SUBCHAPTER 5. SURFACE WATER QUALITY STANDARDS

Part 1. GENERAL PROVISIONS

Section
785:45-5-1. Declaration of Policy; Authority of Board
785:45-5-2. Beneficial Uses: Existing and Designated
785:45-5-3. Beneficial Uses: Default Designations
785:45-5-4. Applicability of Narrative and Numerical Criteria
785:45-5-5. Water Quality Standards Variance
785:45-5-6. Compliance Schedules
785:45-5-7. Site-specific Criteria

Part 3. BENEFICIAL USES AND CRITERIA TO PROTECT USES

785:45-5-9. General Narrative Criteria
785:45-5-10. Public and Private Water Supplies
785:45-5-11. Emergency Public and Private Water Supplies
785:45-5-12. Fish and Wildlife Propagation
785:45-5-13. Agriculture: Livestock and Irrigation
785:45-5-14. Hydroelectric Power Generation [REVOKED]
785:45-5-15. Industrial and Municipal Process and Cooling Water [REVOKED]
785:45-5-16. Primary Body Contact Recreation
785:45-5-17. Secondary Body Contact Recreation
785:45-5-18. Navigation
785:45-5-19. Aesthetics
785:45-5-20. Fish Consumption

Part 5. SPECIAL PROVISIONS

785:45-5-25. Implementation Policies for the Antidegradation Policy Statement
785:45-5-26. Mixing Zones and Zones of Passage
785:45-5-27. Site-Specific Criteria [REVOKED]
785:45-5-28. Implementation Policy for Total Phosphorus Criterion [EXPIRED]
785:45-5-29. Delineation of NLW Areas

PART 1. GENERAL PROVISIONS

785:45-5-1. Declaration of Policy; Authority of Board
(a) General policy to protect, maintain and improve water quality. Title 82 of the Oklahoma Statutes, Section 1084.1, provides as follows: Whereas the pollution of the waters of this state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, it is hereby declared to be the public policy of this state to conserve and utilize the waters of the state and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses...
(b) Board authority to promulgate Standards.
   (1) Title 82 of the Oklahoma Statutes, Section 1085.30 provides that the Board is authorized to adopt, amend and otherwise promulgate rules to be known as "Oklahoma Water Quality Standards" which establish classifications of uses of waters of the state,
criteria to maintain and protect such classifications, and other standards or policies pertaining to the quality of such waters. The...Standards shall, at a minimum, be designed to maintain and protect the quality of the waters of the state.

(2) Wherever the Board finds it is practical and in the public interest to do so, the rules may be amended to upgrade and improve progressively the quality of waters of the state.

(3) The Board may also amend the Standards to downgrade a designated use of any waters of this state which is not an existing use, may establish subcategories of a use or may provide for less stringent criteria or other provisions thereof only in those limited circumstances permissible under the Federal Water Pollution Control Act as amended or federal rules which implement said act. Provided, the Board may amend the...Standards applicable to scenic river areas as such areas are described by Section 1452 of Title 82 of the Oklahoma Statutes, to downgrade a designated use, establish a subcategory of a use or provide for less stringent criteria or other provisions thereof only to the extent as will maintain or improve the existing uses and the water quality of the water affected. Provided further, the Board shall not modify the...Standards to downgrade a designated use, establish a subcategory of a use or provide for less stringent criteria or other provisions thereof.

785:45-5-2. Beneficial Uses: Existing and Designated
(a) Beneficial uses are designated for all waters of the state. Such uses are protected through the restrictions imposed by the antidegradation policy statement, narrative criteria and numerical standards. Some uses require higher quality water than others. When multiple uses are assigned to the same waters, all such uses shall be protected. Beneficial uses are also protected by permits or other authorizations issued to meet these Standards for point sources and through practical management or regulatory programs for nonpoint sources. The criteria to protect the beneficial uses designated in 785:45-5-3 or in Appendix A of this Chapter for certain surface waters of the state are described in sections 785:45-5-10 through 785:45-5-20 of this Chapter.

(b) Beneficial uses designated in 785:45-5-3 or in Appendix A of this Chapter for certain surface waters of the state may be downgraded to a lower use or removed entirely, or subcategories of such designated uses may be established, if:

(1) the use, despite being designated, is not a use which is or has been actually attained in the water body on or after November 28, 1975; and

(2) for the use of Fish and Wildlife Propagation, Primary Body Contact Recreation or Secondary Body Contact Recreation, or any subcategory of such use or uses, it is demonstrated to the satisfaction of the Board and the U.S. E.P.A. that attaining the designated use is not feasible because:

(A) naturally occurring pollutant concentrations prevent the attainment of the use, or

(B) natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating state water conservation requirements to enable uses to be met, or

(C) human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place, or

(D) dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use, or

(E) physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses, or
controls more stringent than those required by sections 301(b) and 306 of the federal Clean Water Act as amended would result in substantial and widespread economic and social impact; and

(3) such downgrade, removal, or establishment of a subcategory will maintain or improve the quality of water affected.

785:45-5-3. Beneficial Uses: Default Designations

(a) Surface waters excluding lakes.

(1) For those surface waters of the state not listed in Appendix A of this Chapter, excluding lakes, the following beneficial uses are designated:

(A) Irrigation Agriculture subcategory of the beneficial use classification Agriculture (see 785:45-5-13),

(B) Aesthetics (see 785:45-5-19),

(C) The Warm Water Aquatic Community subcategory of the beneficial use classification Fish and Wildlife Propagation (see 785:45-5-12(c)), and

(D) Primary Body Contact Recreation (see 785:45-5-16).

(2) The beneficial uses described in 785:45-5-10 (Public and Private Water Supplies), 785:45-5-11 (Emergency Public and Private Water Supplies), 785:45-5-12(b) (the Habitat Limited Aquatic Community subcategory of the beneficial use classification Fish and Wildlife Propagation), and 785:45-5-17 (Secondary Body Contact Recreation) shall be designated only following use attainability analyses.

(3) Beneficial use determinations that follow use attainability analyses are subject to administrative rulemaking proceedings including the public hearing process.

(b) Lakes.

(1) For lakes, including those listed in Appendix A of this Chapter, the following beneficial uses are designated:

(A) The Warm Water Aquatic Community subcategory of the beneficial use classification Fish and Wildlife Propagation (see 785:45-5-12(c));

(B) Irrigation Agriculture subcategory of the beneficial use classification Agriculture (see 785:45-5-13);

(C) Primary Body Contact Recreation (see 785:45-5-16); and

(D) Aesthetics (see 785:45-5-19).

(2) The beneficial use of Public and Private Water Supplies (see 785:45-5-10) is specifically designated for certain lakes as provided in Appendix A of this Chapter. For all other lakes, the beneficial uses designated in this paragraph take control over the uses designated for stream segments which include descriptions of lakes or portions thereof identified in Appendix A of this Chapter.

785:45-5-4. Applicability of narrative and numerical criteria

(a) For purposes of permitting discharges for attainment of numerical criteria or establishing site specific criteria, streamflows of the greater of 1.0 cfs or 7Q2 shall be used to determine appropriate permit conditions unless otherwise provided in OAC 785:45 or 785:46.

(b) When numerical criteria do not apply, water column conditions including dissolved oxygen concentrations, organoleptic compounds, nutrients, and oil and grease shall be maintained to prevent nuisance conditions caused by man's activities.

(c) Narrative criteria listed in this Chapter shall be maintained at all times and apply to all surface waters of the State.

(d) If more than one narrative or numerical criteria is assigned to a stream, the most stringent shall be maintained.
A water quality standards variance is a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the water quality standards variance. OWRB rulemaking and approval is required for all water quality standard variances. All water quality standard variances shall be developed in accordance with and meet the requirements of 40 CFR 131.14 and be subject to U.S. Environmental Protection Agency review and approval or disapproval.

(b) A water quality standard variance may be developed on a discharger specific, reach specific, waterbody specific, or other site-specific basis. The time-limited designated use and criterion associated with the water quality standard variance do not replace the underlying waterbody designated use and criterion. Additionally, all other applicable water quality standards not specifically addressed by the variance remain applicable. A water quality standard variance serves as the applicable water quality standard for implementing Clean Water Act (CWA) §301(b)(1)(C) National Pollutant Discharge Elimination System (NPDES) permit limits and CWA §401 certification for the term of the water quality standard variance. The underlying waterbody designated use and criterion shall remain applicable for all other CWA purposes.

A temporary variance may be granted at the sole discretion of the Oklahoma Water Resources Board in limited circumstances only for specific numerical criteria listed in Table 2 of Appendix G of this Chapter addressing water column numerical criteria to protect human health for the consumption of fish flesh and water, for specific numerical criteria listed in Appendix G Table 2 addressing numerical criteria for toxic substances, and for specific numerical criteria listed in Appendix G Table 2 addressing water column numerical criteria to protect human health for the consumption of fish flesh only.

(1) General requirements and time limits for variance. A variance or exception to listed numeric criteria may only be granted by the Board so long as the applicant complies with all procedural and application requirements, demonstrates to the satisfaction of the Board that the necessary conditions specified in 785:45-5-4(e)(4) exist, and that the variance will not otherwise be contrary to law or inconsistent with the Board’s statutory duties. Variances shall be allowed only in very limited situations. In no circumstances shall a variance be granted which exceeds three (3) years in duration and no renewal shall be allowed.

(2) Applications and related requirements. A variance may only be considered and granted upon application of a person for discharge from a specific facility to a specific stream segment(s). All applications for a variance must contain or include as attachments at the time of filing, at a minimum, all written documentation which supports a finding that the necessary conditions listed in 785:45-5-4(e)(4) exist, a description of the specific numerical criterion for which the variance is requested, the legal description of the stream segment(s) which would receive the discharge and the location of any other affected waters, and such other information as the Board may specify as necessary for adequate review of the application. A fee, as set forth in Chapter 5 of this Title, shall be submitted with the application for variance.

(3) Procedure and scope of variance.

(A) A variance may be granted only by the Oklahoma Water Resources Board, shall be restricted to those listed numerical criteria for which an application is filed, and shall apply only to the specific facility and specific stream segment(s) which receives the discharge.

(B) The applicant for a variance must prepare a public notice whose contents shall reflect the nature of the variance applied for and such other information as the Board may deem appropriate, and shall state the date, time and location of public hearing on the application. Such notice, after submission to and approval by the Board, shall be
published at the expense of the applicant once a week for two consecutive weeks, minimum seven day interval, in a newspaper(s) having general circulation in the county(ies) in which the discharge is located. The Board may require additional publication of the notice in additional counties or publications at the applicant's expense. Proof of publication shall be provided as directed by the Board.

(C) The applicant shall deliver or mail such public notice to all persons who are on a standing list for receiving notice of such applications for variances. Such standing list shall be established and maintained by the Board and shall include the Office of the Attorney General, the chief executive of each affected municipality and county, all persons who shall request to receive such notices, and such other persons as may be specified by the Board.

(D) An administrative hearing shall be held not earlier than twenty-one days following the last publication or mailing of notice. At the hearing, the burden of proof shall be upon the applicant to produce evidence which demonstrates to the satisfaction of the Board that all conditions and requirements of these rules and applicable law are met. All interested persons may present oral or written comments prior to or at the hearing on the application, as specified in the notice.

(4) **Conditions for variance.**

(A) A variance shall be effective only after approval by the U. S. Environmental Protection Agency.

(B) A variance may be granted by the Board only if the following additional conditions are met:

(i) The granting of a variance will not result in the violation of any other OWQS, including those specified for ORW, HQW or other classes of waters; and

(ii) New or previously unavailable information regarding toxicity, bioavailability, persistence or degradation of a specific pollutant refutes the scientific basis for the effective numerical criterion; or

(iii) Non-attainment of a numerical criterion is documented in the stream segment which is the subject of the variance application or in close proximity upstream of such segment, and there is no increase in the concentration of the pollutant which is the subject of the variance outside the mixing zone or at some point downstream of the facility following complete mixing if appropriate relative to the concentration upstream of the facility, and

(I) non-attainment is demonstrated to be the result of natural source concentrations of that pollutant in the water column, sediment or aquatic life, or

(II) non-attainment is the result of human caused conditions which cannot be remedied or would cause more environmental damage if corrected than if left in place.

785:45-5.6. **Compliance Schedules**

(fa) Schedules for compliance with the Oklahoma Water Quality Standards may be granted to persons or facilities discharging wastes into waters of the state unless such discharge creates an actual or potential hazard to the public health in accordance with 82 O.S. §1085.30(D).

785:45-5.7. **Site-specific Criteria**

(a) As needed, site-specific criteria may be developed to reflect site-specific waterbody conditions. Site-specific criteria must be based on sound scientific rationale and assure protection of beneficial uses. Site-specific criteria are developed on a case-by-case basis and depending on the particular case there may be several acceptable scientific approaches for developing site-specific criteria. However, in all cases a detailed workplan consistent with OWRB and or EPA technical guidance, if available, shall be submitted for review and approval by OWRB staff. Prior to the initiation of any work toward development of a site-specific criterion, interested parties shall coordinate with OWRB technical staff. Additional information and site-specific criteria adopted for certain waterbodies and conditions are found in Appendix E.
(g) Site-specific criteria that have been derived for certain waterbodies and conditions are promulgated in Appendix E of this chapter. These site-specific criteria supersede other numeric criteria promulgated elsewhere in this chapter if it is shown to the satisfaction of the Board that properties of the discharge or the circumstances surrounding the development of the site-specific criteria have not significantly changed since the promulgation of those site-specific criteria. Such criteria and the conditions around which they were derived, including but not limited to local environmental factors and effluent characteristics, shall be re-evaluated by the permit holder with each subsequent discharge permit renewal application or major modification request to determine if any significant changes have affected the propriety of the site-specific criteria.