

OKLAHOMA WATER RESOURCES BOARD

RULE IMPACT STATEMENT

for Rule Amendments in OAC 785:45
Proposed or Considered for Adoption during 2018

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

Oklahoma Water Resources Board (OWRB) staff is proposing to amend provisions of the Oklahoma Water Quality Standards codified in Oklahoma Administrative Code (OAC) 785:45 as presented below.

Technical documentation supporting the proposed amendments/rules outlined below is posted on the OWRB website (http://www.owrb.ok.gov/util/rules/wqs_revisions.php). The OWRB hosted informal public meetings to discuss the proposed amendments on September 7, October 10, and October 25, 2017. During and since these meetings, OWRB staff received a limited amount of specific information/comments, from other agencies or interested parties, regarding the proposed rules and subjects B through J below. Staff worked to be responsive to the comments/information received in the draft proposed rules and in the absence of specific information from outside entities evaluated subjects B through J in a broad manner.

Proposed Antidegradation Policy Implementation Revision

The proposed new language (785:45-5-25(c)) clarifies the state's waterbody-by-waterbody classification approach under the existing Antidegradation Policy. Additionally, the new language directs implementation of the Antidegradation Policy in a manner which will evaluate wastewater discharge impacts on receiving water quality and fully protect beneficial uses. The intended effect of this amendment is to clarify the existing waterbody classification approach and clearly link Oklahoma's Water Quality Standards (785:45) with Implementation of Oklahoma's Water Quality Standards (785:46).

Proposed Site-Specific Copper Criteria

Requirements for Development of Site-Specific Criteria for Certain Parameters (OAC 785:45 Appendix E) is proposed to be revoked and reenacted with the addition of a site-specific water effects ratio (WER) and dissolved translator for copper applicable to the Ilabel Public Works Authority Oklahoma Pollution Discharge Elimination System (OPDES) permit (OK0027677) for discharges of treated municipal wastewater to Mud Creek (Segment 410200). The proposed site-specific WER and dissolved translator may be used in calculating permit limits for copper.

The purpose of the proposed rule is to provide criteria adjustment factors (i.e. WER and dissolved translator) which account for the effects of site-specific water chemistry on copper bioavailability and toxicity to aquatic life. The development of a water effects ratio and dissolved translator to modify statewide criteria is a water quality standards tool available to permittees which provides for an allowance at the point of discharge and relaxes permit limits while still fully protecting aquatic life beneficial uses.

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.

Proposed Antidegradation Policy Implementation Revision

This proposed action clarifies the existing approach that the state identifies waters for antidegradation classification on a waterbody-by-waterbody basis and provides clear linkage between the Water Quality Standards (785:45) and Implementation of Oklahoma's Water Quality Standards (785:46). Water quality standards are not self-implementing and because this is a clarification of the existing approach it does not create a new regulatory obligation for any class of persons.

No class of persons will be required to bear a cost due to OWRB clarifying the state's antidegradation classification approach.

OWRB did not receive any cost information from any private or public entity.

Proposed Site-Specific Copper Criteria

The class of persons affected by this proposed rule is the Idabel Public Works Authority. The proposed water effects ratio and dissolved translator will modify the statewide copper criteria and assist Idabel Public Works Authority in maintaining compliance with their OPDES permit. The proposed rule will benefit the Idabel Public Works Authority because they will avoid the cost associated with treatment upgrades.

OWRB did not receive any cost information from any private or public entity.

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

Proposed Antidegradation Policy Implementation Revision

The class of persons mostly likely to benefit from this proposed rule would be any interested and/or regulated party who may seek to classify or reclassify a waterbody under the state's Antidegradation Policy. The proposed action explicitly outlines that antidegradation classes are identified on a waterbody-by-waterbody basis and directs one to the implementation steps set forth in 785:46. This promotes transparency and effectiveness for any party utilizing Oklahoma's Water Quality Standards.

Proposed Site-Specific Copper Criteria

The Idabel Public Works Authority will benefit from this proposed rule by assisting them in maintaining compliance with their OPDES permit limits for copper.

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.

Proposed Antidegradation Policy Implementation Revision

This proposed action simply clarifies the existing approach that the state identifies waters for antidegradation classification on a waterbody-by-waterbody basis and provides clear linkage between the Water Quality Standards (785:45) and Implementation of Oklahoma's Water Quality Standards (785:46). Water quality standards are not self-implementing and because the proposed rule is a clarification of the existing approach, it does not create a new regulatory obligation for any class of persons or political subdivision. The proposed action is not expected to cause an economic impact.

OWRB staff did not receive any information from affected persons or political subdivisions regarding the probable economic impact of the proposed rules.

There are no fee changes included in the proposed rules.

Proposed Site-Specific Copper Criteria

This proposed rule will affect the Idabel Public Works Authority. The proposed site-specific copper criteria will assist the Idabel Public Works Authority in maintaining compliance with their OPDES permit. The proposed rule will economically benefit the Idabel Public Works Authority because the use of the water effects ratio and dissolved translator relaxes the copper criteria and they will avoid cost associated with treatment upgrades.

OWRB staff did not receive any information from affected persons, political subdivisions, or other state agencies regarding the probable economic impact of the proposed rules.

There are no fee changes included in the proposed rules.

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.

Proposed Antidegradation Policy Implementation Revision

Oklahoma's state environmental agencies, including OWRB, currently implement and/or enforce water quality standards under their respective jurisdictions. Because the proposed rule action is a clarification of the state's existing approach to classify waters under the Antidegradation Policy it is not expected to result in any additional costs for other state agencies. Moreover, this potential rulemaking action would provide an overall benefit to OWRB, other state agencies, and

the regulated community by promoting clarity and transparency for any state agency and/or party utilizing the water quality standards.

OWRB did not receive any information on probable costs and benefits to implement and enforce the proposed rules from any agency. The proposed rules are not expected to have any effect on state revenues.

Proposed Site-Specific Copper Criteria

The proposed rule provides criteria adjustment factors that can be used when calculating OPDES permit limits for the Idabel Public Works Authority discharge to Mud Creek. This proposed rule will not create any new implementation or enforcement responsibilities for the ODEQ; thus, the agency is not expected to incur any new costs or benefits related to this proposed rule.

The proposed rules are not expected to have any effect on state revenues.

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.

Proposed Antidegradation Policy Implementation Revision

Political subdivisions are not expected to have implementation or enforcement responsibilities associated with the proposed rules. The proposed rule simply clarifies the existing approach that the state identifies waters for antidegradation classification on a waterbody-by-waterbody basis and provides clear linkage between the Water Quality Standards (785:45) and Implementation of Oklahoma's Water Quality Standards (785:46). Water quality standards are not self-implementing and because this is a clarification of the existing approach it does not create a new regulatory obligation for any political subdivision. Thus, the proposed rule is not expected to cause an economic impact on political subdivisions.

Proposed Site-Specific Copper Criteria

The proposed rule will provide criteria adjustment factors that can be used when calculating OPDES copper permit limits for the Idabel Public Works Authority discharge to Mud Creek. The Idabel Public Works Authority will not have implementation or enforcement responsibilities under this proposed rule; however, they will continue to have compliance responsibilities as part of their OPDES permit. This proposed rule will benefit the Idabel Public Works Authority because it will assist them in maintaining compliance with their permit.

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.

Proposed Antidegradation Policy Implementation Revision

This proposed action simply clarifies the existing approach that the state identifies waters for antidegradation classification on a waterbody-by-waterbody basis and provides clear linkage between the Water Quality Standards (785:45) and Implementation of Oklahoma's Water Quality Standards (785:46). This proposed rule and water quality standards in general are not self-implementing and does not automatically create a regulatory obligation for any small business (defined in 75 O.S. § 502) or other party. The proposed rule is not expected to have an adverse economic impact on any small business.

Proposed Site-Specific Copper Criteria

The proposed site-specific copper criteria are only applicable to the Idabel Public Works Authority OPDES permit for discharges of municipal and industrial wastewater and are not expected to result in any adverse economic effect on small business (defined 75 O.S. § 502).

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.

Proposed Antidegradation Policy Implementation Revision

This proposed action simply clarifies the existing approach that the state identifies waters for antidegradation classification on a waterbody-by-waterbody basis and provides clear linkage between the Water Quality Standards (785:45) and Implementation of Oklahoma's Water Quality Standards (785:46). This proposed rule and water quality standards in general are not self-implementing and does not automatically create a regulatory obligation for any party. Thus, there are not expected to be compliance costs associated with clarifying the state's existing antidegradation classification approach. Additionally, this proposed rule will benefit parties seeking to classify or reclassify a waterbody under Oklahoma's Antidegradation Policy.

Proposed Site-Specific Copper Criteria

The proposed rule will provide criteria adjustment factors that can be used when calculating OPDES copper permit limits for the Idabel Public Works Authority discharge to Mud Creek. Using the WER and dissolved translator results in relaxed copper permit limits for the Idabel Public Works Authority while still fully protecting aquatic life. The approach of developing site-specific criteria adjustment factors to modify the statewide criteria serves to minimize compliance cost as compared to alternative actions such as, as treatment upgrades.

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.

Proposed Antidegradation Policy Implementation Revision

This proposed action simply clarifies the existing approach that the state identifies waters for antidegradation classification on a waterbody-by-waterbody basis and provides clear linkage between the Water Quality Standards (785:45) and Implementation of Oklahoma's Water Quality Standards (785:46). This proposed rule does not automatically create a regulatory obligation for any party. The proposed clarification of the existing approach promotes clarity and transparency in the water quality standards, while continuing to protect water quality and public health.

Proposed Site-Specific Copper Criteria

The purpose of the proposed rule is to provide criteria adjustment factors (i.e WER and dissolved translator) which account for the effects of site-specific water chemistry on copper bioavailability and toxicity to aquatic life. The development of a water effects ratio and dissolved translator to modify statewide criteria is a water quality standards tool available to permittees which provides for an allowance at the point of discharge and relaxes permit limits; however, the criteria modification process is designed to fully protect aquatic life. The proposed rule is not expected to have a negative effect on public health, safety or the environment.

However, during the stakeholder meeting process, the U.S. Fish and Wildlife Service (USFWS) staff informed OWRB staff regarding concerns about potential downstream impacts of increased copper permits limits for the City of Idabel discharge to Mud Creek, which is a tributary of the Little River. Specifically, their concerns regard the effects of copper on the endangered mussel population in the Little River National Wildlife Refuge. The OWRB staff noted the concerns of the USFWS staff and informed them of the opportunity to present their concerns to the Board during the January 16, 2018 public hearing. Additionally, all site-specific criteria are subject to EPA review including a consultation with the USFWS which is intended to ensure compliance with the Endangered Species Act.

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

Proposed Antidegradation Policy Implementation Revision

This proposed action simply clarifies the existing approach that the state identifies waters for antidegradation classification on a waterbody-by-waterbody basis and provides clear linkage between the Water Quality Standards (785:45) and Implementation of Oklahoma's Water Quality Standards (785:46). There are no anticipated adverse effects to public health, safety or the environment if this proposed action is not implemented.

Proposed Site-Specific Copper Criteria

The proposed rule provides criteria adjustment factors that can be used by the permitting agency when calculating OPDES copper permit limits for the Idabel Public Works Authority discharge to Mud Creek. Without this proposed rule the statewide criteria for copper will remain in place for aquatic life protection. There are no anticipated adverse effects to public health, safety or 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 prepared and approved on December 1, 2017, Monty Porter, Section Head, Water Quality Standards Section, Water Quality Programs Division, Oklahoma Water Resources Board.