

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 30. TAKING AND USE OF GROUNDWATER**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General provisions

785:30-1-2 Definitions [AMENDED]

785:30-1-4 Requirement for water right [AMENDED]

Subchapter 3. Permit application requirements and processing

785:30-3-4 Notice of application [AMENDED]

785:30-3-1 General application requirements [AMENDED]

785:30-3-6 Well spacing [AMENDED]

Subchapter 9. Maximum annual yield determinations

785:30-9-4. Final determination as to the maximum annual yield to be allocated
[AMENDED]

Appendix A Potential Well Interference – Simple Model [NEW]

SUMMARY:

The Oklahoma Water Resources Board ("OWRB") proposes to amend this Chapter of the Oklahoma Administrative Code ("OAC") as follows:

Amend the definition of "enhanced recovery of oil and gas" to clarify that water used for fracturing is not considered to be enhanced production, which in turn would clarify that an applicant proposing to use water to fracture an oil or gas formation would not need to provide the additional information required by the substantive rules concerning enhanced recovery of oil and gas. The circumstances which created the need for the rule included an individual proceeding in which an issue was raised whether the use of water for fracturing activities of an oil company triggered the additional requirement in the rule to present information about enhanced recovery of oil or gas. Additionally, there is significant oil and gas drilling in southeast Oklahoma in which fracturing the oil or gas bearing formations with water is a common practice, and the additional information required by existing rule for enhanced recovery would not be helpful in making the decision about use of the water.

Amend the rule on describing the various requirements for a water right to clarify that the amount of water proposed to be used in sand mining operations is the amount of water that leaves the mine site as moisture content of the sand and gravel taken from the mine site, or the water proposed to be used for other beneficial uses off the mine site. The circumstances creating the need for the rule includes an issue raised at an individual proceeding asserting that the amount pumped by a slurry dredge should be the amount applied for as being to transport the sand within the mine area, not just the consumptive amount that leaves the sand mining area as moisture content. The intended purpose of the rule is to provide clarification in the sand mining situation as to the amount the Board presumes to be a beneficial use.

Amend the rule on notice of application to adopt one of two optional methods of addressing protests that involve assertions of potential well interference as a reason to deny or condition a permit to use groundwater. One option is to revise the rule on matters to be presented at hearings on applications for use of groundwater to exclude

or significantly limit evidence relating to potential draw down impact of nearby wells. This option may be more favorable if appropriated funds or fees are not generated to support additional Board staff to establish modeling requirements, to conduct field investigations to gather actual facts to input into the model, and conduct the modeling to provide the Board with sufficient information to make consistent decisions regarding assertions of potential draw down (well interference) impacts. The other alternative option is to revise the rules on matters considered before determining whether to issue a permit to use groundwater to restrict evidence of draw down impacts to results of a simple model that would also be adopted as a new Appendix B to Chapter 30 of the rules, thereby making all parties run the same model with the same factors and information, which should lead to consistent results as to potential impact. The circumstances creating the need for the rule are the number of protests received that assert a potential effect of proposed pumping by an applicant on the protestant's existing well. The Board staff has been using a simple desk top computer model information to gain insight as to potential effects of pumping on nearby groundwater levels, but some argue that the Board does not have authority to make water management decisions on a site by site scale, but is only authorized to make basin-wide management decisions through the maximum annual yield procedures. The intended purpose of the rule is to adopt a consistent policy on how to address protests raising concerns and issues relative to potential drawdown impacts by an applicant's proposal.

Amend the rule on general application requirements to require the submittal of more information by the applicant if commercial water sale is proposed, as a result of the State Auditor recommendation. The circumstances creating the need for the rule is the State Auditor's Performance Audit report questioning the Board's lack of information about proposals for water sales to allow better public understanding of such proposals. The intended purpose of the rule is to satisfy the recommendation from the State Auditor's report.

Amend the rule on well spacing and location exceptions to clarify that for a location exception to be considered, it will be deemed inequitable or unreasonable to require a well to meet spacing if one of the five factors is shown, to eliminate an interpretation that the rules created a two part cumulative test. The circumstances creating the need for the rule include a review of the rule for consistency with the statute and intent of the Legislature and an issue raised in an appeal of a Board order relating to well spacing location exceptions. The intended purpose of the rule is to clarify the Board's interpretation of the statute.

The well spacing and location exception rule is also proposed to be amended by requiring the parties to use a simple computer model as described in a new Appendix B to produce evidence as to possible static water level declines relating to one of the five reasons that a location exception request can be approved. The circumstances creating the need for the rule include assertions in several individual proceedings about the potential draw down impact and lack of uniformity of studies or evidence to address the issue. The intended purpose of the rule is to provide uniformity in the analysis of the potential draw down impact on the static water table.

Amend the rule on maximum annual yield determinations to clarify that the allocation of groundwater occurs when a permit is issued, not when a final order

establishing the maximum annual yield is entered. The circumstances creating the need for the rule include staff's review of the rules and statutes for consistency and to clarify the Board's interpretation of the statute. The intended purpose of the rule is to provide clarification of the Board's interpretation.

A new Appendix B, describing a simple desktop computer model and inputs for determining potential well interference, is proposed if other proposals to this Chapter are adopted. The circumstances creating the need for the rule include the number of protests that assert that a draw down impact of proposed pumping by an applicant will cause harm to nearby landowners and the lack of uniform modeling techniques utilized to predict such impacts. The intended purpose of the rule is to provide a consistent description of the model to be used to estimate potential draw down impacts.

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

AUTHORITY:

Oklahoma Water Resources Board general authority and duties in 82 O.S. Section 1085.2; Oklahoma Groundwater Law in 82 O.S. Section 1020.1 and following.

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 7, 2008.

PUBLIC HEARING:

A public hearing is scheduled for January 8, 2008, beginning at 9:30 A.M. in the Board Room of the OWRB's offices located at 3800 North Classen, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB requests that any business entities affected by these proposed rules provide to the OWRB, within the Comment Period from November 15, 2007 through January 7, 2008, 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 Dean Couch at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 7, 2008.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Water Resources Board, 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118, upon prepayment of the copying charge, or on the Board's web site, www.owrb.state.ok.us.

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 www.owrb.state.ok.us.

CONTACT PERSON:

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