

OKLAHOMA WATER RESOURCES BOARD

**RULE IMPACT STATEMENT**

for Rule Amendments in OAC 785:46  
Proposed for Adoption During 2008

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

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

Several sections throughout OAC 785:46 are proposed to be amended to delete language dealing with the determination of "partial support". These sections include but are not necessarily limited to 785:46-15-4, 785:46-15-5, 785:46-15-6, 785:46-15-7 and 785:46-15-8. The circumstance which created the need for these amendments is that the U.S. Environmental Protection Agency ("EPA") has deemphasized and abandoned the concept of a beneficial use which is "partially supported". The language in OAC 785:46 dealing with "partial support" is now obsolete. The intended effect of these amendments is to delete these obsolete provisions.

OAC 785:46-1-2, 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 785:46, while the term "background" is used frequently. The intended effect of this amendment is to clarify the use of the term "background" throughout OAC 785:46.

OAC 785:46-3-2, Dilutions for whole effluent toxicity testing, is proposed to be amended. The circumstance which created the need for this amendment is that currently the acute whole effluent toxicity ("WET") testing language applies only to streams, while there is no language discussing how acute WET testing applies to lakes. The intended effect of the proposed amendment is to make the acute WET testing language apply to both streams and lakes.

OAC 785:46-15-1, Scope and Applicability, is proposed to be amended. The circumstance which created the need for this amendment is that state environmental agencies have experienced several cases in which the employment of a single parameter in a use support assessment protocol indicated full support or non-support of the use, but other evidence convincingly contradicted that finding. The intended effect of the proposed amendment is to add language that will allow assessing agencies to use data other than that specified for a given parameter in certain circumstances in order to make use support decisions.

OAC 785:46-15-2, Definitions, is proposed to be amended to add a definition for the term "Trophic State Index". The circumstance which created the need for this amendment is that the two references which OWRB staff have used for the determination of Trophic State Index ("TSI") are not specifically cited in OAC 785:45 or 785:46. The intended effect of this amendment is to add a definition of TSI that incorporates both these citations.

OAC 785:46-15-4, Default Protocols, is proposed to be amended regarding long term average parameters. The circumstance which created the need for this amendment is that it has been noted that a variety of averaging periods and techniques have been applied to those parameters not specifically addressed in the use support assessment protocols in OAC 785:46

Subchapter 15. The intended effect of this amendment is to revise the default rule to require the use of a mean of all data that meet the other data quality requirements.

OAC 785:46-15-5, Assessment of Fish and Wildlife Propagation support, is proposed to be amended in several ways. First, portions of this section will be reorganized. The circumstance which created the need for this amendment is that support tests are currently detailed in the paragraph entitled "screening levels" instead of the section entitled "support tests". The intended effect of this amendment is to reorganize the text to a more appropriate placement. Another change in this section is to change the language "natural causes" to "naturally occurring conditions". The circumstance which created the need for this amendment is this language does not match language found elsewhere in this Chapter. The intended effect of this amendment is to create consistent terminology throughout OAC 785:46. Next, amendments are proposed dealing with the assessment of metals criteria that depend upon the hardness of the water that is being assessed. The circumstance which created the need for these amendments is the lack of specificity in how to determine the representative hardness of the stream for purposes of use support determination. The intended effect of this amendment is to provide that specificity. Finally, in the protocol for pH, the term "screening level" is proposed to be modified. The circumstance which created the need for this amendment is that this term is not entirely accurate. The intended effect of this amendment is to amend this term to the more appropriate term "criteria range".

OAC 785:46-15-7, Assessment of Public and Private Water Supply support, is proposed to be amended to clarify the tests for support with respect to toxicants. The circumstance which created the need for this amendment is that there has been some confusion in the interpretation of the current language. The intended effect of the amendment is to reduce or eliminate the confusion and make it clear that (a) both the prescribed tests must be met in order to determine the use is supported with respect to toxicants, and (b) failure of one of the tests results in a determination that the use is not supported.

OAC 785:46-15-8, Assessment of Agriculture Support, is proposed to be amended. The entire section will be reorganized to clarify how assessment of the three different parameters of chlorides, sulfates and total dissolved solids ("TDS") should be performed. The circumstance which created the need for this amendment is OWRB staff were requested to clarify this section by other state agencies. The intended effect of this amendment is to separate the parameters for a more clear application of the tests.

OAC 785:46-15-10, Nutrients, is proposed to be amended in several ways. First, it is proposed that in many instances the term "lake" be replaced with "waterbody". These amendments are needed because some persons interpret that these assessment protocols apply to lakes and reservoirs only. The intended effect of these amendments is to allow the application of these protocols to all waterbodies as appropriate. Second, it is proposed to amend certain references to "impairment studies" to reinforce that it is beneficial uses which are impaired or threatened, rather than waterbodies. This amendment is needed in order to make the language in this Section consistent. The intended effect of this amendment is to bring these few references into line with the other references to "impairment" or "threatened". Third, it is proposed to delete language regarding Scenic Rivers from this section and move it to a new Section 785:46-15-14, Aesthetics. The circumstance which created the need for this amendment is that this language addresses the Aesthetics beneficial use. The intended effect of this amendment is to create a new Section focusing on the beneficial use of Aesthetics.

Several Sections in Subchapter 17, OWRB Water Quality Standards Implementation Plan ("WQSIP"), are proposed to be amended to reflect changes in state law. The rules pertaining to the WQSIP proposed to be amended include but are not necessarily limited to 785:46-17-2, Definitions; 785:46-17-3, Processes to ensure compliance with antidegradation standards and leading to maintenance of, removal of threats to, and restoration of beneficial uses; 785:46-17-10, Evaluation of effectiveness; and Appendix D. Summary of Comments on OWRB's Water Quality Standards Implementation Plan. These amendments are needed to implement program changes that allow Clean Water State Revolving Fund loans to be made for projects that implement the state's Nonpoint Source Management Program. The intended effect of these amendments is to update the WQSIP to reflect current OWRB policies.

**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.**

State environmental agencies have been asked to provide information whether these proposed rules will affect persons within those agencies' respective areas of jurisdiction. The majority of the proposed revisions are organizational in nature and will have no effect on the actual implementation of the Water Quality Standards. As of November 14, 2007, only limited oral and written responses from these agencies have been received.

Lacking specific information to the contrary, OWRB staff do not anticipate any impact to any state agency or the general public except for the following:

State agencies that perform assessments of state's waters and create the reports detailing the results of those assessments are expected to benefit from the proposed revision to 785:46-15-1 allowing evidence other than that required for any particular beneficial use to be employed in the determination of the use support status of any given waterbody. Potential increases in staff time needed to analyze additional information are expected to be offset by the reduced amount remedial action on waterbodies that may not actually be impaired.

State agencies that perform assessments of state's waters and create the reports detailing the results of those assessments are expected to benefit from the proposed revision to 785:46-15-8 which clarifies the assessment of the three parameters used in the assessment of the Agriculture beneficial use.

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

It is anticipated that all state environmental agencies and those entities under their respective jurisdictions will benefit from having consistent application of terms used in Water Quality Standards.

State agencies that perform assessments of state's waters and create the reports detailing the results of those assessments are expected to benefit from the proposed revision to 785:46-15-1 allowing evidence other than that required for any particular beneficial use to be employed in the determination of the use support status of any given waterbody.

These same agencies are expected to benefit from the many organizational changes proposed throughout the rest of the chapter by having a better organized, more logical and user-friendly document.

**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.**

State environmental agencies have been asked to provide information whether these proposed rules will affect persons within those agencies' respective areas of jurisdiction. The majority of the proposed revisions are organizational in nature and will have no effect on the actual implementation of the Water Quality Standards. In the absence of specific information from state environmental agencies or other affected persons, the OWRB staff expects the proposals to have little to no effect on any individual or political subdivision since the majority of the proposals are organizational only.

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 are organizational only.

**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.

**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.**

The majority of the proposed revisions are organizational in nature and will have no effect on the actual implementation of the Water Quality Standards. OWRB staff expects that the proposed rules will not have an adverse economic effect on "small business" as defined in 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.**

The OWRB held several informal meetings 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.

**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 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 are organizational only.

**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 are organizational in nature and 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 14, 2007 by Phillip Moershel, Section Head, Water Quality Standards Section, Water Quality Programs Division, Oklahoma Water Resources Board.