

OKLAHOMA WATER RESOURCES BOARD

**RULE IMPACT STATEMENT**

for Rule Amendments in OAC 785:46  
Proposed or Considered for Adoption during 2021

**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 (OWQS) codified in Oklahoma Administrative Code (OAC) 785:46 as presented below.

Technical documentation supporting the proposed amendments/rules outlined below is posted on the OWRB website

<http://www.owrb.ok.gov/rules/wqs/revisions/totalphosphorous.php>.

The OWRB hosted informal public meetings to discuss the proposed amendments on September 8, 2020, September 22, 2020, and October 6, 2020. 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 Implementation of the Total Phosphorous Criterion for Scenic Rivers in the Illinois River Watershed**

The OWRB is proposing to revise the total phosphorus criterion for the protection of the Aesthetics beneficial use for Scenic River reaches of Illinois River, Flint Creek, and Barren Fork Creek. This revision requires updated use assessment protocols to effectively implement the revised criterion in monitoring and assessment programs (785:46-15-14(c)). The updated use assessment protocols address elements such as data requirements, procedures, and test for beneficial use support or non-support.

The proposed beneficial use assessment protocols incorporate the Joint Study Committees recommendations regarding the term “critical condition” which was introduced in the 2016 Final Report; this is a new term for Oklahoma WQS. The proposed rule would define the critical condition as conditions when baseflow is fifty-five percent (55%) or greater of the total daily average flow calculated by the USGS hydrograph separation method sliding-interval. Implementing this new term would limit the data used for assessment of the aesthetics beneficial use to those data values collected when the critical condition was satisfied. This is a transition away from the present inclusive use of data for beneficial use assessment.

The newly proposed critical condition definition sets a data restriction on the water quality samples to be included a water quality assessment analysis. It does not direct any changes to state water quality monitoring programs and therefore, is not expected to result in any new costs for agency conducting water quality assessments.

**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.**

Proposed Implementation of the Total Phosphorous Criterion for Scenic Rivers in the Illinois River Watershed

The classes of persons mostly likely to be affected by the proposed rules are those state agencies that conduct water quality assessments to determine the attainment or nonattainment of beneficial uses. Additionally, other groups, such as universities, that utilize the state's WQS to evaluate water quality data will be affected. The impact of the proposed total phosphorous implementation provisions will be beneficial because the proposed revision incorporates the new critical condition language and updates use assessment protocols to effectively implement the revised criterion in monitoring and assessment programs.

The proposed revision updates use assessment protocols to effectively implement the revised criterion in monitoring and assessment programs. The revision does not direct any changes to state water quality monitoring programs and therefore, is not expected to result in any new costs for agency conducting water quality assessments.

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

Proposed Implementation of the Total Phosphorous Criterion for Scenic Rivers in the Illinois River Watershed

The classes of persons who will benefit from the proposed rules are primarily staff of state environmental agencies and or tribes that conduct water quality assessments to determine the attainment or nonattainment of beneficial uses.

The proposed rule will benefit agency staff because it serves to incorporate the new critical condition language into the implementation procedures for monitoring and assessment in these waterbodies. Additionally, it provides clear directions on elements such as data requirements, procedures, and test for beneficial use support or non-support. Updating the implementation procedures of the total phosphorous criterion will support consistent and correct water quality assessments. This will subsequently benefit the regulated community because the state will consistently and correctly identify waterbodies in need of additional protection and or further regulatory action.

**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.**

Proposed Implementation of the Total Phosphorous Criterion for Scenic Rivers in the Illinois River Watershed

The proposed revision updates the existing implementation of the total phosphorous criterion. The updates to the criterion and the implementation are minor and the proposed rules are not expected to cause an economic impact on affected persons or political subdivisions.

OWRB staff did not receive any information from affected persons, political subdivisions, or other state agencies regarding the probable economic impact of the proposed rules.

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.**

Proposed Implementation of the Total Phosphorous Criterion for Scenic Rivers in the Illinois River Watershed

The proposed revision updates the assessment protocols to effectively implement the revised total phosphorous criterion in monitoring and assessment programs in these scenic rivers (785:46-15-14(c)). The proposed amendment introduces a new consideration (critical condition) into existing assessment procedures that has not previously been required. However, software program and training documents are freely available online from federal agencies such as the USGS and can be used to determine the critical condition, when necessary. Agencies may need to devote extra staff time to learn how to use these resources to determine if a sample is eligible for assessment under the critical condition flow requirements. Additionally, OWRB staff expects to provide assistance regarding critical condition determinations, as needed. There are no new anticipated costs expected to OWRB or other state agencies.

Oklahoma's state environmental agencies, including OWRB, currently implement and/or enforce water quality standards through existing programs under their respective jurisdictions. The proposed rules do not create any new implementation programs. The Oklahoma Conservation Commission engages in important work directly with landowners in the watershed to mitigate nonpoint sources of pollution like TP with WQS as a target for reductions. These programs are voluntary and primarily centered around educating landowners about best management practices they can implement on their property. Oklahoma Department of Environmental Quality is the agency responsible for the Integrated Report, discharge permitting and enforcement. It is not expected that ODEQ will be required to modify implementation and or enforcement activities.

State agencies that conduct water quality assessments to determine the attainment or nonattainment of beneficial uses will utilize the updated criterion to determine if a waterbody is impaired. If a waterbody is found to be impaired (not attaining its beneficial uses) it will be necessary for agency(s) to develop plans such as, a watershed-based plan or Total Maximum Daily Load to improve water quality. These plans and subsequent implementation actions are part of existing programs and do not create new responsibilities for any agency.

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.**

**Proposed Implementation of the Total Phosphorous Criterion for Scenic Rivers in the Illinois River Watershed**

Political subdivisions are not expected to have implementation or enforcement responsibilities associated with the proposed rules. This revision requires updated use assessment protocols to effectively implement the revised criterion in monitoring and assessment programs (785:46-15-14(c)); the proposed rule is not expected to change the enforcement of the total phosphorous criterion.

**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.**

**Proposed Implementation of the Total Phosphorous Criterion for Scenic Rivers in the Illinois River Watershed**

The proposed revisions to the implementation of the total phosphorous criterion are not expected to create additional costs or have an adverse economic effect on small business (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.**

Proposed Implementation of the Total Phosphorous Criterion for Scenic Rivers in the Illinois River Watershed

The Oklahoma Water Resources Board (OWRB) is the state agency responsible for promulgating water quality standards to ensure water quality protection across the state. It is Oklahoma's desire to ensure protection of our aquatic resources. Recreation in and on Oklahoma's waters substantially contributes to the state's economy. The proposed implementation of the new total phosphorous criterion will benefit Oklahoma residents and recreational visitors through protection of aquatic life resources and improved condition of scenic rivers.

OWRB staff did not receive any expected compliance cost information from other state agencies and/or interested parties.

**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.**

Proposed Implementation of the Total Phosphorous Criterion for Scenic Rivers in the Illinois River Watershed

The purpose of the proposed rule is to incorporate new scientific information regarding algal growth in response to total phosphorous concentrations in the Illinois River Watershed. The implementation of the updated total phosphorous criterion will benefit Oklahoma residents and recreational visitors through protection of the aesthetic beneficial use and improved condition of surface waters in our scenic rivers.

**J. A DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULES ARE NOT IMPLEMENTED.**

Proposed Implementation of the Total Phosphorous Criterion for Scenic Rivers in the Illinois River Watershed

The proposed revision updates the assessment protocols to effectively implement the revised total phosphorous criterion in monitoring and assessment programs in these scenic rivers (785:46-15-14(c)). If the proposed rules are not implemented, there will be a detrimental effect to public health, safety, and the environment. Excess algal growth on the surface of rocks in the streambed will pose a significant fall hazard to those fishing, floating or swimming. Noxious algal scums may cause drinking water taste and odor issues, as well as harmful algal blooms (HABs). HABs may produce toxins that can sicken people and pets in contact with the water and contaminate drinking water sources.

**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 1, 2020, Monty Porter, Assistant Chief of Water Quality Programs Division, Oklahoma Water Resources Board.