OKLAHOMA WATER RESOURCES BOARD

RULE IMPACT STATEMENT

for Rule Amendments in OAC 785:46
Proposed or Considered for Adoption during 2018

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

Oklahoma Water Resources Board (OWRB) staff are proposing to amend provisions of the Oklahoma Water Quality Standards (OWQS) codified in Oklahoma Administrative Code (OAC) 785:46 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 regarding the proposed rules and subjects B through J below. However, in all cases OWRB staff worked to be responsive to the comments/information received from both other state environmental agencies and or interested parties. In the absence of specific information from other state environmental agencies and or interested parties, OWRB staff evaluated subjects B through J in a broad manner.

Proposed Revisions to Implementation of Antidegradation Policy

Revisions are proposed to 785:46-13-1 in order to provide clarity and consistency with the remaining subchapter sections. Amendments to section 4 (785:46-13-4) present the general rules applicable to Sensitive Water Supply-Reuse (SWS-R) waters. These general rules include 1) classification of SWS-R waters, 2) drought of record as the critical condition for SWS-R waters, and 3) implementation of receiving water monitoring requirements. The proposed rule serves to directly implement additional protections afforded SWS-R waters in 785:45-5-25(8).

In order to effectively implement Oklahoma's existing Antidegradation Policy (785:45-3 and 785:45-5-25), a new section 785:46-13-8 is proposed. This newly proposed section outlines the implementation framework for antidegradation review. Antidegradation review is a key function of the state's existing Antidegradation Policy; antidegradation review provides a structured technical and policy review to evaluate the intentional lowering of water quality. The proposed antidegradation review process is composed of three steps: 1) determination of assimilative capacity, 2) use of assimilative capacity, and 3) public participation. The proposed antidegradation review process is triggered when a proposed wastewater discharge activity may affect existing water quality in a waterbody. At this time and under this proposed rulemaking, the only waterbodies subject to antidegradation review are SWS-R waters. The proposed rules serve to delineate and implement a technical and policy based water quality review process, as required by the current Antidegradation Policy, in order to balance between water quality protection and activities potentially lowering water quality.

The substantive revisions described above caused a cascade of revisions to 785:46-13-5, 785:46-13-6, and 785:46-13-7. The contents of these sections were previously existing and only non-substantive changes were made to correctly number these sections.

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.

This proposed action establishes general rules for SWS-R waters including, 1) classification, 2) critical conditions, and 3) receiving water monitoring requirements. Additionally, the proposed rules, outline the implementation framework for antidegradation review, which at this time and under this proposed rulemaking is only applicable to SWS-R waters. These proposed rules are not self-implementing and do not automatically create a regulatory obligation for any class of persons.

The class of persons mostly likely to utilize the proposed rules would be municipal wastewater treatment operations and/or water supply providers if they seek to classify a waterbody as SWS-R and implement a future water reuse project. The interested party would bear costs due to the SWS-R classification process. A party implementing an indirect potable water reuse project within an SWS-R waterbody would also bear costs associated with receiving water monitoring and antidegradation review. However, pursuing these actions (i.e. SWS-R classification and water reuse projects) are completely voluntary and no class of persons will automatically be required to bear a cost due to OWRB adopting the proposed rules.

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.

The class of persons mostly likely to benefit from the proposed rule would be municipal wastewater treatment operations and/or water supply providers if they choose to implement a future water reuse project in an SWS-R waterbody. The proposed rules would provide these parties clear direction regarding implementation of water quality standards. Additionally, Oklahoma residents benefit from sound public policy balancing the combined goals of reliable water supplies and water quality protection.

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.

This proposed action establishes the general rules SWS-R waters including, 1) classification, 2) critical conditions, and 3) receiving water monitoring requirements. Additionally, the proposed rules outline the implementation framework for antidegradation review, which at this time and under this proposed rulemaking is applicable to SWS-R waters. These proposed rules are not self-implementing and do not automatically create a regulatory obligation for any class of persons or political subdivision. Thus, adoption of the proposed rules is not expected to cause a direct economic impact.

The proposed rules are applicable to SWS-R waters and related to the potential implementation of water reuse projects; regulatory responsibilities under the proposed rule would only occur if

an interested party voluntarily chooses to implement a project. No class of persons or political subdivision will automatically be required to bear an economic impact due to OWRB adopting 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.

Oklahoma's state environmental agencies, including OWRB, currently implement and/or enforce water quality standards under their respective jurisdictions. Because the general rules for SWS-R waters and the implementation framework for antidegradation review are new provisions within OAC Chapter 46 new or revised implementation programs may be necessary. This proposed rule was drafted cooperatively between the OWRB, ODEQ, and the Water Reuse Workgroup and as an outgrowth of legislative direction regarding water reuse. It is expected by both OWRB and ODEQ that subsequent planning and other actions will be necessary in order for interested parties to utilize the new provisions and develop water reuse projects in the future. Specifically, OWRB anticipates future rulemaking actions, if a party seeks to classify a waterbody as SWS-R. Additionally, OWRB staff expects to provide staff time to assist interested parties and/or sister agencies with technical aspects of antidegradation review. Thus, some additional work and associated costs will be borne by the OWRB. However, this anticipated work would provide an overall benefit to OWRB, other state agencies, and interested parties by providing a transparent and technically robust approach to implementing SWS-R provisions.

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.

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.

Political subdivisions are not expected to have implementation or enforcement responsibilities associated with the proposed rules. This proposed action establishes the general rules SWS-R waters including, 1) classification, 2) critical conditions, and 3) receiving water monitoring requirements. Additionally, the proposed rules outline the implementation framework for antidegradation review, which at this time and under this proposed rulemaking is applicable to SWS-R waters. These proposed rules are not self-implementing and do not automatically create a regulatory obligation for any political subdivision. Thus, adoption of the proposed rules is not expected to cause a direct economic impact on political subdivisions.

However, in the future if a political subdivision voluntarily seeks to classify a waterbody as SWS-R and/or implement a water reuse project that requires antidegradation review they will have regulatory responsibilities and related economic costs. No political subdivision will automatically be required to bear an economic impact due to OWRB adopting the proposed rules.

Cooperation between interested parties, sister agencies, and OWRB staff is beneficial in all actions/projects related to implementing Oklahoma's Water Quality Standards. OWRB staff works to ensure open communication and cooperation with parties.

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.

This proposed action establishes the general rules SWS-R waters including, 1) classification, 2) critical conditions, and 3) receiving water monitoring requirements. Additionally, the proposed rules outline the implementation framework for antidegradation review, which at this time and under this proposed rulemaking is applicable to SWS-R waters. These proposed rules are not self-implementing and do 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.

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.

This proposed action establishes the general rules SWS-R waters including, 1) classification, 2) critical conditions, and 3) receiving water monitoring requirements. Additionally, the proposed rules outline the implementation framework for antidegradation review, which at this time and under this proposed rulemaking is applicable to SWS-R waters. These proposed rules are not self-implementing and do not automatically create a regulatory obligation for any party. No party will automatically be required to bear compliance costs due to OWRB adopting the proposed rules.

The proposed rules are applicable to SWS-R waters and related to the potential implementation of water reuse projects; regulatory responsibilities and any subsequent compliance costs under the proposed rule would only occur if an interested party voluntarily chooses to implement a project.

Additionally, this proposed rule will benefit parties if they choose to pursue classification of a SWS-R waterbody and implement a future water reuse project in an SWS-R water and require clear direction regarding implementation of water quality standards. Additionally, Oklahoma residents benefit from sound public policy balancing the combined goals of reliable water supplies and water quality protection.

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.

This proposed action establishes the general rules SWS-R waters including, 1) classification, 2) critical conditions, and 3) receiving water monitoring requirements. Additionally, the proposed rules outline the implementation framework for antidegradation review, which at this time and under this proposed rulemaking is applicable to SWS-R waters. These proposed rules are not self-implementing and do not automatically create a regulatory obligation for any party. The adoption of these implementation rules establishes pathway for parties to implement future water reuse projects to augment water supply, while still protection water quality and public health.

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

This proposed action establishes the general rules SWS-R waters including, 1) classification, 2) critical conditions, and 3) receiving water monitoring requirements. Additionally, the proposed rules outline the implementation framework for antidegradation review, which at this time and under this proposed rulemaking is applicable to SWS-R waters. Without the adoption of these implementation rules there is likely to be considerable uncertainty and implementation challenges related to interested parties utilizing the SWS-R provisions in the water quality standards (785:45-5-25(8)), which has the potential to cause detrimental effects on public health, safety, and the environment. The proposed rules provide clear and effective implementation direction which serve to minimize adverse effects to public health, safety or the environment.

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.