "Statistical Summaries of Streamflow in and near Oklahoma through 2007". Section (c)(2) is also proposed to be revised such that if additional daily flow data have been collected, a new regulatory flow may be calculated. Dischargers that are dependent upon the calculated regulatory flow for dilution of their waste stream may, in some instances, benefit where the daily flow data cause an increase in regulatory flow calculation or in the published summary.

Amendments proposed to OAC 785:46-9-3, Regulatory flows, will restore default regulatory low flows proposed in a corresponding revision to OAC 785:45 and update references to the latest version of the USGS publication entitled "Statistical Summaries of Streamflow in and near Oklahoma through 2007". Dischargers that are dependent upon the calculated regulatory flow for dilution of their waste stream may, in some instances, benefit where the daily flow data cause an increase published in the summary.

Amendments proposed to OAC 785:46-15-7, Assessment of Public and Private Water Supply support, will correct conflicting language. This revision will benefit state agencies that perform assessments of the state's waters by clarifying how certain data will be used to determine the beneficial use support status of the state's waters.

Amendments proposed to OAC 785:46-19-3, Reasonable potential determination for dissolved oxygen, will clarify that the appropriate seasonal temperatures prescribed in Table 1 of Appendix G of OAC 785:45 are appropriate for calculating BOD load. The persons who will benefit from the proposed rules are state agencies implementing the water quality standards. Also, permitted entities will benefit by having clear direction regarding the applicable seasonal temperature for calculating if there is reasonable potential and when a permit is required.

D. A DESCRIPTION OF THE PROBABLE ECONOMIC IMPACT OF THE PROPOSED RULES UPON AFFECTED CLASSES OF PERSONS OR POLITICAL SUBDIVISIONS, INCLUDING A LISTING OF ALL FEE CHANGES AND, WHENEVER POSSIBLE, A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE.

Lacking specific information from state environmental agencies or other affected persons, the OWRB staff expects the proposals to have little to no economic impact on any regulated entity, state agency or the general public, except for the following:

Amendments proposed to OAC 785:46-1-6, Determination of regulatory low flow, will update implementation rules to include the latest version of the United States Geological Survey (USGS) publication entitled "Statistical Summaries of Streamflow in and near Oklahoma through 2007". Section (c)(2) is also proposed to be revised such that if additional daily flow data have been collected, a new regulatory flow may be calculated. Dischargers dependent upon the calculated regulatory flow for dilution of their waste stream may be affected by additional treatment costs to comply with the water quality standards where the daily flow data cause a reduced regulatory flow calculation or in the published summary. The probable economic impacts for additional treatment, if required, are undetermined and will be dependent upon the nature of the discharge, background concentrations, dilution flows and the discharge permitting process.

There are no fee changes included in any of the proposed amendments.

E. THE PROBABLE COSTS AND BENEFITS TO THE AGENCY AND TO ANY OTHER AGENCY OF THE IMPLEMENTATION AND ENFORCEMENT OF THE PROPOSED RULES, THE SOURCE OF REVENUE TO BE USED FOR IMPLEMENTATION AND ENFORCEMENT OF THE PROPOSED RULES, AND ANY ANTICIPATED EFFECT ON STATE REVENUES, INCLUDING A PROJECTED NET LOSS OR GAIN IN STATE REVENUES IF IT CAN BE PROJECTED BY THE AGENCY.

No extraordinary costs to the OWRB or other agencies are anticipated. It is anticipated that the proposed amendments will have no effect on state revenues since the majority of the proposals require no additional agency resources to implement the revised rules.

F. A DETERMINATION OF WHETHER IMPLEMENTATION OF THE PROPOSED RULES WILL HAVE AN ECONOMIC IMPACT ON ANY POLITICAL SUBDIVISIONS OR REQUIRE THEIR COOPERATION IN IMPLEMENTING OR ENFORCING THE RULES.

Generally, political subdivisions such as municipalities who discharge waste to waters of the state will be affected by permitting agencies' implementation of the rules. Political subdivisions will not be required to "cooperate" *per se* with the OWRB in implementing or enforcing the proposed rules, but they will have to comply with the rules in the course of implementation and enforcement by permitting agencies.

Amendments proposed to OAC 785:46-1-6, Determination of regulatory low flow, will update implementation rules to include the latest version of the United States Geological Survey (USGS) publication entitled "Statistical Summaries of Streamflow in and near Oklahoma through 2007". Section (c)(2) is also proposed to be revised such that if additional daily flow data have been collected, a new regulatory flow may be calculated. Political subdivision such as municipalities dependent upon the calculated regulatory flow for dilution of their waste stream may be affected by additional treatment costs to comply with the water quality standards where the daily flow data cause a reduced regulatory flow calculation or in the published summary. The probable economic impacts for additional treatment, if required, are undetermined and will be dependent upon the nature of the discharge, background concentrations, dilution flows and the discharge permitting process.

G. A DETERMINATION OF WHETHER IMPLEMENTATION OF THE PROPOSED RULES MAY HAVE AN ADVERSE ECONOMIC EFFECT ON SMALL BUSINESS AS PROVIDED BY THE OKLAHOMA SMALL BUSINESS REGULATORY FLEXIBILITY ACT.

Amendments proposed to OAC 785:46-1-6, Determination of regulatory low flow, will update implementation rules to include the latest version of the United States Geological Survey (USGS) publication entitled "Statistical Summaries of Streamflow in and near Oklahoma through 2007". Section (c)(2) is also proposed to be revised such that if additional daily flow data have been collected, a new regulatory flow may be calculated. Small business with permitted discharges dependent upon the calculated regulatory flow for dilution of their waste stream may be affected by additional treatment costs to comply with the water quality standards where the daily flow data cause a reduced regulatory flow calculation or in the published summary.

Amendments proposed to OAC 785:46-9-3, Regulatory flows, will restore default regulatory low flows proposed in a corresponding revision to OAC 785:45 and update references to the latest version of the USGS publication entitled "Statistical Summaries of Streamflow in and near Oklahoma through 2007". Small businesses with permitted discharges dependent upon the calculated regulatory flow for dilution of their waste stream may be affected by additional treatment costs to comply with the water quality standards.

Amendments proposed to OAC 785:46-15-7, Assessment of Public and Private Water Supply support, will correct conflicting language. This amendment will not have an adverse economic effect on any "small business".

Amendments proposed to OAC 785:46-19-3, Reasonable potential determination for dissolved oxygen, will clarify that the appropriate seasonal temperatures prescribed in Table 1 of Appendix G of OAC 785:45 are appropriate for calculating BOD load. The revision reinforces current procedures already in place and small businesses are not expected to be adversely affected.

H. AN EXPLANATION OF THE MEASURES THE AGENCY HAS TAKEN TO MINIMIZE COMPLIANCE COSTS AND A DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY METHODS OR LESS INTRUSIVE METHODS FOR ACHIEVING THE PURPOSE OF THE PROPOSED RULES.

The OWRB held an informal meeting in Oklahoma City with representatives of state environmental agencies, affected interest groups, and other stakeholders for the purposes of discussing the proposed rules and obtaining suggestions. Dialogue and comments from those attending the meetings have been taken into account wherever possible, and language has been adjusted to minimize the costs, if any, of compliance with the proposed rules.

It does not appear to OWRB staff that there are any less costly or non-regulatory methods or less intrusive methods for achieving the purposes of the proposed amendments with regard to any of the proposed revisions.

I. A DETERMINATION OF THE EFFECT OF THE PROPOSED RULES ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT AND, IF THE PROPOSED RULES ARE DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, AN EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULES WILL REDUCE THE RISK.

OWRB staff expects that the majority of the proposed rules will not provide a significant reduction in risk to the public health or safety or the environment since the majority of the proposals maintain or only slightly modify current water quality implementation.

J. A DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULES ARE NOT IMPLEMENTED.

The majority of the proposed revisions do not directly address public health or safety. It is not likely that there will be any significant detrimental effect on the environment if the proposed rules are not implemented.

K. THE DATE THE RULE IMPACT STATEMENT WAS PREPARED AND IF MODIFIED, THE DATE MODIFIED:

This rule impact statement was reviewed and approved on November 15, 2012 by Phillip Moershel, Section Head, Water Quality Standards Section, Water Quality Programs Division, Oklahoma Water Resources Board.