

Appendix D

State of Oklahoma Antidegradation Policy

Draft

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785:45-3-1. Purpose; Antidegradation policy statement

(a) Waters of the state constitute a valuable resource and shall be protected, maintained and improved for the benefit of all the citizens.

(b) It is the policy of the State of Oklahoma to protect all waters of the state from degradation of water quality, as provided in OAC 785:45-3-2 and Subchapter 13 of OAC 785:46.

785:45-3-2. Applications of antidegradation policy

(a) Application to outstanding resource waters (ORW). Certain waters of the state constitute an outstanding resource or have exceptional recreational and/or ecological significance. These waters include streams designated "Scenic River" or "ORW" in Appendix A of this Chapter, and waters of the State located within watersheds of Scenic Rivers. Additionally, these may include waters located within National and State parks, forests, wilderness areas, wildlife management areas, and wildlife refuges, and waters which contain species listed pursuant to the federal Endangered Species Act as described in 785:45-5-25(c)(2)(A) and 785:46-13-6(c). No degradation of water quality shall be allowed in these waters.

(b) Application to high quality waters (HQW). It is recognized that certain waters of the state possess existing water quality which exceeds those levels necessary to support propagation of fishes, shellfishes, wildlife, and recreation in and on the water. These high quality waters shall be maintained and protected.

(c) Application to beneficial uses. No water quality degradation which will interfere with the attainment or maintenance of an existing or designated beneficial use shall be allowed.

(d) Application to improved waters. As the quality of any waters of the state improve, no degradation of such improved waters shall be allowed.

785:46-13-1. Applicability and scope

(a) The rules in this Subchapter provide a framework for implementing the antidegradation policy stated in OAC 785:45-3-2 for all waters of the state. This policy and framework includes three tiers, or levels, of protection.

(b) The three tiers of protection are as follows:

- (1) Tier 1. Attainment or maintenance of an existing or designated beneficial use.
- (2) Tier 2. Maintenance or protection of High Quality Waters and Sensitive Public and Private Water Supply waters.
- (3) Tier 3. No degradation of water quality allowed in Outstanding Resource Waters.

(c) In addition to the three tiers of protection, this Subchapter provides rules to implement the protection of waters in areas listed in Appendix B of OAC 785:45. Although Appendix B areas are not mentioned in OAC 785:45-3-2, the framework for protection of Appendix B areas is similar to the implementation framework for the antidegradation policy.

(d) In circumstances where more than one beneficial use limitation exists for a waterbody, the most protective limitation shall apply. For example, all antidegradation policy implementation rules applicable to Tier 1 waterbodies shall be applicable also to Tier 2 and Tier 3 waterbodies or areas, and implementation rules applicable to Tier 2 waterbodies shall be applicable also to Tier 3 waterbodies.

(e) Publicly owned treatment works may use design flow, mass loadings or concentration, as appropriate, to calculate compliance with the increased loading requirements of this section if those flows, loadings or concentrations were approved by the Oklahoma Department of Environmental Quality as a portion of Oklahoma's Water Quality Management Plan prior to the application of the ORW, HQW or SWS limitation.

785:46-13-2. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Specified pollutants" means

(A) Oxygen demanding substances, measured as Carbonaceous Biochemical Oxygen Demand (CBOD) and/or Biochemical Oxygen Demand (BOD);

(B) Ammonia Nitrogen and/or Total Organic Nitrogen;

(C) Phosphorus;

(D) Total Suspended Solids (TSS); and

(E) Such other substances as may be determined by the Oklahoma Water Resources Board or the permitting authority.

785:46-13-3. Tier 1 protection; attainment or maintenance of an existing or designated beneficial use

(a) General.

(1) Beneficial uses which are existing or designated shall be maintained and protected.

(2) The process of issuing permits for discharges to waters of the state is one of several means employed by governmental agencies and affected persons which are designed to attain or maintain beneficial uses which have been designated for those waters. For example, Subchapters 3, 5, 7, 9 and 11 of this Chapter are rules for the permitting process. As such, the latter Subchapters not only implement numerical and narrative criteria, but also implement Tier 1 of the antidegradation policy.

(b) Thermal pollution. Thermal pollution shall be prohibited in all waters of the state. Temperatures greater than 52 degrees Centigrade shall constitute thermal pollution and shall be prohibited in all waters of the state.

(c) Prohibition against degradation of improved waters. As the quality of any waters of the state improves, no degradation of such improved waters shall be allowed.

785:46-13-4. Tier 2 protection; maintenance and protection of High Quality Waters and Sensitive Water Supplies

(a) General rules for High Quality Waters. New point source discharges of any pollutant after June 11, 1989, and increased load or concentration of any specified pollutant from any point source discharge existing as of June 11, 1989, shall be prohibited in any waterbody or watershed designated in Appendix A of OAC 785:45 with the limitation "HQW". Any discharge of any pollutant to a waterbody designated "HQW" which would, if it occurred, lower existing water quality shall be prohibited. Provided however, new point source discharges or increased load or concentration of any specified pollutant from a discharge existing as of June 11, 1989, may be approved by the permitting authority in circumstances where the discharger demonstrates to the satisfaction of the permitting authority that such new discharge or increased load or concentration would result in maintaining or improving the level of water quality which exceeds that necessary to support recreation and propagation of fishes, shellfishes, and wildlife in the receiving water.

(b) General rules for Sensitive Public and Private Water Supplies. New point source discharges of any pollutant after June 11, 1989, and increased load of any specified pollutant from any point source discharge existing as of June 11, 1989, shall be prohibited in any waterbody or watershed designated in Appendix A of OAC 785:45 with the limitation "SWS". Any discharge of any pollutant to a waterbody designated "SWS" which would, if it occurred, lower existing water quality shall be prohibited. Provided however, new point source discharges or increased load of any specified pollutant from a discharge existing as of June 11, 1989, may be approved by the permitting authority in circumstances where the discharger demonstrates to the satisfaction of the permitting authority that such new discharge or increased load will result in maintaining or improving the water quality in both the direct receiving water, if designated SWS, and any downstream waterbodies designated SWS.

(c) Stormwater discharges. Regardless of subsections (a) and (b) of this Section, point source discharges of stormwater to waterbodies and watersheds designated "HQW" and "SWS" may be approved by the permitting authority.

(d) Nonpoint source discharges or runoff. Best management practices for control of nonpoint source discharges or runoff should be implemented in watersheds of waterbodies designated "HQW" or "SWS" in Appendix A of OAC 785:45.

785:46-13-5. Tier 3 protection; prohibition against degradation of water quality in outstanding resource waters

(a) General. New point source discharges of any pollutant after June 11, 1989, and increased load of any pollutant from any point source discharge existing as of June 11, 1989, shall be prohibited in any waterbody or watershed designated in Appendix A of OAC 785:45 with the limitation "ORW" and/or "Scenic River", and in any waterbody located within the watershed of any waterbody designated with the limitation "Scenic River". Any discharge of any pollutant to a waterbody designated "ORW" or "Scenic River" which would, if it occurred, lower existing water quality shall be prohibited.

(b) Stormwater discharges. Regardless of 785:46-13-5(a), point source discharges of stormwater from temporary construction activities to waterbodies and watersheds designated "ORW" and/or "Scenic River" may be permitted by the permitting authority. Regardless of 785:46-13-5(a), discharges of stormwater to waterbodies and watersheds designated "ORW" and/or "Scenic River" from point sources existing as of June 25, 1992, whether or not such stormwater discharges were permitted as point sources prior to June 25, 1992, may be permitted by the permitting authority; provided, however, increased load of any pollutant from such stormwater discharge shall be prohibited.

(c) Nonpoint source discharges or runoff. Best management practices for control of nonpoint source discharges or runoff should be implemented in watersheds of waterbodies designated "ORW" in Appendix A of OAC 785:45, provided, however, that development of conservation plans shall be required in sub-watersheds where discharges or runoff from nonpoint sources are identified as causing or significantly contributing to degradation in a waterbody designated "ORW".

(d) LMFO's. No licensed managed feeding operation (LMFO) established after June 10, 1998 which applies for a new or expanding license from the State Department of Agriculture after March 9, 1998 shall be located...[w]ithin three (3) miles of any designated scenic river area as specified by the Scenic Rivers Act in 82 O.S. Section 1451 and following, or [w]ithin one (1) mile of a waterbody [2:9-210.3(D)] designated in Appendix A of OAC 785:45 as "ORW".

785:46-13-6. Protection for Appendix B areas

(a) General. Appendix B of OAC 785:45 identifies areas in Oklahoma with waters of recreational and/or ecological significance. These areas are divided into Table 1, which includes national and state parks, national forests, wildlife areas, wildlife management areas and wildlife refuges; and Table 2, which includes areas which contain threatened or endangered species listed as such by the federal government pursuant to the federal Endangered Species Act as amended.

- (b) Protection for Table 1 areas. New discharges of pollutants after June 11, 1989, or increased loading of pollutants from discharges existing as of June 11, 1989, to waters within the boundaries of areas listed in Table 1 of Appendix B of OAC 785:45 may be approved by the permitting authority under such conditions as ensure that the recreational and ecological significance of these waters will be maintained.
- (c) Protection for Table 2 areas. Discharges or other activities associated with those waters within the boundaries listed in Table 2 of Appendix B of OAC 785:45 may be restricted through agreements between appropriate regulatory agencies and the United States Fish and Wildlife Service. Discharges or other activities in such areas shall not substantially disrupt the threatened or endangered species inhabiting the receiving water.
- (d) Nonpoint source discharges or runoff. Best management practices for control of nonpoint source discharges or runoff should be implemented in watersheds located within areas listed in Appendix B of OAC 785:45.