

OKLAHOMA WATER RESOURCES BOARD

RULE IMPACT STATEMENT

for Rule Amendments in OAC 785:45
Proposed or Considered for Adoption during 2017

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 (WQS) 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 October 7, 2016 and November 3, 2016. 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 Groundwater Quality Standards

Over the past decade, the development of water reuse has been explored a means to augment water supplies to meet Oklahoma's current and future water supply demands. The practice of Aquifer Storage and Recovery (ASR) has been put forward as one possible method for meeting future water supply needs. Under the leadership of the Oklahoma Department of Environmental Quality, the ASR Workgroup was formed in 2014 to consider needs and actions necessary to make ASR activities an option for interested parties in Oklahoma. Upon considering groundwater quality and the structure of Oklahoma's current groundwater quality standards it became clear that the current groundwater quality standards wholly restrict an activity such as ASR and a comprehensive revision of the groundwater quality standards would be necessary in order to allow for ASR and/or other projects. The ASR Workgroup worked cooperatively to draft proposed revisions to the groundwater quality standards.

The proposed revision includes three key components.

- 1) **Antidegradation Policy**: Consistent with the existing protection philosophy outline in the current groundwater quality standards this revision specifies a Groundwater Quality Antidegradation Policy (785:45-7-2), which will continue to protect existing high quality groundwaters and prohibit degradation of Special Source Groundwaters.
- 2) **Beneficial Uses**: The proposed revision maintains two important beneficial uses of *Agriculture and Industrial and Municipal Process and Cooling Water* and revises the drinking water beneficial uses (785:45-7-3(b)). As part of this proposed revision the drinking water beneficial uses are separately identified as *Domestic Untreated Water Supply* and *Public Water Supply*; this allows explicit independent protection for users of raw untreated groundwater and public water supplies.
- 3) **Criteria**: The proposed revision maintains the approach of using narrative criteria to provide broad protection for groundwater quality; however, it accomplishes this in a more

defined manner by expressing the narrative criteria according to pollutant group (785:45-7-4). The proposed narrative criteria protect all groundwater beneficial uses. The proposed revisions also include numeric criteria for several constituents that pose a threat to human health. The numeric criteria protect the drinking water beneficial uses and are applicable to artificial recharge and or ASR activities.

Additionally, the definition section (785:45-1-2) is proposed to be amended to include a definitions for the terms *artificial aquifer recharge* and *aquifer storage and recover activities*.

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 revises the groundwater quality standards; the revised groundwater quality standards are not self implementing and do not automatically create a regulatory obligation for any class of persons. The class of persons mostly likely affected by the proposed rule would be those who decide to pursue operation of an aquifer storage and recovery (ASR) facility and would be required to operate the facility consistent with the revised groundwater quality standards. Additionally, all Oklahoma residents are affected by this revision as it improves the functionality and clarity of the state's groundwater quality standards and more robustly protects groundwater beneficial uses.

No class of persons will be required to bear a cost due to OWRB revising the groundwater quality standards.

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 includes all Oklahoma residents and those who decide to pursue operation of an ASR facility. The proposed revision benefits Oklahomans because it improves the functionality and clarity of the state's groundwater quality standards and more robustly protects groundwater beneficial uses. Moreover, the proposed revision to the groundwater quality standards allows a path forward to permit and operate an ASR facility while protecting groundwater beneficial uses. Oklahoma residents benefit from sound public policy balancing the combined goals of water quality protection and reliable water supplies.

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 revises the existing groundwater quality standards; this revision is not self implementing and does not automatically create a regulatory obligation for any class of persons or political subdivision. The revision of the groundwater quality standards is not expected to cause a direct economic impact. 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 groundwater quality standards under their respective jurisdictions. The proposed action is a revision of the existing groundwater standards and largely will not require new or revised implementation/enforcement programs; it is expected that sister environmental agencies will continue to utilize existing rules and programs. As the proposed revised groundwater quality standards improve in functionality and clarity they are expected to aid sister agencies in their work.

A key objective of the proposed revision to groundwater quality standards is to create a standards structure which allows for permitting and operation of an ASR facility. This will set the stage for the Oklahoma Department of Environmental Quality (ODEQ), as necessary, to promulgate rules for an ASR permit program. The proposed rule was drafted cooperatively between OWRB, ODEQ, and the ASR Workgroup, and ODEQ has stated that they expect to incur and absorb any additional administrative cost associated with prospective ASR rulemaking under its jurisdiction.

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. The proposed action revises the existing groundwater quality standards; this revision is not self implementing and does not automatically create a regulatory obligation for any political subdivision. The proposed rule is not expected to cause an economic impact on political subdivisions.

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 revises the existing groundwater quality standards to improve functionality, clarity, and provide robust beneficial use protection; the proposed revision is 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.

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 revises the existing groundwater quality standards; the proposed revision is 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 revising the groundwater quality standards. This proposed action allows a path forward to permit and operate an ASR facility, while protecting groundwater beneficial uses; thus it will benefit parties seeking to implement future ASR projects. Also, Oklahoma residents will benefit from sound public policy balancing the combined goals of goals of water quality protection and reliable water supplies.

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.

The proposed action serves to improve the functionality and clarity of the state's groundwater quality standards and more robustly protect groundwater beneficial uses. The revised groundwater standards expressly provide protection for two drinking water beneficial uses and scientifically defensible criteria to protect those uses. Hundreds of thousands of Oklahomans rely upon groundwater for their primary and/or sole drinking water supply and it is imperative that the state's shared groundwater resources be protected to ensure a safe and reliable supply of drinking water. By specifically identifying the *domestic untreated drinking water supply* and *public water supply* beneficial uses and providing both narrative criteria and, where suitable, specific numeric criteria to protect these uses OWRB is effectively utilizing an existing regulatory structure and defensible science to protect human 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 revises the groundwater quality standards and includes express protection for both *domestic untreated drinking water supply* and *public water supply* beneficial uses. Hundreds of thousands of Oklahomans rely upon groundwater for their primary and/or sole source of drinking water. These two drinking water beneficial uses and the associated criteria to protect these uses serve to protect human health and ensure that groundwaters are a safe drinking water supply. Without these beneficial uses and the criteria to protect them, there is greater uncertainty and risk to Oklahoma's groundwaters that serve as drinking water supply

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 15, 2016 by Monty Porter, Section Head, Water Quality Standards Section, Water Quality Programs Division, Oklahoma Water Resources Board.