

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

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 45. Oklahoma's Water Quality Standards [AMENDED]

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 785:45-1-2, Definitions, is proposed to be amended. The definition of "background concentration" is proposed to be modified. The circumstance which created the need for this amendment is that the term "background concentration" is not actually used in OAC 785:45, while the term "background" is used frequently. The intended effect of this amendment is to clarify the use of the term "background" throughout OAC 785:45. The definition for "chronic test failure" is also proposed to be modified. The circumstance which created the need for this amendment is that the U.S. Environmental Protection Agency ("EPA") has requested that OAC 785:45 also address the growth of test organisms to determine chronic test failure. The intended effect of this amendment is to consider growth among the sub-lethal effects evaluated for chronic test failure.

Several sections in OAC 785:45 are proposed to be amended to establish subcategories of the beneficial use of Agriculture and appropriate criteria for those subcategories. These sections include but are not necessarily limited to 785:45-5-3, Beneficial uses: default designations; 785:45-5-13, Agriculture: livestock and irrigation; and 785:45-7-3, Groundwater classifications, beneficial uses and vulnerability levels. The circumstance which created the need for these amendments is that naturally occurring mineral concentrations in many small streams may not meet the current criteria as a result of the manner in which they were derived. The intended effect of these amendments is to provide criteria more appropriate and site specific in these circumstances, while maintaining water quality, as permitted by EPA and federal law.

OAC 785:45-5-19, Aesthetics, is proposed to be amended in order to correct a citation error. The circumstance that created the need for this amendment is that when other language from this section was moved to OAC 785:45-5-9, the remaining language of this section was renumbered. The intended effect of this amendment is to correct the citation.

Appendix A.1, Designated Beneficial Uses of Surface Waters, Water Quality Management Basin 1, Middle Arkansas River; Appendix A.2, Designated Beneficial Uses of Surface Waters, Water Quality Management Basin 2, Lower Arkansas River Basin; Appendix A.3, Designated Beneficial Uses of Surface Waters, Water Quality Management Basin 3, Upper Red River Basin; Appendix A.4, Designated Beneficial Uses of Surface Waters, Water Quality Management Basin 4, Lower Red River; Appendix A.5, Designated Beneficial Uses of Surface Waters, Water Quality Management Basin 5, Canadian River; and Appendix A.6, Designated Beneficial Uses of Surface Waters, Water Quality Management Basin 6, Upper Arkansas River, are all proposed to be revoked and reenacted with multiple changes. First, the beneficial use of Public and Private Water Supply is being designated for several waterbodies in each of these Appendices. The circumstance which created the need for these amendments is that EPA has recently encouraged the OWRB staff to protect "source waters" in support of federal Safe Drinking Water Act guidelines. The intended effect of these amendments is to ensure that all drinking water supplies are protected. Second, a number of the lakes and one of the streams monitored in the OWRB's Beneficial Use Monitoring Program are being added to or otherwise revised in these Appendices. The circumstance which created the need for these amendments is that several lakes and one stream, the South Fork of Cavalry Creek, are not currently listed in these appendices, and therefore the prescribed "default uses" are assumed for such waterbodies. In contrast, Great Salt Plains Reservoir is listed in one of these appendices, with several use designations. However, in recent years and months OWRB

staff have gathered monitoring data from these waterbodies which now enable informed designations of uses rather than the default uses. The monitoring has also shown that two of the uses currently designated for Great Salt Plains Reservoir are not existing nor appropriate, and should be deleted. The intended effect of these amendments is to ensure that the appropriate beneficial uses are assigned to and reported for all of these waterbodies.

In addition, a third set of changes is being proposed for Appendix A.1: several Waterbody Identification Numbers are being added or changed. The circumstance which created the need for these amendments is that the Department of Environmental Quality ("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 E, Requirements for Development of Site-Specific Criteria for Certain Parameters, is proposed to be revoked and reenacted with site specific criteria for (1) the Poteau River for cadmium, silver, lead and selenium, and (2) Ninemile Creek and the unnamed tributary of Ninemile Creek for total dissolved solids, chloride and sulfate. These amendments are needed because these affected dischargers have completed studies which indicate that criteria more appropriate and site specific than otherwise provided in OAC 785:45 can and should be applied in their respective circumstances. The intended effect of these amendments is to provide for increased specificity in the criteria and standards which apply to these receiving streams, while maintaining water quality, as permitted by EPA and federal law.

Appendix F, Statistical Values of the Historical Data for Mineral Constituents of Water Quality (Beginning October 1976 Ending September 1983, Except As Indicated), is proposed to be revoked and reenacted with the deletion of several listings. The circumstance that created the need for these amendments was the discovery that nearly all the sites used to generate data for these listings were unduly influenced by old surface mines or mine reclamation activities. The intended effect of these amendments is to remove these inappropriate values and return to use of the segment average for the sub-basin.

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 7, 2008.

PUBLIC HEARING:

A public hearing will be held January 8, 2008 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, 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 Derek Smithee 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 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.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 <http://www.owrb.state.ok.us>.

CONTACT PERSON:

Derek Smithee, Water Quality Programs Division Chief, 405/530-8800.