

TITLE 785. OKLAHOMA WATER RESOURCES BOARD

***Editor's Note:** Effective 7-1-93, some programs and functions of the Oklahoma Water Resources Board were transferred to the newly-created Department of Environmental Quality (DEQ). Rules "relating to such programs and functions transferred . . . remain[ed] in effect until the promulgation of rules by the [DEQ]" [Laws 1993, c. 145, § 8]. For additional information on this transfer, see Laws 1993, c. 145 and Laws 1992, c. 398.*

CHAPTER 1. ORGANIZATION AND PROCEDURE OF OKLAHOMA WATER RESOURCES BOARD

[**Authority:** 27A O.S., §§ 1-1-203 and 1-1-204; 51 O.S., § 24A.5; 75 O.S., §§ 302, 305, and 307; 82 O.S., §§ 105.31, 926.3, 926.6, 1085.1 et seq., and 1086.1 et seq.]

[**Source:** Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

785:1-1-1. Purpose

The purpose of the rules in this Chapter are to set forth basic organizational rules of the Oklahoma Water Resources Board, including details of its structure, procedures on how rules can be amended and how declaratory rulings can be requested, and details about records of the agency.

785:1-1-2. Definitions

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

"**APA**" means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S. 1981, §§301 et seq., as amended.

"**Board**" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

"**Complaint**" means any written or verbal concern expressed by any person that alleges site specific problems relating to matters under the Board's jurisdiction and for which a reply is expected, provided a complaint shall not include a protest of an application or other matters relating to an application presented to the Board by interested parties during the proceedings on the application.

"**Executive Director**" means the Executive Director of the Oklahoma Water Resources Board.

"**Person**" means any individual, firm, partnership, association, corporation, business or public trusts, federal agency, state agency, the State or any political subdivision thereof, municipalities, and any other duly constituted legal entity.

"**Response**" means the determination of the course of action to be taken by the Board in addressing a complaint.

"**Resolution**" means the finding that appropriate administrative, jurisdictional, and/or legal remedies have been completed to the extent possible by the Board.

[**Source:** Amended at 10 Ok Reg 3267, eff 6-25-93; Amended at 23 Ok Reg 3074, eff 7-27-06]

785:1-1-3. Use of words, terms and phrases

(a) The words, terms and phrases used within the rules of this Chapter shall be given the meaning and definition provided under the relevant statutory provisions generally contained in Oklahoma Statutes, Title 82 and as may be substantially provided within any other rule or regulations herein. In instances of ambiguity, words and phrases not otherwise defined by rule, regulations or statute, shall be given a fair and reasonable interpretation of meaning in accordance with the ordinary professional community meaning or common, ordinary and everyday accepted meaning attributed to such words and phrases.

(b) Words expressed in the singular form may be interpreted and applied, in context, in plural form and words expressed in plural form may be interpreted and applied, in context, in singular form.

SUBCHAPTER 3. ORGANIZATION, MEETINGS AND COMPREHENSIVE WATER PLAN

785:1-3-1. Origin, composition and operations of the Board

(a) **Origin and composition.** The Oklahoma Water Resources Board was created as a seven-member Board by an Act of the Twenty-Sixth Oklahoma Legislature in 1957. The Board consists of nine members, one member being appointed from each of the nine (9) regions identified in 82 O.S. 1085.1. At all times the membership shall have represented on it at least one member well versed in each of the following major types of water use: recreational, industrial, irrigational, municipal, rural residential, agricultural, and soil conservation work, but no more than two (2) members may be selected representing any one of the major types of water use. A chairman, vice-chairman, and secretary shall be elected annually, provided that no person shall serve as chairman for more than two consecutive years.

(b) **Operations of Board.** The Executive Director, appointed by the Board, manages the day-to-day operations and staff members of the Board. Four divisions of the Board, each supervised by a Division Chief, have been established as follows: Planning and Management Division, Financial Assistance Division, Water Quality Programs Division and Administrative Services Division. The public may obtain information or make submissions or requests by contacting the appropriate Division staff in person, in writing or by telephone. Other rules may also be applicable to obtain information or make submissions or requests. The Board retains final authority over all matters before the agency unless otherwise provided by law. Agenda items for all meetings of the Board are processed through the appropriate Division and approved for placement on the agenda by the Executive Director in consultation with the Chairman.

[Source: Amended at 10 Ok Reg 3267, eff 6-25-93; Amended at 13 Ok Reg 2849, eff 7-1-96; Amended at 22 Ok Reg 1594, eff 7-1-05; Amended at 40 Ok Reg 1300, eff 8-11-23]

785:1-3-2. Purpose of the Board

It is the purpose of the Board to determine and administer rights to the use of waters of the State; develop long-range plans to encourage the conservation, development, and utilization of the water resources of the State and to coordinate local, state, and federal water activities within the State.

[Source: Amended at 25 Ok Reg 1435, eff 5-27-08; Amended at 40 Ok Reg 1300, eff 8-11-23]

785:1-3-3. Offices of the Board

The principal office of the Board shall be located in Oklahoma City, Oklahoma. Additional branch offices may be located in other Oklahoma towns and cities as the Board may deem necessary and proper to carry out its duties and responsibilities.

[Source: Amended at 10 Ok Reg 3267, eff 6-25-93; Amended at 40 Ok Reg 1300, eff 8-11-23]

785:1-3-4. Seal of the Board

The Seal of the Board shall be a circle, 1.7 inches in diameter, in the center of which shall be a five-pointed star measuring .9 inch from point to opposite point, and the words "Oklahoma Water Resources Board" circularly arranged about the inner edge of said circle.

785:1-3-5. Meetings of the Board

(a) **Regular meetings; voting.** Regular meetings of the Board shall be held on the second Tuesday of each month unless otherwise directed by the Board. Five (5) members must be present to constitute a quorum and a majority vote of those present shall be necessary to act upon and decide any motion before the Board. An abstention shall not be deemed to be a vote. A pass shall allow the member to cast his vote after the other votes, except that of the Chair or Vice-Chair as the case may be, are cast. No action can be approved or disapproved except by affirmative or negative vote of a majority of those present. Meetings may be canceled due to inclement weather or other good cause.

(b) **Special or emergency meetings.** Special or emergency meetings may be called by the Chairman as provided by law.

(c) **Meetings shall be open.** All meetings of the Board shall be open public meetings and notices thereof shall be given as required by the Oklahoma Open Meeting Act (25 O.S. 1981, §§301 et seq., as amended). Executive sessions may be held as authorized by the Oklahoma Open Meeting Act.

(d) **Minutes of the Board.** A minute record shall be made of all proceedings before the Board. The minute record shall show members present and absent, matters considered, actions taken, and the vote of each member on any motion. The minutes shall also reflect the manner and time of notice required by the Open Meeting Law.

(e) **Conduct of meetings.** The Chairman shall preside over Board meetings. In the absence of the Chairman, the Vice-Chairman shall preside. The Secretary shall attest the signature of the Chairman or Vice-Chairman as the case may be on documents executed at the meetings. In the absence of the Secretary, an Acting Secretary shall be appointed by the Chairman or Vice-Chairman as the case may be for the meeting from which the Secretary is absent.

[Source: Amended at 9 Ok Reg 1699, eff 5-11-92]

785:1-3-6. Oklahoma Comprehensive Water Plan

(a) Under the provisions of 82 O.S. 1981, §§1086.1 and 1086.2, the Board has promulgated, adopted and approved the "Oklahoma Comprehensive Water Plan", Board publication 94 dated April 1, 1980. Pursuant to House Concurrent Resolution No. 1004 approved and adopted by the Thirty-Eighth Oklahoma Legislature, First Regular Session, 1981, the "Plan" has been received, approved and adopted, in principle, by the Oklahoma Legislature.

(b) As provided and contemplated by law, the Plan is a general guide to be utilized in providing for and matching the future water needs and supplies of the State of Oklahoma and adoption of the Plan shall not be deemed to preclude the implementation of alternatives consistent with the basic and overall goals and objectives set forth in the Plan.

(c) The Board shall proceed in the performance of its water resource management, administration and planning efforts and activities in such a manner as shall be consistent with and in furtherance of the basic and overall goals, objectives, policies and recommendations set forth in the Plan.

(d) Under House Bill 2036 of the Second Session of the Forty-Third Legislature, the Board shall prepare decennial updates of the Plan, with the first decennial update to be prepared and submitted to the Legislature no later than September 1, 1995, and updates thereafter prepared and likewise submitted no later than September 1 of the fifth year following the taking of the Federal Decennial Census.

[Source: Amended at 10 Ok Reg 3267, eff 6-25-93]

SUBCHAPTER 5. RULES

785:1-5-1. Purpose and use of rules

(a) The rules, regulations, and modes of procedure contained in this Title are adopted pursuant to 82 O.S. 1981. §1085.2(7) and other authorizing provisions, and contain revisions of the rules and regulations adopted in 1985 (OWRB Publication No. 126). They are adopted to simplify procedure, avoid delays, save expense, and facilitate the implementation and administration of the State's water laws.

(b) The rules in this Title shall be given a fair and impartial construction and under no circumstances shall they be constructed to deprive, limit or restrict Board powers, duties and jurisdiction otherwise provided by law.

785:1-5-2. Rules cumulative

Nothing within the rules in this Title shall be construed or applied to affect the validity or enforceability of any additional requirements, rules or regulations of any other governmental entity, public agency or instrumentality which may be otherwise applicable to transactions, conduct and facilities addressed herein. The rules in this Title are cumulative and supplemental to all other applicable rules and regulations authorized by law.

785:1-5-3. Amending of rules by Board

(a) These rules and regulations may, from time to time, be expanded, amended or repealed by the Board pursuant to the Oklahoma APA.

(b) In addition to publishing notice of rulemaking intent in the Oklahoma Register as required by the APA, the Board shall, prior to or within three (3) days after publication of such notice, provide a copy of the notice to all persons who have filed before December 31 of each year a written request for advance notice of rulemaking proceedings for the next ensuing calendar year. Persons who have filed such a request and present comments or otherwise participate in any rulemaking proceedings shall be deemed to have renewed their request to receive such notice for the next calendar year.

[Source: Amended at 22 Ok Reg 1594, eff 7-1-05; Amended at 40 Ok Reg 1300, eff 8-11-23]

785:1-5-4. Petition requesting promulgation, amendment or repeal of a rule by others

(a) Any interested person may petition the Board requesting the promulgation, amendment, or repeal of a Board rule, provided, in submitting such petition, the following requirements shall apply:

- (1) All petitions must be submitted in typewritten or legible printed form.
- (2) All petitions must clearly identify the person submitting such petition and must include a statement reflecting the interest of the person in submitting such petition, i.e., a showing that such petition is being submitted by an "interested person".
- (3) All petitions must clearly state that the petition is for promulgation of a new rule, for the amendment of an existing rule or for the repeal of an existing rule, or, separately, any combination of the above. In the instance of a requested amendment to an existing rule(s), a complete text of the existing rule(s) requested for amendment must be submitted reflecting the existing rule(s) or language requested for change or deletion and/or such language as may be added. In the instance of a requested repeal of any rule(s), the petition must state the complete rule(s) or requested for repeal.
- (4) All petitions must clearly and separately state the submitted basis, reason, ground or justification for each requested rule promulgation, amendment or repeal. Any and all supporting documents, records, statistics, studies or information must be submitted with the petition, and, the legal authority for such requested action, where deemed necessary or appropriate, shall be submitted by the petitioning person unless otherwise ordered by the hearing examiner.
- (5) All petitions must be duly signed and endorsed by all petitioning persons, or their legal representatives, and such signatures and endorsement must be duly acknowledged by notary.

(b) All petitions requesting the promulgation, amendment or repeal of any Board rule, as herein provided, shall be referred to a hearing examiner for review and consideration. The hearing examiner shall initially determine if the submitted petition is in adequate and proper form pursuant to (a) of this Section. If determined to be in proper and adequate form, the hearing examiner shall thereupon make a recommendation whether the petition should be granted or denied, in whole or in part. Before making any such recommendation, the requesting person shall be allowed reasonable opportunity to submit to the hearing examiner argument, written and/or oral, in support of the petition. In making its recommendation on the petition, the hearing examiner may, in his or her discretion, refer the request to staff for additional review, consideration and comment prior to a recommendation thereon by the hearing examiner.

(c) The written recommendations of the hearing examiner shall be submitted to the Board for its consideration. No further argument on the petition shall be allowed unless otherwise determined by the Board.

(d) Should any petition be granted by the Board, in whole or in part, the petition as granted shall separately or in conjunction with other amendments proposed by the Board become subject of proceedings under the APA and other applicable laws for the adoption of such rule promulgation, amendment or repeal. A determination by the Board to grant a petition shall not be binding on the Board in considering the adoption of the rule subject of the petition.

785:1-5-5. Petition for declaratory rulings

Any interested party may petition the Board requesting a declaratory ruling as to the applicability of any Board rule or Board Order.

785:1-5-6. Requirements for declaratory ruling petitions

Petitions for declaratory rulings shall be subject to the following requirements:

- (1) All petitions must be submitted in writing and must contain a complete statement of the nature of the interest of the person submitting the request; a complete statement of the basis for the request and reasons why a Board declaratory ruling is necessary or appropriate; a concise statement of the question presented for declaratory ruling; and, a summary of the position or opinion of the requesting party with respect to the question presented.
- (2) No declaratory rulings shall be utilized or made in an attempt to resolve disputed issues or questions of fact.
- (3) No declaratory rulings shall be made where the question presented involves a matter subject of pending applications, administrative hearings or litigation or generally scheduled for determination by means other than through a declaratory ruling by the Board.
- (4) All petitions for declaratory ruling shall be acted upon by the Board. It shall, however, be the responsibility of Board staff to initially review and consider all petitions requesting a declaratory ruling and to prepare and make a recommendation to the Board regarding final Board action and disposition on such petitions. The petitioning party shall be given notification of the recommended action and disposition prior to the matter of the petition being presented to the Board for its action and at the Board meeting, the petitioning party may appear and be heard concerning the action and disposition recommended.

SUBCHAPTER 7. BOARD RECORDS**785:1-7-1. Records shall be public**

(a) All official files and records of the Board, except for files and records required or allowed by law or regulation to be confidential or privileged, shall be public records open to inspection under reasonable circumstances at any reasonable time during business hours by any person. No records shall be taken from the Board's office.

(b) Any information or materials filed with the Board and not per se confidential or privileged by law or regulation but with respect to which confidentiality or privilege is to be claimed by the person filing same must be asserted and substantiated as being confidential or privileged at the time of filing. Absent such assertion and substantiation, such information or materials shall be recognized and treated by the Board as being public.

785:1-7-2. Copies and certification of Board records

(a) Copies of official records of the Board may be made and certified by the Executive Director or Assistant Director of the Board or their designees. Uncertified copies of Board records may be made by any Board employee. The expense of document search, copying and/or certifying records shall be borne by the party requesting same in accordance with the fee schedule contained in Chapter

5 herein. Certified copies of any records or papers on file in the office of the Board shall be evidence equally with the originals thereof and when introduced as evidence shall have the same validity as the originals.

(b) The Board shall furnish copies of records as promptly as practicable upon request received in the office of the Board where the subject records are kept.

SUBCHAPTER 9. TIME PERIODS FOR PERMIT AND LICENSE ISSUANCE AND DENIAL

785:1-9-1. Time period for permit and license issuance or denial

Any permit, license and certification for an activity regulated by the Board, as described in 785:1-9-2, shall be issued or denied within six (6) months after the Board receives a completed application or notice of completion therefor which is deemed complete by the Board, unless the time is extended as provided in 785:1-9-3. If the application for a permit, license, or certification requires notice and opportunity for hearing, the Board shall issue or deny the application within six (6) months of the end of the notice period.

[Source: Added at 10 Ok Reg 3267, eff 6-25-93; Amended at 40 Ok Reg 1300, eff 8-11-23]

785:1-9-2. Permit and license applications subject to rule

Permit and license applications subject to this subchapter include the following:

- (1) Application for permits and licenses considered under Chapter 15 on Weather Modification;
- (2) Applications for permits to appropriate stream water and notices of completion of works considered under Chapter 20 on Appropriation of Stream Water;
- (3) Applications for approval of plans and specifications to construct, enlarge, alter, remove or repair a dam and notices of completion of works considered under Chapter 25 on Dams and Reservoirs;
- (4) Applications to use groundwater considered under Chapter 30 on Taking and Use of Groundwater;
- (5) Applications for licenses and certifications considered under Chapter 35 on Well Driller and Pump Installer Licensing;
- (6) Applications for development permits considered under Chapter 55 on Development on State Owned or Operated Property Within Floodplain;
- (7) Applications for renewal or modification of permits, licenses or certifications listed in paragraphs (1) through (6) of this section.

[Source: Added at 10 Ok Reg 3267, eff 6-25-93; Amended at 23 Ok Reg 3074, eff 7-27-06]

785:1-9-3. Extension of time period allowed, written reasons

(a) The time period set forth in 785:1-9-1 *shall only be extended by agreement with the applicant for the license or permit or if circumstances beyond the Board's control prevent the Board from meeting* [27A: 11] the time period set forth in 785:1-9-1.

(b) *If the Board fails to issue or deny a permit or license within the required time period set forth in 785:1-9-1 because of circumstances outside of the Board's control, the Board upon request shall state in writing the reasons such licensing or permitting is not ready for issuance or denial* [27A:11].

[Source: Added at 10 Ok Reg 3267, eff 6-25-93]

785:1-9-4. Resolve individual proceeding in accordance with rules and statutes

Any...matter before the Board requiring an individual proceeding shall be resolved in accordance with this Title of the rules and any applicable statutes [27A:11].

[Source: Added at 10 Ok Reg 3267, eff 6-25-93]

SUBCHAPTER 11. COMPLAINTS AND COMPLAINT RESOLUTION

785:1-11-1. Complaint evaluation and resolution procedures

- (a) Upon receipt, each complaint will be logged in by Division and on a central filing system established at the Board. The Chief or Chief's designee of the respective Division shall be immediately advised of the complaint. If the concern presented clearly involves the jurisdictional area of responsibility of another state environmental agency, the Board's staff receiving the written or verbal concern may immediately provide the person expressing the concern contact information for the other state environmental agency, and no further action on the concern will be required by Board's staff.
- (b) The Division Chief or Chief's designee shall determine the appropriate courses of action to further investigate the facts underlying the complaint. Such actions may include an on-site field investigation, telephone calls, written correspondence, etc. After gathering such facts as necessary and appropriate, the Division Chief or Chief's designee shall review pertinent law and rules, in consultation with the Office of General Counsel, the Assistant Director and/or Executive Director, if necessary, to prepare a response the Board may be able to pursue to resolve the complaint or whether the matter should be referred to another environmental regulatory agency.
- (c) The Board will notify the complainant by telephone or in writing of the status of the complaint within two (2) working days of receipt of the complaint. A complaint status report form shall also be prepared and forwarded to the Oklahoma Conservation Commission.
- (d) During the pendency of the fact-finding investigation or of the preparation of the response for action or remedies, the Board shall continue to update the complainant of the status of the complaint at least once a month or such other frequency as determined necessary.
- (e) After completion of the fact-finding investigation and of the preparation of the recommended response, a written report, approved by the Division Chief or the Chief's designee and if necessary by the Assistant Director or Executive Director, of the same shall be forwarded to the complainant. If the recommended action or remedy includes the initiation of litigation, the matter shall be presented to the Board for consideration of staff's recommendation unless the Assistant Director or Executive Director determines that an emergency exists necessitating the initiation of litigation without prior approval of the Board. In such case, the matter will be presented to the Board at its next meeting for ratification of the action taken.
- (f) The Board shall mail a written report of the resolution of the complaint to the complainant within seven (7) working days. A complaint status report shall also be prepared and forwarded to the Oklahoma Conservation Commission.

[Source: Added at 10 Ok Reg 3267, eff 6-25-93; Amended at 12 Ok Reg 2663, eff 7-1-95; Amended at 23 Ok Reg 3074, eff 7-27-06]

SUBCHAPTER 13. DROUGHT RESPONSES

785:1-13-1. Purpose

The purpose of this subchapter is to set forth the intent and policies of the Board in responding to drought conditions declared to exist by the Governor.

[Source: Added at 16 Ok Reg 409, eff 10-22-98 (emergency); Added at 16 Ok Reg 2679, eff 7-1-99]

785:1-13-2. Responses to drought

When the Governor declares, through proclamation, declaration, executive order or otherwise, that a drought emergency or disaster exists, the Board may respond to the drought condition, including but not limited to the following ways:

- (1) Expedite the processing of applications for financial assistance for water resource projects that are intended to relieve drought conditions and specifically waive particular rules as necessary;
- (2) Expedite the processing of applications for permits to use water;
- (3) Coordinate with other state and federal agencies, including but not limited to the United States Army Corps of Engineers and the Oklahoma Department of Civil Emergency Management, to gather and disseminate information related to raw and treated water availability and drought conditions;
- (4) Establish a Drought Relief Grant Account of the Water Resources Fund and direct funds received from state and federal agencies for drought relief into that account; and
- (5) Utilize emergency drought funding from federal agencies and other sources for projects to relieve drought conditions. Except as specified below, applications for such funding may be submitted by eligible entities as defined by law, including but not limited to counties, municipalities and rural water districts. Applicants for drought relief funding shall provide at least fifteen percent (15%) match funding. Additional consideration shall be given to projects that will benefit the most people for the least amount of funds. Priorities will be given for project purposes in the following order:
 - (A) Human consumption, including but not limited to projects for public water supply and domestic use by extending public water supply intake structures into reservoir areas to reach water, acquiring tanks, tankers, temporary lines, pumps and appurtenant equipment by purchase or lease, or providing funding for eligible entities to acquire the same to transport water;
 - (B) Agriculture and farm supply, including but not limited to projects to provide water for domestic farm animals by pasture taps from public water supply sources and for construction of public water loading structures;
 - (C) Projects to increase storage capacity in reservoirs, farm ponds and gully plugs from applications submitted by Boards of County Commissioners; and
 - (D) Fire protection.

[Source: Added at 16 Ok Reg 409, eff 10-22-98 (emergency); Added at 16 Ok Reg 2679, eff 7-1-99; Amended at 17 Ok Reg 2751, eff 7-1-00]

785:1-13-3. Authority of Drought Committee in drought conditions

(a) **Scope.** This section shall apply during drought emergencies or disasters declared to exist by the Governor.

(b) **Use of funds; agreements.** The Board or the Drought Committee of the Board may approve use of funding that may be available for drought relief projects to address water needs for human consumption and to enter agreements with other federal and state agencies and other entities as necessary for such purposes. Reports of all such agreements entered into by the Drought Committee shall be presented to the full Board. In addition to funds that may be available in the Drought Relief Grant Account, the Board or its Drought Committee may approve use of up to \$300,000.00 during any single drought emergency or disaster from the Emergency Grant Account of the Water Resources Fund established by Section 1085.39 of Title 82 of the Oklahoma Statutes to fund drought relief projects of eligible entities to address water needs for human consumption.

[Source: Added at 16 Ok Reg 409, eff 10-22-98 (emergency); Added at 16 Ok Reg 2679, eff 7-1-99; Amended at 17 Ok Reg 2751, eff 7-1-00]

CHAPTER 4. RULES OF PRACTICE AND HEARINGS

[Authority: 75 O.S., §§ 307, and 309 et seq.; 82 O.S., §§ 1085.2 and 1085.10]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

785:4-1-1. Purpose

The rules in this Chapter set forth the requirements and procedures for conducting hearings, issuing orders and considering post-hearing actions.

785:4-1-2. Definitions

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

"**APA**" means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S. 1981, §§301 et seq., as amended.

"**Application**" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"**Board**" means the Oklahoma Water Resources Board or any employee or agent or staff member thereof.

"**Executive Director**" means the Executive Director of the Oklahoma Water Resources Board.

"**Interested party**" means party.

"**Interested person**" means one whose interests could be adversely affected by any proceeding.

"**Party**" means a person or agency named and participating, or properly seeking and entitled by law to participate, in hearings other than hearings on Board rules, regulations and standards.

"**Person**" means any individual, firm, partnership, association, corporation, business or public trusts, federal agency, state agency, the State or any political subdivision thereof, municipalities, and any other duly constituted legal entity.

SUBCHAPTER 3. BOARD HEARINGS

785:4-3-1. Conducting hearings

The Board may hold hearings on any matter within the Board's jurisdiction. Hearings may be instituted and conducted where expressly required by law and where deemed necessary to the proper execution and discharge of any of the powers or duties conferred or imposed upon the Board by law. Hearings may be instituted by written application, petition, complaint (herein generally and collectively referred to as "application") or other similar request of an interested or aggrieved person or by the Board on its own motion.

785:4-3-2. Laws governing hearings

All hearings shall be held in accordance with the governing and applicable provisions of Title 82 of the Oklahoma Statutes, the APA and the rules of this Subchapter.

785:4-3-3. Types of hearings

The Board may conduct general or individual hearings:

- (1) General hearings include hearings on matters of general statewide, regional or area-wide interest, concern and applicability. These matters may directly or indirectly affect interests of individual persons and may result in the adoption of rules or the issuance of orders. Examples of general hearings include hearings to determine prior groundwater rights and maximum annual ground water basin yields, and hearings on the formation of special purpose water districts and hearings on Board rules, regulations and standards. Hearings on maximum annual groundwater basin yields shall be evidentiary type hearings conducted pursuant to Article II of the APA. Hearings on Board rules, regulations and standards shall be conducted according to the requirements of the APA and other applicable laws.
- (2) Individual hearings are hearings held on matters directly affecting the interests of an individual person or persons and resulting in the issuance of an Order. Examples of individual hearings include hearings on permit applications and petitions and violation hearings.

785:4-3-4. Hearing Examiners

(a) **Who may be Hearing Examiners.** Hearings may be conducted by authorized and designated Hearing Examiners. Any Board member, the Board Executive Director or Assistant Director, any authorized Board staff member, staff attorneys, the Attorney General or Assistant Attorney General or any other Board authorized person may serve as Hearing Examiner.

(b) **General authority of Hearing Examiners.** Hearing Examiners are authorized to supervise, direct, preside over and conduct the hearing proceedings; to make and enter interlocutory rulings; to make and enter rulings on procedural or evidentiary questions or objections; to make and enter rulings on any other motions or objections arising during the course of the hearing; and, generally, to do all things necessary and incidental to conducting and completing the hearing and all other acts authorized under this Chapter.

(c) **Assistance.** Where deemed necessary, the Hearing Examiner may designate any Board staff member to assist the Hearing Examiner in the conduct of the proceedings or to aid the Hearing Examiner in an advisory capacity.

785:4-3-5. Location of hearings

Hearings may be held at the main offices of the Board in Oklahoma City, at any designated branch office of the Board or at such other location as may be designated by law, the rules of this Subchapter, the Hearing Examiner or the Board.

785:4-3-6. Record of hearings

(a) **Recording; transcriptions.** All testimony and evidence given at hearings shall be recorded electronically, but shall be transcribed only upon *order of the reviewing court* [75:309] pursuant to the APA or upon other proper request of an interested party of record and pre-payment of the estimated cost of transcribing. *Costs of transcription of the recordings shall be borne by the party requesting the transcription. For judicial review, electronic recordings of an individual proceeding, as certified by the Board may be submitted to the reviewing court without transcription unless otherwise required to be transcribed by the reviewing court* [75:309].

(b) **Court reporter.** Any party desiring the taking of stenographic notes by a qualified court reporter must make such request in writing to the Board and submit the name of a qualified reporter who is available on the date set for hearing. The party requesting the reporter shall bear the expense of the reporter's attendance fees. If the reporter's transcript is deemed by the Board to be the official transcript of the hearing, the party requesting the reporter shall furnish the Board a transcript free of charge.

(c) **Other electronic recording.** Electronic recording of hearings other than that provided under this rule may be made at the discretion of the hearing examiner; provided that any such recording or transcript thereof shall not be made a part of the official record of proceedings nor shall such recording be used in any way to challenge or impeach the official record of the proceedings.

[Source: Amended at 10 Ok Reg 3271, eff 6-25-93; Amended at 11 Ok Reg 2907, eff 6-13-94]

785:4-3-7. Notice and scheduling of hearings

The Hearing Examiner shall give notice of the hearing within sixty (60) days of receipt of the evidentiary file submitted by the Board's Office of General Counsel. The hearing shall be scheduled at least thirty (30) days from the date of the notice, subject to continuances as provided in section 785:4-5-5(a).

[Source: Added at 40 Ok Reg 1303, eff 8-11-23]

SUBCHAPTER 5. PRE-HEARING ACTIONS AND PROCEEDINGS

785:4-5-1. Pre-hearing discovery

When deemed necessary and proper for the purposes of a hearing, pre-hearing discovery by an interested party may be allowed by the Hearing Examiner as provided under the APA and the rules in this Chapter. Depending upon the nature of the hearing, pre-hearing discovery may be requested at any time subsequent to the filing (and acceptance for filing) of an application or petition, or otherwise, at any time subsequent to the institution of proceedings on the application. The party requesting discovery shall submit a proposed schedule for discovery to be agreed upon and signed by the parties and for approval and signature by the Hearing Examiner. The joint schedule may include, but need not be limited to, requests for discovery, objections to discovery requests, responses to discovery requests to which there are no objections, exchange of exhibits to be introduced at the hearing, and a list of witnesses that may be called at the hearing. The parties may agree to

close discovery in the proceedings under the joint schedule within a reasonable time before the date of the hearing, but not later than fifteen (15) days before the hearing. The Hearing Examiner must resolve disputes regarding discovery or disputes regarding compliance with the joint scheduling order as soon as possible so that the parties may continue to comply with the joint scheduling order. Requests for pre-hearing discovery must be timely made and the Hearing Examiner may impose reasonable and necessary limitations on the scope of discovery and the period of time within which discovery requests may be presented and entertained.

[Source: Amended at 40 Ok Reg 1303, eff 8-11-23]

785:4-5-1.1. Mediation

After receipt of a protest that meets the requirements of section 785:4-5-4(b), the Board staff may schedule a mediation meeting with the parties to attempt a compromise and settlement of the protest. A statement concerning the outcome of the mediation meeting if one is held will be prepared and placed into the record by the person conducting the mediation. If the protest is not settled, the person conducting the mediation for the Board should not be designated as hearing examiner for further proceedings on the matter unless the parties agree.

[Source: Added at 25 Ok Reg 1436, eff 5-27-08]

785:4-5-2. Pre-hearing conferences

(a) **Directing appearance; notice.** In any hearing proceeding, the Hearing Examiner may direct, on the Examiner's own motion or at the request of an interested party, that the parties appear for a pre-hearing conference. Interested parties of record shall be notified of such conferences in advance.

(b) **Matters subject of pre-hearing conference.** Pre-hearing conferences may be held to facilitate and expedite notice and simplification of issues presented; admissions and stipulations; the identification of documents and witnesses proposed to be offered; discovery and production of relevant documents and other information; and any other matters as may aid in the conducting of the hearing.

785:4-5-3. Witnesses and subpoenas

The Hearing Examiner, on the Examiner's own motion or at the request of an interested party, may, in the name of the Board, issue subpoenas for witnesses and/or the production of books, records, papers or other information or objects. Subpoenas may be personally served by any Board staff member or by certified mail, return receipt requested. Subpoenas must be served no less than three (3) days prior to the date of the hearing. The issuance of subpoenas or subpoenas duces tecum or requests to quash the same shall be governed by provisions of the APA.

[Source: Amended at 10 Ok Reg 3271, eff 6-25-93]

785:4-5-4. Application protests; comments and objections

(a) **Who may file.** Any interested person may file a written protest, objection or comment to any permit application, petition or other matter subject of a hearing. Persons signing form letters, multiple letters containing substantially similar or duplicate text or information, or persons signing written submittals in petition format containing multiple signatures, may not be considered parties to a proceeding unless all requirements specified in subsection b are set forth for each person signing such letters or petitions.

(b) Requirements for protests; standing. Protests must be filed with the Board in writing and must contain the following information:

- (1) Name, telephone number, e-mail (if available) and postal address of the interested person;
- (2) The application to which the protest relates;
- (3) Specific information to show how approval of the application, petition or action proposed may directly and adversely affect legally protected interests of the person filing the protest; and
- (4) A statement of the relief sought by the interested person.

(c) Protest required for party status. To become a party and to facilitate reasonable notice to the applicant or petitioner, all protests must contain the information as set forth in paragraphs (1) through (4) of subsection (b) and be filed with the Board, and a copy must be provided to the applicant or petitioner, within the time period stated in the notice. In enforcement actions initiated by Board staff, all respondents named in the notice of hearing shall be deemed parties for purposes of participation in the proceedings. A person who fails to provide a copy of the protest with the applicant or petitioner within the time period stated may not be considered a party unless otherwise determined by the Hearing Examiner.

(d) Hearing examiner discretion on allowing presentation of protest. If an interested person appears at the hearing for purposes of presenting a protest to the application without first meeting the requirements set forth above, the Hearing Examiner may at the Examiner's discretion, reject the protest, receive the protest, orally or in writing, and proceed with the hearing; or may defer receiving such protest and direct a continuance of the hearing in order to allow the interested person an opportunity to file the protest in compliance with the requirements set forth above. In the last described instance, the Examiner may take into consideration the wishes of the applicant or petitioner with respect to proceeding with or continuing the hearing. The Hearing Examiner may allow any interested person to make a statement in support of or in opposition to an application or petition without cross examination if the statement is not intended as evidence, provided the Hearing Examiner may limit such presentations to avoid duplication.

(e) Record of protests, comments and objections.

- (1) All correspondence relating to an application, including all protest, objection and comment letters, shall be retained in the permanent application file.
- (2) Persons who submit objections or comments to an application or petition will not be deemed to be parties, but, as described in subsection (d), may be allowed to make statements at a hearing.
- (3) Abbreviated notice, including but not limited to notice by electronic mail, of further proceedings or of the availability of proposed findings, conclusions and order prepared after a hearing may be given to a person who files objections and comments or who makes a statement at a hearing.

[Source: Amended at 11 Ok Reg 2907, eff 6-13-94; Amended at 16 Ok Reg 2680, eff 7-1-99; Amended at 23 Ok Reg 3076, eff 7-27-06]

785:4-5-5. Pre-hearing continuances, informal disposition by stipulation, agreed settlement or consent order

(a) Continuances may be requested not more than five (5) days prior to the hearing by telephone, followed by a written request, and may be granted by the Hearing Examiner if all parties of record agree or otherwise at the discretion of the Hearing Examiner.

(b) In enforcement actions initiated by Board staff, informal disposition of the matter subject of the hearing may be made by stipulation, agreed settlement or consent order. A proposed stipulation, agreed settlement or consent order, acceptable to Board staff and respondent, shall be presented to the Hearing Examiner for recommendation to the Board. The recommendation of the Hearing Examiner, along with the proposed stipulation, agreed settlement or consent order, shall be forwarded to the Board for consideration without further hearing or findings of fact and conclusions of law (see also 785:4-9-1).

785:4-5-6. Electronic mail notice

(a) The Board may allow protests, comments and objections to applications to be submitted through electronic mail to an e-mail address specified in the notice of application.

(b) Unless a request is made to provide notice to a U.S. Postal Service address, persons who submit protests, comments or objections by electronic mail will be given notice to the electronic mail address from which the protest, comment or objection was received, unless another electronic mail address is provided.

(c) Hard copies of electronic mail messages and attachments sent or received by the Board relating to applications, protests, comments and objections and will be made and placed in the application file.

[Source: Added at 23 Ok Reg 3076, eff 7-27-06]

785:4-5-7. Motions, requests and orders

(a) Except for oral motions made in proceedings on the record, or where the Hearing Examiner otherwise direct, each motion shall:

(1) Be in writing; and

(2) Contain a concise statement of supporting grounds.

(b) Unless the Hearing Examiner orders otherwise, any party to a proceeding in which a motion is filed under (a) of this section shall have 15 days from service of the motion to file a statement in response.

(c) Failure to make a timely motion or to file a statement in response may be construed as a waiver of objection.

(d) The Hearing Examiner shall rule on all motions as expeditiously as possible.

(e) Any person filing a motion or other request to the Board shall mail a copy of the motion or request to all parties of record. A certificate of such mailing shall be filed with the motion or request.

(f) Unless otherwise directed within the interlocutory order, a copy of the interlocutory order relating to the motion or request shall be provided by the Board to the person filing the motion or request. That person shall mail a copy of the interlocutory order to all parties of record.

(g) A written copy of the proposed final order of the Board prepared by the Hearing Examiner after the conclusion of any hearing shall be provided to the applicant, and the applicant shall be required to serve all other parties at least fifteen (15) days prior to Board meeting at which the proposed final order is scheduled to be considered.

[Source: Added at 23 Ok Reg 3076, eff 7-27-06; Amended at 40 Ok Reg 1303, eff 8-11-23]

SUBCHAPTER 7. CONDUCT OF HEARINGS

785:4-7-1. Opening of hearings and general supervision of hearings

(a) The Hearing Examiner shall open the hearing at the time and place scheduled by the Hearing Examiner. The Hearing examiner shall state the purpose of the hearing and read and admit into evidence and the record the following:

- (1) The application which initiated the proceeding;
- (2) The notice of application;
- (3) The affidavit of publication or other proof of service of notice required by law;
- (4) All other pleadings and documents submitted; and
- (5) Any protests which have been filed.

(b) Hearing Examiners shall have general supervision over the manner in which the hearings are held, requiring the degree of formality necessary to provide due process for all parties. Hearing Examiners may limit or prohibit distractions, such as cameras, lights, posters, vocal outbursts, etc. as deemed appropriate under the circumstances.

[Source: Amended at 11 Ok Reg 2907, eff 6-13-94]

785:4-7-2. Proper notice

After opening the hearing, the Hearing Examiner shall determine whether notice of the application was properly given as required by law. If a proof of publication affidavit by the newspaper publisher is not available at the hearing, the Hearing Examiner may at the Hearing Examiner's discretion leave the record open for late-filing of such proof of publication, provided that the matter subject of the hearing shall not be presented to the Board for consideration until such proof of publication showing that notice was properly published is filed. If the notice given is inaccurate as to matters to be considered at the hearing, the Hearing Examiner shall recess the hearing and consult with the Executive Director, Assistant Director and/or General Counsel concerning the inaccuracy and related matters of due process in determining whether the notice is materially, substantially or prejudicially defective in form or content. Should it be determined that the required notice was not given or is materially, substantially or prejudicially defective in form or content, the Hearing Examiner shall adjourn the hearing, set a new hearing date and a new and proper notice thereof shall be given. In addition to the required notice, all interested parties of record shall be given written notice of the new hearing date by the Hearing Examiner.

[Source: Amended at 10 Ok Reg 3271, eff 6-25-93; Amended at 11 Ok Reg 2907, eff 6-13-94]

785:4-7-3. Appearances

(a) After opening the hearing and making a determination on notice, the Hearing Examiner shall require that all interested parties enter their appearances for the record by indicating on the attendance sheet or stating their names, addresses, who they represent if other than themselves and whether they are appearing in support of or in opposition to the application.

(b) Interested parties may appear personally, by authorized representative and/or by legal counsel, provided, attorneys appearing as legal counsel for and in behalf of an interested party must be duly licensed to practice law by the Oklahoma Supreme Court.

(c) In protested proceedings including enforcement actions initiated by Board staff and unless otherwise waived by the Board, the applicant and protestants or respondents, as the case may be, must appear at the hearing, either personally, by representative or by legal counsel. The failure of an interested party to appear shall be deemed to constitute default and abandonment of interest by the party failing to

appear and shall preclude the party from being heard further unless good cause for such failure to appear is shown within five (5) days from the date of the hearing.

(d) If a respondent party fails to appear without good cause shown, the allegations set forth in the Board's notice and supplemental statement thereto, if any, shall be deemed confessed, and the Hearing Examiner may recommend a default order based thereon to the Board without further notice to such defaulting respondent.

785:4-7-4. Presentation of evidence and examination of witnesses

After all interested parties have entered their appearances, the Hearing Examiner shall proceed to admit into evidence any additional statements filed and then proceed to entertain presentation of evidence and testimony. The testimony of a witness shall be taken only upon oath or affirmation. Witnesses may be sworn individually or as a group. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, to object to the introduction of evidence, to impeach any witness regardless of which party called him first to testify, to rebut evidence presented, and to call and examine an adverse party or witness as if under cross-examination. Board members and staff may participate as appropriate, using their technical knowledge and experience for the primary purpose of developing a full, fair, accurate and complete hearing on all issues relevant to the hearing. Questioning of witnesses will generally be permitted only by the attorneys of parties so represented, or by parties appearing on their own behalf, or by members of the Board or its staff.

785:4-7-5. Evidence

(a) As provided under the APA, the strict and formal rules of evidence and pleadings such as are applied and prevail in a court of law need not be observed in Board hearings.

(b) All evidence and testimony offered must be relevant and material to the matter subject of the application and hearing. Evidence and testimony which is clearly irrelevant, immaterial, incompetent or unduly repetitious or cumulative may be excluded or limited.

(c) Evidence may be received by stipulation and agreement of all interested parties. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available and upon request, an interested party may be given the opportunity to compare the copy submitted to the Hearing Examiner. Documentary exhibits should not exceed eight and one-half (8 1/2) by fourteen (14) inches. The size of maps and drawings which are entered as exhibits should be limited or copies reduced in size in order to not unduly encumber the record. Each exhibit offered shall be tendered for identification and placed on file. No exhibit shall be filed after the conclusion of the hearing unless provision is made for holding the record open.

785:4-7-6. Waiving necessity of oral testimony

The Hearing Examiner may waive presentation of oral testimony in uncontested proceedings where all evidence required for the issuance of an order has been sworn under oath or verified and any other evidence or facts necessary to the proceedings is a matter of which the Hearing Examiner may properly take official notice.

785:4-7-7. Evidence by reference and official notice

Files and records of the Board which pertain to the subject of the hearing, and books, reports, and other papers or writings which have been prepared and published by any governmental or public agency may, at the discretion of the Hearing Examiner, be officially noticed and received into evidence as exhibits and incorporated by reference without the necessity of supplying copies to the Board and other parties, providing, the original or a copy is in the possession of the Board and available for inspection by any party. The parties offering same shall designate the particular portions on which they rely. Each such matter shall be appropriately identified and designated by number in the record as an exhibit of the party offering same or of the Board or its staff. Certification of such files and records may be waived when it appears there is no valid reason to doubt the authenticity of the document presented. Official notice may also be taken of judicially cognizable facts and of any generally recognized technical or scientific facts within the Board's specialized knowledge.

785:4-7-8. Evidentiary objections and exceptions

Objections to evidence may be made and "sustained" or "overruled" by the Hearing Examiner. If a party objects to the introduction of certain evidence and is overruled by the Hearing Examiner, formal exception to such ruling is not necessary. Evidence excluded may be identified and included in the record and offers of proof may be made for the purpose of preserving the objection to the exclusion.

785:4-7-9. Hearing continuances, adjournments and leaving the record open

(a) The Hearing Examiner may, at the Examiner's discretion, continue or adjourn a hearing to another date. Hearing continuances may be granted at the request of an interested party for good cause shown or by agreement of all interested parties or may be ordered on motion of the Hearing Examiner. Continuances or adjournments for further hearing shall be to a date, time and place certain announced in open session of the hearing. The party at whose request the continuance was granted or ordered shall notify all other interested parties of record of the date, time and place for further hearing.

(b) At the conclusion of a hearing, the Hearing Examiner may, at the Examiner's discretion for good cause shown and without prejudice to any interested party, leave the hearing record open to allow presentation of additional material or information necessary to a full, fair and complete submission and disposition of the matter subject of the hearing.

785:4-7-10. Proposed order of parties

Upon conclusion of a hearing interested parties may, upon request, be allowed to file legal memorandums, briefs and proposed findings of fact, conclusions of law and Board Order for review and consideration by the Hearing Examiner. Unless otherwise allowed or ordered by the Hearing Examiner, any such memorandums, briefs or proposed Orders of an interested party must, to be given consideration, be submitted to the Hearing Examiner within five (5) days from the date of the hearing.

785:4-7-11. Closing the record and submission of cause for ruling

After all interested parties have had an opportunity to be heard and present evidence, and after expiration of any additional time allowed, the hearing shall be deemed completed and submitted for Final Order and ruling and the hearing record shall be deemed closed unless otherwise ordered by the Hearing Examiner. The subject matter of the hearing shall thereupon be taken under advisement for final decision and Order by the Board.

[Source: Amended at 10 Ok Reg 3271, eff 6-25-93]

SUBCHAPTER 9. POST-HEARING ACTIONS AND PROCEEDINGS

785:4-9-1. Hearing Examiner's proposed order and exceptions

- (a) As expeditiously as possible after completion of the hearing, the Hearing Examiner shall review, consider and evaluate all matters presented and relevant to the hearing issues, and, based thereon, the Hearing Examiner shall prepare a proposed Final Order containing necessary findings of fact and conclusions of law.
- (b) The Examiner's proposed Order shall be presented to the Board in regular and open session, for its review, consideration and action.
- (c) All interested parties of record shall be served a copy of the Examiner's proposed Order at least fifteen (15) days prior to the regular Board meeting at which the Order is to be presented for Board consideration and action. For purposes of this subsection, service shall be deemed to occur upon delivery of the proposed order to the U.S. mail or other carrier.
- (d) Each party who would be adversely affected by the order as proposed shall have opportunity to file exceptions thereto, provided that said exceptions shall be filed no later than three days before the regular meeting of the Board at which the proposed order is to be considered.
- (e) In uncontested matters, informal summary disposition may be made by placing such matters on the Board's agenda without the necessity of preparing proposed Final Orders.

[Source: Amended at 10 Ok Reg 3271, eff 6-25-93]

785:4-9-2. Board consideration and action

- (a) At the regular meeting of the Board in which an Examiner's proposed Order or recommended summary disposition is to be considered and acted upon by the Board, no new testimony or evidence may be presented or entertained. Upon request, briefs and oral arguments on the Examiner's proposed Order may be presented, but a reasonable time limit for argument shall be fixed.
- (b) Upon a motion by one of the Board members the matter will be voted on. The minutes of the meeting pertaining thereto, including the motion and vote thereon, shall be recorded in the permanent minute records of the Board. In cases where an application for a permit has been duly considered and granted by the Board, under such terms and conditions as the Board may prescribe, the formal permit so granted shall forthwith be issued by the Executive Director pursuant to and in accordance with the Board Order. All parties of record shall be furnished a copy of the approved Final Order of the Board either personally or by certified mail, return receipt requested.

[Source: Amended at 10 Ok Reg 3271, eff 6-25-93]

785:4-9-3. Reconsideration and appeals

(a) As allowed by and subject to compliance with the requirements imposed under the APA, any interested party may request rehearing, reopening or reconsideration of any final Board action, decision or Order. The Board may, at any time and on its own motion, order rehearing, reopening or reconsideration of any Board action, decision or Order.

(b) Appeals from any final Board action, decision or ruling may be taken as allowed and provided by and subject to the requirements of the APA. Subject to the provisions of the APA and unless otherwise directed or ordered by the Board, no Board action, decision or Order shall be stayed or deemed stayed pending rehearing, reopening, reconsideration or appeal.

(c) In any action other than an appeal in which a challenge to the Board's jurisdiction to issue an order or decision is made, the Board's jurisdiction shall be determined by the face of the proceedings which shall consist of:

- (1) The application or other document initiating the proceedings.
- (2) Process given, including proof of publications and affidavits of mailing.
- (3) The Board's order or approved minutes reflecting the decision.
- (4) The permit, rules or other document issued pursuant to such order or decision.

[Source: Amended at 9 Ok Reg 1671, eff 5-11-92]

SUBCHAPTER 11. MEDIATION PROCEDURES

785:4-11-1. Mediation

(a) The Board is authorized to *review disputes involving service areas or territories, rates for raw or treated water, and abrogation clauses in contracts among municipalities and rural water districts or not-for-profit rural water corporations; to recommend mediation and refer parties in appropriate disputes to mediators and provide technical information to such mediators; and to recommend other means of resolving disputes....* [82:1085.2(16)]

(b) As soon as possible after receiving notice of a dispute, the Board staff shall attempt to contact the appropriate representatives of the parties to the dispute to schedule a meeting with such representatives. From information obtained at such meetings or otherwise, staff shall present a recommendation about resolution of the dispute to the Board.

[Source: Added at 12 Ok Reg 2665, eff 7-1-95]

CHAPTER 5. FEES

[Authority: 75 O.S., § 302; 82 O.S., §§ 1085.2, 1085.4, 1087.9, and 1087.15]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

785:5-1-1. Purpose

The rules in this Chapter are to specify the fees and charges to be collected by the Board for applications, copies, filing papers, making records, providing transcripts and other specified services, all as authorized by 82 O.S., §§1085.2(9) and 1087.15.

[Source: Amended at 35 Ok Reg 2211, eff 9-14-18]

785:5-1-2. Definitions

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

"**APA**" means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S. §§301 et seq., as amended.

"**Appropriation**" means the process under 82 O.S. §§105 et seq., by which an appropriative stream water right is acquired. A completed appropriation results in an appropriative right.

"**Board**" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

"**Executive Director**" means the Executive Director of the Oklahoma Water Resources Board.

"**Groundwater**" *means fresh water under the surface of the earth regardless of the geologic structure in which it is standing or moving outside the cut bank of any definite stream.* [82:1020.1]

"**Person**" means any individual, firm, partnership, association, corporation, business or public trusts, federal agency, state agency, the State or any political subdivision thereof, municipalities, and any other duly constituted legal entity.

"**Stream water**" means water in a definite stream and includes but is not limited to water in ponds, lakes, reservoirs, and playa lakes.

[Source: Amended at 10 Ok Reg 3273, eff 6-25-93; Amended at 11 Ok Reg 2909, eff 6-13-94; Amended at 35 Ok Reg 2211, eff 9-14-18]

785:5-1-3. Board to charge and collect fees

Pursuant to 82 O.S. §§1085.2(10) and 1085.4, the Board shall prepare and charge a schedule of reasonable fees for services rendered; provided that such fees shall not be collected from any state agency or state institution who receives appropriated funds. All fees shall be paid in cash or by check payable to the Oklahoma Water Resources Board which shall be receipted by the Accounting Department. Each fee is a separate charge and is in addition to other fees. Required fees must be paid before any action will be taken by the Board on the matter relating thereto and before the issuance of any permit. Permit fees will not be refunded if the application for a permit is denied.

[Source: Amended at 35 Ok Reg 2211, eff 9-14-18]

785:5-1-4. Special fund

All monies derived from fees shall be deposited with the State Treasurer and credited, apportioned, and appropriated to a separate and distinct fund known as the "Water Resources Board Revolving Fund" to be used to enforce and administer the water and pollution duties of the Board, except that all weather modification license and permit fees paid to the Board shall be deposited in the "Oklahoma Modification Revolving Fund" to be used to enforce, administer and implement the weather modification duties of the Board.

[Source: Amended at 11 Ok Reg 2909, eff 6-13-94]

785:5-1-5. Weather modification license and permit fees

The following fees are required for Weather Modification licenses and permits:

- (1) For issuing Weather Modification License - \$100.00
- (2) For annual renewal of license - \$100.00
- (3) For each Weather Modification Permit - \$ 25.00
- (4) For annual renewal of permit - \$ 25.00

785:5-1-6. Stream water permit application and administration fees

(a) A filing fee based on amount requested in the application must be submitted with each application for a permit to appropriate stream water as follows:

- (1) 1 through 320 acre-feet - \$500.00
- (2) 321 through 640 acre-feet - \$700.00
- (3) 641 through 1,500 acre-feet \$900.00
- (4) More than 1,500 acre-feet - \$900.00, plus an additional \$250.00 for each increment of 500 acre-feet above 1500 acre-feet requested, provided that no person shall be charged a total amount in excess of Four Thousand Dollars (\$4,000.00) per application.
- (5) If the applicant proposes to divert or use stream water from a scenic river or an area designated as an outstanding water resource by the State, the applicant must submit an additional fee of \$250.00 (see also Chapter 45 of this Title).

(b) Applications for provisional temporary permits to appropriate stream water except expedited applications require a fee of \$200.00.

(c) Expedited applications for provisional temporary permits to appropriate stream water require an additional fee of \$100.00.

(d) Annual water right administration fee for the submittal of water use reports shall be \$75.00 for each permit or vested right.

(e) If the annual water use report is filed later than 30 days after the due date as set forth in the report form mailed to the water right holder, an additional amount of \$50.00 for each permit shall be due (see also 785:20-9-5).

(f) Applications for stream water use for the purpose of enhanced recovery of oil and gas pursuant to 785:20-3-4 shall have an application fee of \$4,500.00.

(g) For stream water applications that have proposed diversion points within stream systems that the Board at any time determines have no unappropriated water available and the Board holds those applications administratively, an annual fee shall be submitted by the applicant equivalent to the annual water right administration fee for the submittal of water use reports per part (d).

(h) Permit fees pursuant to this section will not be refunded unless the Board determines that an overpayment was made by the applicant.

[Source: Amended at 10 Ok Reg 3273, eff 6-25-93; Amended at 11 Ok Reg 2909, eff 6-13-94; Amended at 12 Ok Reg 2667, eff 7-1-95; Amended at 25 Ok Reg 1437, eff 5-27-08; Amended at 26 Ok Reg 1712, eff 6-11-09; Amended at 27 Ok Reg 1292, eff 5-27-10; Amended at 35 Ok Reg 2211, eff 9-14-18; Amended at 37 Ok Reg 2284, eff 9-11-20; Amended at 39 Ok Reg 2441, eff 9-11-22]

785:5-1-7. Watercourse reclamation permit fee [REVOKED]

[Source: Revoked at 35 Ok Reg 2211, eff 9-14-18]

785:5-1-8. Release of easement or easement deed fees

The fee required when making application for release of easement or easement deed is based on acres contained in easement, as follows:

- (1) Less than 25 acres - \$ 35.00
- (2) 25 through 50 acres - \$ 70.00
- (3) 51 through 75 acres - \$100.00

- (4) 76 through 100 acres - \$150.00
- (5) More than 100 acres - \$200.00

785:5-1-9. Dam safety and inspection fees

(a) Filing fees which must be submitted with each application to construct, enlarge, alter, or repair a dam (based on estimated cost of construction, enlargement, etc.) are as follows:

- (1) \$99,999 or less estimated cost - \$500.00
- (2) \$100,000 through 19,999,999 estimated cost - One-half of one percent (0.5%) of estimated cost; not to exceed \$5,000.00.
- (3) \$20,000,000 or greater estimated cost - \$10,000.

(b) Fees for inspections of dams classified as low or significant hazard potential made at request of a person who is not an owner of the dam or other routine or periodic inspections conducted by Board personnel are as follows:

- (1) Small (see 785:25-3-3) - \$250.00 for each inspection visit.
- (2) Intermediate (see 785:25-3-3) - \$500.00 for each inspection visit.
- (3) Large (see 785:25-3-3) - \$1000.00 for each inspection visit.

(c) Fees for inspections of dams classified as high hazard potential made at request of a person who is not an owner of the dam or other routine or periodic inspections conducted by Board personnel shall be the actual cost of such inspection.

(d) The fee required for issuance of a certificate of completion is \$25.00 plus if applicable, the inspection fee set out in subsection (b) or (c) of this Section.

(e) Inspection report review and administration fees are due with submittal of the inspection reports as follows:

- (1) Significant hazard dams - \$300 once every three (3) years
- (2) High hazard dams - \$350 each year; provided that if the inspection report and fee is not submitted by the date specified, an additional fee of \$50.00 will be due.

[Source: Amended at 9 Ok Reg 1673, eff 5-11-92; Amended at 11 Ok Reg 2909, eff 6-13-94; Amended at 12 Ok Reg 2667, eff 7-1-95; Amended at 14 Ok Reg 2749, eff 7-1-97; Amended at 27 Ok Reg 1292, eff 5-27-10; Amended at 36 Ok Reg 1286, eff 8-11-19]

785:5-1-10. Groundwater application and administration fees

(a) A filing and application fee based on amount requested must be submitted with each application for a permit for the withdrawal of groundwater as follows:

- (1) 1 through 320 acre-feet - \$500.00
- (2) 321 through 640 acre-feet - \$700.00
- (3) 641 through 1,500 acre-feet - \$900.00
- (4) More than 1,500 acre-feet - \$900.00, plus an additional \$250.00 for each increment of 500 acre-feet above 1,500 acre-feet requested, provided that no person shall be charged a total amount in excess of Four Thousand Dollars (\$4,000.00) per application.

(b) Applications for provisional temporary permits except expedited applications require a fee of 200.00.

(c) Expedited applications for provisional temporary permits to withdraw groundwater require an additional fee of \$100.00.

(d) Annual water right administration fee for the submittal of water use reports shall be \$50.00 for each permit or prior right.

(e) If the annual water use report is filed later than thirty (30) days after the due date as set forth in the report form mailed to the water right holder, an additional amount of \$50.00 for each permit shall be due.

- (f) Applications for groundwater use that overlie a sensitive sole-source basin shall require an additional \$250.00 fee.
- (g) Applications for groundwater use for the purpose of enhanced recovery of oil and gas pursuant to 785:30-3-2 shall have an application fee of \$4,500.00.
- (h) Permit fees pursuant to this section shall not be refunded unless the Board determines that an overpayment was made by the applicant.

[Source: Amended at 10 Ok Reg 3273, eff 6-25-93; Amended at 11 Ok Reg 2909, eff 6-13-94; Amended at 25 Ok Reg 1437, eff 5-27-08; Amended at 26 Ok Reg 1712, eff 6-11-09; Amended at 27 Ok Reg 1292, eff 5-27-10; Amended at 35 Ok Reg 2211, eff 9-14-18; Amended at 37 Ok Reg 2284, eff 9-11-20; Amended at 39 Ok Reg 2441, eff 9-11-22]

785:5-1-11. Well driller and pump installer licensing fees

- (a) The filing application and license fee for issuance of individual, partnership, or corporation well driller licenses for one activity to be certified under 785:35-3-1 which shall include the operator certification for the individual license or, in the case of a partnership or corporation, one operator certification for such activity shall be \$400.00 for two years.
- (b) The license fee for a nonresident shall be the amount charged in the state of the nonresident but in no case less than \$1,000.00 for two years.
- (c) The initial fee for the Indemnity Fund for one activity certified under 785:35-3-1 shall be \$250.00 for residents and \$400.00 for nonresidents.
- (d) The license application and indemnity fund fee for each additional activity shall be \$200.00.
- (e) The application fee for each additional operator certificate shall be \$100.00 for a two (2) year period.
- (f) The renewal fee, which shall include the operator certification shall be \$350.00 if the application to renew is filed by May 31; provided that a late fee of \$250.00 shall be due for the completed license renewal application if received by the Board after May 31 of the year to be renewed, but before the end of the applicable grace period.
- (g) The fee for each additional operator certification renewal shall be \$100.00 for a two (2) year period.
- (h) The renewal fee for the Indemnity Fund for each operator shall be \$100.00 for residents of Oklahoma and \$200.00 for nonresidents for a two (2) year period.
- (i) The fee for examination of any operator shall be \$50.00.
- (j) The fee for transfer of individual licensee designation to partnership, corporation or other entity or certified operator from one firm or corporation to another shall be \$50.00.
- (k) The fee to file a request for a variance or exception from any construction, completion, plugging or other requirement set forth for groundwater wells, fresh water observation wells, heat exchange wells or test holes in Chapter 35 in this Title shall be \$75.00.
- (l) The fee to file a request for a variance or exception from any construction, completion, plugging or other requirement set forth for monitoring wells or geotechnical borings in Chapter 35 shall be \$200.00.
- (m) The fee to file an intent to drill for marginal water well construction shall be \$500.00.
- (n) Upon presentation of satisfactory evidence that an applicant for licensure or certification is a low-income individual, shall grant a one-time one-year waiver of any fees associated with such licensure or certification. For purposes of the section, "low-income individual" means an individual who is enrolled in a state or federal public assistance program, including, but not limited to, the Temporary Assistance

for Needy Families, Medicaid or the Supplemental Nutrition Assistance Program, or whose household adjusted gross income is below one hundred forty percent (140%) of the federal poverty line or a higher threshold to be set by the executive branch department that oversees business regulation.

(o) The fee to file an intent-to-drill for authorization to construct a groundwater well for a use which requires a permit or a water right shall be \$250.00.

(p) The fee to file an intent-to-drill for authorization to construct a groundwater well for domestic use shall be \$25.00

[Source: Amended at 10 Ok Reg 3273, eff 6-25-93; Amended at 11 Ok Reg 2909, eff 6-13-94; Amended at 12 Ok Reg 2667, eff 7-1-95; Amended at 13 Ok Reg 2851, eff 7-1-96; Amended at 15 Ok Reg 2433, eff 6-11-98; Amended at 16 Ok Reg 2681, eff 7-1-99; Amended at 24 Ok Reg 2441, eff 6-25-07; Amended at 26 Ok Reg 1712, eff 6-11-09; Amended at 27 Ok Reg 1292, eff 5-27-10; Amended at 36 Ok Reg 1286, eff 8-11-19; Amended at 37 Ok Reg 2284, eff 9-11-20; Amended at 39 Ok Reg 2441, eff 9-11-22]

785:5-1-12. Waste Disposal Permit fees [REVOKED]

[Source: Amended at 9 Ok Reg 2619, eff 6-25-92; Revoked at 11 Ok Reg 2909, eff 6-13-94]

785:5-1-13. Laboratory certification fees [REVOKED]

[Source: Revoked at 11 Ok Reg 2909, eff 6-13-94]

785:5-1-14. Stream Water and Groundwater petition fees

Stream water and groundwater petition fees are as follows:

(1) For the filing of a petition to amend a permit or water right which does not require notice to be given - \$200.00

(2) For the filing of an Information Sheet regarding domestic use of stream water from federal reservoirs - \$100.00

(3) For the filing of a petition to transfer ownership or a petition to subdivide the ownership or record partial assignment of a permit or water right - \$400.00.

(4) For filing a petition for extension of time for commencement of any works for the taking of stream water - \$100.00

(5) For filing of a petition regarding addition or deletion of land from an irrigation district - \$100.00

(6) For filing of a petition to amend a permit or groundwater right requesting additional water, a filing and application fee based on the additional amount requested must be submitted with each amendment application as follows:

(A) 1 through 320 acre-feet - \$400.00

(B) 321 through 640 acre-feet - \$750.00

(C) 641 through 1,500 acre-feet - \$900.00

(D) More than 1,500 acre-feet - \$900.00, plus an additional \$250.00 for each increment of 500 acre-feet above 1,500 acre-feet requested, provided that no person shall be charged a total amount in excess of Four Thousand Dollars (\$4,000.00) per application.

(7) For filing of all other petitions to amend a permit or water right for which notice must be given - \$400.00.

(8) For filing of a petition to amend a groundwater right that overlies a sensitive sole-source basin shall require an additional \$250.00 fee.

(9) For filing a petition to amend a groundwater or stream water right to add the beneficial use of, or request additional water for, enhanced recovery of oil and gas pursuant to 785:20-3-4 or 785:30-3-2, shall require an

application fee of \$4,500.00.

(10) Permit fees pursuant to this section shall not be refunded unless the Board determines that an overpayment was made by the applicant.

[Source: Amended at 10 Ok Reg 3273, eff 6-25-93; Amended at 12 Ok Reg 2667, eff 7-1-95; Amended at 14 Ok Reg 2749, eff 7-1-97; Amended at 27 Ok Reg 1292, eff 5-27-10; Amended at 35 Ok Reg 2211, eff 9-14-18; Amended at 36 Ok Reg 1286, eff 8-11-19; Amended at 39 Ok Reg 2441, eff 9-11-22]

785:5-1-15. Fees for reproduction, maps and publications

Fees for reproduction, maps and publications shall be as follows:

- (1) For making and certifying the transcript of a record for transmittal to the District Court pursuant to 75 O.S. §320, the fee shall be the actual cost of such transcription with \$35.00 minimum charge plus postage at cost.
- (2) For reproducing audio of recorded meetings, the fee shall be \$35.00 plus \$2.00 per copy of audio recording.
- (3) For making and certifying each and every copy of an instrument, application or permit, the fee shall be \$1.00 per page.
- (4) For machine copy charges for any instrument, the fee shall be \$.25 per copy and postage at cost.
- (5) For Oklahoma Base Maps (USGS 1:500,000 scale), the fee shall be \$3.00 each.
- (6) For Oklahoma Base Map with OWRB Stream Systems, the fee shall be \$5.00 per sheet.
- (7) For publications, the fee shall not to exceed the established printing cost each.

[Source: Amended at 10 Ok Reg 3273, eff 6-25-93; Amended at 13 Ok Reg 2851, eff 7-1-96; Amended at 35 Ok Reg 2211, eff 9-14-18]

785:5-1-16. Fees required in other matters

(a) The fee for computer services shall be as follows:

- (1) Copying documents to electronic media - \$1.00 per document or file plus actual cost of Board provided electronic media.
- (2) Direct labor cost to convert raw data in data bases to machine-readable format, including but not limited to preparation of table and field descriptions.
- (3) Actual cost of medium supplied by Board used in copying data from data base.

(b) The fee for a document search shall be \$10.00 per hour.

(c) The filing fee for Information Sheets regarding domestic use of stream water from federal reservoirs shall be \$50.00.

(d) For transcripts prepared by certified court reporter, stenographer or Board staff under the provisions of 785:4-3-6, the fee shall be the actual cost of the transcription. Prior to such transcription being made, the person requesting the transcription (or appealing the Board's order) shall pre-pay to the Board the estimated cost of the transcribing the audio, with such estimate to be prepared by the Board. Upon completion of the transcription, the person requesting the same shall deposit the balance, if any, necessary for full payment of the transcription. The Board shall refund or credit any excess amount previously deposited.

(e) If unavailable from local floodplain administrators, flood zone and flood map information on file with the Board for each tract or description of land requested will be provided for a fee of \$25.00.

(f) The fee for preparation and compilation of the administrative record for transmittal to a court pursuant to the Administrative Procedures Act shall be \$1.00 per page for written documents, plus the cost of copying the audio recording and the electronic media as provided in this Chapter, plus actual cost of duplication of other exhibits, all payable prior to the transmittal of the record in the court. If the party appealing an order of the Board requests a written transcription of the hearing, or if the district court orders a written transcription as authorized by 75 O.S. § 309, the provisions in subsection (f) above, including prepayment of the cost of transcribing cassette tapes of the hearing, shall apply to the party appealing the Board's order. The full cost of transcribing the tapes must be paid before the Board shall transmit the transcription to the court. The Board shall review any such transcription for accuracy before transmitting the same to court.

(g) In addition to any other applicable fee, and subject to review by the State Governmental Internet Applications Review Board and approval by the Office of Management and Enterprise Services ("OMES"), unless otherwise waived by the Board a person who undertakes an electronic/on-line transaction with the Board shall pay a convenience fee approved by OMES which includes, but is not necessarily limited to, the transaction fee levied by OMES, the credit card or other financial institution charge, and a prorated share of the reasonable costs of development and implementation of, sustaining and upgrading, and future expansion of, the electronic/on-line application. Such transactions may include, but shall not be limited to, filing applications for permits or loans, filing reports of well drilling activities, and renewing licenses or certifications.

[Source: Amended at 9 Ok Reg 1673, eff 5-11-92; Amended at 11 Ok Reg 2909, eff 6-13-94; Amended at 12 Ok Reg 2667, eff 7-1-95; Amended at 13 Ok Reg 2851, eff 7-1-96; Amended at 14 Ok Reg 2749, eff 7-1-97; Amended at 15 Ok Reg 2433, eff 6-11-98; Amended at 20 Ok Reg 2603, eff 7-11-03; Amended at 35 Ok Reg 2211, eff 9-14-18; Amended at 37 Ok Reg 2284, eff 9-11-20]

785:5-1-17. Loan application fees

The following filing, review and processing fee schedule is imposed upon all loan applications under the Board's program of financial assistance (See Chapter 50). Such fees shall not exceed the maximum amount listed and shall be based on the amount of financial assistance applied for (as set out below) and must be paid by the applicant at the time of filing the secondary application - request for additional information.

- (1) For a loan application amount of \$249,000 or less, the fee is \$200.00.
- (2) For a loan application amount of \$250,000 - 999,999, the fee is \$500.00.
- (3) For a loan application amount of \$1,000,000 or more, the fee is \$1,000.00.

[Source: Amended at 10 Ok Reg 3273, eff 6-25-93; Amended at 35 Ok Reg 2211, eff 9-14-18]

785:5-1-18. Development application fees

A fee in the amount of \$100.00 must be submitted with each application filed with the Board by a non-governmental entity for a development permit for proposed development or substantial improvement on state-owned or operated property (see Chapter 55).

[Source: Added at 11 Ok Reg 2909, eff 6-13-94]

785:5-1-19. Request for Water Quality Standards site specific criteria fee

The fee which must be submitted with a request for a site specific criteria within the Oklahoma Water Quality Standards is \$5,000.00.

[Source: Added at 35 Ok Reg 2211, eff 9-14-18]

785:5-1-20. Aquifer storage and recovery permit fees

- (a) A filing and application fee of \$5,000.00 must be submitted with each application for an aquifer storage and recovery permit, including the review of a proposed site-specific aquifer storage and recovery plan.
- (b) An annual review fee of \$2,000.00 must be submitted each year, along with the required annual use and monitoring plan reports as required by Chapter 32 of Title 785.

[Source: Added at 35 Ok Reg 2211, eff 9-14-18]

785:5-1-21. Documentation reviews related water trapped in producing mines

- (a) Submittal of documentation requesting the Board's determination of whether a mine meets the requirements of OAC 785:30-15-3(b) (request for de minimis determination) shall be accompanied with a \$2,000.00 application fee. Thereafter, any of the Board's required submittals of de minimis documentation for the mine shall be accompanied with a \$250.00 application fee.
- (b) A review fee of \$500.00 shall accompany all annual mine reports submitted to the Board as required by 785:30-15-3(2) and 785:30-15-4(2) & (3).
- (c) Augmentation and Management Plans submitted to the Board in accordance with 785:30-15-6 shall be accompanied with a \$3,000.00 review fee.

[Source: Added at 37 Ok Reg 2284, eff 9-11-20]

**APPENDIX A. INSTRUCTIONS FOR COMPLETING WASTEWATER
DISCHARGE WASTE DISPOSAL PERMIT ANNUAL FEE RATING
WORKSHEET [REVOKED]**

[Source: Amended at 9 Ok Reg 2619, eff 6-25-92; Revoked at 11 Ok Reg 2909, eff 6-13-94]

**APPENDIX B. OKLAHOMA WATER RESOURCES BOARD WASTE
DISPOSAL (DISCHARGE) PERMIT ANNUAL FEE RATING
WORKSHEET [REVOKED]**

[Source: Amended at 9 Ok Reg 2619, eff 6-25-92; Revoked at 11 Ok Reg 2909, eff 6-13-94]

CHAPTER 10. SPECIAL PURPOSE DISTRICTS

[Authority: 82 O.S., §§ 277.1 et seq., 531 et seq., 1266 et seq., and 1324.1 et seq.]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

785:10-1-1. Purpose

The purpose of the rules in this Chapter are to delineate and clarify the interest of the State of Oklahoma and the Board in special purpose districts.

785:10-1-2. Definitions

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

"**Assessments**" mean the charges imposed by any special purpose district for the purposes of the district.

"**Board of directors**" means the governing body of any special purpose district.

"Directors" mean the directors of any special purpose district.

"Elector" means any person who is of legal voting age or any authorized officer or agent of a corporation, including municipal corporation, providing a copy of resolution of authorization is presented to the Board, and:

"Special purpose district" means any water district organized under the laws of the State of Oklahoma, i.e., conservancy districts or master conservancy districts; regional water distribution districts; rural water, sewer, gas, solid waste management districts, and irrigation districts.

SUBCHAPTER 3. CONSERVANCY AND MASTER CONSERVANCY DISTRICTS

785:10-3-1. Use of water

Organization of conservancy districts and master conservancy districts shall be governed by the laws of the State (82 O.S. 1981, §§541 through 549, §§561 through 577, §§601 through 616, §§630 through 669, §§671 through 676, and §§681 through 688.1 as amended). The right to the use of water by each such district, the landowners, municipalities, corporations, and other water users shall be governed by the laws pertaining to the use of water and the rules of this Title. In filing for water rights a copy of the petition forming such district shall accompany the application.

785:10-3-2. Right of Board to vote

The Oklahoma Water Resources Board may represent the State of Oklahoma at any election or meeting of the district and shall have the right to vote for Directors or in any matter that shall come up properly before any election or meeting to the extent of the assessment against land owned by the State, which vote may be cast by any person designated by the Board.

SUBCHAPTER 5. REGIONAL WATER DISTRIBUTION DISTRICTS

785:10-5-1. Use of water

Organization of any Regional Water Distribution District shall be governed by the laws of the State (82 O.S. 1981, §1266). The right to the use of water by any such district shall be governed by the laws pertaining to the use of water and the rules in this Title. In filing for water rights, a certified copy of the petition forming such district shall accompany the application.

SUBCHAPTER 7. RURAL WATER, SEWER, GAS AND SOLID WASTE MANAGEMENT DISTRICTS

785:10-7-1. Board to determine availability of water

Whenever a petition for the incorporation of a Rural Water, Sewer, Natural Gas, and Solid Waste Management District, as provided by 82 O.S. 1981, §1324.1 through 1324.26, as amended, is filed with the county clerk, the county clerk shall thereupon give notice to the county commissioners, and the county commissioners shall immediately determine from the Oklahoma Water Resources Board whether or not sufficient water is available for purchase or available for appropriation to serve the needs of the district. A copy of the petition of incorporation shall accompany such request to the Board.

785:10-7-2. Filing of water purchase contracts or filing of application for appropriation of water

After the incorporation of a district, when a water purchase contract has been executed, the district shall either file a copy of the water purchase contract or file an application for appropriation of water with the Board.

785:10-7-3. Consent of legislature to export water or gas outside the state

No district shall sell or export water or gas outside the State of Oklahoma without consent of the Legislature. [82:1324.10(A) (11)]

785:10-7-4. Right to water held by the district

The district shall have the right to buy water from or sell water to any municipality, another district, or any other legal entity engaged in the distribution and storage of water; *provided quantities of water sold do not exceed any vested right or appropriation granted by the Board. [82:1324.10(A) (13)]* *Appropriative rights to water held by the district shall not be alienated or encumbered apart from the alienation or encumbrance of the facilities of the district. [82:1324.10(B)]*

785:10-7-5. Annexation of additional territory

In the annexation of additional territory to a district, the board of county commissioners shall determine from the Board *that adequate water is available to the district or has been appropriated to the district by the ... Board. [82:1324.13(4)]*

SUBCHAPTER 9. IRRIGATION DISTRICTS

785:10-9-1. Filing of petition to form an irrigation district with the Board

If a minimum of ten or a majority of the holders of title to irrigable lands ... desire to provide for irrigation ... from a common source or combined sources and by the same system or combined system of works [82:277.2], they may organize an irrigation district by petition which shall be signed by the petitioners and filed with the ... Board [82:277.3]. The petition shall contain but not be limited to the following:

- (1) A specific description of the lands within the proposed district. [82:277.3(1)]*
- (2) The names and addresses of all of the electors within the proposed district as reflected by the records of the county clerk of the county wherein the land is located [82:277.3(2)], together with all resolutions of authority and certified copies of appointment.*
- (3) The proposed plan of operation.*
- (4) An attached map showing the boundaries of the proposed district. [82:277.3(4)]*
- (5) If it is proposed to divide the district into divisions, then boundaries of the proposed divisions shall be mapped.*

[Source: Amended at 10 Ok Reg 3277, eff 6-25-93]

785:10-9-2. Notice of hearing for formation of irrigation district

(a) Upon receipt of a petition for formation of irrigation district the Board shall set a date for a hearing thereon *before a hearing officer in a place of general*

convenience at the nearest county seat. The Board shall instruct the petitioners to publish, at their expense, notice of said hearing by legal publication for two (2) consecutive weeks in a newspaper of general circulation published in each county containing lands within the boundaries of the proposed district. The hearing date shall not be earlier than thirty (30) days after the last publication date of said notice. [82:277.4]

(b) Notice of such hearing shall also be given by registered or certified mail by the petitioners to the electors whose names and addresses are shown on the petition at least thirty (30) days before the date of the hearing.

(c) The notice shall contain a brief statement describing the purpose of the hearing and a description of the land to be included within the proposed district and such other matters as required by law.

[Source: Amended at 10 Ok Reg 3277, eff 6-25-93]

785:10-9-3. Filing of statements in support or opposition to petition

Written statements supporting or opposing a petition for formation of an irrigation district may be filed with the Board prior to or on the date set for the hearing.

785:10-9-4. Lands included or excluded within the district

Upon application filed by the owners, the Board shall include or exclude lands within an irrigation district provided the *Board finds that it is in the best interest of the district and the owners of such land*, [82:277.4] but may not include those lands not included in the definition of irrigable land under 82 O.S. 1981, §277.1(6).

785:10-9-5. Division of districts; minimum and maximum number of divisions

(a) An irrigation district may be subdivided into district divisions in which event there shall be not less than five (5) nor more than nine (9) such divisions.

(b) Each district division shall be entitled to elect directors equal in number with those elected by other divisions and at least one director shall be elected within each division.

(c) Electors may vote in all elections and be eligible to serve as director as follows:

(1) Where he resides if he owns land within that division.

(2) If he resides outside the district then in that division in which the majority of his land is located.

[Source: Amended at 10 Ok Reg 3277, eff 6-25-93]

785:10-9-6. Denial or approval of petition and order of the Board

(a) The Board shall issue an order approving or denying a petition for organization of an irrigation district.

(b) If the organization of the district is approved, the Board shall describe the boundaries.

(c) The order approving the petition shall be filed of record in the office of the county clerk in each county or counties wherein district lands are located within thirty (30) days after the date of issuance by the Board.

[Source: Amended at 10 Ok Reg 3277, eff 6-25-93]

785:10-9-7. Notice of meeting of district electors

The Board shall establish a time and place for a meeting of district electors for the purpose of adopting bylaws, adopting an official seal, electing directors, and conducting any other necessary business and shall instruct the petitioners to give twenty (20) days notice thereof by mail to all district electors.

[Source: Amended at 10 Ok Reg 3277, eff 6-25-93]

785:10-9-8. Bylaws to be submitted for Board approval

(a) Bylaws adopted by the electors at the first meeting shall include at a minimum the provisions set forth in Title 82, Section 277.5(B) of the Oklahoma Statutes, as amended, and shall be submitted the Board for approval or disapproval as authorized in Title 82, Section 277.5 (D)(1) of the Oklahoma Statutes, as amended.
(b) Bylaws subsequently amended or modified by the electors shall be submitted to the Board for approval or disapproval as authorized by Title 82, Section 277.5 (D) (2) of the Oklahoma Statutes, as amended.

[Source: Amended at 10 Ok Reg 3277, eff 6-25-93]

785:10-9-9. Use of water

Upon election, the Board of Directors of an irrigation district shall make application to the Board for the use of any stream or groundwater to serve the needs of the district, and such water use shall be governed by the laws of the State and the rules and regulations of the Board pertaining thereto. The Board of Directors shall prepare and use a uniform service agreement providing for the equitable distribution and use of water among the members of the district which shall be filed with the Board.

785:10-9-10. Power of eminent domain

The power of eminent domain shall not be exercised to acquire water rights unless the land is acquired in fee. Oil, gas, and minerals shall not be subject to the power of eminent domain, except to the extent necessary to prevent activities adversely affecting the purposes of the district. [82:277.6(C) (12)]

[Source: Amended at 10 Ok Reg 3277, eff 6-25-93]

785:10-9-11. Admission of new lands or release of lands in the district

The board of directors of an irrigation district may [r]eclassify or authorize transfer of existing lands of the district as provided in the Oklahoma Irrigation District Act. [82:277.6(C) (11)]

[Source: Amended at 10 Ok Reg 3277, eff 6-25-93]

785:10-9-12. Consolidation of districts

Two or more [irrigation] districts desiring to consolidate into one district may file a petition with the ... Board and shall attach the following along with any other information the Board may require:

- (1) A certified resolution authorizing the same approved by the Board of Directors of all the districts.*
- (2) A certified resolution authorizing the same approved by the electors of the districts in a meeting called in each district for that purpose.*
- (3) Approval by the bondholders of the district. [82:277.16]*
- (4) All other requirements for the original formation of the districts under these rules and regulations.*

785:10-9-13. Board denial or approval of consolidation

(a) The Board shall approve or deny a petition for consolidation of irrigation districts.

(b) If consolidation is approved, the Board shall issue an amended order which shall be filed of record in the office of the county clerk of each county or counties wherein lands included within the consolidated district are located within thirty (30) days after date of issuance. [82:277.16]

785:10-9-14. Dissolution of a district

(a) Whenever an irrigation district shall be dissolved, within thirty (30) days after all the property of the district has been disposed of and all of its obligations paid, the board shall file a certificate of dissolution in the office of the county clerk of each county in which the district is located, and in the office of the ... Board. The certificate shall be signed by the president and attested by the secretary-treasurer, with the seal of the district affixed. The certificate shall state that the district has disposed of its property, has been dissolved and shall describe the lands released from the district. [82:277.18]

(b) If a district is inactive, the district judge of the county in which the greater part of the district is situated may designate a Board of Directors who shall act with the same authority and in the same manner in dissolving the district as if they had been duly elected officers of the district [82:277.19] and a certificate of dissolution shall be filed in the same manner as prescribed in (a) of this Section.

[Source: Amended at 10 Ok Reg 3277, eff 6-25-93]

785:10-9-15. Petitions for enlarging purposes

The owners of more than fifty percent (50%) of the land area within... [an irrigation] district, who are district electors, [82:277.22] may petition the Board, as set forth in (b) of this Section, to enlarge the purposes of the district in order to:

- (1) Grant the district the power to acquire land;
- (2) Construct dams and drainage systems;
- (3) Install pumps and equipment to recharge underground basins and subbasins;
- (4) Make surveys;
- (5) Develop comprehensive plans for efficient use of fresh groundwater and control and prevention of waste;
- (6) Carry out research projects;
- (7) Develop information and limitations on well sizes, withdrawal rates, well spacing, and basin and subbasin determinations;
- (8) Require filing with the district of copies of ground water permit applications, well log and completion data, water use reports, and well plugging reports;
- (9) Appear before the Water Resources Board to protest any application not in conformity with district rules and regulations; and
- (10) Adopt district rules and regulations on the foregoing and enforce the same as provided by the Administrative Procedures Act, ... providing the same are in conformity with and have been approved by the ... Board. [82:277.22]
- (11) The petitioners shall sign and file a petition with the ... Board, in the same manner as provided in Section 785:10-9-1, asking that the powers of the district be enlarged ... Upon receipt thereof, the ... Board shall proceed

to hear the said petition as provided in 785:10-9-1 [82:277.22(10)].

785:10-9-16. Participation by a Municipality or corporation

A municipality or corporation may become an elector in the district pursuant to the provisions of Title 82, Section 277.23 of the Oklahoma Irrigation District Act.

[Source: Amended at 10 Ok Reg 3277, eff 6-25-93]

785:10-9-17. United States, State of Oklahoma, or agencies or instrumentalities thereof as electors

The United States, the State of Oklahoma, or any agency or instrumentality thereof, and the Commissioners of the Land Office, may become electors in organized irrigation districts and are authorized to agree to pay an amount equal to the assessments against lands owned or held in trust by such governmental entity, agency, instrumentality, or department responsible for the supervision of land within a district, shall have one (1) vote in the district, and may exercise such vote through the chief officer of such agency or his designated representative.

[82:277.23]

785:10-9-18. Annual certified audit

The Board of Directors of an irrigation district shall cause an independent auditor to prepare and furnish an annual certified audit of the financial condition of the district for the preceding year to the ... Board, the electors, and creditors.

[82:277.6(B)(8)]

[Source: Amended at 10 Ok Reg 3277, eff 6-25-93]

785:10-9-19. District property

An irrigation district shall hold title to its property in its corporate name for the uses and purposes of the district unless required to hold title in some other name or manner by the United States or this state. The formation of a district shall not transfer water rights to the district under lands included within the district. Any district which contracts with the State of Oklahoma or the United States may convey district property, with or without consideration, if such property is needed by [82:277.20] this state or the United States in connection with the construction, operation, or maintenance of an irrigation project [82:277.20].

[Source: Amended at 10 Ok Reg 3277, eff 6-25-93]

785:10-9-20. Taking, use, or disposal of salt water

The provisions of the rules of this Subchapter shall not apply to the taking, use, or disposal of salt water associated with the exploration, production and recovery of oil and gas. [82:277.24]

CHAPTER 11. ACQUISITION OF ASSETS AND CONTROL OF RURAL WATER DISTRICTS AND CORPORATIONS

[Authority: 82 O.S., §§ 1324.41 et seq.]

[Source: Codified 7-1-01]

SUBCHAPTER 1. GENERAL PROVISIONS

785:11-1-1. Purpose, scope and applicability

Title 82 Oklahoma Statutes, Section 1324.41 and following provides to the effect that no person shall acquire assets and control of a rural water district or corporation unless such person has first obtained the approval of the Board upon written application following notice and a hearing. This Chapter prescribes rules to interpret and implement the provisions of this Act. Wherever the Act is applicable and this Chapter has no rule on point, the provisions of the Act shall be applied.

[Source: Amended at 18 Ok Reg 2243, eff 7-1-01]

785:11-1-2. Definitions

In addition to terms defined in 82 O.S. Section 1324.41, the following words or terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Acquiree" means the district or corporation, the assets and control of which are sought to be acquired by an acquiring party.

"Act" means the act codified at 82 O.S. §1324.41 and following, sometimes referred to as the Acquisition of Assets Act.

"Application" means a statement or other written request by an acquiring party for approval of a proposed acquisition of assets and control of a district or corporation.

"Domestic water public utility" means a municipality, public trust, rural water district, or other public entity, organized under the laws of and having its principal place of business in the State of Oklahoma and existing at least in part for the purpose of providing water utility service to domestic, commercial and other consumers.

"Statement" means a written request made under oath or affirmation, containing the information specified in 82 O.S. §1324.43.

[Source: Amended at 18 Ok Reg 2243, eff 7-1-01]

SUBCHAPTER 3. APPLICATION AND HEARING REQUIREMENTS

785:11-3-1. Application requirements

(a) **General.** Prior to making an offer for, entering into an agreement for, seeking to acquire, merging with, or acquiring the assets and control of a rural water district or corporation, an acquiring party shall file with the Board an application and obtain the Board's approval of the proposed transaction. All applications for approval of acquisitions of assets and control must be made under oath or affirmation and completed by the acquiring party either on written forms as may be provided by the Board or in such other written form as the Board may require.

(b) **Application by a domestic water public utility.** If the acquiring party is a domestic water public utility, the application shall contain the following information and items unless deemed inapplicable and waived by the Board or its staff:

- (1) The full, true and correct legal name, principal office location and mailing address for both the acquiring party and the acquiree;
- (2) The authority of law under which the acquiring party was created and is existing, the independent legal authority under which the application is made, and identification of the acquiring party as a municipality, public trust, rural water district, or other public entity;

- (3) A certified copy of the resolution or other specific authorizing instrument reflecting the acquiring party's authorization for making the subject application to the Board;
- (4) Current and complete maps of the service areas of the acquiring party and acquiree, preferably in a geographic information systems format acceptable to the Board;
- (5) A description of the water system and operation thereof, including but not limited to water sources, treatment facilities, storage capacity, system design, annual average unaccounted-for losses, personnel certifications, customer base, and rate structure for both the acquiring party and the acquiree;
- (6) A statement of the manner and means by which the acquiring party intends to fund and complete the acquisition;
- (7) A certified copy of the acquiring party's previous three (3) years' annual audits, if available, and a statement of the acquiring party's financial condition including a current statement of all outstanding indebtedness of the acquiring party and its related entities, including but not limited to all outstanding general obligation or revenue debt, which might affect the acquiring party's overall financial condition;
- (8) A description of the nature and division of ownership or other legal or equitable interest in the assets to be acquired, if other than complete ownership by the acquiring party;
- (9) A description of all rights to water supply, including water supply contracts, water rights, licenses or permits, whether existing under federal, state or local law or regulation, for both the acquiring party and the acquiree;
- (10) A description of any plans the acquiring party may have to make any material change in the acquiree's assets, system or operations which would affect the service provided to the acquiree's customers, including but not limited to the acquiring party's future capital improvement plans, if any, for both the acquiring party and the assets to be acquired;
- (11) A copy of the offer or draft agreement for the proposed acquisition, together with any information whether the acquiree has indicated it will object to or consent to the proposed acquisition;
- (12) If the acquiree has creditors, the application shall include the written approval of the proposed acquisition by all creditors of the acquiree, or otherwise shall describe how the creditors will be protected and paid; and
- (13) Such additional information as may be deemed necessary by the Board or its staff for proper application review under the particular facts and circumstances of the acquisition proposal.

(c) **Application by a person other than a domestic water public utility.** If the acquiring party is not a domestic water public utility, the acquiring party shall file with the Board an application containing all of the information and items set forth in (b) of this Section, plus the information and items stated in 82 O.S. § 1324.43. Additional information shall be provided on a case-by-case basis if deemed by the Board or its staff to be *necessary or appropriate for the protection of ratepayers* [82:1324.43(A)(7)] or customers of the acquiree.

[Source: Amended at 18 Ok Reg 2243, eff 7-1-01]

785:11-3-2. Notice and hearing; disposition of application

(a) **Notice.** An application for approval of a proposed acquisition shall be deemed filed as of the date the Board staff complete their review thereof and determine it to be ready for the notice and hearing process. Thereafter, the staff shall schedule a hearing and shall notify the acquiring party and the acquiree of the date, time and place of the hearing at least twenty (20) days prior to the date thereof. If so directed by the Board, the acquiring party shall give notice of the hearing at least fifteen (15) days prior to the date thereof to additional persons in the manner directed. Staff may also require that acquiree give notice of the hearing to its customers in the form, manner and time specified by the Board. Any expenses incurred by the acquiree in preparing and giving such notice to the acquiree's customers shall be paid by the acquiring party no later than thirty (30) days following submission of an invoice therefor to the acquiring party. If the acquiring party is a domestic water public utility, and the acquiree consents to the acquisition and timely files a written waiver of the hearing, and if no customer of the acquiree files an objection to the proposed acquisition prior to the hearing date, then the hearing may be cancelled and the Board may proceed to make its final determination on the application.

(b) **Hearing.** Unless cancelled as provided in (a) of this Section, the Board shall hold a hearing on the application and proposed acquisition. Following the hearing, if any, the Board shall review the available evidence and application information to determine whether any of the following conditions will exist if the proposed acquisition is consummated:

- (1) The acquisition of assets and control would adversely affect the contractual obligations of the acquiree or adversely affect the level of service currently being rendered to the acquiree's customers;
- (2) The financial condition of the acquiring party might adversely affect the financial stability of the acquiree or otherwise adversely affect the interests of the acquiree's customers;
- (3) The acquiring party's plans to make any material change in the acquiree's assets, system or operations would be detrimental to the acquiree's customers and not in the public interest; or
- (4) The competence, experience and integrity of the persons who would control the operation of the acquiree or its assets are such that it would not be in the interest of the acquiree's customers and the public to permit the acquisition of control.

(c) **Decision on application.** As soon as practical after the conclusion of the hearing, the Board staff shall prepare a proposed order with proposed findings of fact and conclusions of law and serve the same on the acquiring party, the acquiree, and any other interested persons as necessary. The proposed order shall be presented to the Board for its consideration and action. Upon consideration of the case, the Board shall approve the application and acquisition unless the Board finds that one or more of the conditions listed in (b) of this Section will exist if the acquisition is consummated. In the latter event, the Board shall disapprove the proposed acquisition and it shall not be consummated. In either case, the Board shall issue its final order within the time frame specified in 82 O.S. §1324.44(B).

[Source: Amended at 18 Ok Reg 2243, eff 7-1-01]

CHAPTER 15. WEATHER MODIFICATION

[Authority: 82 O.S., §§ 1085.2 and 1087.1 et seq.]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

785:15-1-1. Purpose

These rules are adopted to promote properly conducted weather modification operations and research and development, to minimize possible adverse effects from weather modification activities and to facilitate the administration and enforcement of the Weather Modification Act. The rules of this Chapter shall be liberally construed to carry out these objectives and purposes.

785:15-1-2. Definitions

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

"Assessments" mean the charges imposed by any weather modification program.

"Board" means the Oklahoma Water Resources Board or any employee or agent or staff member thereof.

"License" means a certification issued by the Board to qualified persons making application therefor authorizing such persons to engage in weather modification and control operations.

"Person" means any individual, firm, partnership, association, corporation, business or public trusts, federal agency, state agency, the State of or any political subdivision thereof, municipalities, and any other duly constituted legal entity.

"Weather modification" means changing or attempting to change by artificial methods, the composition, motions and resulting behavior of the atmosphere.

"Weather modification apparatus" means any apparatus used with the intention of producing artificial changes in the composition, motions and resulting behavior of the atmosphere.

"Weather modification operation" means *the performance of weather modification activities by chemical, mechanical or physical means pursuant to a single contract entered into for the purpose of producing, or attempting to produce a certain modifying effect other than naturally occurring within one specified geographical area during the period of operation not exceeding one (1) year, or, if the performance of weather modification activities are to be undertaken individually or jointly by a person or persons to be benefited and not undertaken pursuant to a contract, "operation" means the performance of weather modification activities by chemical, mechanical or physical means entered into for the purpose of producing, or attempting to produce, a certain effect other than that naturally occurring within one specified geographical area during the period of operation not exceeding one (1) year.* [82:1087.2(2)]

"Weather modification operations director" means the person who has the knowledge and experience necessary to design, manage, evaluate and have overall responsibility for a weather modification operation.

"Weather modification permit" means the specific written authorization to perform weather modification activities within a specified area of the State of Oklahoma under a license issued by the Board.

"Weather modification research and development" means *theoretical analysis, exploration and experimentation and the extension of investigative findings and theories of a scientific or technical nature into a practical application for experimental production and testing of models, devices, equipment, materials,*

and processes. [82:1087.2(3)]

"Weather modification target area" means the surface area within which the effects of an operation are expected to be found.

785:15-1-3. Violations and penalties

As provided by 82 O.S. 1981, §1087.20, any person violating any of the provisions of the Weather Modification Act (82 O.S. 1981, §§1087.1 through 1087.33, as amended) or any rules, regulations, or orders *issued pursuant thereto shall be guilty of a misdemeanor and a continuing violation punishable as a separate offense for each day during which it occurs, and upon conviction shall be imprisoned in the county jail for not more than ten (10) days or by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or both, for each such separate offense.*

785:15-1-4. Certain liabilities not imposed or rights affected

Nothing in the Weather Modification Act or the rules of this chapter shall be construed to impose or accept any liability or responsibility on the part of the State of Oklahoma or any state officials or employees for any weather modification ... activities of any private person or group, or to affect in any way any contractual, tortious or other legal rights, duties, or liabilities between any private persons or groups. [82:1087.19]

785:15-1-5. Contracts to engage in weather modification activities

Any counties contracting with other counties and other local subdivisions of government and State and federal agencies who shall contract to engage in joint weather modification operations as provided in 82 O.S. 1981, §§1087.22 et seq., shall file copies of such contracts with the Board for its approval.

785:15-1-6. Hearings

Any hearing held pursuant to the Weather Modification Act shall be conducted in accordance with the Administrative Procedures Act (75 O.S. 1981, §§301 et seq., as amended) and Chapter 4 of this Title.

785:15-1-7. Advisory committees

In the performance of the functions authorized in the Weather Modification Act the Board *may establish advisory committees to advise with and make recommendations to the Board concerning legislation, policies, administration, research and other matters.* [82:1087.3(1)]

SUBCHAPTER 3. LICENSES AND PERMITS

PART 1. LICENSING PROCEDURES

785:15-3-1. Who should file for a license

Any person desiring to engage in weather modification operations in the State of Oklahoma shall be required to make application, prior to commencing actual operations, for a license and be issued such license by the Board.

785:15-3-2. License application procedures and requirements

In order to qualify for a weather modification license an applicant must:

- (1) Submit a properly completed application in duplicate on forms furnished by the Board;
- (2) Submit an application fee (see Chapter 5 of this Title, Fees) with the completed application form or show exemption from such fee as set forth in 785:15-3-20;
- (3) Designate an Operations Director having the following minimum professional and education requirements:
 - (A) Two (2) years experience as an Operations Director; and
 - (B) One of the following four (4) requirements:
 - (i) Six (6) additional years of experience in weather modification field operations; or
 - (ii) A bachelor's degree in engineering, mathematics, or applicable physical or natural sciences, plus two (2) additional years of experience in weather modification field operations; or
 - (iii) A bachelor's degree in meteorology; or
 - (iv) A bachelor's degree in engineering, mathematics, or applicable physical or natural sciences including at least twenty-five (25) semester hours of meteorological course work.
- (4) Demonstrate, to the satisfaction of the Board, sufficient knowledge and competence in the field of meteorology and cloud physics. If the applicant is an organization, these requirements shall be met by the individual or individuals who are to be in control and in charge of the operation for the applicant. A resume of each individual's qualifications shall be attached as a part of the application.
- (5) Show financial responsibility reasonably necessary to engage in activities for weather modification (See 785:15-3-12).

785:15-3-3. Expiration, renewal, and revocation of license

- (a) Each weather modification license *shall be issued for a period to expire at the end of the State fiscal year in which it is issued.* [82:1087.9(B)] Such license shall, upon application, be renewed at the expiration of such period if the licensee possesses all the necessary qualifications stated in Section 785:15-3-2. The application for renewal shall be accompanied by the renewal fee (see Chapter 5 of this Title, Fees) except in the case of those exemptions as set forth in 785:15-3-20, in which case the fee will be waived.
- (b) The Board may, after first giving notice and reasonable opportunity for hearing as provided in the Administrative Procedures Act and Chapter 4 of this Title, *revoke or refuse to renew any license issued by it if the applicant no longer qualifies for such license or if the applicant has violated any provisions of* [82:1087.18(A)] the Weather Modification Act or these rules and regulations.

PART 3. PERMIT PROCEDURES

785:15-3-10. Who should file for a permit

- (a) Any person desiring to engage in operations for weather modification in the State of Oklahoma shall be required to make application, prior to actual operations, for a permit and be issued such a permit by the Board.
- (b) A separate application and permit shall be required for each operation under a given license and shall automatically terminate upon expiration of such license.

785:15-3-11. Permit application procedures and requirements

- (a) In order to qualify for a weather modification permit an applicant must:
- (1) Possess a valid license for weather modification operations in the State of Oklahoma;
 - (2) Submit a properly completed application in duplicate on forms furnished by the Board for each operation under a given license;
 - (3) Submit an application fee (see Chapter 5 of this Title, Fees) for each permit with the completed application form or show exemption from such fee as set forth in 785:15-3-20;
 - (4) Publish a notice of intention for each permit (forms to be furnished by the Board);
 - (5) Any additional information as the Board may deem appropriate.
- (b) In cases where contractual agreements are involved, and other than research and development operations are to be performed, the contractor must have on file with the Board a corporate surety bond for Five Thousand Dollars (\$5,000.00) for the faithful performance of each weather modification contract to be entered into by the contractor. The surety on any bond to guarantee the faithful performance and execution of any work shall be deemed and held, any contract to the contrary notwithstanding, to consent without notice to an extension of time to the contract-or in which to perform the contract for a period of not more than thirty (30) days.
- (c) Weather modification permits shall be issued for a twelve (12) month period, commencing on the date of issuance. When a weather modification operation extends past twelve (12) months the permit may be extended for subsequent twelve (12) month periods upon payment of the annual fee and a review of the operation(s) by the Board.
- (d) Permit applications shall be submitted at least ninety (90) days prior to the initial date of the proposed operational period for which the permit is being sought. This will allow time to hold a hearing in the event the application for a permit is protested, review the information presented, and allow action by the Board prior to the proposed starting date of the project.
- (e) A weather modification permit is neither assignable nor transferable by the holder.
- (f) A new permit shall be required if the boundaries of the operation for which a permit has previously been obtained are changed.
- (g) Any weather modification operation for which a permit is granted shall be conducted, on an operation-day basis, under the personal direction of a qualified operations director possessing a valid weather modification license.

785:15-3-12. Financial responsibility requirement under permit

All applicants shall have on file, prior to permit issuance, proof of *ability to respond in damages for liability which might reasonably be attached to or result from* [82:1087.14] any permitted weather modification activities. This proof shall be in the form of a liability insurance policy in the amount of Three Hundred Thousand Dollars (\$300,000.00) minimum for each permit to be issued or such other proof of financial responsibility as may be required.

785:15-3-13. Publication of notice of intention for permit

- (a) A notice of intention for each permit shall be filed on forms furnished by the Board containing the following information:
- (1) The name and address of the applicant;

- (2) Name and address of the operations director;
 - (3) The individual or organization on whose behalf the operation is to be conducted;
 - (4) The operations area;
 - (5) The target area;
 - (6) The seeding hypothesis;
 - (7) The intended effect of the operation;
 - (8) The seeding materials and weather modification apparatus to be used in conducting the operation;
 - (9) The period of operation, including starting and ending dates (the operation need not be continuous);
 - (10) Any additional information as the Board may deem appropriate.
- (b) The notice of intention shall be published at the applicant's expense *once a week for two (2) consecutive weeks* [82:1087.13(A)] on the dates designated by the Board *in a newspaper having general circulation* [82:1087.13(A)] in each county or counties of the proposed operations area and affected area.
- (c) *Proof of publication together with the publisher's affidavit* [82:1087.13(B)] showing dates the notice of intention was published *shall be filed with the Board by the licensee within fifteen (15) days from the date of the last publication of the notice.*[82:1087.13(B)]

785:15-3-14. Hearings

Upon request of any interested party the Board shall conduct a hearing in accordance with the provisions in Chapter 4 of this Title and the Administrative Procedures Act to determine if the requirements of the Weather Modification Act and the rules of this chapter have been met.

785:15-3-15. Permit approval or denial

- (a) After evaluating the application and the evidence presented at the hearing held pursuant to 785:15-3-14, if it is determined that the proposed weather modification operation is safe and not a menace to life and property and is in conformity with all statutory requirements and the rules of this Chapter, said application shall be approved by the Board.
- (b) If it is determined that the proposed weather modification operation is unsafe and a menace to life and property or does not give reasonable and adequate consideration to the planting and harvesting of agricultural crops or does not give reasonable and adequate consideration to other segments of the economy or important public events which could be affected by the operation, said application shall be denied by the Board.
- (c) The applicant shall be notified in writing of the Board's decision.

785:15-3-16. Permit suspension, modification or cancellation

- (a) Each permit issued will reflect that weather modification operations may be suspended during certain times to protect life and property.
- (b) When it appears to the Board that an emergency exists or appears imminent, or the Board has been notified of a probable impending emergency or is not satisfied with the conduct of field operations or the effect of the modification operations within the area affected by such condition, the Board may order the permit holder to immediately suspend all weather modification operations within the area affected by such condition.
- (1) Notification shall be given in the most expeditious manner.

- (2) If the telephone is used to give such notice, it is to be followed promptly by a certified letter of particulars from the Board addressed to the permit holder stating the time and place for holding a hearing on the question of taking permanent action to modify or cancel the permit.
 - (3) Whether or not operations are allowed to be reinstated by the Board, and when such reinstatement may take place, will depend upon the conditions that develop within the permit area or when the requirements of the Board are met.
- (c) Failure of the licensee to notify the Board of an existing or impending emergency which should have reasonably been foreseen may be grounds for cancellation of the permit and the operator's license after notice and hearing as provided in the Administrative Procedures Act and the rules in this Title.

PART 5. EXEMPTIONS

785:15-3-20. Exemptions from license and permit requirements

The Board, to the extent it deems practical, shall provide for exempting from license and permit requirements...:

- (1) *Research and development and experiments by state and federal agencies and institutions of higher learning;*
 - (2) *Laboratory research and experiments;*
 - (3) *Activities normally engaged in for purposes other than those inducing, increasing, decreasing or preventing [82:1087.8] naturally occurring weather phenomena; and*
 - (4) *Religious ceremonies, rites or acts and American Indian or other cultural ceremonies which do not utilize chemical or mechanical means to alter weather phenomena and which are not performed for profit.*
- [82:1087.8]

SUBCHAPTER 5. RECORDS, REPORTS AND MONITORING

785:15-5-1. Records

(a) **Daily Log.** Each permittee must maintain a daily log of weather modification activities for each unit of weather modification apparatus used during an operation. The log requires:

- (1) Date of weather modification activity.
- (2) Each aircraft flight track and location of each item of weather modification apparatus during each modification mission. Use of maps is encouraged.
- (3) Local time when modification activity began and ended. For non-continuous activities, the start and end of a total sequence of activity is acceptable.
- (4) Amount of time each unit of weather modification apparatus is in operation use.
- (5) Type of modification agent used in each weather modification apparatus.
- (6) Rate of dispersal of the seeding agent during actual use of each weather modification apparatus.
- (7) Total amount of seeding agent used. If more than one agent is used, list totals for each type of agent separately.

- (8) Local time when any type of monitoring, (i.e., radar, rawinsonde) was operational.
- (9) Type(s) of cloud(s) modified, (i.e., stratiform, isolated cumuliform, organized cumuliform, etc.).
- (10) Narrative indicating such operational problems as equipment failure, personnel problems, weather conditions, etc.
- (11) Monthly totals from the daily logs listings the following:
 - (A) Days during month in which operation was conducted;
 - (B) Time of operation;
 - (C) Amount of each kind of seeding agent used;
 - (D) Average rate of dispersal of each kind of seeding agent used;
 - (E) Time of operation of any monitoring equipment;
 - (F) Days of each type of cloud treated.

(b) **Weather Records.** Each permittee must obtain and retain copies of all daily precipitation total records available from the National Weather Service stations in the target area and from any other reliable source.

(c) **Participants.** Each permittee must keep a current listing of names and addresses of all participants in the State on an operation for which a permit has been issued.

(d) **Exempted Activities.** The Board, at its discretion, may require persons engaged in weather modification activities exempted under 785:15-3-20 to keep all or part of the record required of permittees by this rule. These records shall be kept in a manner as the Board requires.

785:15-5-2. Reports

(a) **Monthly Report.** Within ten (10) days after the conclusion of each calendar month the permittee shall submit a report to the Board which shall consist of:

- (1) A summary of the records prepared under 785:15-5-1;
- (2) A copy of the roster of all participants in the State on an operation which was prepared according to Section 785:15-5-1;
- (3) A narrative account of the manner in which the weather modification operation did not conform to the intended effect of the notice of intention filed in accordance with 785:15-3-13.

(b) **Summary Report.** Summary reports on observed results of each operation must be submitted annually and/or within thirty (30) days after expiration of the period of the permit or at other times as the Board may require. These summary reports shall consist of:

- (1) A summary of the records prepared under 785:15-5-1;
- (2) A copy of the roster of all participants in the State on an operation which was prepared according to 785:15-5-1;
- (3) A narrative account of the manner in which the weather modification operation did not conform to the intended effect of the notice of intention filed in accordance with 785:15-3-13.

(c) **Evaluation.** Within one hundred and twenty (120) days after completion of the operation the permittee shall file with the Board a narrative evaluation of the operation. The data for this report should be assembled, evaluated and presented in accordance with 785:15-3-13.

(d) **Reports to Sponsors.** The permittee shall file with the Board a copy of all reports made by the permittee to sponsors of the operation.

(e) **Exempted Weather Modification Activities.** The Board may, at its discretion, require those persons operating weather modification activities exempted under

785:15-3-20 but who have been required under 785:15-5-1 to keep certain records, to file all or part of the reports required by this rule. These records and reports shall be kept and filed in such manner as required by the Board.

785:15-5-3. Release of information to public

All operational information on a permitted project shall be filed with the Board before such information on the project may be released to the public. Scientific and other information concerning a project shall also be filed with the Board as it becomes available and before being released to the public.

785:15-5-4. Monitoring

Where any licensee is conducting weather modification operations in an area where the United States Government or its agent is conducting weather modification research then said licensee shall submit to monitoring by the United States Government or its agent, provided the monitoring does not interfere with the normal operation and results of the project.

SUBCHAPTER 7. EMERGENCY DROUGHT CONDITIONS

785:15-7-1. Emergency drought conditions

Upon declaration of emergency drought conditions within any county or counties of this State by proclamation of the Governor or by concurrent resolution by the Legislature, [82:1087.13(C)] a permit may be granted, by the Director, without requiring notice by publication of intent. If the notice by publication requirement has been suspended by the declaration of emergency drought conditions, the licensee may begin operations under the permit immediately provided he initiates a compliance with the notice of intention requirements of 785:15-3-13 within ten (10) days of issuance of the permit.

CHAPTER 20. APPROPRIATION AND USE OF STREAMWATER

[Authority: 82 O.S., §§ 105.1 et seq., and 1085.2]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

785:20-1-1. Purpose

This Chapter of the rules is to set out the procedure and substantive requirements to establish appropriative rights to use stream water, to amend such rights, and provisions regarding loss of rights.

785:20-1-2. Definitions

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

"Agricultural use" means water used for livestock, poultry, fish farms, fish hatcheries, veterinary services, feed lots, etc. (see also "Irrigation use").

"Application" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"Appropriation" means the process under 82 O.S. 1981, §§105 et seq., by which an appropriative stream water right is acquired. A completed appropriation

results in an appropriative right.

"Appropriative right to stream water" means the right acquired under the procedure provided by law to take a specific quantity of public water, by direct diversion from a stream, an impoundment thereon, or a playa lake, and to apply such water to a specific beneficial use or uses.

"Beneficial use" means the use of such quantity of stream or groundwater when reasonable intelligence and reasonable diligence are exercised in its application for a lawful purpose and as is economically necessary for that purpose. Beneficial uses include but are not limited to municipal, industrial, agricultural, irrigation, recreation, fish and wildlife, etc.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, duties authorized by law to be delegated to the Executive Director, or any employee or agent or staff member thereof as assigned by the Executive Director.

"Commercial use" means use which includes but is not limited to water for businesses, industrial parks, laundries, cafes, motels/hotels, institutions, food processing and water used in the transportation of metal ores and non-metals by pipelines.

"Consumptive use" means use of water which diverts it from a water supply.

"Definite stream" means a *watercourse in a definite, natural channel, with defined beds and banks, originating from a definite source or sources of supply. The stream may flow intermittently or at irregular intervals if that is characteristic of the sources of supply in the area.* [82:105.1(A)]

"Diffused surface water" means water that occurs, in its natural state, in places on the surface of the ground other than in a definite stream or lake or pond.

"Domestic use" *means the use of water by a natural individual or by a family or household for household purposes, for farm and domestic animals up to the normal grazing capacity of the land whether or not the animals are actually owned by such natural individual or family, and for the irrigation of land not exceeding a total of three (3) acres in area for the growing of gardens, orchards, and lawns* [82:105.1(B)]. Domestic use also includes: (1) the use of water for agriculture purposes by natural individuals, (2) use of water for fire protection, and (3) the use of water by non-household entities for drinking water purposes, restroom use, and the watering of lawns, provided that the amount of stream water used for any such purposes does not exceed five acre-feet per year.

"Enhanced recovery of oil and gas" means a long-term process using fresh water to recover substantial quantities of additional oil or gas which would not be recoverable under ordinary primary methods or under short-term stimulation techniques. This definition applies to all non-primary forms of oil and gas recovery including but not limited to secondary, tertiary, or other enhanced recovery operations.

"Excess or surplus water" means water in excess of the appropriator's present and reasonable future need. For purposes of 82 O.S. 1981, §§1086.1 et seq., "excess or surplus water" shall mean that amount of water which is greater than the present or reasonable foreseeable future water requirements needed to satisfy all beneficial uses within an area of origin.

"Industrial use" means the use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value.

"Interested party" means party.

"Irrigation use" means use of water for the production of food, fiber, crops, timber, fruits, nuts; and water applied to pastures, fields, landscaping, horticultural services, and golf courses.

"Mining use" means any use wherein the water is applied to mining processes including but not limited to oil and gas recovery operations, for drilling and reworking wells, and for conducting oil and gas field operations.

"Municipal and rural water use" means the use of water by a municipality, rural water district, water corporations, or community for the promotion and protection of safety, health and comfort; distribution to natural persons for the maintenance of life and property; public and private business pursuits; and the furtherance of all generally recognized municipal purposes, except large recreational uses such as lakes unless in conjunction with other uses.

"Notice by publication" means, unless otherwise specifically provided, publication in a daily or weekly newspaper of general circulation once a week for two (2) consecutive weeks (minimum seven day interval).

"Party" means *a person or agency named and participating, or properly seeking and entitled by law to participate* [75:250.3(7)], in hearings other than hearings on Board rules, regulations and standards.

"Permittee" means the person to whom a permit to use water has been issued by the Board or the person to whom such permit has been duly and properly transferred under Board rules.

"Permit to appropriate stream water" means the specific written authorization to construct works and make an appropriation of stream water which is issued to the one whose application for a permit has been approved by the Board. Types of stream water permits include regular, seasonal, temporary, term, and provisional temporary.

"Person" means any individual, firm, partnership, association, corporation, business or public trusts, federal agency, state agency, the State or any political subdivision thereof, municipalities, and any other duly constituted legal entity.

"Power use" means water used for power generation, including, but not limited to, fossil-fueled electric power generation and hydroelectric power generation.

"Priority" means an appropriative stream water right, which is governed by the time the right is filed, is the superiority of a right over all later appropriative rights that attach to the same water supply when the aggregate quantities of water available are not sufficient to satisfy the aggregate rights which attach to such a water supply. The date of priority is the date the right accrues.

"Public water supply" means use of water for drinking water purposes by housing developments, trailer parks, churches, schools, etc., other than water used for "municipal or rural water use".

"Recreation, fish and wildlife use" means the use of water for swimming, water skiing, boating, fishing, hunting or other forms of water recreation, and water for fish and wildlife conservation.

"Return water or return flow" means the portion of water diverted from a water supply which finds its way back into a watercourse.

"Reservoir" means any surface depression which contains or will contain the water impounded by a dam.

"Stream system" means the drainage area of a watercourse or series of watercourses which converge in a large watercourse the boundaries of which have been defined and which has been designated by the Board as a stream system.

"Stream sub-system" means the drainage area of a portion of a stream system.

"Stream water" means water in a definite stream and includes but is not limited to water in ponds, lakes, reservoirs and playa lakes.

"Unappropriated water available" means water available for appropriation which is the amount of water within a particular stream system, stream sub-system, or watershed available for appropriation as determined by the Board at a proposed point of diversion and/or from a specific water supply which currently is not appropriated.

"Vested stream water right or vested right" means the right established by the beneficial use of stream water from a water supply prior to the enactment and pursuant to the provisions of 82 O.S. Supp. 1963, §1 et seq., and the rules and regulations of the Board.

"Waste" means use of water in such an inefficient manner that excessive losses occur or any manner that is not a beneficial use or use of water in excess of the amount which is authorized by the water right.

"Watershed" means the boundaries of a drainage area of a watercourse or series of watercourses which diverge above a designated location or diversion point, as determined by the Board.

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 13 Ok Reg 2853, eff 7-1-96; Amended at 14 Ok Reg 2750, eff 7-1-97; Amended at 16 Ok Reg 410, eff 10-22-98 (emergency); Amended at 16 Ok Reg 2682, eff 7-1-99; Amended at 25 Ok Reg 1438, eff 5-27-08]

785:20-1-3. Statutory provisions on violations and penalties

As provided by 82 O.S. 1981, §105.20, *the unauthorized use of water, the unauthorized transfer of a water right, the continued use of works which are unsafe after receiving notice to repair, the waste of water, the unauthorized severance of a water right from the land to which it is appurtenant, the refusal to change unsafe works when directed to do so, or the injury or obstruction of waterworks shall be a misdemeanor, and each day such violation continues shall be a separate violation. The Board shall have the right, in addition to filing criminal complaints and any other remedies provided, to bring an action in the district court of the county wherein such act or omission occurs to enjoin the same. The Board and its authorized agents shall have a reasonable right to go upon private property in the performance of its duties and shall have the duty to file complaints of violations.* [82:105.20]

785:20-1-4. Statutory provisions on ownership and use of water

(a) *The owner of land owns water standing thereon, or flowing over or under its surface but not forming a definite stream. The use of groundwater shall be governed by the Oklahoma Groundwater Law. Water running in a definite stream, formed by nature over or under the surface, may be used by the owner of the land riparian to the stream for domestic uses as defined in Section 105.1 of Title 82 of the Oklahoma Statutes, but he may not prevent the natural flow of the stream, or of the natural spring from which it commences its definite course, nor pursue nor pollute the same, as such water then becomes public water and is subject to appropriation for the benefit and welfare of the people of the State, as provided by law; provided, however, that nothing contained herein shall prevent the owner of land from damming up or otherwise using the bed of a stream on his land for the collection or storage of waters in an amount not to exceed that which he owns, by virtue of the first sentence of this Section so long as he provides for the continued*

natural flow of the stream in an amount equal to that which entered his land less the uses allowed for domestic uses and valid appropriations made pursuant to Title 82 of the Oklahoma Statutes; provided further, that nothing contained herein shall be construed to limit the powers of the Oklahoma Water Resources Board to grant permission to build or alter structures on a stream pursuant to Title 82 of the Oklahoma Statutes to provide for the storage of additional water the use of which the land owner has or acquires by virtue of this act.

(b) All rights to the use of water in a definite stream in this state are governed by this section and other laws in Title 82 of the Oklahoma Statutes, which laws are exclusive and supersede the common law. [60:60]

(c) The State of Oklahoma is a party to four interstate stream compacts which were adopted by the Oklahoma Legislature as statutes, including the Canadian River Compact (82 O.S. 1991, §526.1), the Kansas-Oklahoma Arkansas River Compact (82 O.S. 1991, §1401), the Arkansas-Oklahoma Arkansas River Compact (82 O.S. 1991, §1421), and the Red River Compact (82 O.S. 1991, §1431). Among other matters, the compacts apportion water among the states that are party to the compacts. Water rights subject to regulation under this chapter of the rules are likewise subject to applicable provisions of the compacts. (d) Use of water in a scenic river area in Oklahoma is also subject to applicable provisions of the Oklahoma Scenic Rivers Act, 82 O.S. 1991, §1451 and following.

[Source: Amended at 15 Ok Reg 2435, eff 6-11-98]

785:20-1-5. Purposes for a water appropriation

(a) The purposes for which the public waters of this State may be appropriated are agriculture, irrigation, mining, drilling of oil and gas wells, recovery of oil and gas, milling, manufacturing, power production, industrial purposes, the construction and operation of water works for cities and towns, stock raising, public parks, game management areas, propagation and utilization of fishery resources, recreation, housing developments, pleasure resorts, artificial recharge of a groundwater basin or subbasin or any other beneficial uses.

(b) The amount or quantity of water to be appropriated for each purpose shall be so stated and shall be specifically appropriated for such purpose or purposes, provided that no amount shall be specified in water rights for non-consumptive uses in reservoirs if a consumptive use is also authorized by the same water right.

[Source: Amended at 12 Ok Reg 2617, eff 7-1-95]

785:20-1-6. Who should file an application

(a) Any person, firm, corporation, state or federal governmental agency, or subdivision thereof, intending to acquire the right to beneficial use of any water shall, before commencing any construction for such purposes or before taking the same from any constructed works, make an application to the Board [82:105.9] for a permit to appropriate such water.

(b) Water for domestic use, as defined herein, is exempt from such filing: however, where domestic use of water from a federal reservoir operated by the Corps of Engineers, U.S. Army, is desired, an application must be on file with the Board before the Federal Government through the Corps of Engineers will grant an easement to cross government property.

(c) Unless otherwise determined by the Board, a permit to use water for hydroelectric power generation, navigation, recreation fish and wildlife, and other nonconsumptive instream uses is required only where the water used for such purpose is taken from reservoir storage.

(d) If an application is filed after non-domestic use of the water has begun, the application filing fee due for the type of permit requested as set forth in Chapter 5 of the Oklahoma Administrative Code, title 785, shall be doubled.

[Source: Amended at 27 Ok Reg 1294, eff 5-27-10]

785:20-1-7. Forms to be furnished by the Board [REVOKED]

[Source: Amended at 12 Ok Reg 2671, eff 7-1-95; Revoked at 14 Ok Reg 2750, eff 7-1-97]

785:20-1-8. Rejection of application where water has been withdrawn by the United States

When an application is received in a stream system where all of the unappropriated water has been withdrawn by the United States under the provisions of 82 O.S. 1981, §105.29, for the economic justification of a water supply project, the application and fee shall be rejected and returned to the applicant by certified mail with a letter of explanation as to why the application was rejected.

785:20-1-9. Use of water from a reservoir

To clarify the distinction between regulation of the use of water in a reservoir and ownership and use of the storage space created by a reservoir, it is recognized:

- (1) Water, not previously appropriated or otherwise not subject to previously recognized claims to use, in reservoirs owned by federal, state or local governments or non-governmental entities or persons is public water subject to appropriation as provided herein. The use of storage space created by a reservoir is subject to applicable laws and regulations and is recognized to be property of the owner of such reservoir.
- (2) For reservoirs constructed by agencies of the federal government, such as the U.S. Army Corps of Engineers, Department of Interior Bureau of Reclamation, and U.S. Department of Agriculture Natural Resources Conservation Service, the Board will consider applications for regular permits to appropriate water only within quantities which represent the dependable yield of water from conservation storage space in such reservoirs, as calculated by such agencies, provided that for upstream flood control impoundments constructed under sponsorship of Soil and Water Conservation Districts, the amount of water in the sediment pool will be available to landowners or their successors who granted easements without compensation for such impoundments and who obtain water rights for the beneficial use of such water, and provided further that 785:20-11-1 shall be applicable where multiple landowners granted such easements.

[Source: Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 14 Ok Reg 2750, eff 7-1-97]

785:20-1-10. Wastewater released to definite stream

All wastewater or effluent released into a definite stream shall be considered public water subject to appropriation.

785:20-1-11. Vested rights subject to administrative regulation

Rights to the use of stream water recognized to be vested by the Board through vested stream water rights hearings conducted and orders entered under the procedures of 82 O.S. Supp. 1963, §§5 and 6, have been and shall remain subject to administrative regulation by the Board. Such regulation includes but is not limited

to provisions on amending rights, annual use reports, loss of rights, assignment of rights, inspection of works for safety, and waste of water. Upon amendment of a vested right, an Amended Vested Right form shall be completed and forwarded to the vested right holder.

785:20-1-12. Fees

Fees required in filing for stream water permits and other matters will be charged in accord with Chapter 5 of this Title.

SUBCHAPTER 3. APPLICATION REQUIREMENTS AND PROCESSING

785:20-3-1. Preparation of application

- (a) The Board shall furnish without charge blank applications forms and instructions for the filing for a stream water permit. The application shall be typewritten or printed clearly in ink.
- (b) If the application is filled out in writing or in pencil, or is illegible, the application will be returned.
- (c) Each blank in the application shall be filled in carefully and as accurately and completely with the relevant data as the circumstances permit.
- (d) Supplements may be attached if there is not sufficient space on the printed form.
- (e) If a supplement is used, the data entered thereon should be segregated into paragraphs with numbers corresponding to the paragraph numbers of the printed form and properly cross-referenced thereto.
- (f) If there are any unusual or unique aspects concerning the application, such as multiple diversion points, the applicant should confer with agency staff. The applicant may also be required to submit additional information which is necessary for proper consideration of the application.

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 14 Ok Reg 2750, eff 7-1-97]

785:20-3-2. General application requirements

- (a) **Application form to be used.** The applicant shall complete all applications for a regular, term, seasonal or provisional temporary stream water permit on the approved form set out in Appendix A, or on an electronic or other form provided by the Board, and in the manner described by the form. The application form may be presented to the Board in person, by mail, e-mail, readable facsimile transmittal, or through the Board's online application service. The filing fee must be submitted to the Board before application review and processing commences. With copies of the application form, the Board will provide copies of a sample plat on which information as required by the application form must be indicated.
- (b) **Right of access to diversion point and to cross lands of another.** If at the time the application is filed, the applicant has evidence regarding right of access to the diversion point and authority to cross lands of another with pipelines or other appurtenances related to the use of the water, such evidence shall be submitted with the application.

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 13 Ok Reg 2853, eff 7-1-96; Amended at 15 Ok Reg 2435, eff 6-11-98; Amended at 20 Ok Reg 2604, eff 7-11-03; Amended at 27 Ok Reg 1294, eff 5-27-10]

785:20-3-3. Place of use and irrigation use application requirements

[REVOKED]

[Source: Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2617, eff 7-1-95; Revoked at 13 Ok Reg 2853, eff 7-1-96]

785:20-3-4. Enhanced oil recovery use application requirements

(a) To aid the Board in making its determinations, applicants filing for the use of fresh water for enhanced recovery of oil and gas, in addition to all other requirements, must furnish the following as part of and at the time of filing the application:

- (1) A copy of the easements or leases from the surface right owners giving the applicant the right to transport fresh stream water from point of diversion to point of injection for the recovery process;
- (2) An estimated schedule of use showing the amount of fresh water used each year in the recovery process;
- (3) An economic study containing the following information:
 - (A) A detailed analysis of the relative cost of obtaining salt water versus the relative cost of obtaining fresh water;
 - (B) Total project costs and the amount of oil or gas expected to be recovered and the value expected to be realized;
 - (C) The estimated value of fresh water for other purposes (purposes or uses common to the area or vicinity subject of the application) as measured against the overall estimated value of the oil or gas to be recovered;
 - (D) The additional expense per barrel recovered if the applicant is required to use or treat salt water instead of fresh water in the recovery process, and
 - (E) A summary evaluation of other recovery methods or alternatives considered and why recovery requiring the use of fresh water was deemed to be necessary or the most feasible.
- (4) An inventory of all wells, fresh water, salt water, oil, gas, disposal, injection, both active and abandoned, within the boundaries of the proposed unitization and within two (2) miles from the outside boundaries of the proposed unitization;
- (5) The permeability, thickness, and estimated porosity of the injection zone; and
- (6) Information about reuse and recycling of the fresh groundwater.

(b) The applicant may also be required to furnish other relevant material upon request which may include the following:

- (1) A copy of the unitization plan on file with the Corporation Commission;
- (2) A copy of each injection well application and the approval of such application by the Corporation Commission; and
- (3) A copy of all logs of each injection well showing the name of each zone containing salt water.

[Source: Amended at 13 Ok Reg 2853, eff 7-1-96]

785:20-3-5. Content requirements of plats and maps [REVOKED]

[Source: Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2617, eff 7-1-95; Revoked at 13 Ok Reg 2853, eff 7-1-96]

785:20-3-6. Filing fee required [REVOKED]

[Source: Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 11 Ok Reg 2917, eff 6-13-94; Revoked at 13 Ok Reg 2853, eff 7-1-96]

785:20-3-7. Priority of application

The application and all attachments delivered to the Board will be date stamped "received" and noted in the records. The date of receipt of an application shall establish a priority date of filing.

[Source: Amended at 12 Ok Reg 2617, eff 7-1-95]

785:20-3-8. Revisions and corrections to applications

(a) Applications for stream water will be altered, corrected or revised by the Board only upon written request signed by the applicant or his duly authorized agent or by telephone instructions to the Board from the applicant or his duly authorized agent to be followed by written confirmation.

(b) Changes may also be made directly on the application, or filed through the Board's online application service, by the applicant or his duly authorized agent.

(c) All changes must meet the requirements of 82 O.S. §§ 105.1 et seq. and the rules in this Chapter.

(d) Revisions to the application requested after notice has been published may be granted if the resultant change in the application is not substantial.

[Source: Amended at 12 Ok Reg 2617, eff 7-1-95; Amended at 20 Ok Reg 2604, eff 7-11-03]

785:20-3-9. Defective applications; when applications deemed withdrawn

(a) Upon the filing of an application that *is defective as to form or unsatisfactory as to feasibility or safety of the plan or as to the showing of the ability of the applicant to carry the construction to completion, the Board shall advise the applicant of the correction, amendments, or changes required, and sixty (60) days from the date the Board so advises shall be allowed for the refiling thereof.* [82:105.10]

(b) *If refiled corrected as required within such time, the application shall, upon being accepted, take priority as of the date of its original filing, subject to compliance with further provisions of the law and the rules herein.* [82:105.10]

(c) Any corrected application filed after the time allowed in (a) of this Section *shall be treated in all respects as a new application on the date of its refiling* [82:105.10] and the original priority date of filing shall be lost.

(d) If an applicant does not correct an application or publish notice as instructed by the Board, and no further proceedings are initiated by the applicant for six months or more after last contact with the Board, the application shall be deemed withdrawn. The Board shall provide notice to the applicant that the application has been deemed withdrawn.

(e) *For applications that have been pending for more than three (3) years prior to June 5, 2000, the Board shall provide written notice to the applicant at the applicant's last-known address that the application shall be deemed withdrawn and the priority date based on the original filing date shall be lost unless the applicant provides notice of the application as instructed by the Board. The Board shall provide an opportunity for a hearing if requested in order for the applicant to show cause why:*

(1) *notice should not be published, and*

(2) *the application should not be deemed withdrawn and the priority date lost.*

(3) *Cause may be shown by substantial competent evidence that:*

(A) *the applicant has been diligently pursuing plans for the project for which the water is proposed to be used,*

- (B) *construction of the project is still practical, and*
(C) *the applicant is still able to complete the project.*

(4) *If the Board receives no response to the notice, the application shall be deemed withdrawn and priority date lost.*

(f) For applications that the Board initially determines may remain pending pursuant to subsection (e) of this section, such *applications may remain pending for more than three (3) years and retain the priority date based on the original filing date or date of refiling in compliance with this Section if the applicant files a request to extend pending status of the application before the end of the first three-year period and each successive three-year period thereafter* and the Board determines after notice and an opportunity for hearing that the application may remain pending. *If a request to extend pending status is not filed in time and as required by Board rules, the application will be deemed withdrawn [82 O.S. 105.10].*

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 16 Ok Reg 2682, eff 7-1-99; Amended at 18 Ok Reg 2245, eff 7-1-01]

785:20-3-10. Telecopier submittals

Legible facsimile copies of applications, amendments to applications and corrections to applications will be accepted by the Board. The date and time of receipt of a facsimile copy of an application shall establish the priority date of filing as described in 785:20-3-7.

[Source: Amended at 14 Ok Reg 2750, eff 7-1-97]

SUBCHAPTER 5. NOTICE, HEARINGS AND BOARD ACTIONS

785:20-5-1. Notice of application

(a) **Application notice.** Notice of the application, including hearing date, time and place if scheduled prior to notice, shall be provided by the applicant as required by law and Board instructions. Accuracy and adequacy of notice shall be the responsibility of the applicant.

(b) **Proof of notice.** Adequate proof that notice was provided as instructed by the Board shall be submitted to the Board by the applicant within fifteen days after the last date of publication or as otherwise directed by the Board. Such proof shall show the dates on which said notice was published in the newspaper.

(c) **Failure to give adequate notice.** If adequate proof of notice is not provided by the applicant, the application may be dismissed and the application fee forfeited.

(d) **Revised published notice of application.** The Board may require a revised notice to be published at the applicant's expense in case material error is made, or if the applicant makes substantial revisions to his application after notice of the original application.

[Source: Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 13 Ok Reg 2853, eff 7-1-96; Amended at 14 Ok Reg 2750, eff 7-1-97]

785:20-5-2. Affidavit of notice publication [REVOKED]

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Revoked at 13 Ok Reg 2853, eff 7-1-96]

785:20-5-3. Protests and hearings

(a) *If the Board does not schedule a hearing on the application before instructing the applicant to publish notice, a hearing shall be scheduled by the Board upon*

receipt of a protest which meets the requirements of Section 785:4-5-4. The Board shall notify the applicant and protestant of such hearing. Any interested party shall have the right to protest any application and appear and present evidence and testimony in support of such protest [82:105.11] at the hearing thereon. If, after the application is deemed complete, the application cannot be recommended to the Board for approval, the applicant shall be notified and shall be given an opportunity for hearing.

(b) Protests shall be made and hearings conducted in accordance with Chapter 4 of this Title.

(c) Even if no protest to the application is received, the applicant shall be advised and shall be given an opportunity for a hearing if the application cannot be recommended to the Board.

(d) For a limited quantity permit application, interested persons may submit written comments. A hearing on such application may be required by the Executive Director pursuant to 785:20-7-1(f) if it is shown that a significant public interest or property right would be affected by approval of the application.

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 13 Ok Reg 2853, eff 7-1-96; Amended at 13 Ok Reg 3911, eff 8-7-96 (emergency); Amended at 14 Ok Reg 2750, eff 7-1-97]

785:20-5-4. Board determination and approval of application

(a) **Elements of statute.** Before taking final action on the application, the Board shall determine from the evidence presented whether:

(1) *Unappropriated water is available in the amount applied for [82:105.12(A)(1)] (as set forth in 785:20-5-5(a) and (b));*

(2) *The applicant has a present or future need for the water and the use to which applicant intends to put the water is a beneficial use. In making this determination, the Board shall consider the availability of all stream water sources and such other relevant matters as the Board deems appropriate, and may consider the availability of groundwater as an alternative source [82:105.12(A)(2)] as set forth in 785:20-5-5(c);*

(3) *The proposed use does not interfere with domestic or existing appropriative uses [82:105.12(A)(3)] as set forth in 785:20-5-5(d); and*

(4) *If the application is for the transportation of water for use outside the stream system wherein the water originates, [82:105.12(A)(4)] the provisions of Section 785:20-5-6 are met.*

(b) **Application approval.** If the Board determines that the elements listed in subsection (a) of this section and the applicable provisions of this chapter of the rules have been established, *the Board shall approve the application by issuing a permit to appropriate water. [82:105.12(A)]*

[Source: Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2617, eff 7-1-95; Amended at 13 Ok Reg 2853, eff 7-1-96]

785:20-5-5. Factors relating to statutory elements for application approval

(a) **Determination of water available for appropriation from a stream.**

(1) For direct diversions from a stream, the determination of water available for appropriation shall take into consideration the mean annual precipitation run-off in the watershed above the point(s) of diversion, the mean annual flow, stream gauge measurements, domestic uses and all existing appropriations and other designated purposes in the stream system. The Board may consider other evidence or laws relating to stream flow or elevation, including but not limited to apportionment provisions of

interstate stream compacts to which the State of Oklahoma is a party and the Oklahoma Scenic Rivers Act.

(2) Absent the presentation of more accurate evidence to the contrary, the Board shall estimate the amount of water required to satisfy domestic use to be six (6) acre-feet per household per year or three (3) acre-feet per non-household domestic use.

(b) Determination of water available for appropriation from a reservoir, lake or pond.

(1) The amount of water available for appropriation from a lake or reservoir shall be based on a ninety-eight percent (98%) dependable yield of the reservoir for municipal and industrial use and an eighty percent (80%) dependable yield of the reservoir for irrigation use. The Board may consider other dependable yields of reservoirs, considering the type of use proposed, interconnections with other reservoirs and other factors deemed relevant by the Board.

(2) The amount of water available from a Natural Resources Conservation Service flood detention structure shall be based on the designated sediment pool amount as specified in 785:20-11-1. For impoundments other than Natural Resources Conservation Service flood detention structures, the Board shall determine the amount of water available for appropriation by estimating the yield based on the storage capacity, evaporation amounts and other factors deemed appropriate by the Board.

(3) If an application is made to appropriate water from water supply storage at Sardis Reservoir, an amount of 20,000 acre-feet of water shall not be considered available for appropriation unless the applicant's use is within one or more of the 10 county area of southeastern Oklahoma. The 10 counties include LeFlore, McCurtain, Pushmataha, Latimer, Haskell, Choctaw, Pittsburg, Coal, Atoka, and Bryan. The following conditions apply to this paragraph:

- (i) Appropriations shall be granted first from the remainder of the yield of Sardis Reservoir; and
- (ii) Water appropriated from the 20,000 acre-feet amount cannot be used as a substitute for water which is used out of southeastern Oklahoma; and
- (iii) If the applicant's proposed use from the 20,000 acre-feet amount is for municipal or rural water district use, the service area must be within southeastern Oklahoma, and if the use from the 20,000 acre-feet is for industrial, commercial, irrigation or power use, the primary processes for such use must occur within southeastern Oklahoma; and
- (iv) No water shall be released or withdrawn from water supply storage in Sardis Reservoir unless a lake level management plan for the applicant's use has been reviewed by the Oklahoma Department of Wildlife Conservation and is approved by the Board, provided that an approved lake level management plan shall have an emergency clause for domestic use.

(c) Present or future need.

(1) In considering the amount of water requested, the Board may review the efficiency of the works proposed to place the water to beneficial use and may order modifications to such works or that different works be utilized.

- (2) For a proposed public water supply or municipal use, the Board may review population projections for the area served or proposed to be served by the applicant.
- (3) For a proposed irrigation use, the amount of water needed shall be based on the types of crops to be grown and the number of irrigable acres, as indicated by the "Technical Report on Irrigation Water Requirements State of Oklahoma," U.S. Department of the Interior, Bureau of Reclamation, Southwest Region, Amarillo, Texas, September 1986. Other appropriate publications may be utilized to calculate water demand for crops, and the applicant may submit additional information for consideration as to the amount of water needed. If more than one crop is to be irrigated, present and future need may be based on the crop which has the greatest irrigation water requirements during a dry year.

(d) Determination of interference with domestic and existing appropriative uses.

- (1) For purposes of determination of interference with domestic uses of stream water, interference with domestic use of groundwater will not be considered.
- (2) The Board may determine that conditions or restrictions are necessary to protect existing beneficial uses and rights and may establish and impose such conditions on certain stream flow whereby direct diversion may be allowed only during certain times of the year or when a certain level of stream flow or elevation in the stream is reached. In some cases, the Board may determine that water storage is necessary.
- (3) If the Board determines water to be available for appropriation pursuant to 785:20-5-5(a) and (b) and the applicant agrees to the placement of a condition(s) on the permit that the proposed use will not interfere with domestic or existing appropriative uses and/or conditions or restrictions pursuant to 785:20-5-5(d)(2), it shall be a presumption that interference will not occur.

(e) Additional factors to be determined for scenic rivers and outstanding resource waters. If the application is to divert water from a definite stream which has been designated as a "scenic river area" under the Scenic Rivers Act, 82 O.S. 1991, §1451 et seq., or a stream designated as Outstanding Resource Waters under Chapter 45 of this Title, the Board shall consider, in addition to the guidelines set forth in (a), (b), (c) and (d) of this Section, the following factors insofar as sufficient information is readily available to assure that appropriate instream flows are protected:

- (1) Quantity of water requested in comparison to the amount of water available for appropriation based on mean annual precipitation run-off produced within the drainage area of the watershed above the proposed point of diversion;
- (2) Quantity of flow needed in cubic feet per second (cfs) for recreational purposes, including sustaining existing fish species in the stream, spawning periods for such species, etc., provided that for sustaining existing fish species in the Barren Fork Creek, and unless information to the contrary is shown, a flow restriction of 50 cfs will be considered as needed;
- (3) Existing water quality in the stream and the potential of the diversion to alter the water quality or physical characteristics of the stream; and
- (4) Other information as deemed relevant by the Board.

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 13 Ok Reg 2853, eff 7-1-96; Amended at 14 Ok Reg 2750, eff 7-1-97; Amended at 15 Ok Reg 2435, eff 6-11-98; Amended at 16 Ok Reg 2682, eff 7-1-99; Amended at 20 Ok Reg 2604, eff 7-11-03]

785:20-5-6. Approval of application for out-of-stream system use

(a) In considering applications for the transportation and use of water outside the stream system where the water originates, the following provisions are applicable:

(1) *The proposed use must not interfere with existing or proposed beneficial uses within the stream system and the needs of the water users therein. In making this determination, the Board shall utilize the review conducted pursuant [82:105.12(A) (4)] to (b) of this Section.*

(2) *In the granting of water rights for the transportation of water for use outside the stream system wherein water originates, pending applications to use water within such stream system shall first be considered in order to assure that applicants within such stream system shall have all of the water required to adequately supply their beneficial uses. [82:105.12(B)]*

(b) *The Board shall review the needs within such area of origin every five (5) years to determine whether the water supply is adequate for municipal, industrial, domestic, and other beneficial uses. [82:105.12]* Ongoing studies and information about proposed or potential needs may be used by the Board. Adequacy for future needs of water within the stream system shall be based on reasonably foreseeable prospects for use and for a period of not longer than fifty (50) years from the date of issuance of the permit for use outside the stream system.

(c) *The review conducted pursuant to (b) of this Section shall not be used to reduce the quantity of water authorized to be used pursuant to permits issued prior to such review. Such permits, however, remain subject to loss, in whole or in part, due to nonuse, forfeiture or abandonment, pursuant to this [82:105.12(c)] Chapter.*

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94]

785:20-5-7. Denial of permit and amended application

(a) **Denial of permit and notification.** If the Board finds from the evidence presented that the applicant has failed to meet the requirements of 82 O.S. 1981, §105.12 and 785:20-5-4, the permit shall be denied and the applicant shall be notified of the rejection.

(b) **Denial of permit on basis of no unappropriated water available; amended application.** *If the Board denies a permit on the basis that no unappropriated water is available in the amount applied for, but [82:105.14] finds that water is available in a lesser amount and that the other requirements of 785:20-5-4 were complied with, the applicant shall be notified of the amount that is available. The applicant may amend the application previously filed and apply for said lesser amount. Such amendment shall not be deemed a waiver of the right of applicant to appeal from the Board's action in denying the permit on the original application. Such amended application shall be returned to the Board by certified mail no later than fifteen (15) days after receipt of the notice of denial...by the Board. Upon receipt of the amended application, the Board shall approve the application for the lesser amount at its next regularly scheduled meeting. [82:105.14]*

(c) **Denial of permit on basis of no present or future need; amended application.** If the Board denies a permit on the basis that the applicant has not demonstrated a present or future need for the water in the amount applied for but finds that he has demonstrated a need in some lesser amount and finds that the other requirements of 785:20-5-4 were complied with as to this lesser amount, the

applicant shall be so notified. The applicant may then amend the application previously filed and apply for the lesser amount. The amended application shall be returned to the Board by certified mail no later than fifteen (15) days after receipt of the notice of denial of the amount applied for. The Board shall then approve the permit for the lesser amount at its next regularly scheduled meeting. The amendment of the application to a lesser amount shall not be deemed a waiver of the right of the applicant to appeal from the Board's action in denying the permit on the original application.

[Source: Amended at 12 Ok Reg 2617, eff 7-1-95]

785:20-5-8. Notice of Board decision

The Board shall give written notice to the applicant, and any protestants or other interested parties, announcing its findings and decision. If such decision results in an amended application as provided in 785:20-5-7, the Board shall give written notice to the parties of its decision on the amended application.

[Source: Amended at 14 Ok Reg 2750, eff 7-1-97]

785:20-5-9. Issuance of permit

Upon the decision of the Board to grant a permit, an original permit to appropriate water shall be forwarded to the applicant. Forms for notice of commencement of works and for completion of works shall be enclosed with the permit.

[Source: Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 14 Ok Reg 2750, eff 7-1-97]

SUBCHAPTER 7. PERMITS

785:20-7-1. Classes of stream water permits

(a) **Regular permit.** A regular permit authorizes *the holder of such permit to appropriate water on a year-round basis in an amount and from a source approved by the Board.* [82:105.1(c)]

(b) **Seasonal permit.** A seasonal permit authorizes *the holder of such permit to divert available water for specified time periods during the calendar year* [82:105.1(D)]

(c) **Temporary permit.** A temporary permit authorizes *the appropriation of water in an amount and from a source approved by the Board is valid for a time period not to exceed three (3) months, does not vest in the holder any permanent right, and may be canceled by the Board in accordance with its terms.* [82:105.1(E)]

(d) **Term permit.** A term permit authorizes *the appropriation of water in an amount and from a source approved by the Board for a term of years which does not vest the holder with any permanent right and which expires upon expiration of the term permit.* [82:105.1(F)]

(e) **Provisional temporary permit.**

(1) A provisional temporary permit *authorizes an appropriation of water in an amount and from a source approved by the Board.* [82:105.1(G)] A provisional temporary permit is granted by the Board's Executive Director for a period not to exceed *ninety (90) days, is non-renewable, does not vest in the holder any permanent right and is subject to cancellation... at any time* [82:105.1(G)] within its term. It is not necessary to hold a hearing, publish application data or notify adjacent downstream domestic or appropriative users prior to consideration of this type of permit. The permit

may be issued summarily and immediately at the discretion of and upon administrative approval by the Executive Director.

(2) A provisional temporary permit may be issued only where the verified application and supporting materials filed therewith show:

(A) That the use will not interfere with domestic or prior appropriative users; and

(B) That economic hardship will occur if the permit is not granted; and

(C) That the applicant owns, leases or has the written consent of the respective landowners to use lands at the point of diversion or lands for placement of water lines or other appurtenances related to use of the water.

(f) Limited quantity permit.

(1) The Executive Director of the Board may administratively issue regular, seasonal, temporary or term permits to use 15 acre-feet or less of stream water in a calendar year or during its term if the term is less than one year [82:105.13].

(2) Notice of the application for such a permit shall be published by the applicant in a newspaper of general circulation one time only in the county of the point of diversion and in the adjacent downstream county, or as otherwise directed by the Board.

(3) Written comments about the application must be filed with the Board within ten (10) days after the date of publication or other notice provided.

(4) The permit may be issued or denied summarily and immediately after the ten (10) day period at the discretion of the Executive Director, provided that the Executive Director may require that a hearing on the application be held. After such hearing, the application shall be presented to the Board with proposed findings of fact and conclusions of law for consideration.

(5) Limited quantity permits cannot be combined to authorize the use of more than a total of 15 acre-feet per year.

(g) Priorities among classes. In circumstances where there is less water actually available than that calculated for purposes of considering a regular permit application, regular permit holders shall have a better right over all other classes of permits. Among regular permit holders, priority in time, determined by date of filing an application as provided in these rules, shall give the better right. Among classes other than regular permit holders, priority in time, determined by date of filing an application as provided in these rules, shall give the better right.

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 13 Ok Reg 3911, eff 8-7-96 (emergency); Amended at 14 Ok Reg 2750, eff 7-1-97]

785:20-7-2. Contents of regular permits

Every regular permit issued by the Board shall contain substantially the following:

(1) The stream system name and number;

(2) The county;

(3) Application number and date of filing;

(4) The permit number and date issued, which shall be the date the permit is issued by the Board;

(5) The name and address to whom issued;

(6) The source, amount of water in acre-feet, and maximum rate of withdrawal in gallons per minute;

- (7) A legal description of the point or points of diversion to the nearest ten (10) acre subdivision of the legal description;
- (8) The purpose of the diversion; and
- (9) The area of use or in the case of irrigation, the number of acres to be irrigated and the legal description of same;
- (10) A provision making the permit and holder thereof subject to domestic users and existing appropriators;
- (11) The time within which construction shall commence and the time within which the water shall be applied to beneficial use;
- (12) If an applicant's water lines are to cross a public right-of-way or another landowner's property, it shall be a condition of the permit that the applicant provide, within a reasonable time as determined by the Board, an easement, license, or other evidence that he can cross the right-of-way or another's property in order to put the water to beneficial use;
- (13) If the applicant leases the land on which the water is authorized to be used for irrigation, the permit shall expire upon termination of the lease or renewals thereof unless the permit is transferred to the owner of the land within thirty (30) days of the termination of the lease, and that copies of any such lease renewals shall be filed with the Board within thirty (30) days of the effective date of such renewal;
- (14) Water released for navigation purposes pursuant to project operations adopted by the United States shall not be diverted; and
- (15) Any additional terms, conditions, limitations, or restrictions the Board may prescribe.

[Source: Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2617, eff 7-1-95; Amended at 22 Ok Reg 1596, eff 7-1-05]

785:20-7-3. Contents of seasonal, temporary, term or provisional temporary permits

In addition to regular permits, *the Board is authorized to issue seasonal, temporary, term or provisional temporary permits at any time it finds such issuance will not impair or interfere with domestic uses or existing rights of prior appropriators and may do so even where it finds no unappropriated water is available for a regular permit. All seasonal temporary, term or provisional temporary permits shall contain [82:105.13] substantially the same information as a regular permit and shall contain a provision making them subject to all rights of prior appropriators [82:105.13] and domestic users.*

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94]

785:20-7-3.1. Contents of permits to divert water from Barren Fork Creek

(a) This section shall apply to permits (except provisional temporary permits) issued after July 1, 2003, to divert water from the Barren Fork Creek and its tributaries in Adair and Cherokee Counties, provided that this section shall not be construed to alter or remove any condition on diversions based on flow in permits issued prior to July 1, 2003.

(b) Unless contrary information is shown and the Board determines that a different flow restriction is needed for aquatic community purposes on the Barren Fork Creek, the Board will include a condition in the permit that diversions must be temporarily suspended beginning the sixth day after the stream flow measured at the United States Geological Survey gage number 07197000 near Eldon, Oklahoma, falls below 50 cfs for a period of five (5) consecutive days.

- (c) The condition shall indicate that the temporary suspension shall continue until the flow at the Eldon gage increases to 50 cfs.
- (d) In establishing the condition, the Board may utilize an alternative gage that reliably measures stream flow on the Barren Fork Creek or its tributaries and may make corresponding adjustments to the flow restriction.
- (e) Details relating to notice of the flow at the Eldon gage (or its equivalent) shall be set forth in the permit condition.
- (f) The permittee may be required to utilize storage or an alternative source of water for supply when diversions are temporarily suspended.

[Source: Added at 20 Ok Reg 2604, eff 7-11-03]

785:20-7-4. Additional provisions of seasonal, temporary, or term permits for impounded water

If any seasonal, temporary, or term permit is for water impounded in any works for storage, diversion, or carriage of water, the applicant must comply with the provisions of 82 O.S. 1981, §105.21 (Surplus Water) and 785:20-11-4.

785:20-7-5. Permits issued from federal projects requiring a repayment contract

It shall be a condition of permits issued for water from existing federal reservoir projects that a storage repayment contract be negotiated and signed within two (2) years from the date the permit is issued or from the date of impoundment, whichever is later. Provided, for good cause shown, such contract negotiation and signature time requirement may be extended by the Board.

785:20-7-6. Acceptance of permit by applicant

Acceptance of the permit shall be an acknowledgment and agreement by the permittee that he will comply with all the terms, provisions, limitations, conditions, and restrictions contained in such permit and that such permit shall be subject to forfeiture or revocation for failure to comply with such material terms, provisions, limitations, conditions, and restrictions.

[Source: Amended at 12 Ok Reg 2617, eff 7-1-95]

SUBCHAPTER 9. ACTIONS AFTER STREAMWATER RIGHT OBTAINED

785:20-9-1. Construction of works

(a) Time for beginning of construction.

(1) Any regular, term or seasonal permit issued by the Board *shall expire unless the applicant commences construction of the works within two (2) years of the issuance of the permit. If the Board does not receive a written notice of commencement of works or request to extend time within thirty (30) days after the end of the two-year period, the permit shall be deemed expired after written notice to the applicant.* [82:105.15] The commencement of construction shall be deemed to consist of the commencement of any of the following activities: land acquisition, preparation of the land, the acquisition of equipment, or construction of the dam or diversion works. Within ten (10) days after beginning actual construction of a project, the permit holder shall file in a written statement with the Board showing that such work was begun within the time limit

allowed in the permit.

(2) The construction of non-federal dams is governed by the provisions of Chapter 25 of this Title.

(b) **Amendment of construction plans.** *The plans of construction may be amended by the permittee, with the approval of the Board, at any time, [82:105.10] upon approval of a petition, but no change shall authorize an extension of time for construction or placing the water to beneficial use beyond that authorized in the permit, except as provided in 82 O.S. 1981, §105.15, and rules in this Chapter.*

(c) **Extension of time for beginning of construction.** Upon written request by the permittee the Board may *extend the time for the beginning of construction beyond the time allowed in the permit for good cause shown, such as engineering difficulty or other valid reason over which the applicant has no control; [82:105.15]* provided that no extension shall be granted beyond seven (7) years or beyond the first time step of a schedule of use, whichever is longer.

(d) **Notice of completion of works.** Within ten (10) days following completion of the works, a regular, seasonal or term permittee shall give notice on forms previously provided by the Board, that the work has been completed. If the works were constructed prior to obtaining a permit to appropriate, the permittee shall file a notice of completion of works within ten (10) days after receiving the permit and notice form.

(e) **Inspection of works.** Upon due notice of completion by the owner, the Board shall make an inspection of the works *which shall be thorough and complete in order to determine the actual capacity of the works and their safety and efficiency. [82:105.25]* Inspections of dams are governed by the provisions of Chapter 25 of this Title. Inspection fees shall be as set forth in Chapter 5 of this Title and shall be due on the date set forth in the invoice sent to the permittee.

(f) **Improperly constructed works to be changed.** *If not properly and safely constructed, the Board may require the necessary changes and shall give notice of the changes to be made within a reasonable time and shall not issue a certificate of completion until such changes are made. [82:105.25]*

(g) **Postponement of priority for failure to make necessary changes.** *Failure to make necessary changes within the time required by the Board shall cause the postponement of the priority under the permit for such time as may elapse from the date for completing such changes until made to the satisfaction of the Board, and applications subsequent in time shall have the benefit of such postponement of priority. [82:105.25]*

(h) **Report by registered professional engineer accepted.** *The Board may accept the report of inspection by a registered professional engineer. [82:105.25]*

(i) **Certificate of completion.**

(1) *When the works other than dams are found in satisfactory condition, after inspection and after payment of any inspection fees due, the Executive Director shall approve the issuance of a certificate of completion of construction, setting forth the actual capacity of the works [82:105.26] in acre-feet per year, and in gallons per minute or cubic feet per second as appropriate, and such limitations upon the water right as shall be warranted by the condition of the works, but in no manner extending the rights described in the permit. [82:105.26]*

(2) If the actual capacity of the works is less than that authorized in the permit, and no schedule of use was made part of the permit, the actual capacity amount set forth in the certificate of completion shall govern and the Board shall issue an amended permit showing the actual capacity

amount as the amount authorized to be used.

(3) Certificates of completion for dams are governed by Chapter 25 of these rules.

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2617, eff 7-1-95]

785:20-9-2. Time for putting water to beneficial use

(a) *Unless a schedule of use is provided by the Board, a regular permit shall require that the whole of the amount of the water authorized by the permit be put to beneficial use within a period of no less than seven (7) years. [82:105.16] The time for commencing construction and putting the entire amount of appropriated water to beneficial use shall be stated in any permit issued but in no event will the permittee be required to place the whole amount authorized to use within a period of less than seven (7) years [82:105.16] under a regular permit. Unless a schedule of use is requested by the applicant and granted by the Board, the time for putting the entire amount of appropriated water to beneficial use shall be seven (7) years under a regular permit.*

(b) *Upon evidence presented to the Board and considering the present and future needs of the stream system of origin, if it appears that the proposed project, improvement or structure will promote the optimal beneficial use of water in the State and if it further appears that the total amount of water to be utilized by the facility and authorized by the permit cannot be put to beneficial use within (7) years, then the Board shall, [82:105.16] based upon a proposed schedule of use to be submitted by the applicant and, where appropriate, supported by population data from the Oklahoma Department of Commerce or its successor, provide in the permit a schedule of the time within which certain percentages of the total amount to be authorized shall be put to beneficial use. [82:105.16] However, in no event shall the extended schedule of use exceed the useful life of the proposed project, improvement or structure as found by the Board or, where such useful life is indeterminate, beyond fifty (50) years from the date of the permit.*

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2617, eff 7-1-95]

785:20-9-3. Loss of rights and reversion of water to public

(a) **Forfeiture and loss of rights.** *Nothing in 82 O.S. 1981, §§105.1 et seq. shall be deemed to reestablish any right to the use of any water which has been lost by failure to use same or by forfeiture prior to July 5, 1961. [82:105.16]*

(b) **Loss of right to use water under permit.**

(1) *To the extent that the amount of water authorized is not put to beneficial use as provided by the terms of the permit including but not limited to a schedule of use of incremental amounts within the corresponding time periods, the amount not so used shall be forfeited by the holder of the permit and such unused water shall again become public water and available for appropriation. [82:105.17]*

(2) *If a permit authorizes use of water for more than one purpose and water is not used for a purpose under the terms of the permit, the Board may delete such purpose from the permit upon notice and hearing as provided in this section.*

(3) *If the permittee fails to comply with any material term, limitation, condition or restriction provided in the permit, including but not limited to the requirements to file a Notice of Completion of Works on the date specified, the Board may revoke and cancel said permit upon notice and hearing as provided in this section.*

- (4) For a permit containing a schedule of use, the amount lost in any increment shall be subtracted from the total amount authorized by the permit and the amounts for any remaining increments shall be adjusted based on the percentages of the time intervals in the schedule of use.
- (5) If the water right authorizes use of water from a reservoir, a reduction or cancellation of the right to use water shall not affect the storage rights in the reservoir, and any appropriation permit issued thereafter which authorizes use of water in such storage shall contain a condition that the permittee shall pay to the owner of the storage rights the proportionate amount of the costs of the storage attributable to the permit.

(c) Loss of right after commencing use.

- (1) *When any person entitled to the use of water commences using water but thereafter fails to beneficially use all or any part of the water claimed by him, for which a right of use has been vested for the purpose for which it was appropriated, for a period of seven (7) continuous years, the right of use of the unused amount of water for such purpose shall be lost and such unused water shall revert to the public and shall be regarded as unappropriated public water [82:105.17]; provided however, the application of this paragraph shall not conflict with use under a schedule of use or other terms of a water right. Periods of excused nonuse shall stop the running of the forfeiture period for the period of the excused nonuse and such period shall not be included in computing the forfeiture period.*
- (2) This subsection is applicable to vested rights and permits to use stream water.
- (3) The following shall not be calculated as amounts used in determining whether a loss of right has occurred:
- (A) use of water on lands not described in a water right,
 - (B) use of water for purposes other than that described in the water right,
 - (C) use of water in a manner that constitutes waste.
- (4) If the water right authorizes use of water from a reservoir, a reduction or cancellation of the right to use water shall not affect the storage rights in the reservoir, and any appropriation permit issued thereafter which authorizes use of water in such storage shall contain a condition that the permittee shall pay to the owner of the storage rights the proportionate amount of the costs of the storage attributable to the permit.

(d) Notice of loss of right to use water.

- (1) **When Board may send notice.** *When the Board has reasonable cause to believe that the right to use water has been lost in whole or in part,... the Board may proceed to cancel administratively such water right by notifying the claimant, or his latest successor in such rights, by written notification mailed by registered or certified mail to his last known address that there is reasonable cause for believing that he has lost his water rights under the provisions of [82:105.18] 82 O.S. 1981, §§105.16 and 105.17.*
- (2) **Contents of notice.** Such notice shall contain:
- (A) A statement of the time, place, and location of the hearing;
 - (B) A statement of the nature and of the legal authority and jurisdiction under which the hearing is to be held;
 - (C) A reference to the particular sections of the statutes and rules involved;
 - (D) A short and plain statement of matters asserted.

(3) **Mailing notice; publication.** The notice must be mailed at least thirty (30) days prior to the date set for a hearing...If there is evidence that delivery of such notice by registered or certified mail cannot be made to the claimant or his successor in such water rights, the Board shall give notice by publishing the same in a local newspaper qualified to publish such notice, nearest the point where said water right had attached, once each week for two (2) consecutive weeks. [82:105.18] A certified mailing which is returned to the Board and marked "refused" or "unclaimed" is not evidence that delivery cannot be made to the claimant or his successor.

(e) **Hearing on loss of right.**

(1) The hearing date shall be set not earlier than thirty (30) days after the notice by certified mail or the last publication date of the notice.

(2) At the hearing the claimant or his successor shall have the right to show cause why such water right should not be declared to have been lost through nonuse or non-compliance with water right terms, conditions, etc. *Such cause may be shown by substantial competent evidence that the failure to beneficially use the water subject to forfeiture was caused by circumstances beyond the control of the claimant and the claimant was ready and willing to use the water.* [82:105.18]

(3) In addition to any cause which may be provided by law, acceptable cause for nonuse includes but is not limited to the following:

(A) damage to claimant's field, pump, pipe or other equipment caused by flooding or other events after reasonable diligence to repair same;

(B) claimant's service on active duty in the armed forces;

(C) placement of land to which an irrigation water right is appurtenant into a federally sponsored conservation reserve or soil bank program;

(D) wrongful acts of others which prevented water usable for claimant's authorized purposes from reaching the claimant's point of diversion, and

(E) need for the water did not develop as anticipated when the water right was obtained or when a schedule of use was added or amended, and the water right holder acquired and has properly maintained significant infrastructure (such as lakes, storage rights in lakes, pipelines, pumps and other appurtenances) at a capacity necessary to put the amount of water subject to forfeiture to the use authorized.

(4) In any instances of reported nonuse, the claimant may be required to state the reasons for such nonuse and furnish to the Board sufficient verification and evidence of the reasons, underlying basis or cause for the nonuse.

(f) **Notice of Board's determination on loss of right.** The Board shall notify the claimant, or successor in such water right, of its determination in accordance with the Oklahoma Administrative Procedures Act.

(g) **Failure of Board to determine loss of right.** *The failure of the Board to determine that a right to use water has been lost in whole or in part for nonuse shall not in any way revive or continue the said right.* [82:105.18]

(h) **Voluntary surrender of water rights.** *The Board may accept the voluntary surrender of any water right by the holder thereof.* [82:105.19] Forms for surrender shall be furnished by the Board.

[Source: Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 13 Ok Reg 2853, eff 7-1-96; Amended at 15 Ok Reg 2435, eff 6-11-98; Amended at 22 Ok Reg 1596, eff 7-1-05]

785:20-9-4. Amendments of stream water rights

(a) **Severance and transfer of water rights for irrigation.** *All water used ...for irrigation purposes shall remain appurtenant to the land upon which it is used, provided, however, if for any reason it should at any time become impracticable beneficially or economically to use water for the irrigation of land to which the right of use of same is appurtenant, the right may be severed ..and simultaneously transferred to become appurtenant to other land without losing priority of right theretofore established, if such change can be made without detriment to existing rights.* [82:105.22] Forms to petition the change will be furnished by the Board. The petition shall be accompanied by a plat showing the legal description of the land to be irrigated under the transfer and the petition fee as required in Chapter 5 of this Title. The amount of water authorized shall not be increased over that originally permitted.

(b) **Amendments in place or rate of diversion, storage, areas of use or purpose.**

(1) *Any appropriator of water including but not limited to one who uses water for irrigation, may use the same for other than the previously approved purposes for which it was appropriated or may change the place or rate of diversion, storage, or use in the manner and under the conditions prescribed* [82:105.23] *in subsections (a) through (d) of this section; provided however, an appropriator may not change use from a previously approved non-consumptive recreation, fish and wildlife purpose to any other purpose unless the water is taken from the sediment pool amount in an upstream flood control impoundment constructed under the supervision of the Natural Resources Conservation Service.*

(2) The required information set forth in 785:20-3-4 for an application for enhanced oil and gas recovery purposes shall be submitted with any request to change or add such a purpose.

(3) The procedures set forth herein shall apply to requests to change uses authorized by a vested right.

(c) **Additions and amendments to schedules of use.**

(1) Upon request of the permit holder, permits may be amended to life of the project by the Board after a regular permit has been issued if it is found that such amendment will promote the optimal beneficial use of the water and that the total amount of water cannot be put to use in the seven (7) year period of the original permit.

(2) All permits for life of the project will contain a schedule of use.

(3) Any or all of the use dates on a schedule of use may be amended at the discretion of the Board for good cause at any time; however, no lapsed use date can be extended pursuant to this provision.

(4) To qualify as a project for which a schedule of use may be added to a permit, or for which an existing schedule of use may be amended, there must be a change or proposed change of condition relied upon to utilize the water which will promote the optimal beneficial use of water in the state. However, a schedule of use shall not be added to any permit to extend the time for using amounts of water which have vested.

(5) The procedures described in subsections (a) through (d) of this section must be completed prior to Board consideration.

(d) Notice of petition to make amendments, changes and revisions of rights.

(1) Before any petition for amendment, change, or revisions of water rights, except for changes in name or address of the permit holder, is approved, the petitioner must give notice thereof by publication once a week for two (2) consecutive weeks in a newspaper or newspapers of general circulation in the county or counties designated by the Board.

(2) The notice to be published shall be furnished by the Board and shall include the name of the petitioner; a description of the nature of proposed change; *and the manner in which a protest to the application may be made.* [82:105.11]

(3) If the petitioner does not own the land where the proposed new point of diversion is to be located, in addition to published notice, the petitioner is required to give actual notice of the requested water right amendment by certified mail to said landowner.

(4) *Upon receipt of a protest which meets the requirements of Section 785:4-5-4, the Board shall schedule a hearing on the petition and notify the applicant and protestant of such hearing. Any interested party shall have the right to protest said petition and present evidence and testimony in support of such protest* [82:105.11] at the hearing thereon.

(5) Protests shall be made and hearings conducted in accordance with Chapter 4 of this Title.

(6) Even if no protest to the petition is received, the petitioner shall be advised and shall be given an opportunity for a hearing if the petition to amend, change or revise cannot be recommended to the Board.

(e) Board order. *The Board order may deny or grant the petition for amendment, change, or revision in whole or in part upon such conditions as are necessary to preserve the rights of the parties.* [82:105.22] If the petitioner does not own the land on which a new diversion point is to be located or upon which pipelines or other appurtenances related to the water right will be located, it shall be a condition of the permit that the petitioner provide, within a reasonable time as provided by the Board, evidence of the right of access and use.

(f) Assignment or transfer of appropriation permit and transfer of title of land.

(1) *Any permit to appropriate water may be assigned, but no assignment shall be binding, except upon the parties thereto, unless filed for record in the office of the Board; ...provided, however, that no permit to appropriate water for irrigation purposes shall be assigned, or the ownership thereof in any way transferred apart from the land to which it is appurtenant, except in the manner* [82:105.24] provided in (a) of this section and in 82 O.S. 1981, §105.22.

(2) *The transfer of title to land shall carry with it all rights to use of water appurtenant thereto for irrigation purposes.* [82:105.24]

(3) Upon transfer of any water rights, the transferee shall furnish to the Board a notarized notice of transfer containing the name and address of the transferee and a statement that the transfer has been properly completed.

(4) A fee, as required herein, shall accompany the assignment or notice of transfer of water right, and upon receipt of such fee, the Board shall record such assignment or transfer and provide copies of the transferred or assigned water right.

(5) If notification of the transfer of a water right is made by the previous owner, the Board shall advise the transferee of the transfer procedure and he shall then have thirty (30) days from receipt of the Board's notice to

submit the required fee or use of water by the transferee will be considered unauthorized by the Board.

(g) **Assignment of rights on works constructed by the United States.** *The evidence of the right to use water from any works constructed by the United States or its duly authorized agencies shall in like manner be filed in the office of the Board upon assignment.* [82:105.24]

(h) **Board may initiate action to amend water right.**

(1) If, in the exercise of its duties to properly administer the stream water use laws of this state and of any interstate stream compacts heretofore entered by the State of Oklahoma, the Board determines it to be necessary to amend or add conditions to existing vested rights or permits, the Board shall so notify the holder of such rights or permits by certified mail.

(2) The notice to amend rights or permits shall specify the proposed action and provide that the holder of the water right or permit may request a hearing be held thereon.

(3) After such hearing pursuant to (2) of this subsection, or if no hearing is requested, the Board will proceed to consider the proposed amendments or conditions.

[Source: Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 14 Ok Reg 2750, eff 7-1-97]

785:20-9-5. Reports

(a) **Annual reports of water use.**

(1) Water use report forms will be mailed during January of each year to every holder of a valid water right. These reports must be completed and returned with the annual file maintenance fee to the Board within thirty (30) days of receipt thereof. This report shall become a part of each record of each stream water right holder. Willful failure to complete and return such report with the appropriate filing fee may be considered by the Board as nonuse of water under a water right. In a review of the water use by the water right holder, the Board may adjust its records regarding nonuse after payment of all past accrued fees.

(2) Absent differing expressed direction of the water right holder, if two or more water rights are held by the same person for use of water from the same point of diversion, from the same source of supply and for the same purpose, the total amount used annually under all such water rights shall be recorded first under the water right with the oldest priority date until full use is made, then the next amounts shall be reported under the next oldest priority date, until all amounts are accounted for.

(3) Holders of water rights with multiple diversion points may be required to report use from each diversion point, if diversion points are in different stream segments, or diversion points are in both a stream and lake or pond, or other valid reasons as determined by the Board.

(b) **Reports by temporary, and term permit holders.** Upon the expiration of the period for which a temporary, or term permit was granted, the appropriator shall cease the taking of water and file a written report with the Board stating the amount of water used under the temporary, or term permit and the date of cessation.

(c) **Change of address.** It shall be the responsibility of the holder of a water right to provide the Board with a current mailing address for receipt of all correspondence dealing with the water right.

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2617, eff 7-1-95]

SUBCHAPTER 11. MISCELLANEOUS PROVISIONS

785:20-11-1. Multiple ownership of reservoir sites

(a) In those instances in which a Natural Resources Conservation Service flood detention structure or other non-natural impoundment is located on land owned by more than one person and an applicant desires to use his portion of the storage therein for beneficial use, the Oklahoma Water Resources Board will, absent evidence to the contrary, apportion the site among all the owners using the following formula:

$$\text{Eqn } 0.25\text{FP} + 0.75 \text{ D} + \text{S} + 1.00\text{SP} = \text{TV}$$

EqnFP = total area of flood pool
exclusive of sediment pool.

EqnD
+S = total area of dam and
spillway.

EqnSP = total area of sediment pool.

EqnTV = total value.

$$\frac{\text{Individual shares Eqn } -0.25\text{FP}' + 0.75\text{D}' + \text{S}' + 1.00\text{SP}'}{\text{PV} / \text{touchup}}$$

EqnFP' = area in flood pool owned by
an individual.

EqnD'
+S' = area of dam and spillway
owned by an individual.

EqnSP' = area of sediment pool
owned by an Individual.

EqnPV = proportionate value of total.

$\text{EqnPV} / \text{TV} \times 100 = \% \text{ of water stored (To which individual is entitled).}$

(b) The Board may adjust the total amount of water available for appropriation in the reservoir by utilizing a refill factor that is based on average annual precipitation and runoff within the drainage area for the reservoir, in addition to or with correlative stream gauge data. In no case shall the refill factor exceed a value of two (2) times the amount of water available for appropriation from the sediment pool of the reservoir.

(c) Absent evidence to the contrary, storage in natural impoundments shall be divided in accordance with the percent of surface area of impoundment on the applicant's property.

[Source: Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 14 Ok Reg 2750, eff 7-1-97]

785:20-11-2. Reclaiming water turned into a watercourse

(a) **Application to reclaim required.** *Water turned into any natural or artificial watercourse by any party entitled to the use of such water may be reclaimed below and diverted therefrom by such party, subject to existing rights, due allowance for losses being made by the Board. [82:105.4.]* Anyone wishing to reclaim such water using the bed and banks of any stream for conveyance shall, before commencing

such conveyance, file an application setting forth the following information:

- (1) The name of the applicant and the place and purpose of use.
- (2) The name of the stream whose bed and banks are to be used for the transportation of the water.
- (3) The name of the owner of any reservoir located on the stream through which the waters are to be conveyed.
- (4) The place of origin and the terminus of the proposed transported waters.
- (5) The time of commencement and termination of the transit.
- (6) The number of acre-feet of water to be transported and the approximate flow at the point of origin in cubic feet per second of time.
- (7) The number of the water right which authorizes the storage and the number of the water right which authorizes the use of the water proposed to be transported.

(b) **Other requirements.** Other requirements to reclaim water turned into a watercourse are as follows:

- (1) Any copy of any water purchase contract shall also be filed.
- (2) The Board shall have the right to require the alteration or amendment of any contract for the transportation of water where it finds such alteration or amendment is necessary to protect domestic uses or existing appropriative uses.
- (3) The conveyor shall not permit the water to overflow the banks of any stream, nor shall he interfere with those having a lawful right to the use of that rate of flow of the stream which would prevail in the absence of the water in transit.
- (4) When stored waters are released from a reservoir or dam and such waters are designated for use or storage downstream by a specified user legally entitled to receive such waters, it shall be unlawful for any person without legal right to divert, store, appropriate, use, or otherwise interfere with the passage of such water for downstream use or storage.
- (5) Anyone whose rights are impaired by such transport of water may bring suit under the provisions of 82 O.S. 1981, §105.5.

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2617, eff 7-1-95]

785:20-11-3. Right of eminent domain

Any person, corporation or association may exercise the right of eminent domain to acquire right-of-way for the storage or conveyance of waters for beneficial use, including the right to enlarge existing structures, and use the same in common with the former owner. Such right-of-way shall in all cases be so located as to do the least damage to private or public property, consistent with proper and economical engineering construction. Such rights may be acquired in the manner provided by law for the taking of private property for public use.

[82:105.3]

785:20-11-4. Surplus water

The owner of any works for the storage, diversion, or carriage of water, which contain water in excess of his needs for irrigation or other beneficial use for which it has been appropriated, shall be required to deliver such surplus, at reasonable rates for storage or carriage or both, as the case may be, to the parties entitled to the use of the water for beneficial purposes. In case of the refusal by the owner to deliver any such surplus water at reasonable rates as determined by the Board, he may be compelled to do so by the district court for the county in which

the surplus water is to be used. [82:105.21]

785:20-11-5. Impairment of water rights

Any person having a right to the use of water from a stream as defined in 82 O.S. 1981, §105.1, or this Chapter, whose right is impaired by the act or acts of another or others may bring suit in the district court of any county in which any of the acts complained of occurred. [82:105.5]

785:20-11-6. Measurement of water

The standard of measurement of the flow of water shall be the cubic foot per second of time; the standard measurement of the volume of water shall be the acre-foot, being the amount of water upon an acre covered one foot deep, equivalent to forty-three thousand five hundred sixty (43,560) cubic feet, or 325,851 U.S. gallons. [82:105.28]

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94]

785:20-11-7. Water supply contracts from federal projects

- (a) The Board shall obtain the amount of storage together with the estimated dependable yield available for contract from the federal agency responsible for construction of federal projects and notify the managing agency for the project as to who has the rights to the water and the priority of such rights.
- (b) The responsible federal construction agency shall notify the Board upon completion of a project for water supply and the managing agency will be requested to execute water supply contracts for storage in federal projects with holders of permits with a priority falling within the amount of water supply storage available in the project.
- (c) In cases in which the appropriation is from storage other than water supply, the permit holders with appropriation from the water supply storage should be granted first opportunity to sign repayment contracts with the responsible managing agency.
- (d) If a holder of a permit from the water supply pool does not sign a contract as provided in 785:20-7-5, then the permit holder with the next best priority will be given an opportunity to sign a contract.

785:20-11-8. Release of easement or easement deed

The Oklahoma Water Resources Board, as successor to the Conservation Commission of the State of Oklahoma and the Oklahoma Planning and Resources Board, shall execute and deliver a written release of any easement or easement deed given to the Conservation Commission on land situated in the State for the purpose of constructing a dam, spillway, and appurtenances whenever it appears that the need for such easement or easement deed no longer exists. Any person desiring such release of easement or easement deed shall make application to the Board accompanied by a filing fee as set forth in Chapter 5 of this Title. Upon receipt of such application a notice will be prepared by the Board setting the date, time, and place of a hearing thereon. The hearing notice shall be published by the applicant at his expense once a week for two (2) consecutive weeks in a newspaper having a general circulation in the county where the land is situated. The last notice shall be published at least ten (10) days prior to the date set for the hearing. Upon approval of the release the applicant shall submit a copy of the release as recorded in the office of the County Clerk in the county wherein the land is situated showing the date, book, and page of such filing.

785:20-11-9. Impoundment of water in mine pits.

Unless otherwise required by the Board for purposes of proper administration and accounting of water uses and rights, the impoundment of water in a mine pit as described in a surface mining closure plan approved by the Oklahoma Department of Mines shall not be deemed a beneficial use of water requiring a regular permit, provided that the Board may request that the Oklahoma Department of Mines include conditions and requirements as part of the closure plan to protect downstream domestic and appropriate uses.

[Source: Added at 22 Ok Reg 1596, eff 7-1-05]

APPENDIX A. APPLICATION FOR A PERMIT TO USE SURFACE OR STREAM WATER

Figure 1

OFFICE USE ONLY	
Application No.	
Type of Permit	
Stream System Code	
Reservoir Code	
Hydrologic Unit Code	

Application for a Permit to Use Surface or Stream Water
OKLAHOMA WATER RESOURCES BOARD
PLANNING & MANAGEMENT DIVISION
3800 North Classen Blvd.
Oklahoma City, OK 73118
Phone: (405) 530-8800
Fax: (405) 530-8900
Website: www.owrb.ok.gov

APPLICATION FILING FEE	
Amount of Water Requested	Fee
0 - 320 acre-feet	\$
321 - 640 acre-feet	\$
641 - 1500 acre-feet	\$
Over 1500 acre-feet	\$
*Plus \$ for each 500 acre-feet (or any increment thereof) over 1500 acre-feet. (Maximum Fee \$3,000.00)	

1. NAME & ADDRESS (Print the applicant's full name, as listed on the ownership documentation, and mailing address)
Phone () -
Applicant Name Fax () -
Address City State Zip
Contact Name (if applicable) Phone () -
Address City State Zip

2. TYPE OF SURFACE WATER PERMIT REQUESTED (Check One)
☐ Regular Permit - authorizes diversion and use of water on a year-round basis
☐ Seasonal Permit - authorizes diversion and use of water for specific time periods during a calendar year.
☐ Term Permit - valid for a term of years and does not vest the holder with any permanent right.
(Provide ending date for term permit: day of , 20)

3. PURPOSE(S) FOR WHICH WATER WILL BE USED (List the purpose(s) for which the water will be used and the number of acre-feet for each purpose. Note: one acre-foot of water will cover one acre of land one foot deep and is equal to 325,851 gallons)
AMOUNT PURPOSE
acre-feet of water will be used for
acre-feet of water will be used for
Total Amount Requested acre-feet; Pumping Rate not to Exceed gallons per minute
Irrigation Only: acres will be irrigated. Proposed Crops

OFFICE USE ONLY	
SEC Code	

4. DIVERSION(S) OF WATER: Source, Location and Method of Diversion (For each diversion point, state the amount of water to be diverted annually and give the legal description to the nearest acre (1/4-acre tract). Legal description of the diversion point must match the area drawn on the attached plat. If additional space is needed, list on a separate sheet of paper.)

Figure 2

Will the water be used as a non-consumptive use in a pond, lake or reservoir and will not be pumped or moved from one location to another? ☐ Yes ☐ No (If yes, use the location of the dam or spillway as the point of diversion below.)
acre-feet of water will be diverted from:
1/4 of 1/4 of 1/4 of Section Twp. OS Rng. ☐ EIM ☐ WIM in ☐ ECM County

Source of Water: (Check one and provide the requested information showing the source of water to be diverted.)
☐ Direct Diversion from a Stream or River - Name of Stream: _____
☐ Natural Resources Conservation Service Flood Control Site - N.R.C.S. Site No. _____
Watershed Name: _____
☐ Reservoir or Pond - Name of Reservoir: _____
Reservoir is (Check one): ☐ Existing (Date Completed: _____) ☐ Under Construction ☐ Planned
Storage: _____ acre-feet; Average Depth: _____ feet; Surface Area: _____ acres
Method of Diversion: (Check one and provide description of the system to be used)
☐ Gravity: _____
☐ Pump: _____

Do you own or lease the land on which the point of diversion will be located? ☐ Yes ☐ No (If available, attach a copy of the deed, lease agreement, etc. showing the right to use the point of diversion.)

Will water lines cross public right-of-ways or another landowner's property? ☐ Yes ☐ No (If yes and available, attach a copy of the easement.)
(Note: If the deed, lease agreement, etc. and/or the easement is not submitted, the permit, if issued, will contain a condition requiring submission of the information before water use begins.)

5. LEGAL DESCRIPTION OF AREA OF USE (List the legal description of the area of use. Please do not use city lot and block numbers or metes and bounds. If additional space is needed, list on a separate sheet of paper. Legal description must be drawn on the attached plat and must match the area of use described below. Municipal and rural water entities refer to this below.)
_____ acres in 1/4 of 1/4 of 1/4 of Section Twp. ☐ N ☐ EIM ☐ WIM in ☐ ECM County
_____ acres in 1/4 of 1/4 of 1/4 of Section Twp. ☐ N ☐ S Rng. ☐ EIM ☐ WIM in ☐ ECM County
_____ acres in 1/4 of 1/4 of 1/4 of Section Twp. ☐ N ☐ S Rng. ☐ EIM ☐ WIM in ☐ ECM County

FOR IRRIGATION ONLY: Do you own or lease the land to be irrigated? ☐ Yes ☐ No (If available, attach a copy of the deed or lease. If not available, the permit, if issued, will require that a deed or lease be submitted before water use begins.)

6. JUSTIFICATION OF PRESENT AND FUTURE NEED
IRRIGATION: Completion of #3 serves as justification of need for amounts requested for irrigation for common crops grown in Oklahoma. The Board will use appropriate publications and information the applicant submits in determining the amount of water needed.
MUNICIPAL AND RURAL WATER ENTITIES: Submit population projection figures and all other methodologies, calculations, and additional information used to determine amount of water requested. Submit a map of the service areas and the water line locations. The map must show points of reference or scale. A schedule of use based on population growth may also be submitted.

Figure 3

INDUSTRIAL, COMMERCIAL AND AGRICULTURE (NON-IRRIGATION) Submit methodology, calculations, and additional information used to determine amount of water requested.

7. CITIZENSHIP AFFIDAVIT
Are you a citizen of the United States of America? ☐ Yes ☐ No
If no, are you a qualified alien under the federal Immigration and Nationality Act and lawfully present in the United States? ☐ Yes ☐ No. My A-number is _____ and a true and correct copy of my immigration document, including my date of birth, user case number, and immigration document type and its expiration date, must be attached.

(PLEASE NOTE: Each natural individual listed as an applicant must provide a citizenship affidavit. If the land is owned by more than one person, a copy of this page will need to be filled out, signed, notarized and filed with the completed application.)

8. SIGNATURES
Upon my oath or affirmation, I swear or affirm (1) that all information submitted to the Oklahoma Water Resources Board in connection with this application is true and accurate to the best of my knowledge; and (2) that I or the person or entity I represent will comply with all applicable laws and regulations contained in Chapter 20 of the Oklahoma Water Resources Board rules and all other applicable regulations of the State of Oklahoma or its agencies, and any lawful conditions imposed by the Oklahoma Water Resources Board, which apply or pertain to the use of fresh stream water.

_____ SIGNATURE OF APPLICANT	_____ NOTARY
_____ PRINT NAME	STATE OF _____) ss.
_____ TITLE (IF APPLICABLE)	COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____.

Notary Public
My commission expires: _____ (SEAL)

APPLICATION SUBMISSION AND PROCESSING
To be deemed complete, the submitted application must:
a. The appropriate filing fee;
b. The original application, typed or printed in ink, signed and notarized;
c. One copy of the plat(s) showing the information requested in items #4 and #5 above and as otherwise instructed on this form; and
e. If available, deed(s), lease(s), and / or letter(s) of consent as required.

If you believe that within the first seven (7) years after issuance of your permit you will not be able to use the full amount of water applied for, please contact Board staff.

Please note: Any incomplete or unresponsive answers may cause a delay in the processing of your application. In addition, Oklahoma Administrative Code (OAC) 785:20-3-9 states: (a) "Upon filing of an application that is defective as to form or unsatisfactory as to feasibility or safety of the plan or as to the showing of the ability of the applicant to carry the construction to completion, the Board shall advise applicant of the correction, amendments, or changes required, and sixty (60) days from the date the Board so advises shall be allowed for the filing thereof. (b) "Any corrected application filed after the time allowed in (a) of this Section shall be treated in all respects as a new application on the date of its refiling (b)(2) (b)(3) and the original priority date of filing shall be lost." (c) "If an application does not correct an application or publish notice as instructed by the Board, and no further proceedings are initiated by the applicant for six months or more after last contact with the Board, the application shall be deemed withdrawn." The Board shall provide notice to the applicant that the application has been deemed withdrawn."

Figure 4

**Oklahoma Water Resources Board
STREAM WATER Application Plat**

Applicant Name _____ Application # _____

Note: Drawings must match the legal descriptions provided in questions #4 and #5 in the application and one copy of the plat must be filed with the application.

NW 1/4 NW 1/4	NE 1/4 NW 1/4	SW 1/4 NW 1/4	SE 1/4 NW 1/4	NW 1/4 NE 1/4	NE 1/4 NE 1/4	SW 1/4 NE 1/4	SE 1/4 NE 1/4
SW 1/4 NW 1/4	SE 1/4 NW 1/4	SW 1/4 NE 1/4	SE 1/4 NE 1/4	SW 1/4 SE 1/4	SE 1/4 SE 1/4	SW 1/4 SE 1/4	SE 1/4 SE 1/4
NW 1/4 SW 1/4	NE 1/4 SW 1/4	NW 1/4 SE 1/4	NE 1/4 SE 1/4	NW 1/4 SW 1/4	NE 1/4 SW 1/4	SW 1/4 SW 1/4	SE 1/4 SW 1/4
SW 1/4 SW 1/4	SE 1/4 SW 1/4	SW 1/4 SE 1/4	SE 1/4 SE 1/4	SW 1/4 NE 1/4	SE 1/4 NE 1/4	SW 1/4 SE 1/4	SE 1/4 SE 1/4
NW 1/4 SW 1/4	NE 1/4 SW 1/4	NW 1/4 SE 1/4	NE 1/4 SE 1/4	NW 1/4 SW 1/4	NE 1/4 SW 1/4	SW 1/4 SW 1/4	SE 1/4 SW 1/4
SW 1/4 SW 1/4	SE 1/4 SW 1/4	SW 1/4 SE 1/4	SE 1/4 SE 1/4	SW 1/4 NE 1/4	SE 1/4 NE 1/4	SW 1/4 SE 1/4	SE 1/4 SE 1/4
NW 1/4 SW 1/4	NE 1/4 SW 1/4	NW 1/4 SE 1/4	NE 1/4 SE 1/4	NW 1/4 SW 1/4	NE 1/4 SW 1/4	SW 1/4 SW 1/4	SE 1/4 SW 1/4
SW 1/4 SW 1/4	SE 1/4 SW 1/4	SW 1/4 SE 1/4	SE 1/4 SE 1/4	SW 1/4 NE 1/4	SE 1/4 NE 1/4	SW 1/4 SE 1/4	SE 1/4 SE 1/4

Section – Township – Range _____ County _____

Land Owned or Leased Area of Use Point of Diversion

[Source: Added at 12 Ok Reg 2671, eff 7-1-95; Revoked and reenacted at 13 Ok Reg 2853, eff 7-1-96; Revoked and reenacted at 14 Ok Reg 2750, eff 7-1-97; Revoked and reenacted at 27 Ok Reg 1294, eff 5-27-10]

CHAPTER 25. DAMS AND RESERVOIRS

[Authority: 82 O.S., §§ 105.25 through 105.27, 110.1 through 110.12, and 1085.2]
[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

785:25-1-1. Purpose

The rules of this Chapter on reservoir requirements and safety of dams set forth minimum standards for construction and maintenance of dams based on size and hazard classification, application requirements for approval of plans and specifications, and inspection requirements. These rules are adopted pursuant to 82 O.S. 1981, §§105.27,110.1 et seq. (Oklahoma Dam Safety Act) and 1085.2(7), and Public Law 92-367, 92nd Congress, H.R. 15951, approved August 8, 1972 (33

U.S.C. 467 et seq.). Under no circumstances shall the rules in this Chapter be construed to deprive or limit the Oklahoma Water Resources Board of any exercise of powers, duties, and jurisdiction conferred by law nor to limit or restrict the amount or character of data or information which may be required from any owner of any dam for the proper administration of the law.

[Source: Amended at 10 Ok Reg 3287, eff 6-25-93]

785:25-1-2. Definitions

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

"Agriculture-exempt dam" means *a low hazard potential dam which is less than 25 feet in height, has a normal storage capacity of less than 100 acre-feet of water that will be used primarily for agriculture purposes as defined in 785:20-1-2, and was or will be designed or constructed with the assistance of a local conservation district or federal agriculture related agency* [82:110.5].

"Alteration" means only such alteration as may affect the safety of a dam or reservoir.

"Application" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"Board" means and refers to the Oklahoma Water Resources Board or any employee or agent or staff member thereof.

"Breach" means an unintentional opening through a dam that allows the uncontrolled draining of a lake or reservoir.

"Breach analysis" means an engineering analysis to determine the area that would be inundated by the failure of a dam.

"Controlled breach" means a constructed opening through a dam to drain or partially drain a lake or reservoir.

"Dam" means any artificial barrier, together with appurtenant works, which does or may impound or divert water.

"Decommission" means to render a dam incapable of impounding water by breaching the dam embankment in such a manner that water cannot be stored or impounded, to stabilize the sediment in the lake bed and remaining embankment with grass or other vegetation to prevent erosion and control sediment, and to restore the stream channel to natural conditions.

"Enlargement" means any change in or addition to an existing dam or reservoir which raises or may raise the water storage elevation of the water impounded by the dam or reservoir.

"Failure" with respect to a dam means any uncontrolled release of water.

"Gully plug" means any grade stabilization structure that has less than five acre-feet of water storage available below the principal spillway elevation and less than 50 acre-feet of storage volume below the emergency spillway elevation.

"Interested party" means party.

"Loss of human life" means the human fatalities that would result from a failure of the dam, excluding the occasional passer-by or recreationist and without considering evacuation or other emergency actions.

"Maximum storage" means the amount of water which may be stored behind a dam with the lake level at the top of the dam embankment.

"Notice by publication" means unless otherwise specifically provided, publication in a daily or weekly newspaper of general circulation once a week or two (2) consecutive weeks (minimum seven day interval).

"Owner" means any person who, jointly or severally, owns, controls, maintains, manages, or proposes to construct a dam or reservoir, and includes those shown by records of the county registrar of deeds to have some interest, fee, easement, or otherwise, in the land on which the dam and lake lie and may also include those persons who may derive a direct pecuniary benefit from the existence of the lake [82:110.3].

"Party" means a person or agency named and participating, or properly seeking and entitled by law to participate, in hearings other than hearings on Board rules, regulations and standards.

"Person" means any individual, firm, partnership, association, corporation, any trust formed for the benefit of an individual, business or any public entity, federal agency, state agency, the State or any political subdivision thereof, municipalities, and any other legal entity [82:110.3].

"Removal" means complete elimination of the dam embankment, spillways, and structures whereby the area is restored to the approximate topographic contours original to the area before the dam was constructed.

"Repairs" means only such repairs as may affect the safety of a dam or reservoir.

"Reservoir" means any surface depression which contains or will contain the water impounded by a dam.

"Statistical twenty-four (24) hour, fifty (50) year storm" means a storm of twenty-four (24) hour duration with a probable recurrence interval of once in fifty (50) years as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

"Water storage elevation" means that elevation of water surface which may be obtained by the temporary or permanent storage of water. This elevation is normally the lowest point on the top of the dam.

[Source: Amended at 10 Ok Reg 3287, eff 6-25-93; Amended at 11 Ok Reg 2931, eff 6-13-94; Amended at 27 Ok Reg 1300, eff 5-27-10; Amended at 30 Ok Reg 879, eff 6-13-13]

785:25-1-3. Violations and penalties

(a) Under Section 105.20 of Title 82 of the Oklahoma Statutes, the continued use of works which are unsafe, after receiving notice to repair, and the refusal to change unsafe works when directed to do so, or the injury or obstruction of waterworks shall be a misdemeanor and each day such violation continues shall be a separate violation.

(b) Under the Oklahoma Dam Safety Act (82 O.S. Supp. 1992, §§110.1 et seq.), the Board is authorized to issue emergency orders without prior notice and hearing and orders after notice and hearing requiring an owner to take action as necessary to put a dam in safe condition. In addition, the Board may impose administrative penalties against owners of dams who fail, refuse or neglect to comply with the provisions of the Oklahoma Dam Safety Act. Procedures for imposition of such penalties are found in Subchapter 11 of this Chapter.

[Source: Amended at 10 Ok Reg 3287, eff 6-25-93; Amended at 37 Ok Reg 2287, eff 9-11-20]

785:25-1-4. Variances and waivers

Applicants who request a variance or waiver to rules specified in this chapter must demonstrate, and shall bear the burden of demonstrating that operations under the variance will equal or exceed the protections accorded by the

particular rule for which the variance is sought. The variance may also be granted if the Board finds that the cost of compliance with the rule without a variance would impose significant expense without providing for additional safety of the construction for which the variance or waiver is sought, and integrity of the dam will not be adversely affected. The Board may require that a registered professional engineer certify that the variance or waiver being requested will not adversely affect the integrity of the dam.

[Source: Added at 21 Ok Reg 2625, eff 7-1-04; Amended at 27 Ok Reg 1300, eff 5-27-10]

SUBCHAPTER 3. RESPONSIBILITY, CLASSIFICATION AND DESIGN STANDARDS

785:25-3-1. Dams subject to Board's jurisdiction

(a) *Dams, together with appurtenant works, which meet the following alternative criterion are subject to the provisions of [82:110.4] the Oklahoma Dam Safety Act and this Chapter of the Board's rules:*

(1) Dams which are or will be twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier or from the lowest elevation of the outside limit of the barrier if it is not across a stream channel or watercourse, to the top of the dam [82:110.4]; or

(2) Dams which have or will have an impounding capacity of fifty (50) acre-feet or more [82:110.4]; provided however, any barrier to the flow of water which does or may impound water and which is or will be not in excess of six (6) feet in height, regardless of storage capacity, or which has or will have a storage capacity not in excess of fifteen (15) acre-feet, regardless of height, shall not be subject to regulation... unless it is determined to have a high hazard potential classification under these rules [82:110.4] or except as hereinafter provided. The figure in Appendix A of this Chapter presents a graphic illustration of the height and storage criteria reviewed to determine the Board's authority relating to dams.

(b) No barrier to the flow of water determined by the Board to be designated primarily for roadfill shall be subject to regulation under this [82:110.4] Chapter.

(c) Gully plugs are not subject to regulation under this [82:110.4] chapter of the Board's rules.

(d) Dams constructed by any agency of the United States Government shall not be subject to regulation under this Chapter during or after construction while such dams remain under the supervision of any officer or agency of the United States [82:110.4].

[Source: Amended at 10 Ok Reg 3287, eff 6-25-93; Amended at 11 Ok Reg 2931, eff 6-13-94]

785:25-3-2. Owner's responsibility

(a) General.

(1) Owners of dams to which the provisions of this Chapter apply shall have the responsibility to provide for the safety of such works by making any necessary changes to put the works in a safe condition.

(2) Such responsibility includes but is not necessarily limited to the following: the filing of an application to construct, enlarge, alter or repair the dam pursuant to Subchapter 5; the modification of the dam to meet applicable minimum requirements in this Subchapter; and the adequate

maintenance, operation, and inspection of an existing dam.

(b) Multiple owners.

- (1) When there is more than one owner of a dam, the Board shall consider all such owners responsible for the safety of such dam unless evidence to the contrary shows otherwise.
- (2) The Board shall provide copies of inspection reports to at least one owner of record at the Board and shall provide notice of hearing on dam safety related matters to such owner with an instruction that the notice shall be delivered or mailed to all owners.
- (3) Unless otherwise agreed by all the owners and the Board, the Board may, after such notice and hearing, order all the owners to take whatever remedial action is necessary to put the dam in a safe condition.
- (4) The Board will not attempt to delineate levels of responsibility or allocate particular items of action among the owners.

(c) Transfer of ownership. Upon transfer of ownership of the works, the new owner shall notify the Board of such transfer.

[Source: Amended at 9 Ok Reg 1675, eff 5-11-92; Amended at 14 Ok Reg 2766, eff 7-1-97; Amended at 37 Ok Reg 2287, eff 9-11-20]

785:25-3-3. Classification of size and hazard potential

(a) All dams shall be classified as to size and for potential hazards as follows:

(1) Size Classification of Dams. The size classification shall be based on the following:

- (A) Small.** Small size dams are those which have a maximum storage of less than 10,000 acre feet and have a maximum height of less than 50 feet.
- (B) Intermediate.** Intermediate size dams are those which have a maximum storage of between 10,000 and 50,000 acre feet and have a maximum height of between 50 and 100 feet.
- (C) Large.** Large size dams are those which have a maximum storage of over 50,000 acre feet and have a maximum height of over 100 feet.

(2) Hazard-Potential Classification of Dams. The hazard-potential classification of a dam is determined by the downstream risk in the event of a failure, without regard to the physical condition of the dam, as follows:

- (A) Low.** Dams assigned the low hazard-potential classification are those where failure would result in no probable loss of human life and low economic losses.
- (B) Significant.** Dams assigned the significant hazard-potential classification are those dams where failure would result in no probable loss of human life but can cause economic loss or disruption of lifeline facilities.
- (C) High.** Dams assigned the high hazard-potential classification are those where failure will probably cause loss of human life.

(b) Hazard-potential classification subject to regulation and change.

(1) For dams which were inventoried in the National Safety of Dams program authorized under 33 U.S.C. 467 et seq., and for which "Phase I" reports pursuant to said inventory were prepared, the hazard classifications set forth in such "Phase I" reports shall be presumed accurate. If the owner of the dam disagrees with the hazard classification, the owner shall have the burden to show that such hazard classification is inaccurate and should be

changed.

(2) At the discretion of the Board, any proposed or existing dam considered to have classification of a high hazard-potential may be subject to regulation regardless of size or impounding capacity.

(3) The hazard-potential classification may change as the area downstream from a dam develops and the dam may be reclassified from time to time under the provisions of 785:25-9-10 and 785:25-9-11.

[Source: Amended at 11 Ok Reg 2931, eff 6-13-94; Amended at 27 Ok Reg 1300, eff 5-27-10]

785:25-3-4. Dams considered unsafe and menace to life and property

(a) In determining whether a dam is *unsafe and a menace to life and property* [82:105.27] under the provisions of Section 105.27 of Title 82 of the Oklahoma Statutes and the corrective actions necessary to put a dam in a safe condition, the Board shall review the requirements set forth in rules of this Chapter, and recommendations on matters which directly affect the integrity of dams set forth in DESIGN OF SMALL DAMS (1977) and DESIGN OF GRAVITY DAMS (1976), published by the U.S. Department Interior Bureau of Reclamation (BOR), ENGINEERING AND DESIGN MANUALS, SERIES EM-1110, published by the U.S. Department of the Army, Corp of Engineers (COE), the ENGINEERING FIELD MANUAL and TECHNICAL RELEASE NO. 60, published by the U.S. Department of Agriculture, Natural Resources Conservation Service, or equivalent recommendations.

(b) Existing dams which are in imminent peril of failure shall be considered *unsafe and a menace to life and property* [82:105.27] under the provisions of Section 105.27 of Title 82 of the Oklahoma Statutes.

[Source: Amended at 9 Ok Reg 1675, eff 5-11-92; Amended at 10 Ok Reg 3287, eff 6-25-93; Amended at 14 Ok Reg 2766, eff 7-1-97]

785:25-3-5. Minimum design standards (other than spillway)

(a) The construction of the downstream embankment slope shall not be steeper than 3 horizontal units to each 1 vertical unit (3:1) to provide adequate factors of safety against sliding, sloughing or rotation in the embankment and foundation, unless a stability analysis is performed which shows a steeper slope provides an adequate factor of safety.

(b) Except as otherwise provided in this Chapter, all dams must be designed by methods, procedures and criteria that meet or exceed acceptable dam safety engineering practices, including those found in the federal agency publications referenced in 785:25-3-4.

[Source: Amended at 27 Ok Reg 1300, eff 5-27-10]

785:25-3-6. Minimum spillways performance standards

(a) General performance standards.

(1) Except as otherwise provided in this Chapter, all dams must meet or exceed the following performance standards as determined by analysis of plans and specifications for the dam and existing site conditions.

(2) Owners of existing dams which do not meet the following performance standards must make necessary changes in the dam to meet the applicable performance standards.

(3) The discharge capacity and/or storage capacity of the project shall be capable of passing the indicated spillway design flood without infringing on

the minimum freeboard requirements, provided that a design which includes overtopping of the dam may be authorized if specifically approved by the Board.

(4) The minimum performance standards expressed as magnitude of spillway design flood and minimum freeboard will be assigned to the various size and hazard potential classification determined under 785:25-3-3 as described in Appendix B.

(b) **Amending minimum freeboard.** The minimum freeboard requirement may be amended by the Board on a case-by-case basis for good cause shown by the owner.

(c) **Probable maximum flood.**

(1) PMF means and refers to the Probable Maximum Flood and is defined as the flood that may be expected from the most severe combination of critical meteorologic conditions, defined as the Probable Maximum Precipitation (PMP), and critical hydrologic conditions that are reasonably possible in the region.

(2) Since design floods are usually determined by using mathematical computations through computer modeling and since several different acceptable models are available, flood design calculations must fall within plus/minus 5% PMF of the Board's current model results.

(3) The PMF storm should be the most conservative PMP storm type and duration to adequately reflect the size and hydrologic characteristics of the watershed in which the dam is located.

(4) *Regional Probable Maximum Precipitation Study for Oklahoma, Arkansas, Louisiana, and Mississippi* (Applied Weather Associates, 2019) shall be used in determining precipitation depth, area, and duration relationships for the PMP.

(d) **PMF on dam designated for regulation.** A dam which the Board has determined is subject to regulation because of its high hazard potential, although otherwise considered too small, shall be required to safely pass 25% PMF with no minimum freeboard.

(e) **Dams constructed prior to June 13, 1973.** Any dam constructed prior to June 13, 1973, classified as having high hazard-potential as described in 785:25-3-3 shall be required to pass a minimum design flood as follows:

(1) Small size - 25% PMF with one foot of freeboard.

(2) Intermediate size - 50% PMF with no minimum freeboard.

(3) Large size - 75% PMF with no minimum freeboard.

(f) **Dams constructed after 1973 without Board approval.** An owner of a dam constructed after 1973 without prior approval by the Board shall remove the dam or may request a variance or waiver from the requirement for submittal of plans and specifications as provided for in 785:25-5-2 and 785:25-5-3, provided the owner of the dam shall submit an application containing the following:

(1) A topographic map of the dam site showing the location of spillway and outlet works.

(2) Drawings showing the length, width, and height of dam.

(3) Detailed plans of spillway structures, spillway profile, and procedures for operating of the spillway structure.

(4) Hydrologic and hydraulic analysis report as described in Hydrologic and Hydraulic Guidelines for Dams in Oklahoma, Oklahoma Water Resources Board, Dam Safety Program, August 2011.

(5) Complete a dam breach inundation analysis and map if Board staff determines the dam may be a significant or high hazard-potential structure.

(6) Inspection of the dam by a registered Professional Engineer and submit a written inspection report to the Board not later than 30 days after the inspection and shall contain information as set forth in a Board hazard inspection report.

(7) Pay minimum application fee as provided in 785:5-1-9(a).

(8) In addition the applicant may be required to submit a detailed geotechnical investigation and analysis of the dam and report on such investigation. The geotechnical investigation shall include a minimum boring layout as follows:

(A) One (1) crest boring extending through the embankment and foundation materials to bedrock.

(B) Two (2) crest borings extending through the embankment and foundation materials to bedrock, one near each abutment.

(C) One (1) boring extending through the embankment and foundation materials to bedrock near the mid-height on the downstream slope of the dam.

(D) One (1) boring extending through the embankment and foundation material to bedrock along the toe of the dam.

[Source: Amended at 9 Ok Reg 1675, eff 5-11-92; Amended at 12 Ok Reg 2687, eff 7-1-95; Amended at 30 Ok Reg 879, eff 6-13-13; Amended at 37 Ok Reg 2287, eff 9-11-20]

785:25-3-7. Minimum outlet conduit capacities

(a) Requirements for outlet conduit capacity shall be as follows:

(1) All dams subject to the Board's jurisdiction shall have at least one outlet conduit of sufficient capacity to prevent interference with natural streamflow and injury of downstream appropriators and domestic users. Absent evidence to the contrary, the minimum size of the outlet conduits shall be as set forth in subsection (d) of this section.

(2) The height of the outlet conduit shall be no more than five feet (5') above the natural stream channel unless otherwise ordered by the Board. The capacity of the reservoir below the outlet conduit shall be designated as the inactive pool.

(b) **Conduit operation.** All conduits shall be gate- or valve-operated on the upstream side and shall be maintained in an operable condition at all times.

(c) **Conduit design life.** The design life expectancy of the conduit shall be equal to or greater than the design life of the dam.

(d) **Minimum size outlet conduit requirements.** The outlet conduit must be of sufficient size to draw down the entire reservoir to the inactive pool within twenty (20) days, provided that minimum size outlet requirements are as follows:

(1) For less than 100 acre-feet normal pool capacity (at principal spillway), the minimum size of conduit is 6-inch pipe.

(2) For 101 to 150 acre-feet normal pool capacity (at principal spillway), the minimum size of outlet conduit is 8-inch pipe.

(3) For 151 to 200 acre-feet normal pool capacity (at principal spillway), the minimum size of outlet conduit is 10-inch pipe.

(4) For 201-250 acre-feet normal pool capacity (at principal spillway), the minimum size of outlet conduit is 12-inch pipe.

(5) For 251-300 acre-feet normal pool capacity (at principal spillway), the minimum size of outlet conduit is 14-inch pipe.

(6) For 301-350 acre-feet normal pool capacity (at principal spillway), the minimum size of outlet conduit is 15-inch pipe.

(7) For 351-500 acre-feet normal pool capacity (at principal spillway), the minimum size of outlet conduit is 16-inch pipe.

(8) For more than 500 acre-feet normal pool capacity (at principal spillway), the minimum size of outlet conduit is 24-inch pipe.

(e) **Amendments of minimum requirements for good cause.** Minimum size requirements may be amended by the Board for good cause. However, conduit must be of sufficient size to draw down the entire reservoir to the inactive pool within a period of not more than twenty (20) days.

[Source: Added at 21 Ok Reg 2625, eff 7-1-04]

785:25-3-8. Measuring devices

When required by the Board, measuring devices capable of providing an accurate water measurement must be provided to measure the flow of the stream above and below the reservoir. Permanent staff gages may be required to be placed near the outlet of the reservoir and such other locations as specified by the Board and such gages shall be plainly marked in feet and tenths of feet.

785:25-3-9. Prohibited construction

No construction or excavation other than that necessary for the operation, maintenance, investigation and monitoring of the dam and reservoir, shall be allowed on a dam or spillway structure or within fifty (50) feet from the line where such dam or spillway structure meets the natural grade unless otherwise ordered by the Board after a showing by substantial, competent evidence that the proposed construction will not affect the integrity of the dam or spillway structure.

[Source: Amended at 9 Ok Reg 1675, eff 5-11-92]

785:25-3-10. Prohibited vegetation and erosion

Trees and heavy vegetation shall be removed from the slopes and crest of earthen embankments and emergency spillway area. Trees and heavy vegetation shall also be removed from an area a minimum distance from the toe of the embankment of 30 feet. Dams shall be maintained such that internal or external erosion is prevented. If erosion is present it shall be repaired utilizing appropriate engineering practices.

[Source: Amended at 27 Ok Reg 1300, eff 5-27-10]

785:25-3-11. Minimum safety factors

As a guide for use by the Board and by engineers designing new dams, assessing the condition of existing dams or proposing modifications to existing dams, the following safety factors shall be utilized for:

(1) Embankment dams:

LOADING CONDITION	MINIMUM FACTOR OF SAFETY*
Steady seepage at emergency spillway crest	1.5
Rapid drawdown from principal spillway	1.2
Earthquake - reservoir at emergency spillway crest for downstream slope; reservoir at principal spillway for upstream slope	1.0

*The minimum factor of safety is calculated by the ratio of available shear strength to shear stress required for stable equilibrium.

(2) Concrete dams or concrete portions thereof:

LOADING CONDITION	MINIMUM FACTOR OF SAFETY** (by hazard classification of dam)	
	High and Significant	Low
Principal spillway level	2.25	2.0
Inflow design flood at maximum pool level	1.75	1.25
Principal spillway level with earthquake	greater than 1.0	greater than 1.0

**These minimum factors of safety apply to the calculation of stress and the shear friction factor of safety within the structure of the rock/concrete interface and foundation.

[Source: Amended at 11 Ok Reg 2931, eff 6-13-94]

SUBCHAPTER 5. APPLICATIONS AND APPROVAL OF CONSTRUCTION

785:25-5-1. Application and fee required

(a) General.

- (1) Any person who shall desire to construct, enlarge, alter, remove or repair any dam under the Board's jurisdiction shall submit an application upon printed forms which will be furnished by the Board upon request.
- (2) For the purposes of this subchapter, repair shall not be deemed to include routine normal maintenance.
- (3) The maps, plans, drawings, and specifications of the proposed work along with the required fee shall form a part of the application.
- (4) The application and attachments shall be filed in duplicate.
- (5) Notwithstanding the provisions of paragraph (1) of this subsection, *an owner who proposes to construct a new dam* that will be considered an agriculture-exempt dam *shall be required only to notify the Board of such construction* and file a notice of completion in accordance with 785:25-7-6 [82:110.5].

(b) **Signature Of applicant.** The application shall be signed as follows:

- (1) If the applicant is an individual, the application shall be signed by the applicant or his duly appointed agent, who shall present satisfactory evidence of his authority to represent the applicant.
- (2) A joint application shall be signed by each applicant or his duly authorized agent, provided that a joint application by husband and wife may be signed by either party (joint applicants are required to select one among them to act for and represent the others in dealing with the Board).

(3) If the application is by a partnership, the applicant shall be designated by the firm name followed by the words "A Partnership" and the application shall be signed by each of the general partners or, if signed by one partner or other agent, a written statement of the agent's authorization to make the application, signed by the other parties of interest, shall be attached to the application.

(4) In the case of an estate or guardianship, the application shall be signed by the duly appointed guardian or representative of the estate, and a certified copy of the letter issued by the court shall be attached to the application.

(5) In the case of a water district, county, municipality, etc., the application shall be signed by a duly authorized official, and a certified copy of the resolution or other authorization to make the application shall be attached.

(6) In the case of a private corporation, the application shall be signed by a duly authorized person and, if not attested by the secretary or assistant secretary, a copy of the authorization shall be attached to the application.

(c) **Notary public required.** All applicants shall subscribe and swear to the application before a Notary Public, who shall also sign his name and affix his seal to the application.

(d) **Water rights.** Water rights requested or required in connection with a planned dam or reservoir may be approved based on preliminary information; however, no construction, enlargement, alteration or repair shall proceed until the application required by this Section has been submitted and approved in accordance with the rules of this subchapter and until the water rights required are approved.

[Source: Amended at 10 Ok Reg 3287, eff 6-25-93; Amended at 14 Ok Reg 2766, eff 7-1-97; Amended at 30 Ok Reg 879, eff 6-13-13]

785:25-5-2. Plans to be prepared by registered professional engineer

Plans and specifications shall be prepared by a Registered Professional Engineer (59 O.S. 1981, §§475.1 and 475.15) who shall have training and/or experience concerning the analysis, design, and/or construction of dams and reservoirs, or by an engineer of any United States governmental agency acting in his official capacity (82 O.S. 1981, §105.27). However, if it is found that a project does not concern or involve the public welfare or the safeguarding of life, health or property, this requirement may be waived by the Board.

785:25-5-3. Content of plans and specifications

(a) The plans and specifications shall, as a minimum, include the following:

(1) A topographic map of the dam site showing the location of spillway and outlet works. The map shall also show all contiguous property and the owners thereof. The topographic maps for low hazard dams are not required to show test borings, test pits and borrow pits.

(2) A profile along the dam axis showing the location, elevation, depth of borings or test pits including logs or bore holes and/or test pits, provided that plans and specifications for low hazard dams are not required to contain such a profile.

(3) A maximum cross-section of the dam showing elevation and width of crest, slopes of upstream and downstream faces, thickness of riprap, zoning of earth embankment, location of cutoff and bonding trenches, elevations, size and type of outlet conduit, valves and operating mechanism.

(4) Area and capacity curves of the proposed reservoir.

- (5) Detailed drawings showing plans, cross and longitudinal sections of the outlet conduits, valves and controls for operating the same, and trash racks.
 - (6) The discharge capacity in cubic feet per second of the spillway for each foot in water depth above the spillway crest up to the maximum high water level and the formula used in making such determinations.
 - (7) Detailed plans of spillway structures, cross-section of the channel leading to and from the spillway, spillway profile, and procedures for operation of the spillway structure.
 - (8) Hydrologic and hydraulic analysis report as described in the publication Hydrologic and Hydraulic Guidelines for Dams in Oklahoma, Oklahoma Water Resources Board, Dam Safety Program, August 2011.
 - (9) A requirement, during the period of construction, for supervision by an engineer as required in 785:25-7-2.
 - (10) A provision that the plans and specifications may not be substantially changed or changed in any material respect without prior written consent of the Board.
 - (11) A provision stating in detail all matters necessary to ensure that construction is accomplished in a responsible manner and that needed control is exercised by an engineer as required in 785:25-7-2 to ensure construction of a safe structure.
- (b) The size of all plans and maps filed shall not be more than 11" x 17" and shall be drawn with an adequate number of views, in proper dimensions, and to a sufficiently large scale so that the plans and maps may be readily interpreted and studied. In addition to the plans and maps required to be filed, if plans and maps larger than 11" x 17" are submitted for review purposes, the larger plans and maps will not be retained by the Board.

[Source: Amended at 27 Ok Reg 1300, eff 5-27-10; Amended at 30 Ok Reg 879, eff 6-13-13]

785:25-5-4. Additional report information

An engineer's report giving details necessary for analysis of the structure and appurtenances shall be submitted with the plans and specifications. Included as a part of the report shall be the following:

- (1) Formula and assumptions used in design;
- (2) Hydrologic data used in determining runoff from the drainage areas including copies of any records that the applicant has of flood flows and precipitation for the region;
- (3) Foundation and materials investigations; and
- (4) All other information which would aid in evaluating the design.

[Source: Amended at 37 Ok Reg 2287, eff 9-11-20]

785:25-5-5. Notice of application

(a) Notice preparation.

- (1) After an application has been duly filed and accepted, the Board may require that applicants for permits involving significant and high hazard-potential dams publish notice as it instructs. If such notice is required, a notice will be prepared by the Board and include information describing the application, the name and address of the applicant and opportunities for public comment.
- (2) The notice will be mailed to the applicant with a letter of instructions as to the publication. Prior to publication, the applicant shall check the notice for any errors.

(b) Publication in newspaper.

- (1) The notice of application, if required, shall be published once a week for two (2) consecutive weeks on the dates designated by the Board in a newspaper having general circulation in the county where the dam is located.
- (2) The last notice shall be published at least ten (10) days prior to the hearing date.
- (3) The applicant shall bear the cost of publication and shall see that the notice is reproduced accurately in the newspaper.
- (4) If the Board instructs the applicant to mail notice, such mailing shall be by certified mail, return receipt requested.

[Source: Amended at 9 Ok Reg 1675, eff 5-11-92; Amended at 27 Ok Reg 1300, eff 5-27-10]

785:25-5-6. Affidavit of notice publication and mailing

- (a) **Affidavit of publication required.** If the Board has required publication of notice, then the applicant shall file the sworn statement of the publisher with the Board before the application is considered by the Board. The affidavit shall state the dates on which the notice was published in the newspaper.
- (b) **Failure to furnish affidavit.** Failure to furnish evidence of publication or of mailing of the notice in the manner required on or before the date the Board considers the application or may be deemed evidence of abandonment of the application.

[Source: Amended at 9 Ok Reg 1675, eff 5-11-92; Amended at 27 Ok Reg 1300, eff 5-27-10]

785:25-5-7. Public comment

- (a) Any interested person may submit written comments on any application.
- (b) If the Board determines there is significant public interest in an application, it may schedule a public meeting to receive oral comments. Any interested person may appear and present comments.
- (c) The Board shall consider the public comments when evaluating the application, and shall respond or prepare and publish a response to those comments, and may direct the applicant to respond.

[Source: Amended at 9 Ok Reg 1675, eff 5-11-92; Amended at 27 Ok Reg 1300, eff 5-27-10]

785:25-5-8. Approval or denial of application

- (a) After evaluating the application, if it is determined that the proposed construction, enlargement, alteration, or repair of any dam is safe and not a menace to life and property and is in conformity with all statutory requirements and the rules in this Chapter, said application shall be approved by the Board upon such conditions as the Board may prescribe.
- (b) If it is determined that the proposed construction, enlargement, alteration, or repair of any dam is *unsafe and a menace to life and property*, [82:105.2] said application shall be denied by the Board.
- (c) The applicant shall be notified in writing of the Board's decision.
- (d) If the application is approved, no impoundment of water by the dam may be made until all additional requirements of these rules and regulations are met unless the approved construction is for an existing dam and the construction may be carried out without emptying the water in the reservoir.
- (e) The applicant shall commence construction within two (2) years after the date of approval of the plans and specifications or the approval will be deemed to have

lapsed and shall thereafter be null and void, provided that the applicant may request an extension of time to commence such construction and if the extension is granted, the approval will not be deemed to lapse during the time extended.

SUBCHAPTER 7. POST APPROVAL ACTIONS

785:25-7-1. Inspection during construction

During the construction, enlargement, repair, alteration, or removal of any dam or reservoir, periodic inspections may be made by the Board and the owner shall be required to perform at his expense such works or tests as necessary to disclose information sufficient to enable the Board to determine that substantial conformity with approved plans and specifications is being secured, which shall include adequate inspection, at owner's expense, to satisfy the Board of substantial compliance to approved plans, drawings, and specifications.

785:25-7-2. Inspection fee

(a) Fees for any such inspection must be paid by the owner upon submission of an itemized statement by the Board.

(b) Fees for inspections not paid by the owner within thirty (30) days after notice by the Board, *shall be a lien against any property of such owner, to be recovered by suit instituted by the District Attorney of the county at the request of the Board. Such liens shall be superior in right to all mortgages or other encumbrances, except ad valorem tax liens, placed upon the land and the water appurtenant thereto or used in connection therewith.* [82:105.27]

785:25-7-3. Deficiencies during and after construction

(a) If, after any inspections, investigations, or examinations, or at any time after completion, it is found that amendments, modifications, or changes to the work performed pursuant to the approved plans and specifications are necessary to protect life and insure safety of the dam or to meet acceptable dam safety engineering practices, including those found in references set forth in 785:25-3-4, the owner shall be required to submit a revised application.

(b) If conditions are revealed which will not permit the construction of a safe dam or reservoir, the prior approval may be revoked or modified by the Board after notice and hearing.

(c) After the inspection, investigation, or examination, the Board shall, in a report to the owner, specify the deficiencies and allow a reasonable time for correcting the deficiencies.

[Source: Amended at 9 Ok Reg 1675, eff 5-11-92]

785:25-7-4. Supervision of construction by owner

After receiving approval of plans and specification, supervision of construction by the owner shall be as follows:

(1) The work of construction, enlargement, repair, alteration or removal of dam or reservoir, for which approved application, plans, drawings, and specifications are required, shall be under the responsible charge of an engineer as defined in 785:25-5-2 who shall certify, upon completion and prior to impoundment of any waters, that such construction, enlargement, repair, alteration, or removal was done in accordance with approved plans, drawings, and specifications.

(2) Final approval in writing by a United States governmental agency shall be required for those structures designed by and/or constructed under the supervision of personnel of that agency.

785:25-7-5. Changes to plans and specifications after approval

(a) If during construction, enlargement, repair, alteration, or removal of any dam or reservoir, it is found that amendments, modifications, or changes that increase the normal or maximum water elevations, increase spillway releases or discharges, or that increase potential damages downstream will need to be made to the plans and specifications as previously approved by the Board, an amended application including hydrologic and hydraulic analysis, maps, plans, drawings, and specifications shall be submitted to the Board for approval.

(b) The owner may be required to publish notice of the date, place and time when the Board will consider the matter as was done for the original application.

(c) Other amendments, modifications or changes shown in as-built plans and specifications may be accepted by Board staff.

[Source: Amended at 9 Ok Reg 1675, eff 5-11-92; Amended at 27 Ok Reg 1300, eff 5-27-10; Amended at 30 Ok Reg 879, eff 6-13-13]

785:25-7-6. Notice of completion and filing of supplementary drawings or descriptive matter

Immediately upon completion of a new dam or reservoir or enlargement or repair of a dam or reservoir, the owner shall give notice of completion and as soon thereafter as possible shall file supplementary drawings or descriptive matter showing or describing the dam or reservoir as actually constructed, including the following:

- (1) A record of all grout holes and grouting;
- (2) A record of permanent location points and bench marks;
- (3) A record of tests of concrete soils, or other materials used in the construction of the dam or reservoir;
- (4) Any other items which may be of permanent value and have a hearing on the safety and performance of the dam or reservoir; and
- (5) For dams classified as high hazard-potential, a breach analysis report and map showing the breach inundation area utilizing the publication Hydrologic and Hydraulic Guidelines for Dams in Oklahoma, Oklahoma Water Resources Board, Dam Safety Program, August 2011.

[Source: Amended at 30 Ok Reg 879, eff 6-13-13]

785:25-7-7. Emergency action plans

(a) Owners of existing or proposed dams classified as high hazard-potential, regardless of the size of such dams, and any other dam as determined by the Board, shall create and maintain an EAP that utilizes the recommendations, as determined by the Board, of the "Federal Guidelines for Dam Safety, Emergency Action Planning for Dams," published July 2013 by the Federal Emergency Management Agency. The owner shall submit a copy of the EAP to the Board.

(b) Owners shall annually review their EAPs to assure they are still accurate and applicable, and submit any updates to the EAPs to the Board.

[Source: Amended at 27 Ok Reg 1300, eff 5-27-10; Amended at 37 Ok Reg 2287, eff 9-11-20]

785:25-7-8. Certificate of completion

(a) **Issuance; revocation; amendments.** Certificates of completion shall be issued and may be revoked or amended as follows:

(1) Upon filing of notice of completion of works by the applicant, the Board shall, within sixty (60) days, inspect or cause the dam to be inspected. The Executive Director shall approve the issuance of a certificate of completion if, based on the certification from the engineer in the Notice of Completion, the dam or reservoir is safe to impound water within the limitations prescribed in the certificate. However, no certificate of completion shall be issued until receipt of fee for certificate and all invoiced filing and inspection fees.

(2) Every certificate of completion issued shall contain *the date of approval of plans and specifications for the dam, date construction was completed on said dam, and* [82:110.8] any such terms and conditions as the Board may prescribe. The Board may revoke any such certificate whenever it is determined that the dam constitutes a danger to life and property. Whenever such action is necessary to safeguard life and property, the terms and conditions of any such certificate may be amended and a new certificate issued containing the revised terms and conditions.

(3) *Certificates of completion of works from the . . . Board shall be required before any water may be impounded by a new dam or before water may be impounded at an elevation higher than that previously authorized by the Board at an existing dam which has been modified* [82:110.8]

(b)

Notice and action. After the issuance of the certificate of completion, the Board shall provide notice to the owner, allowing opportunity for a hearing, prior to the issuance of any order revoking or modifying the previous Board certificate.

[Source: Amended at 10 Ok Reg 3287, eff 6-25-93; Amended at 25 Ok Reg 1440, eff 5-27-08]

SUBCHAPTER 9. ACTIONS AFTER CONSTRUCTION

785:25-9-1. Inspections of dams

(a) **Oversight vested in Board.** Oversight of the maintenance and operation of constructed dams and reservoirs insofar as necessary to safeguard life and property from injury by reason of the failure thereof is vested in the Board.

(b) **Periodic inspections.** Except for low hazard potential dams, owners are required to have their dams inspected by qualified persons periodically according to a schedule prepared by the Board to meet the requirements of paragraphs (1) and (2) of this subsection. Periodic inspections of dams shall be according to hazard potential classifications as follows:

(1) High hazard. High hazard potential dams shall be inspected at least once annually.

(2) Significant hazard. Significant hazard shall be inspected at least once every three years.

(3) Low hazard. Low hazard potential dams shall be inspected at least once every five years, which inspection shall be conducted by the owner and shall consist of a review of the hazard classification on forms provided by the Board.

(4) Significant or high hazard dams in an unsatisfactory or poor condition, described in Section 6 of the National Dam Safety Review Board's Guidelines for Updating the 2008 National Inventory of Dams (NID), April 2008, as determined by the Board shall be inspected by a register

Professional Engineer at the expense of the owner at least every six months until such time as the deficiencies have been corrected.

(5) Periodic inspections shall be conducted by the end of the calendar year indicated by the schedule above.

(c) **Expense of periodic inspections.** Periodic inspections shall be at the owner's expense (except for low hazard potential periodic inspections) and shall be conducted by a Registered Professional Engineer hired by the owner, who is licensed in the state of Oklahoma, and shall have training and/or experience concerning the analysis, design, and/or construction of dams and reservoirs, or by an engineer of any United States governmental agency acting in his official capacity. Provided that inspections of low hazard classification dams may be conducted by persons who are not Registered Professional Engineers but who are trained in inspecting dams.

(d) **Unscheduled inspections.** Unscheduled (non-periodic) inspections such, as those conducted in response to complaints, after major heavy precipitation events, after earthquakes within 50 miles of a high or significant hazard potential dam that measure 5.0 or greater on the Richter magnitude scale, or in emergency situations, may be conducted by Board staff, or the Board may require the owner to conduct an unscheduled inspection at the owner's expense. No fee for such inspection shall be due, provided that a request for inspection by other parties shall be governed by 785:25-9-6.

(e) **United States dams not subject to inspection.** Any dam *constructed by the United States or its duly authorized agencies shall not be subject to inspection while under the supervision of officers or the United States.* [82:105.27]

(f) **Board to notify when inspection due; violation.** The Board shall notify persons shown by its records to own the dam of the date the periodic inspection of the dam is due. Failure to have the inspection completed shall constitute a violation of Board rules.

(g) **Minimum standards.** Except for low hazard potential dams, qualified persons shall submit a written report describing any dam safety deficiencies observed and outline remedial actions to be taken to address those deficiencies as follows:

(1) Engineering inspection reports shall be prepared for each inspection completed. The inspecting engineer shall record their findings of the inspection and submit a written inspection report to the Board not later than 30 days after the inspection.

(2) All inspections shall also include documentary digital photographs of the dam, auxiliary spillway, principal spillway inlet structure, principal spillway outlet, and potential safety concerns. When explanation is needed to identify or describe the safety concern, notes shall be included in the written report to provide this explanation. Photographs shall be attached to the completed inspection report.

(3) Inspection reports shall include a schedule of corrective actions to be taken to address dam safety deficiencies.

(4) Periodic inspection reports shall also include review of the Emergency Action Plan and of the operation and maintenance manual to assure they are still accurate and applicable, as well as any changes in downstream development or other conditions if applicable.

[Source: Amended at 10 Ok Reg 3287, eff 6-25-93; Amended at 11 Ok Reg 2931, eff 6-13-94; Amended at 12 Ok Reg 2687, eff 7-1-95; Amended at 25 Ok Reg 1440, eff 5-27-08; Amended at 27 Ok Reg 1300, eff 5-27-10; Amended at 30 Ok Reg 879, eff 6-13-13; Amended at 37 Ok Reg 2287, eff 9-11-20]

785:25-9-2. Records and reports of owner

(a) The owner of a dam or reservoir or his agent shall fully and promptly advise the Board by telephone of any sudden or unprecedented flood or unusual or alarming circumstances or occurrence affecting the safety of the dam or reservoir. Within ten (10) days after such shall flood event or circumstance, the owner or owner's agent shall provide a written report of any damages to the dam and of the need to make any repairs.

(b) The Board may require owners to keep records of and to report on maintenance, and staffing of any dam or reservoir if, in the opinion of the Board, such records and reports are necessary to safeguard life and property.

[Source: Amended at 10 Ok Reg 3287, eff 6-25-93]

785:25-9-3. Correction of deficiencies (not creating imminent peril)

(a) *When an owner fails, neglects or refuses to comply with the Oklahoma Dam Safety Act, rules of this chapter, or orders of the ... Board, and there is no imminent peril to the public health or welfare shown the Board may, after notice and opportunity for hearing; issue an order requiring such owner to take whatever action the Board deems necessary to place the dam in a safe condition, meet the requirements of the Oklahoma Dam Safety Act, rules of the Board, or the previous orders of the Board [82:110.10].*

(b) *Actions which can be ordered may include but are not limited to lowering the level of or removing all water in the reservoir, providing an adequate warning to the public downstream, repair or modification of the existing dam after having the appropriate application for approval of plans and specifications granted, cease all construction work on a dam, and implementation of an appropriate operation and maintenance plan [82:110.10].*

(c) If after such hearing it shall be determined to order such amendments, modifications or changes, the owner shall submit, if necessary under 785:25-5-1, plans and specifications for Board approval. Upon approval of the plans and specifications, the Board shall direct the time within which such modification, alteration, or construction shall be completed.

(d) In determining whether amendments, modifications or changes are necessary to protect life and insure safety of the dam, the Board shall take into consideration the possibility that the dam and reservoir might be endangered by overtopping, seepage, settlement, erosion, cracking, earth movement, or other conditions which exist in any area in the vicinity of the dam or reservoir.

(e) Amendments, modifications or changes may include routine maintenance items that do not require plans and specifications, such as removal of trees on an earthen embankment, establishing vegetation cover to prevent erosion, or updating a warning and evacuation plan, etc. Amendments, modifications or changes may also include alterations or repairs which require submittal and approval of plans and specifications, including but not limited to changing the spillway design capacity, rebuilding embankments, etc.

[Source: Amended at 9 Ok Reg 1675, eff 5-11-92; Amended at 10 Ok Reg 3287, eff 6-25-93; Amended at 37 Ok Reg 2287, eff 9-11-20]

785:25-9-4. Notice and action [REVOKED]

[Source: Revoked at 10 Ok Reg 3287, eff 6-25-93]

785:25-9-5. Correction of deficiencies creating imminent peril

(a) *When an owner fails, neglects or refuses to comply with the Oklahoma Dam Safety Act, rules of this chapter, or orders of the Board, and there is an imminent peril to the public health or welfare shown, the Executive Director of the Board, or Assistant Director in the absence of the Executive Director, may, without notice or opportunity for hearing, issue an emergency order requiring such owner to take actions the Board deems necessary to place the dam in a safe condition. Such emergency order shall indicate the finding of imminent peril and shall specify the actions that are to be taken immediately. The order shall also specify a time and place for hearing to be held after such actions are taken [82:110.10].* In determining whether an imminent peril to the public health or welfare exists, the Board may consider the following:

- (1) The condition of any dam or reservoir is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order after notice and hearing relative to maintenance or operation; or
 - (2) Passing imminent floods threaten the safety of any dam or reservoir.
- (b) The Board may, if the owner cannot be served or is otherwise unable to act, immediately employ remedial measures. The remedial measures the Board may take in such an emergency include but are not limited to any of the following:
- (1) Lower the water level by releasing water from the reservoir;
 - (2) Completely empty the reservoir; or
 - (3) Take such other steps as may be essential to safeguard life and property.
- (c) The cost and expenses of the remedial measures taken by the Board, including cost of any work done to render a dam or reservoir or its appurtenances safe, shall be recoverable by the State from the owner by action brought by the Board in the district court of the district wherein the dam or reservoir or any part thereof is situated.

[Source: Amended at 10 Ok Reg 3287, eff 6-25-93; Amended at 37 Ok Reg 2287, eff 9-11-20]

785:25-9-6. Request for inspection of dams by other parties

Upon the request of any party, accompanied by the estimated cost of inspection, the Board shall cause any alleged unsafe works to be inspected. If the works are found to be unsafe the money deposited by such party shall be refunded and the fee for inspection shall be paid by the owner of such works. [82:105.27]

[Source: Amended at 11 Ok Reg 2931, eff 6-13-94]

785:25-9-7. Recovery of costs and expenses

The costs and expenses incurred by the Board for inspection of any dam found to be unsafe shall be paid by the owner of such works and if not paid by the owner of the dam within thirty (30) days after the decision of the Board shall be a lien against any property of such owner and be recoverable by the State from the owner by suit instituted by the District Attorney of the county at the request of the Board. Such liens shall be superior in right to all mortgages or encumbrances, except ad valorem tax liens, placed upon the land and the water appurtenant thereto or used in connection therewith. [82:105.27]

785:25-9-8. Emergency repairs

(a) If conditions exist which may cause loss of life if repairs are not made immediately, emergency repairs may be made by the owner without prior submittal

of the plans and specifications required under 785:25-5-1.

(b) The Board shall be notified of the emergency and the repairs to be made within 48 hours and plans and specifications shall be furnished to the Board for review as required in 785:25-5-1 as soon as possible.

785:25-9-9. Breach analysis for existing dams

If an existing dam does not have a breach analysis, and a failure might put lives at risk downstream, then after the next regularly scheduled inspection the Board's Engineer may direct the owner to provide a breach analysis and breach inundation map, utilizing modeling and analysis guidelines provided by the Board, and according to a reasonable schedule of compliance.

[Source: Added at 27 Ok Reg 1300, eff 5-27-10]

785:25-9-10. Reclassification of the hazard-potential class of a dam

(a) The Board may reclassify the hazard-potential classification of a dam at any time based on an inspection and downstream hazard evaluation.

(b) If the Board determines that the hazard-potential class of a dam should be increased to a greater hazard-potential classification, then the Board shall notify the owner of that finding and of the upgrade options that are available, and set a reasonable deadline, based on the circumstances, for the owner to:

- (1) file an application to upgrade the dam to meet the requirements for a greater hazard-potential classification; or
- (2) seek an individual proceeding to contest the finding; or
- (3) perform a breach analysis and inundation mapping or, for existing dams that lack a breach analysis, through the use of acceptable mathematical computations applied to the downstream area from the dam to a point where the necessary design flood and breach is contained within the main stream channel, utilize modeling and analysis guidelines provided by the Board to show the dam should not be reclassified to the greater hazard-potential classification.

[Source: Added at 27 Ok Reg 1300, eff 5-27-10]

785:25-9-11. Upgrading dams due to downstream development

(a) **Alternatives.** Instead of upgrading the dam using structural methods, an owner may seek to implement alternative methods. Such alternative methods shall include but is not limited to the following:

- (1) a current breach analysis and hydrologic study that demonstrates a lesser hazard-potential classification is correct; or
- (2) a current breach analysis and design flood analyses that demonstrate existing downstream developments would not be adversely affected by more than one foot difference between breach and non-breach simulations in the affected area, or records showing the downstream development has been dedicated to non-residential and non-commercial use; or
- (3) a plan to permanently remove the dam.

(b) **Schedule of Compliance.** An owner may seek a compliance schedule with the Board that sets the timeframes for various stages of work to be performed. In considering such applications to upgrade on a compliance schedule the Board shall evaluate whether the current dam will not significantly affect the public safety during the compliance period.

[Source: Added at 27 Ok Reg 1300, eff 5-27-10]

SUBCHAPTER 11. ADMINISTRATIVE PENALTIES AND PROCEDURES

785:25-11-1. Applicability and authority

(a) *The Board may impose administrative penalties against owners of dams who fail, refuse or neglect to comply with the provisions of the Oklahoma Dam Safety Act, rules of the Board promulgated pursuant to the Oklahoma Dam Safety Act, and orders of the Board. Such administrative penalties shall be imposed only after notice and opportunity for hearing on the proposed imposition of such penalties* [82:110.10].

(b) *The notice and opportunity for hearing required by this Section maybe combined with the notice and hearing required in* [82:110.10] 785:25-9-3.

(c) *The penalties shall not exceed Five Hundred Dollars (\$500.00) per day for each violation* [82:110.10].

(d) *Each day a violation continues shall constitute a separate violation* [82:110.10].

[Source: Added at 10 Ok Reg 3287, eff 6-25-93]

785:25-11-2. Notice of violation and proposed assessment

The notice of proposed assessment of administrative penalties shall inform the respondent of the provisions of the Oklahoma Dam Safety Act or of the rule or order of the Board at issue and the proposed amount of the penalty. A letter, petition, notice of violation, consent order or final order may constitute a notice of proposed assessment for purposes of initiating administrative penalty proceedings if it meets the requirements of this section.

[Source: Added at 10 Ok Reg 3287, eff 6-25-93]

785:25-11-3. Determining amount of penalty

In setting the administrative penalty amount, the Board may consider the following:

- (1) The nature, duration and number of previous instances of failure by respondent to comply with requirements of law relating to dam safety and requirements of Board rules and orders;
- (2) The efforts of the owner to correct deficiencies or other instances of failure to comply with the requirements of law relating to dam safety and requirements of Board rules and orders subject of the proposed penalty;
- (3) The cost of carrying out actions required to meet the requirements of law and Board rules and orders;
- (4) The size and hazard classification of the dam;
- (5) Other factors deemed appropriate by the Board.

[Source: Added at 10 Ok Reg 3287, eff 6-25-93]

785:25-11-4. Procedures for penalty assessment

(a) The notice of proposed assessment of administrative penalties shall specify a time, date and place for a hearing.

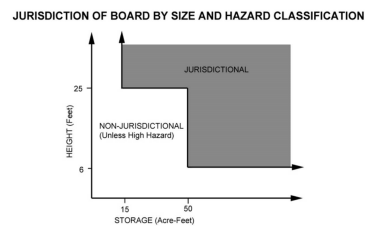
(b) Failure of respondent to appear at the hearing shall be deemed to constitute an agreement with the imposition of the penalty in the amount proposed as set forth in the notice, and proposed findings, conclusions and order shall not be prepared in that instance. The Board and respondent may also agree to an informal disposition of the matter. In either situation, the matter shall be presented to the Board for consideration of entering a final order assessing the administrative penalty.

- (c) The administrative penalty is due and payable immediately upon issuance of the final order, unless otherwise provided therein.
- (d) If the Board believes that violations are continuing after issuance of the administrative penalty order, it may seek the issuance of additional orders to assess penalties occurring in the period after issuance of the previous assessment orders.

[Source: Added at 10 Ok Reg 3287, eff 6-25-93]

APPENDIX A. JURISDICTION OF BOARD BY SIZE AND NAZARD CLASSIFICATION

Figure 1



[Source: Added at 11 Ok Reg 2931, eff 6-13-94]

APPENDIX B. MINIMUM SPILLWAY PERFORMANCE STANDARDS

Figure 1

SIZE	HAZARD	MINIMUM SPILLWAY	
		DESIGN FLOOD	MINIMUM FREEBOARD
Small	Low	25% PMF	0 Feet
Small	Significant	40% PMF	0 Feet
Small	High	50% PMF	1 Foot
Intermediate	Low	25% PMF	1 Foot
Intermediate	Significant	50% PMF	1 Foot
Intermediate	High	75% PMF	3 Feet
Large	Low	50% PMF	1 Foot
Large	Significant	75% PMF	1 Foot
Large	High	100% PMF	3 Feet

SUBCHAPTER 1. GENERAL PROVISIONS

785:30-1-1. Purpose

This Chapter of the Board's rules sets out the requirements to obtain authority to use fresh groundwater, and details procedures for determining the maximum annual yield of basins and subbasins and for issuing final orders recognizing prior rights to use groundwater.

785:30-1-2. Definitions

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

"Agricultural use" means water used for livestock, poultry, fish farms, fish hatcheries, veterinary services, feed lots, etc. (see also "Irrigation use").

"APA" means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S., §§301 et seq., as amended.

"Application" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"Artificial recharge" means any man-made process specifically designed for the primary purpose of increasing the amount of water entering into a groundwater basin or subbasin.

"Beneficial use" means the use of such quantity of stream or groundwater when reasonable intelligence and reasonable diligence are exercised in its application for a lawful purpose and as is economically necessary for that purpose. Beneficial uses include but are not limited to municipal, industrial, agricultural, irrigation, recreation, fish and wildlife, etc.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, duties authorized by law to be delegated to the Executive Director, or any employee or agent or staff member thereof as assigned by the Executive Director.

"Commercial use" means use which includes but is not limited to water for businesses, industrial parks, laundries, cafes, motels/hotels, institutions, food processing and water used in the transportation of metal ores and non-metals by pipelines.

"Dedicated land" means the tract or tracts of land which the applicant owns, leases, or from which the applicant holds a valid right to withdraw groundwater and which is listed in the application and used to calculate the amount of groundwater requested.

"Definite stream" means a *watercourse in a definite, natural channel, with defined beds and banks, originating from a definite source or sources of supply. The stream may flow intermittently or at irregular intervals if that is characteristic of the sources of supply in the area.* [82:105.1(A)]

"Domestic use" means the use of water by a natural individual or by a family or household for household purposes, for farm and domestic animals up to the normal grazing capacity of the land whether or not the animals are actually owned by such natural individual or family, and for the irrigation of land not exceeding a total of three (3) acres in area for the growing of gardens, orchards, and

lawns [82:1020.1(2)]. Domestic use also includes: (1) the use of water for agriculture purposes by natural individuals, (2) use of water for fire protection, and (3) the use of water by non-household entities for drinking water purposes, restroom use, and the watering of lawns, provided that the amount of groundwater used for any such purposes does not exceed five acre-feet per year.

"Enhanced recovery of oil and gas" means a long-term process using fresh water to recover substantial quantities of additional oil or gas which would not be recoverable under ordinary primary methods or under short-term stimulation techniques. This definition applies to all non-primary forms of oil and gas recovery including but not limited to secondary, tertiary, or other enhanced recovery operations.

"Equal proportionate part or share" means the maximum annual yield of water from a groundwater basin or subbasin which shall be allocated to each acre of land overlying such basin or subbasin. It shall be that percentage of the maximum annual yield, determined as provided by 82 O.S., §1020.5 and 785:30-9-2 which is equal to the percentage of the land overlying the fresh groundwater basin or subbasin which is owned or leased by an applicant for a regular permit.

"Fresh water" means *water which has less than five thousand (5,000) parts per million total dissolved solids. All other water is salt water.* [82:1020.1(7)]

"Groundwater" means *fresh and marginal water under the surface of the earth regardless of the geologic structure in which it is standing or moving outside the cut bank of any definite stream.* [82:1020.1(1)]

"Groundwater basin" means *a distinct underground body of water overlain by contiguous land having substantially the same geological and hydrological characteristics and yield capabilities.* [82:1020.1(3)] The area boundaries of a major or minor basin can be determined by political boundaries, geological, hydrological, or other reasonable physical boundaries.

"Groundwater subbasin" means *a subdivision of a major or minor groundwater basin overlain by contiguous land and having substantially the same geological and hydrological characteristics and yield capabilities.* [82:1020.1(4)] Examples are a lateral or vertical subdivision of a groundwater basin delineated by either physical or political boundaries. Physical boundaries would be different in geological, hydrological or yield capabilities; bedrock; faults; low permeability zones or limits of pressure areas, etc. Political boundaries would be irrigation districts, planning districts, counties, city limits, etc.

"Industrial use" means the use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value.

"Irrigation use" means use of water for the production of food, fiber, crops, timber, fruits, nuts; and water applied to pastures, fields, landscaping, horticulture services, and golf courses.

"Life of a groundwater basin or subbasin" means that period of time during which at least fifty (50) percent of the total overlying land of the basin or subbasin will retain a saturated thickness allowing pumping of the maximum annual yield for a minimum twenty (20) year life of such basin or subbasin, provided that after July 1, 1994, the average saturated thickness will be calculated to be maintained at five feet (5') for alluvium and terrace aquifers and fifteen feet (15') for bedrock aquifers unless otherwise determined by the Board; provided further that after July 1, 1994, whether fifty (50) percent of the total overlying land of the basin or subbasin retains a saturated thickness allowing pumping for a minimum twenty (20) year life of the basin or subbasin need not be considered by

the Board.

"Major groundwater basin" means a distinct underground body of water overlain by contiguous land and having substantially the same geological and hydrological characteristics and from which groundwater wells yield at least fifty (50) gallons per minute on the average basinwide if from a bedrock aquifer and at least one hundred fifty (150) gallons per minute on the average basinwide if from an alluvium and terrace aquifer, or as otherwise designated by the Board.
[82:1020.1(3)]

"Marginal Water" means water which has at least five thousand (5,000) and less than ten thousand (10,000) parts per million total dissolved solids.

"Maximum annual yield" means a determination by the Board of the total amount of fresh groundwater that can be produced from each basin or subbasin allowing a minimum twenty (20) year life of such basin or subbasin.

"Mining use" means any use wherein the water is applied to mining processes including but not limited to oil and gas recovery operations, for drilling and reworking wells, and for conducting oil and gas field operations.

"Minor groundwater basin" means a distinct underground body of water overlain by contiguous land and having substantially the same geological and hydrological characteristics and which is not a major groundwater basin.
[82:1020.1(9)]

"Municipal and rural water use" means the use of water by a municipality, rural water district, water corporation, or community for the promotion and protection of safety, health and comfort, distribution to natural persons for the maintenance of life and property, public and private business pursuits, and the furtherance of all generally recognized municipal purposes, except large recreational uses such as lakes unless in conjunction with other uses.

"Natural recharge" means all flow of water into a groundwater basin or subbasin by natural processes including percolation from irrigation.

"Notice by publication" means unless otherwise specifically provided, publication in a daily or weekly newspaper of general circulation once a week for two (2) consecutive weeks (minimum seven day interval).

"Party or interested party" means a person or agency named and participating, or properly seeking and entitled by law to participate, [75:250.3(7)] in hearings other than hearings on Board rules, regulations and standards.

"Permittee" means the person to whom a permit to use water has been issued by the Board or the person to whom such permit has been duly and properly transferred under Board rules.

"Person" means any individual, firm, partnership, association, corporation, business or public trust, federal agency, state agency, the State or any political subdivision thereof, municipalities, and any other duly constituted legal entity.

"Power use" means water used for power generation, including, but not limited to, fossil-fueled electric power generation.

"Prior groundwater right" means the right to use ground water established by compliance with the laws in effect prior to July 1, 1973, the effective date of the Groundwater Act, and determined pursuant to 82 O.S., §1020.14 and Subchapter 11 of this Chapter.

"Public water supply" means the use of water for drinking water purposes by housing developments, trailer parks, churches, schools, etc., other than water used for "municipal and rural water use."

"Recreation, fish and wildlife use" means use which includes but is not limited to the use of water for swimming, water skiing, boating, fishing, hunting or

other forms of water recreation, and water for fish and wildlife conservation.

"Salt water" means any water containing more than five thousand (5,000) parts per million total dissolved solids.

"Sensitive sole source groundwater basin or subbasin" means a major groundwater basin or subbasin all or a portion of which has been designated as a "Sole Source Aquifer" by the United States Environmental Protection Agency, and includes any portion of an contiguous aquifer located within five (5) miles of the known areal extent of the surface outcrop of the sensitive sole source groundwater basin [82:1020.9A].

"Special use" means and includes but is not limited to the use of groundwater for groundwater heat pump systems or artificially recharging a groundwater basin or subbasin.

"Total discharge from the basin or subbasin" means and shall include but may not be limited to the amount of fresh groundwater withdrawn and placed to beneficial use prior to July 1, 1973, which amount shall be determined from the applicable final orders of the Board determining prior groundwater rights.

"Waste by depletion" means unauthorized use of wells or groundwater; *[d]rilling a well, taking, or using fresh groundwater without a permit, except for domestic use; [t]aking more fresh groundwater than is authorized by the permit; [t]aking or using fresh groundwater in any manner so that the water is lost for beneficial use; [t]ransporting fresh groundwater from a well to the place of use in such a manner than there is an excessive loss in transit; [u]sing fresh groundwater to reach a pervious stratum and be lost into cavernous or otherwise pervious materials encountered in a well ... drilling wells and producing fresh groundwater therefrom except in accordance with the well spacing previously determined by the Board; [82:1020.15(A)] or [u]sing fresh groundwater for air conditioning or cooling purposes without providing facilities to aerate and reuse such water [82:1020.15(A)].*

"Waste by pollution" means *[p]ermitting or causing the pollution of a fresh water strata or basin through any act which will permit fresh groundwater polluted by minerals or other waste to filter or otherwise intrude into such a basin or subbasin ... or [f]ailure to properly plug abandoned fresh water wells in accordance with rules of the Board and file reports thereof [82:1020.15(A)].*

"Water right" means a right to the use of stream or groundwater for beneficial purposes.

"Water supply" means a natural body of water, whether static or moving either on or under the surface of the ground, or in a man-made reservoir, available for beneficial use on a reasonably dependable basis.

"Well" means any type of excavation for the purpose of obtaining groundwater or to monitor or observe conditions under the surface of the earth but does not include oil and gas wells.

[Source: Amended at 11 Ok Reg 2935, eff 6-13-94; Amended at 12 Ok Reg 2689, eff 7-1-95; Amended at 13 Ok Reg 2869, eff 7-1-96; Amended at 14 Ok Reg 2767, eff 7-1-97; Amended at 16 Ok Reg 412, eff 10-22-98 (emergency); Amended at 16 Ok Reg 3227, eff 7-12-99; Amended at 19 Ok Reg 2481, eff 6-27-02; Amended at 21 Ok Reg 2626, eff 7-1-04; Amended at 25 Ok Reg 1441, eff 5-27-08; Amended at 36 Ok Reg 1288, eff 8-11-19]

785:30-1-3. Violations and prohibitions

(a) *Any person who, after notice from the Board, violates, refuses, or neglects to comply with any provision of [82:1020.22] 82 O.S. 1981, §§1020.1 through 1020.22, as amended or of any rule or regulation pursuant thereto or who commits waste as defined in 82 O.S. 1981, §1020.15, shall be guilty of a misdemeanor and upon conviction shall be fined not less than Twenty-Five Dollars (\$25.00) nor more*

than Two Hundred Fifty Dollars (\$250.00) for each offense. After notice that he is in violation, any person who continues to violate and fails to comply within a reasonable length of time is guilty of a separate offense for each day the violation continues. [82:1020.22]

(b) The Board shall not permit any fresh groundwater user to commit waste as defined by §1020.15 of Title 82 of the Oklahoma Statutes.

785:30-1-4. Requirement for water right

(a) **Who should file.** *Any person intending to [82:1020.7] initiate a use of groundwater for beneficial use as defined herein, other than domestic use as defined herein, shall make application and obtain an appropriate permit before completing any fresh water well for such purposes. An application for a permit to use groundwater is not required to be filed for testing. For purposes of this section, testing shall be considered the conducting of a pump, well acceptance, drawdown or aquifer test that will require the continuous pumping of the well for twenty-four (24) hours or less, or the cumulative pumping for seventy-two (72) hours or less within a five (5) day period. If pumping for longer periods occurs or is intended, an application must be filed.*

(b) **Forms to be furnished by the Board.** The Board will furnish, without charge, blank application forms and instructions for filing for a groundwater permit. Each blank on the application shall be filled in by the applicant as accurately and completely as the circumstances permit with all the relevant data. Supplements may be attached if space on the form is insufficient. If a supplement is used, the data entered thereon should be segregated into paragraphs with numbers corresponding to the paragraph numbers of the forms and properly cross-referenced thereto.

(c) **Applications to be amended by applicant.** Groundwater applications will be altered, corrected, amended or revised by the Board only upon written request signed by the applicant or his duly authorized agent. Changes may also be made directly on the application, or filed through the Board's online application service, by the applicant or his duly authorized agent or by telephone instructions to the Board from the applicant or his duly authorized agent to be followed by written confirmation. All changes must meet the requirements of 82 O.S. §§1020.1 et seq. and these rules and regulations.

(d) **Corrections, changes, or amendments to defective applications.** If the application is defective as to form, the Board shall advise the applicant of the corrections, amendments, or changes required and sixty (60) days shall be allowed for the refiling thereof. If the application is not corrected, amended, or changed within the time required, the Board may inactivate the application.

(e) **Corrected applications not filed in time allowed.** Any corrected application filed after the time allowed shall be treated in all respects as an original application received on the date of its refiling.

(f) If an application is filed after non-domestic use of the water has begun, the application filing fee due for the type of permit requested as set forth in Chapter 5 of the Oklahoma Administrative Code, title 785, shall be doubled.

[Source: Amended at 10 Ok Reg 3293, eff 6-25-93; Amended at 11 Ok Reg 2935, eff 6-13-94; Amended at 12 Ok Reg 2689, eff 7-1-95; Amended at 20 Ok Reg 2607, eff 7-11-03; Amended at 27 Ok Reg 1305, eff 5-27-10]

785:30-1-5. Fees

Fees required in filing for groundwater permits and other matters will be charged in accordance with Chapter 5 of this Title.

785:30-1-6. Policy and applicability to prior rights

(a) **Policy.** *It is declared to be the public policy of the State of Oklahoma, in the interest of the agricultural stability, domestic, municipal, industrial and other beneficial uses, general economy, and health and welfare of the State and its citizens, to utilize the groundwater resources of the State, and for that purpose to provide reasonable regulations for the allocation for reasonable use based on hydrologic surveys of fresh groundwater basins or subbasins to determine a restriction on the production based upon the acres overlying the groundwater basin or subbasin.* [82:1020.2]

(b) **Applicability to prior rights.** Several provisions of this Chapter apply to prior rights as well as permits to use groundwater, which prior rights are determined to exist through proceedings of the Board conducted under Subchapter 11 of this Chapter pursuant to Title 82 O.S., Section 1020.14.

SUBCHAPTER 3. PERMIT APPLICATION REQUIREMENTS AND PROCESSING

785:30-3-1. General application requirements

(a) **Application form to be used.** The applicant shall complete an application for a groundwater permit on an electronic or other form approved by the Board, copies of which are provided by the Board, and in the manner described by the form. The application form may be presented to the Board in person, by mail, by readable facsimile transmittal, or through the Board's online application service. With copies of the application form, the Board will provide copies of a sample plat on which information as required by the application form must be indicated. The Board may require that relevant portions of the approved form be completed for applications or petitions to amend an existing groundwater right.

(b) **Written permission of owner required if applicant does not own land.**

Except as provided in 82 O.S., §1020.21, *no permit shall be issued to an applicant who is not the surface owner of the land on which the well is to be located, or hold a valid* [82:1020.11(D)] *right from such surface owner permitting withdrawal of water* [82:1020.11(D)], provided that an owner (or lessee) of a mineral estate severed prior to May 28, 1985, shall not be required to get separate authorization from the surface estate owner, pursuant to the Oklahoma Supreme Court case of Unit Petroleum Co. v. Okla. Water Res. Board. A copy of the ownership documentation or written permission may be required as part of the application.

(c) **Existing and proposed well locations; potential well areas; maximum number of wells to be completed.**

(1) **Locations of existing wells.** The applicant may in the application form Appendix A describe or show the actual location of existing wells by distances in feet from readily identifiable objects or monuments such as section lines or provide latitude/longitude coordinates of existing wells requested to be authorized.

(2) **Locations of proposed wells.** If specific information is known, for instances by test drilling, the actual locations of proposed wells may be shown in the application plat by distances in feet from readily identifiable objects or monuments such as section lines or by latitude/longitude coordinates.

(3) **Potential well areas.** If the applicant does not have specific information as to location of existing or proposed wells, the potential area or areas

where such wells are located or may be drilled and completed on the dedicated lands must be indicated on the application plat. Unless specified well location information is provided, the potential well area information for proposed well locations as indicated on the plat will be used to determine the certified mail notice that the applicant must provide. To be authorized by the permit, specific location information about existing and proposed wells must be provided or the wells must be located in the potential well area or areas.

(4) **Maximum number of wells to be completed.** If the requested permit is issued, it will authorize a maximum number of existing wells and proposed wells to be drilled and completed.

(d) **Additional information.** In addition to the information specified in (a) and (b) of this Section and in the application form, the applicant may be required to submit additional information necessary for proper consideration of the application.

[Source: Amended at 10 Ok Reg 3293, eff 6-25-93; Amended at 11 Ok Reg 2935, eff 6-13-94; Amended at 12 Ok Reg 2689, eff 7-1-95; Amended at 13 Ok Reg 2869, eff 7-1-96; Amended at 15 Ok Reg 2438, eff 6-11-98; Amended at 16 Ok Reg 3227, eff 7-12-99; Amended at 17 Ok Reg 2752, eff 7-1-00; Amended at 20 Ok Reg 2607, eff 7-11-03; Amended at 37 Ok Reg 2294, eff 9-11-20]

785:30-3-2. Additional application requirements for enhanced recovery of oil and gas

(a) To aid the Board in making its determinations, applicants filing for the use of fresh water for enhanced recovery of oil and gas, in addition to all other requirements, must furnish the following as part of and at the time of filing the application:

- (1) A copy of the easements or leases from the surface right owners giving the applicant the right to develop and use the fresh groundwater for the recovery process;
- (2) An estimated schedule of use showing the amount of fresh water used each year in the recovery process;
- (3) An economic study containing the following information:
 - (A) A detailed analysis of the relative cost of obtaining salt water and any other feasible alternative versus the relative cost of obtaining fresh water,
 - (B) Total project costs and the amount of oil and gas expected to be recovered and the value expected to be realized,
 - (C) The estimated value of fresh water for other purposes (purposes or uses common to the area or vicinity subject of the application) as measured against the overall estimated value of the oil or gas to be recovered,
 - (D) The additional expense per barrel recovered if the applicant is required to use or treat salt water instead of fresh water in the recovery process, and
 - (E) An evaluation of other recovery methods or alternatives considered and why recovery requiring the use of fresh water was deemed to be necessary or the most feasible.
- (4) An inventory of all wells, fresh water, salt water, oil, gas, disposal, injection, both active and abandoned, within the boundaries of the proposed unitization and within two (2) miles of the outside boundaries of the proposed unitization;
- (5) The permeability, thickness, and estimated porosity of the injection zone; and

- (6) Information about reuse and recycling the fresh groundwater.
- (b) The applicant may also be required to furnish other relevant material upon request which may include the following:
 - (1) A copy of the unitization plan on file with the Corporation Commission;
 - (2) A copy of each injection well application and the approval of such application by the Corporation Commission;
 - (3) A copy of all logs of each injection well showing the name of each zone containing salt water; and
 - (4) The name and chemical composition of any material or substance proposed to be injected underground in connection with the proposed enhanced recovery operation (other than fresh water).

[Source: Amended at 13 Ok Reg 2869, eff 7-1-96]

785:30-3-3. Acceptance of application for filing; when applications deemed withdrawn

- (a) The date of receipt of an application in the office of the Board shall be endorsed thereon and the application noted in the records.
- (b) If an applicant does not correct an application or publish notice as instructed by the Board, and no further proceedings are initiated by the applicant for six months or more after last contact with the Board, the application shall be deemed withdrawn. The Board shall provide notice to the applicant that the application has been deemed withdrawn.

[Source: Amended at 16 Ok Reg 3227, eff 7-12-99]

785:30-3-4. Notice of application

- (a) **Application notice.** Notice of the application, including hearing date, time and place if scheduled prior to notice, shall be provided by the applicant as required by law and Board instructions. Unless otherwise directed by the Board, such notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county where each existing or proposed well is located. Notice shall also be provided by certified mail to all surface estate owners of lands located within one-thousand three hundred twenty feet (1,320') from actual locations of existing or proposed wells shown on the application plat and from the outside boundaries of any potential well areas shown on the application plat. Accuracy and adequacy of notice shall be the responsibility of the applicant.
- (b) **Proof of notice.** Adequate proof that notice was provided as instructed by the Board shall be submitted to the Board by the applicant within fifteen days after the last date of newspaper publication, or as otherwise directed by the Board. Such proof shall show the dates on which said notice was published in such newspaper and that the applicant did properly notify the surface estate owners as instructed.
- (c) **Failure to give adequate notice.** If adequate notice and proof of notice is not provided by the applicant, the application may be dismissed and the application fee forfeited.
- (d) **Revised published notice of hearing.** The Board may require a revised notice to be published at the applicant's expense in case material error or deviation is made in the description of the land, the well location, *or the manner in which a protest to the application may be made* [82:1020.8], or if the applicant makes substantial amendments to his application after notice of the original application, or fails to effect proper publication in any manner.
- (e) **Protests and hearings.**

- (1) If the Board does not schedule a hearing on the application before instructing the applicant to provide notice, a hearing on the application shall be scheduled by the Board upon receipt of a protest which meets the requirements of Section 785:4-5-4, and the Board shall notify the applicant and protestant of such hearing [82:1020.8].
- (2) Any interested person shall have the right to protest said application and present evidence and testimony in support of such protest. Such protests shall be made in accordance with Chapter 4 of this Title.
- (3) Even if no protest is received, the applicant shall be advised and given opportunity for hearing if the application cannot be recommended for approval to the Board.
- (4) For limited quantity permit applications, interested persons may submit written comments about the application. A hearing on such application may be required by the Executive Director pursuant to 785:30-5-4.1(d) if it is shown that a significant public interest or property right would be affected by approval of the application.

[Source: Amended at 10 Ok Reg 3293, eff 6-25-93; Amended at 11 Ok Reg 2935, eff 6-13-94; Amended at 12 Ok Reg 2689, eff 7-1-95; Amended at 13 Ok Reg 2869, eff 7-1-96; Amended at 13 Ok Reg 3913, eff 8-7-96 (emergency); Amended at 14 Ok Reg 2767, eff 7-1-97; Amended at 17 Ok Reg 2752, eff 7-1-00]

785:30-3-5. Approval of application

- (a) When a person makes an application for a groundwater permit, the Board shall consider relevant evidence and data before taking final action on the application. Subject to subsection (f) of this section, if the Board finds that the applicant owns the surface of the dedicated land or has a valid lease or other legal authority for the taking of groundwater from the land; the dedicated land overlies a fresh groundwater basin or subbasin; the applicant's intended use for the water is a beneficial use; and that waste by depletion and waste by pollution as specified in 82 O.S. § 1020.15 will not occur, then the Board shall approve the application and issue the appropriate permit.
- (b) In making the determination of whether the lands are owned or leased by the applicant, the Board will only consider language on the face of legal instruments used to support or oppose this element.
- (c) In making the determination of whether the lands owned or leased overlie the fresh groundwater basin or subbasin, if a hydrologic survey or report and determination of the maximum annual yield have not been completed, and absent specific evidence to the contrary, the Board will presume that the groundwater underlying the lands dedicated is contained in one groundwater basin as shown in United States Geological Survey and Oklahoma Geological Survey hydrologic atlases. The Board will presume that no subbasin exists unless clear and convincing evidence is presented that the groundwater subject of the application is contained in a confined aquifer and is not hydrologically connected to a main body of water underlying the general area as shown in hydrologic atlases.
- (d) The Board may approve applications proposing well locations on dedicated lands which are not contiguous to other lands dedicated, as long as the lands on which the wells are to be located and the other non-contiguous lands overlie the same groundwater basin. This provision shall be subject to any well spacing orders issued by the Board.
- (e) In determining whether waste will occur, the Board shall consider the following:

(1) Regarding waste by depletion, evidence concerning the manner and method of use proposed, efficiency of system proposed to be used, history and incidents of past waste and applicant's response thereto and the amount of groundwater needed for the purpose proposed in relation to the amount allocated to the land dedicated to the application may be considered by the Board.

(2) Regarding waste by pollution, the Board may consider relevant and admissible evidence regarding the manner and method of all of applicant's uses of fresh groundwater; applicant's well and water distribution system; history and incidents of permitting or causing pollution of groundwater or *failure to properly plug abandoned fresh water wells in accordance with rules of the Board and file reports thereof* [82:1020.15]; and anything else that tends to prove that the applicant will or will not cause or allow groundwater pollution. Provided, however, *[i]f the activity for which the applicant intends to use the water is required to comply with rules and requirements of or is within the jurisdictional areas of environmental responsibility of the Department of Environmental Quality or the State Department of Agriculture, the Board shall be precluded from making a determination whether waste by pollution will occur as a result of such activity* [82:1020.9].

(3) To ensure that waste by pollution or waste by depletion will not occur and that the activities to be conducted by the applicant will not violate Oklahoma Water Quality Standards, the Board may impose conditions on the use of the groundwater.

(f) Applications for use from sensitive sole source groundwater basin; moratorium. When a person makes an application for a permit to use groundwater from a sensitive sole source groundwater basin or subbasin, in addition to the findings described in subsection (a) of this section, the Board must find that *the proposed use of groundwater is not likely to degrade or interfere with springs or stream emanating in whole or in part from water originating from the sensitive sole source groundwater basin or subbasin* [82:1020.9(A)(2)(d)] before it may approve the application and issue the appropriate permit; provided that under Title 82 of the Oklahoma Statutes, Section 1020.9A, effective August 28, 2003, a *moratorium is established on the issuance of any temporary permit that would lead to any municipal or public water supply use of groundwater from a sensitive sole source groundwater basin or subbasin outside of any county that overlays in whole or in part said basin or subbasin* [82:1020.9A(B)(1)] and that *said moratorium shall be in effect until such time as the . . . Board conducts and completes a hydrological survey and approves a maximum annual yield that will ensure that any permit for the removal of water from a sensitive sole source groundwater basin or subbasin will not reduce the natural flow of water from springs or streams emanating from said basin or subbasin* [82:1020.9A(B)(2)].

[Source: Amended at 10 Ok Reg 3293, eff 6-25-93; Amended at 11 Ok Reg 2935, eff 6-13-94; Amended at 12 Ok Reg 2689, eff 7-1-95; Amended at 16 Ok Reg 3227, eff 7-12-99; Amended at 19 Ok Reg 2481, eff 6-27-02; Amended at 21 Ok Reg 2626, eff 7-1-04]

785:30-3-5.1. Prohibition to issuance or amendment of permit and waiver [REVOKED]

[Source: Added at 16 Ok Reg 414, eff 10-22-98 (emergency); Added at 16 Ok Reg 3227, eff 7-12-99; Revoked at 36 Ok Reg 1288, eff 8-11-19]

785:30-3-6. Well spacing

(a) Spacing requirements.

(1) Within bedrock groundwater basins or subbasins where the maximum annual yield has been determined, no new or proposed well(s) shall be authorized by regular permit to be drilled and completed within one thousand three hundred twenty feet (1320') of an authorized existing well or proposed well location on lands of another, provided that the well on lands of another is capable of taking water from the same basin.

(2) Within alluvium and terrace groundwater basins or subbasins where the maximum annual yield has been determined, no new or proposed well(s) shall be authorized by regular permit to be drilled and completed within six hundred sixty feet (660') of an authorized existing well or proposed well location on lands of another, provided that the well on lands of another is capable of taking water from the same basin.

(3) For applications filed on or after October 1, 2019 within minor bedrock groundwater basins or subbasins, no new or proposed well(s) shall be authorized by temporary permit to be drilled and completed within one thousand three hundred twenty feet (1320') of an authorized existing well or proposed well location on lands of another, provided that the well on lands of another is capable of taking water from the same basin.

(4) For applications filed on or after October 1, 2019 within minor alluvium and terrace groundwater basins or subbasins, no new or proposed well(s) shall be authorized by temporary permit to be drilled and completed within six hundred sixty feet (660') of an authorized existing well or proposed well location on lands of another, provided that the well on lands of another is capable of taking water from the same basin.

(5) Spacing requirements for major bedrock basins or subbasins and for major alluvium and terrace basins or subbasins may be imposed on new or proposed wells requested to be authorized by applications for temporary permits filed on or after October 1, 2019, and after the Board has conducted at least one public hearing on the spacing setback provisions at a location within or in close proximity to the major basin or subbasin pursuant to Section 1020.17 of Title 82 of the Oklahoma Statutes.

(6) These well spacing provisions shall not be applicable to plugged or abandoned wells, or wells authorized pursuant to a provisional temporary permit if no regular, temporary, special or limited quantity permit application requesting authorization to use the same wells is filed, provided further that the well spacing provisions shall not be applicable to proposed wells on lands of another if the proposed wells on lands of another are no longer authorized pursuant to 785:30-5-5(a)(9).

(b) Location exceptions. A location exception shall be granted if the person requesting the exception shows and the Board determines in an individual proceeding that drilling or completing the new or proposed well at the location required to comply with the established well spacing set forth in subsection (a) of this section would be inequitable or unreasonable, and that notice, as set forth in 785:30-3-4, of the location exception request is provided.

(1) The following situations are examples to show that compliance with well spacing would be inequitable or unreasonable:

(A) No objection is received from any landowner having a well located within the established well spacing distance of the proposed

well requested to be authorized.

(B) The amount or dimensions of the land dedicated to the permit precludes the drilling of a well in compliance with the spacing requirement set forth in (a) of this section.

(C) The well requested to be authorized is a well which was drilled, completed and used prior to the date of the maximum annual yield determination or prior to October 1, 2019 within temporary basins and which does not meet the spacing requirements of (a) of this section.

(D) The applicant presents substantial, competent evidence to the Board and the Board determines that the amount of groundwater available in locations that would meet spacing requirements is insufficient for the purposes to be authorized.

(2) Criteria and conditions for location exceptions may include compliance with terms to prevent unreasonable impact on other wells within the spacing distance, including:

(A) the rate and timing of the withdrawal of groundwater;

(B) the depth of perforation of the groundwater well; and,

(C) the depth of sealing of the well.

(c) Well spacing within a sensitive sole source groundwater basin.

(1) Within a sensitive sole source groundwater basin where the maximum annual yield has been determined:

(A) No new or proposed well shall be drilled and completed within a one thousand three hundred twenty feet (1320') radius of a spring that flows 50 or more gallons per minute, emanates from the basin and is identified in Appendix D to this Chapter or in the National Water Information System database of the United States Geological Survey (USGS);

(B) No new or proposed well shall be drilled and completed within a two (2)-mile radius of a spring that flows 500 or more gallons per minute, emanates from the basin and is identified in Appendix D to this Chapter or in the National Water Information System database of the United States Geological Survey (USGS), unless the Board first determines that the total amount of groundwater authorized to be used from all wells within that radius is no more than 1600 acre feet per year; and

(C) No new or proposed well shall be drilled and completed within one (1) mile of a stream segment considered to be perennial in the U.S. Geological Survey's National Hydrology Dataset and with a base flow of 500 gallons per minute that emanates from the basin.

(2) Provided, an applicant may obtain an exception from the provisions of paragraph (1) of this subsection (c) if:

(A) The applicant first demonstrates to the satisfaction of the Board that the cumulative impact of pumping from the new or proposed well together with authorized pumping from existing and proposed wells will not cause a reduction of more than 25% of the base flow of the subject spring or stream; or

(B) The amount or dimensions of the land dedicated to the permit precludes the drilling of a well in compliance with the provisions of paragraph (1) of this subsection (c).

(3) Notwithstanding any other provision of this subsection (c), the Board shall not authorize any new or proposed well within a sensitive sole source groundwater basin where the maximum annual yield has been determined if the use of that well *is likely to degrade or interfere with springs or streams emanating in whole or in part from [82:1020.9(A)(1)(d)] the basin.*

[Source: Amended at 10 Ok Reg 3293, eff 6-25-93; Amended at 12 Ok Reg 2689, eff 7-1-95; Amended at 13 Ok Reg 2869, eff 7-1-96; Amended at 14 Ok Reg 2767, eff 7-1-97; Amended at 15 Ok Reg 2438, eff 6-11-98; Amended at 17 Ok Reg 2752, eff 7-1-00; Amended at 21 Ok Reg 2626, eff 7-1-04; Amended at 27 Ok Reg 1305, eff 5-27-10; Amended at 31 Ok Reg 2506, eff 9-12-14; Amended at 36 Ok Reg 1288, eff 8-11-19]

SUBCHAPTER 5. GROUNDWATER PERMITS

785:30-5-1. Regular permit

(a) *A regular permit is an authorization to put groundwater to beneficial use for other than domestic purposes. [82:1020.11(A)]*

(b) *The regular permit shall be granted only after completion of the hydrologic survey and determination of the maximum annual yield for the appropriate basin or subbasin. [82:1020.11(A)]*

(c) *A regular permit shall allocate to the applicant his proportionate part of the maximum annual yield of the basin or subbasin. [82:1020.9]*

(d) *His proportionate part shall be that percentage of the total annual yield of the basin or subbasin previously determined to be the maximum annual yield...which is equal to the percentage of the land overlying the fresh groundwater basin or subbasin which he owns or leases. [82:1020.9]*

(e) *The permit shall specify the location of the permitted well or wells. [82:1020.9]*

(f) *A regular permit shall not be granted for less than the remaining life of the basin or subbasin as previously determined by the Board. [82:1020.9]*

(g) *If the lands dedicated to the application overlie two or more groundwater basins which overlie each other and both basins have had maximum annual yields determined, the amount to be authorized by the regular permit shall be calculated on the basin having the greatest maximum annual yield. [82:1020.9]*

(1) If the existing or proposed well(s) are completed in both groundwater basins or subbasins, so that the well(s) are capable of taking water from both basins or subbasins, the amount to be authorized by the regular permit shall be calculated on the basin or subbasin having the greatest maximum annual yield.

(2) If the existing or proposed well(s) are completed in only one of the groundwater basins or subbasins, the amount of water authorized by the regular permit shall be calculated on the maximum annual yield for that basin or subbasin.

(h) If the lands dedicated to the application overlie two or more groundwater basins which overlie each other and the maximum annual yield has been determined for at least one but not all the basins or subbasins, a regular permit shall be issued. See also 785:30-5-2(b)(4).

[Source: Amended at 11 Ok Reg 2935, eff 6-13-94; Amended at 12 Ok Reg 2689, eff 7-1-95; Amended at 17 Ok Reg 2752, eff 7-1-00]

785:30-5-2. Temporary permits

(a) Temporary permit purposes; procedures for granting.

(1) *A temporary permit is an authorization for the same purposes as a regular permit but is granted by the...Board prior to completion of the hydrologic survey and the determination of the maximum annual yield of*

the basin or subbasin and must be revalidated annually during its term.

[82:1020.11(B)]

(2) The procedures provided for the granting of regular permits shall be applicable to the granting of temporary...permits except that the completion of the hydrologic survey shall not be a condition precedent. [82:1020.10]

(b) Amount of water allocated by temporary permit.

(1) Except as provided in this subsection, unless requested by a majority of the...owners of the land [82:1020.11(B)] overlying the fresh groundwater basin or subbasin, or by the applicant, the water allocated by a temporary permit shall not be less than two (2) acre-feet annually for each acre of land owned or leased by the applicant in the basin or subbasin.

[82:1020.11(B)]

(2) However, if the applicant presents clear and convincing evidence that allocations in excess of two (2) acre-feet annually for each acre of land overlying the basin or subbasin will not exhaust the water thereunder in less than twenty (20) years, then the Board may issue temporary permits in such basin or subbasin in such amounts in excess of said limitation as will assure a minimum of twenty (20) year life for such basin or subbasin.

[82:1020.11(B)]

(3) Less than two (2) acre-feet per acre annually may be granted if the applicant requests a lesser amount, or if the evidence submitted shows that an amount at two acre-feet per acre would not be of beneficial use or would constitute waste.

(4) If the lands dedicated to the application overlie two or more groundwater basins or subbasins which overlie each other and the maximum annual yield has been determined for at least one but not all the basins or subbasins, a temporary permit may be issued to the applicant if the applicant demonstrates by substantial competent evidence that the water to be withdrawn by the temporary permit will not be taken from a basin or subbasin for which the maximum annual yield has been determined. [82:1020.9]

(A) If applicant intends to take water from both groundwater basins or subbasins, then a temporary permit may be issued only if the individual well(s) are or will be completed in only the basins or subbasins which have not had a maximum annual yield determined and a separate permit will be required for the withdrawal of groundwater from well(s) in each basin or subbasin for which a maximum annual yield has been determined.

(B) If existing or proposed well(s) dedicated to the application are completed in more than one groundwater basin or subbasin so that the wells are capable of taking water from both basins or subbasins, a temporary permit may not be issued.

(5) If the land overlies two or more groundwater basins which overlie each other and the maximum annual yield has not been determined for any of the basins or subbasins, more than one temporary permit may be issued for the land if the applicant demonstrates by substantial competent evidence from which basin the water will be withdrawn for each of the permits.

[82:1020.9]

(c) Annual revalidation and expiration of temporary groundwater permits.

(1) A temporary groundwater permit must be revalidated annually during its term. [82:1020.11(B)]

(2) *Water use report forms will be mailed in January to each temporary permit holder.* [82:1020.11(B)] The water use report form shall include information about the requirement to return the completed form in a timely manner, and shall specify the date by which the form must be returned.

(3) *Timely return of the completed, signed, and dated water use report form to the Board shall automatically revalidate a temporary groundwater permit if the revalidation is not protested and if the use report does not reflect any permit-water use violations* [82:1020.11(B)]. The return of the completed, signed and dated water use report on or before the specified return date shall be considered timely and shall be considered a timely request to revalidate the temporary permit.

(4) *The temporary permit shall lapse at expiration of its term, revocation, cancellation, suspension, or upon the issuance of a regular permit, whichever shall occur first.* [82:1020.11(B)] Failure to return a completed, signed and dated water use report form by the date specified may be considered a willful failure to report annual water usage and subject to the provisions of 785:30-5-7.

(5) Revalidation protest procedures are as follows:

(A) *If an objection against the revalidation of a temporary groundwater permit is in writing, satisfies the requirements of 785:4-5-4, and is received by the Board by February 28th of the year following the water use report year, or by a later date specified by the Board in its newsletter or on its website, then the objection shall constitute a protest against the application and the Board* [82:1020.11(B)] *will immediately set a date for hearing and notify the applicant and protestant(s) of the time and place of the hearing* [82:1020.11(B)]. Objections that are not timely received or do not satisfy 785:4-5-5 will be considered only as comments in opposition to the application, but such comments will be made part of the permanent record of the proceeding. Persons who submit objections that do not qualify as protests will not be named as parties to the proceeding.

(B) *At the hearing, any interested person may appear and present evidence and argument in support of or in opposition to the protest and revalidation.* [82:1020.11(B)]

(C) *At the hearing on the revalidation protest, matters previously presented or considered and adjudicated shall not be subject to reconsideration or readjudication* [82:1020.11(B)].

(D) *The protest issues which may be entertained shall be limited to matters not previously determined, such as (for example only) a material or substantial change in conditions since issuance of the permit; evidence of the applicant's noncompliance with any of the terms, provisions or conditions of the permit; or subsequent violation of the Oklahoma Groundwater Law...or these rules and regulations* [82:1020.11(B)] related to the permit issued. Proposed findings of fact, conclusions of law and Board Order will be presented to the Board for its consideration.

(d) Requests for revalidation of certain temporary permits to be considered as applications for new permits; moratorium.

(1) Pursuant to Title 82 of the Oklahoma Statutes, Section 1020.9A, *[a]ny revalidation of a temporary permit, in effect on August 28, 2003, that*

allows for any municipal or public water supply use of groundwater from a sensitive sole source groundwater basin outside any county that overlays in whole or in part said basin shall be considered a new permit application and subject to the provisions of Senate Bill No. 288 of the First Regular Session of the 49th Legislature.

(2) A provision of Senate Bill No. 288 of the First Regular Session of the 49th Legislature establishes a moratorium *on the issuance of any temporary permit that would lead to any municipal or public water supply use of groundwater from a sensitive sole source groundwater basin or subbasin outside of any county that overlays in whole or in part said basin or subbasin* [82:1020.9A(B)(1)] and that *said moratorium shall be in effect until such time as the . . . Board conducts and completes a hydrological survey and approves a maximum annual yield that will ensure that any permit for the removal of water from a sensitive sole source groundwater basin or subbasin will not reduce the natural flow of water from springs or streams emanating from said basin or subbasin* [82:1020.9A(B)(2)].

(3) If the holder of a temporary permit that lists municipal use or public water supply use as an authorized purpose certifies that the groundwater will not be used outside any county that overlays in whole or in part a sensitive sole source groundwater basin or subbasin, the request to revalidate such a temporary permit shall not be considered a new permit application. The filing of such a certification shall be deemed to be a request to amend the temporary permit to add a condition to prohibit the use of the groundwater outside any county that overlays in whole or in part a sensitive sole source groundwater basin or subbasin.

[Source: Amended at 11 Ok Reg 2935, eff 6-13-94; Amended at 12 Ok Reg 2689, eff 7-1-95; Amended at 17 Ok Reg 2752, eff 7-1-00; Amended at 21 Ok Reg 2626, eff 7-1-04]

785:30-5-3. Special permits

(a) Special permit purpose.

(1) *A special permit is an authorization by the Board in lieu of or in addition to a regular or temporary permit. The special permit is granted to put groundwater to a beneficial use which shall require quantities of water in excess of that allocated under a regular or temporary permit.*

[82:1020.11(C)]

(2) *The water so authorized may be used only for the purpose designated in the permit.* [82:1020.11(C)]

(3) The applicant must establish that the lands dedicated to the special permit overlie a fresh groundwater basin, are owned or leased by the applicant, and that waste will not occur.

(b) Duration of special permits.

(1) *A special permit shall be granted for a period not to exceed six (6) months and may be renewed three (3) times upon written request of the applicant prior to the expiration of said permit and approval by the Board.*

[82:1020.11(C)]

(2) *Successive special permits shall not be granted for the same purpose.*

[82:1020.11(C)]

(3) *A special permit is subject to revocation or cancellation upon failure to use the water for the purpose granted.* [82:1020.11(C)]

[Source: Amended at 11 Ok Reg 2935, eff 6-13-94]

785:30-5-4. Provisional temporary permits

- (a) A provisional temporary permit is a nonrenewable permit granted by and at the discretion of the Executive Director.
- (b) The permit is only effective *for a period not to exceed ninety (90) days* [82:1020.10] and is subject to cancellation at any time during its term.
- (c) No hearings are held, no application notice or data is published and no notice to surface estate owners is required on applications for this type of permit.
- (d) The application may be approved and the permit may be issued summarily and immediately upon administrative approval where it appears from the verified application and supporting material filed therewith that the permit issuance conditions described in 82 O.S. 1981, §§1020.9 and 1020.11(D) are satisfied and that well spacing distances, as specified in 785:30-3-6, and other conditions as may be required by the Board, are met.
- (e) On applications in which the applicant is not the surface owner of the lands upon which the water well is to be located, the applicant must satisfy the requirements of 82 O.S. 1981, §1020.11(D) and 785:30-3-1(b).
- (f) Provisional temporary permit holders are required to notify the Board in writing within thirty (30) days after the expiration of their permit as to the disposition of the well covered under the permit.

[Source: Amended at 11 Ok Reg 2935, eff 6-13-94; Amended at 12 Ok Reg 2689, eff 7-1-95]

785:30-5-4.1. Limited quantity permits

- (a) The Executive Director of the Board may administratively issue regular, temporary or special permits to use 15 acre-feet or less of groundwater in a calendar year or during its term if the term is less than one year [82:1020.10].
- (b) Notice of the application shall be given by the applicant to owners of land located within six hundred feet (600') or within the applicable well spacing distance (if greater) of the boundaries of the ten acre tract within which applicant's wells will be located; or as otherwise directed by the Board.
- (c) Written comments about the application must be filed with the Board within ten (10) days after the date of receipt of notice.
- (d) The permit may be issued or denied summarily and immediately after the ten (10) day period at the discretion of the Executive Director, provided that the Executive Director may require that a hearing on the application be held. After such hearing, the application shall be presented to the Board with proposed findings of fact and conclusions of law for consideration.
- (e) Limited quantity permits cannot be combined to authorize the use of more than a total of 15 acre-feet per year.

[Source: Added at 13 Ok Reg 3913, eff 8-7-96 (emergency); Added at 14 Ok Reg 2767, eff 7-1-97]

785:30-5-5. Contents of permits

- (a) Every regular, temporary, special, marginal water, and provisional temporary permit issued by the Board shall contain substantially the following:
 - (1) Date of filing.
 - (2) The county or counties in which the well(s) is or are located.
 - (3) The permit number and date issued, which shall be the date the permit is approved by the Board or where appropriate, by the Executive Director.
 - (4) The name and address to whom issued.
 - (5) The amount of water in acre-feet authorized to be withdrawn annually.

- (6) The purpose for which the water will be used and the legal description of the land dedicated to the permit.
- (7) The legal description of the well location(s) to the nearest ten (10) acre subdivision, or by indicating "center of" when applicable for a larger tract of land.
- (8) Groundwater basin(s) or formation(s) from which water is to be withdrawn.
- (9) If a proposed well is not drilled and completed within one (1) year of permit issuance, groundwater will no longer be authorized to be withdrawn from that location unless a written request to extend the drilling period is approved by the Executive Director.
- (b) In addition to the above, the permit shall contain any additional terms, conditions, limitations, or restrictions the Board may prescribe and on which the applicant agrees or as ordered after notice and hearing.

[Source: Amended at 10 Ok Reg 3293, eff 6-25-93; Amended at 11 Ok Reg 2935, eff 6-13-94; Amended at 12 Ok Reg 2689, eff 7-1-95; Amended at 14 Ok Reg 2767, eff 7-1-97; Amended at 14 Ok Reg 3770, eff 8-20-98 through 7-14-98 (emergency)¹; Amended at 37 Ok Reg 2294, eff 9-11-20]

EDITOR'S NOTE: ¹This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 7-15-98 (after the 7-14-98 expiration of the emergency action), the text of 785:30-5-5 reverted back to the text as was last published in the 1997 OAC Supplement, and re-published in the 1998 through 2000 OAC Supplements and 2001 through 2016 Editions of the OAC, and remained as such until amended by permanent action on 9-11-20.

785:30-5-6. Acceptance of permit by permittee

Acceptance of the permit shall be an acknowledgement and agreement by the permittee that permittee will comply with all the terms, provisions, limitations, conditions and restrictions contained in such permit.

[Source: Amended at 12 Ok Reg 2689, eff 7-1-95]

785:30-5-7. Cancellation or suspension of permits

- (a) Any regular, temporary, marginal water, or special permit may be cancelled by the Board upon willful failure of the applicant to report annual usage upon proper notice and hearing as provided in the Administrative Procedures Act.
- (b) In addition thereto, if any person commits waste as defined in 82 O.S. §1020.15, *the Board shall immediately institute action to enjoin in a court of competent jurisdiction and may suspend any permit to take water as long as such waste continues.* [82:1020.15]
- (c) Any permit for marginal water may be reopened, amended, suspended, or cancelled by the Board at any time for failure to comply with the permit terms, limitations, or restrictions, or any provision of the relevant statutes or rules, upon proper notice and hearing as provided in the Administrative Procedures Act and the Board's rules.

[Source: Amended at 37 Ok Reg 2294, eff 9-11-20]

785:30-5-8. Voluntary surrender of permits

- (a) *The Board may accept the surrender of groundwater permits by the holder thereof.* [82:1020.13]
- (b) Forms for surrender shall be furnished by the Board, and the holder's signature thereon shall be notarized.

785:30-5-9. Annual reports of water use

- (a) Water use report forms will be mailed during January of each year to every holder of a valid prior right and every regular, marginal water, and temporary permit holder, with the exception of persons holding special permits, who must complete same and return to the Board within thirty (30) days of receipt.
- (b) This report shall become a part of each permit record.
- (c) *Willful failure to report annual usage may result in cancellation of the permit.*
[82:1020.12]
- (d) Holders of special permits are required to complete and return a water use report within thirty (30) days after expiration of such permit. Holders of provisional temporary permits will not be required to complete and return a water use report.

[Source: Amended at 12 Ok Reg 2689, eff 7-1-95; Amended at 13 Ok Reg 2869, eff 7-1-96; Amended at 37 Ok Reg 2294, eff 9-11-20]

785:30-5-10. Marginal water permits

- (a) In addition to the requirements of this section, all marginal water permits must comply with rules in 30-5-5.
- (b) Any well used for the marginal water permit must meet well construction rules as specified in OAC 785:35-7-3(b)(2) so as to not contaminate fresh water resources.
- (c) Wells used for marginal water permits shall be metered with the pumping rate logged and volume withdrawn recorded. Meter records shall be kept by the permit holder for the duration of the marginal water permit, and available to submit to the Board, upon request. The permit holder shall maintain records showing the meter is properly calibrated and make them available to the Board upon request.
- (d) If the permit applicant can provide hydrologic information of the expected volume of marginal water underlying the proposed acreage of dedicated lands for the marginal water permit, the applicant may request the entire volume of marginal water to be permitted from the Board, with no annual limitation on withdrawal amount, until such time as the applicant withdraws the total permitted amount of marginal water.
- (e) If the permit applicant cannot provide hydrologic information, as directed by subsection (d) of this section, the applicant will be allowed to dedicate land overlying the same geologic formation, as determined by the Board, containing the marginal water. In the event the Board determines the geologic formation not sufficient, the Board may allow the applicant to dedicate lands within the same county or contiguous county for use on the marginal water permit. Marginal water permits dedicated to lands based on geologic formation or county will be permitted a minimum of four acre-feet per acre
- (f) As determined by staff, and as approved by the Board, water quality sampling measuring total dissolved solids shall occur after every 100 acre feet withdrawn and must be submitted to the Board to verify total dissolved solids are between five thousand and ten thousand parts per million. The well should be purged three well volumes prior to sampling. If that is not possible, alternate methods of purging can be considered. These can include, chemical parameter stabilization where pH and specific conductance remain constant for at least three consecutive measurements, or if the well is pumped dry prior to three well volumes, it can be considered sufficiently purged, or using low flow methods where a pump or sampler is placed directly at the screen.
- (g) Water quality sampling results for total dissolved solids from an accredited laboratory must be submitted to the Board. The Board may approve annual sampling after two years of readings between five and ten thousand parts per

million.

(h) When the permit holder becomes aware of total dissolved solids below five thousand parts per million, the permit holder must report to the Board within 48 hours. Staff may determine that the permit holder will be required to apply for permit authorization for a provisional temporary permit or a regular permit.

[Source: Added at 37 Ok Reg 2294, eff 9-11-20]

SUBCHAPTER 7. AMENDMENTS TO GROUNDWATER RIGHTS

785:30-7-1. Adding or changing uses, or increasing the amount of water allocated to a permit

(a) Adding or changing a use, or increasing the amount of water allocated to a permit.

(1) The permittee may add a use or change a use from that specified in the permit upon approval of such addition or change by the Board. The permittee may increase the amount of water authorized by an existing permit for lands already dedicated to that permit upon approval of such addition by the Board.

(2) Petitions for such addition or change shall be made in writing.

(b) The petition to add or change a use or increase the amount of water allocated to a permit, shall be considered and granted pursuant to the following:

(1) The permittee must give notice as set forth in 785:30-3-4.

(2) *Upon receipt of a protest which meets the requirements of Section 785:4-5-4, the Board shall schedule a hearing on the petition and notify the applicant and protestant of such hearing.* [82:1020.8] Even if no protest is received, the petitioner shall be advised and given an opportunity for hearing if the petition cannot be recommended for approval to the Board. The Board shall determine whether the proposed use is a beneficial use and whether waste as described in 785:30-3-5 will occur by the proposed use.

(3) If the Board finds that the use is beneficial and that there is no indication that waste will occur, the Board shall approve the request by amending the permit.

[Source: Amended at 11 Ok Reg 2935, eff 6-13-94; Amended at 12 Ok Reg 2689, eff 7-1-95; Amended at 13 Ok Reg 2869, eff 7-1-96]

785:30-7-2. Adding or changing location of use

(a) The prior right holder or permittee may add or change a location of use from that specified in the prior right or permit upon approval of such addition or change by the Board.

(b) Requests for such addition or change shall be made in writing.

(c) Notice as required in 785:30-3-4 shall not be required unless otherwise determined by the Board.

[Source: Amended at 16 Ok Reg 3227, eff 7-12-99]

785:30-7-3. Change of well location [REVOKED]

[Source: Revoked at 11 Ok Reg 2935, eff 6-13-94]

785:30-7-4. Adding or replacing a well for the purpose of exercising prior rights or existing permits

(a) **Additional wells.**

(1) The holder of a permit or prior right may make a written petition to the Board for approval of an additional well(s) where such well(s) is or are necessary in order to withdraw the amount authorized by the existing permit. If ownership of the land, permit or prior right changes after the petition is filed, the petitioner must promptly notify the Board and notice of such change may be required.

(2) The petition shall be filed prior to drilling the well(s) on forms provided by the Board and shall be accompanied by a map or plat (see APPENDIX A of this Chapter). The additional well(s) must be located on lands dedicated to a permit to take and use groundwater from the same groundwater basin, be drilled and used to prevent waste and meet applicable well spacing requirements or location exceptions.

(3) The Executive Director shall approve the petition, provided:

(A) That the new well location meets established well spacing or is not closer than one-thousand three hundred twenty feet (1320') from lands owned by another if well spacing is not applicable; or

(B) That, if well spacing is not applicable, there is submitted a written statement from each surface estate owner owning land closer than one-thousand three hundred twenty feet (1320') from the well requested to be authorized, stating that he or she has no objection to the new well location.

(4) If one of the above enumerated conditions cannot be met, the permittee must give notice as set forth in 785:30-3-4 regarding each additional proposed well. If a protest is received, the Board shall schedule a hearing and notify the applicant and protestant of such hearing. Even if no protest is received, the petitioner shall be given opportunity for hearing if the petition cannot be recommended for approval to the Board.

(b) Replacement well.

(1) For well locations authorized by a permit or prior right, a replacement well may be drilled on dedicated lands without prior approval from the Executive Director if the proposed replacement well will not be closer than meets established well spacing or will not be closer than one-thousand three hundred twenty feet (1320') from lands owned by another if well spacing is not applicable.

(2) For a well location authorized by permit or prior right where the proposed replacement well location is within one-thousand three hundred twenty feet (1,320') of lands owned by another, the replacement well may be drilled on lands relied on to establish the prior right or dedicated lands without prior approval of the Executive Director, provided the replacement well is within two-hundred fifty feet (250) of the well to be replaced.

(3) If paragraphs (1) or (2) of this subsection cannot be met, a petition for an additional well may be filed.

(c) Location of wells identified. A legal description or multi-purpose completion report such as that required by 785:35-5-3 showing the location of the well to the nearest ten (10) acre tract shall be submitted to the Board within sixty (60) days after completion of any additional or replacement well.

[Source: Amended at 10 Ok Reg 3293, eff 6-25-93; Amended at 11 Ok Reg 2935, eff 6-13-94; Amended at 12 Ok Reg 2689, eff 7-1-95; Amended at 13 Ok Reg 2869, eff 7-1-96; Amended at 36 Ok Reg 1288, eff 8-11-19]

785:30-7-5. Dedicating additional land and groundwater to an existing permit

(a) The Board may approve a petition by the holder of an existing permit issued after July 1, 1973 to amend the permit by dedicating additional land and groundwater, and increasing the amount of water authorized to be withdrawn under the permit, provided that the additional land must overlie the same groundwater basin or subbasin from which groundwater is withdrawn under the existing permit and any new wells on the added lands must withdraw groundwater from the same groundwater basin.

(b) The permit holder shall give notice of such petition as set forth in 785:30-3-4.

(c) *Upon receipt of a protest which meets the requirements of Section 785:4-5-4, the Board shall schedule a hearing on the petition and notify the petitioner and protestant of such hearing.* [82:1020.8] Any interested person shall have the right to protest such petition and present evidence and testimony in support of such protest. Even if no protest is received, the petitioner shall be given opportunity for hearing if the petition cannot be recommended for approval to the Board.

(d) Such protests shall be made in accordance with Chapter 4 of this Title.

(e) Action by the Board shall be in accordance with 785:30-3-5.

[Source: Amended at 11 Ok Reg 2935, eff 6-13-94; Amended at 13 Ok Reg 2869, eff 7-1-96; Amended at 16 Ok Reg 3227, eff 7-12-99]

785:30-7-6. Change of address

When the owner of a water right makes a change in his mailing address, he or his agent shall notify the Board in writing of the new address and shall reference his water right number(s).

785:30-7-7. Transfer of groundwater rights

(a) Upon transfer of groundwater rights, the new owner shall provide a notarized statement or other evidence deemed necessary to the Board of the transfer and change of address and submit the transfer fee as specified in Chapter 5 of this Title. If notification is made by the previous owner, the Board shall advise the new owner of the transfer procedure, and he shall then have thirty (30) days to submit the transfer fee and notarized statement or other evidence of the transfer, or the water right or permit, as the case may be, will be subject to cancellation.

(b) Upon transferring a portion of groundwater rights, the new owner shall notify the Board of the transfer and change of address and submit evidence of such transfer and the transfer fee as specified in Chapter 5 of this Title. Unless the parties to the transfer submit specific evidence establishing their respective rights to the groundwater, the existing groundwater right will be divided proportionately based on the amount of the land relied on to establish a prior right or dedicated to a permit and transferred to the new owner. If the groundwater right authorizes more than one purpose, the amounts for each purpose will be adjusted proportionately, unless the parties have specified otherwise. The original groundwater right number with additional designations will be used to identify the files.

[Source: Amended at 11 Ok Reg 2935, eff 6-13-94; Amended at 12 Ok Reg 2689, eff 7-1-95]

785:30-7-8. Consolidation of permits

(a) Permits to use groundwater can be consolidated for annual use reporting purposes only and under the following circumstances:

- (1) The permittee files a written application to consolidate with proper fee;
- (2) Consolidation will facilitate the reporting of groundwater use;
- (3) The permits are of the same class and are held by the same owner;
- (4) The lands dedicated to the permits overlie the same groundwater basin;

- (5) The number of wells and withdrawal rate of the wells authorized under the permits will not be changed;
- (6) The lands dedicated to the permits are within the same county.
- (b) The Executive Director may approve the application to consolidate if the requirements of subsection (a) of this section are shown. A new permit number, designated with the year the application to consolidate was filed, shall be given to the consolidated permit.

[Source: Added at 10 Ok Reg 3293, eff 6-25-93; Amended at 13 Ok Reg 2869, eff 7-1-96; Revoked at 14 Ok Reg 2767, eff 7-1-97; Amended at 30 Ok Reg 884, eff 6-13-13]

785:30-7-9. Change of basin or subbasin for proposed or existing well(s)

- (a) The permittee may petition to change the groundwater basin or subbasin indicated on the permit from which the authorized well(s) will withdraw groundwater. Such requests must be for all well(s) authorized by the permit.
- (b) The petition shall be filed prior to drilling the proposed well(s) or deepening the existing well(s).
- (c) Notice of the petition as specified in 785:30-3-4 must be given.

[Source: Added at 11 Ok Reg 2935, eff 6-13-94]

SUBCHAPTER 9. MAXIMUM ANNUAL YIELD DETERMINATIONS

785:30-9-1. Hydrologic surveys and investigations

- (a) *Prior to making orders establishing the tentative maximum annual yield for major groundwater basins or subbasins therein, the Board shall make hydrologic surveys and investigations. The Board is authorized to cooperate with state and federal agencies engaged in similar surveys and investigations and may accept and use the findings of such agencies. [82:1020.4]*
- (b) *Prior to making orders establishing the tentative maximum annual yield for minor groundwater basins or subbasins therein, the Board shall prepare reports using information from hydrologic surveys and investigations of groundwater basins or subbasins having substantially the same geological and hydrological characteristics and data from wells in such basin or subbasins and other relevant information. [82:1020.4]*

[Source: Amended at 11 Ok Reg 2935, eff 6-13-94]

785:30-9-2. Determination of maximum annual yield

- (a) *After completing the hydrologic survey, the Board shall make a tentative determination of the maximum annual yield of groundwater to be produced from each major groundwater basin or subbasin therein. Such determination shall be based upon the following:*
 - (1) *The total land area overlying the basin or subbasin;*
 - (2) *The amount of water in storage in the basin or subbasin at the time of the survey or investigation;*
 - (3) *The rate of recharge to the basin or subbasin and total discharge from the basin or subbasin the time of the survey or investigation;*
 - (4) *Transmissibility or transmissivity of the basin or subbasin; and*
 - (5) *The possibility of pollution of the basin or subbasin from natural sources.*
- (b) *The maximum annual yield of each groundwater basin or subbasin shall be based upon a minimum basin or subbasin life of twenty (20) years from the order*

establishing the final determination of the maximum annual yield. [82:1020.5]

(c) For minor groundwater basins or subbasins therein, the tentative determination of the maximum annual yield shall be based upon present and reasonably foreseeable future use of groundwater from such basin or subbasin, recharge and total discharge, the geographical region in which the basin or subbasin is located and other relevant factors. [82:1020.5(C)]

(d) The maximum annual yield of each minor groundwater basin or subbasin shall be based upon a minimum basin or subbasin life of twenty (20) years from the order establishing the final determination of the maximum annual yield.

(e) The maximum annual yield for a sensitive sole source groundwater basin or subbasin will ensure that any permit for removal of water from the basin or subbasin will not reduce the natural flow of water from springs or streams emanating from said basin or subbasin [82:1020.9A(B)(2)].

[Source: Amended at 11 Ok Reg 2935, eff 6-13-94; Amended at 21 Ok Reg 2626, eff 7-1-04]

785:30-9-3. Annual yield hearings

(a) Once the Board has set a tentative maximum annual yield for the groundwater basin or subbasin, the Board shall call and hold hearings at centrally located places within the area of the major groundwater basin or subbasin or in the county for minor groundwater basins or subbasins [82:1020.6] if such hearings are requested.

(b) Copies of the order and notices of the tentative determination and how to formally request a hearing shall be mailed by first class mail or post card to the address of record of all holders of permits to use groundwater from the basin or subbasin subject of the yield proceedings.

(c) Notice of the tentative determination and how to formally request a hearing on the tentative order such hearings shall be published in a newspaper of general circulation in each county having lands that overlie the basin or subbasin. The notice shall be published at least once per week for two (2) consecutive weeks and the last publication shall be at least thirty (30) days prior to the date of the hearing if a hearing is requested and held. Notice and hearing on the tentative determination of the maximum annual yield for minor groundwater basins or subbasins may be consolidated. [82:1020.11(B)] Notice of the tentative determination and how to formally request a hearing on the tentative order may also be published in the Oklahoma Water News, the periodic newsletter of the Board.

(d) Such hearings, if requested, will be held in accordance with the Administrative Procedures Act and Chapter 4 of this Title.

(e) Prior to such hearings being held, the Board shall make copies of such hydrologic survey available for inspection and examination by all interested persons and, at such hearings, shall present evidence of the geological findings and determinations upon which the tentative maximum annual yield has been based.

(f) Any interested party shall have the right to present evidence in support or opposition thereto. [82:1020.6]

[Source: Amended at 11 Ok Reg 2935, eff 6-13-94; Amended at 12 Ok Reg 2689, eff 7-1-95; Amended at 13 Ok Reg 2869, eff 7-1-96]

785:30-9-4. Final determination as to the maximum annual yield to be allocated

(a) After hearings are completed, but no longer than one (1) year after the tentative order has been approved unless otherwise deemed necessary by the Board, the

Board shall then proceed to make its final determination as to the maximum annual yield of groundwater which shall be allocated to each acre of land overlying such basin or subbasin by issuing a final order containing findings of fact and conclusions of law, which order shall be subject to judicial review pursuant to Article II of the Administrative Procedures Act. [82:1020.4(C)]

(b) Determinations of maximum annual yields are not rules, rulemaking procedures of the APA are not followed; and the declaratory judgment provision of the APA is inapplicable.

[Source: Amended at 11 Ok Reg 2935, eff 6-13-94]

785:30-9-5. Updating hydrologic surveys

The Board shall review and update, if necessary, the hydrologic surveys...at least every twenty (20) years after issuance of the final order determining the maximum annual yield. [82:1020.4]

[Source: Amended at 11 Ok Reg 2935, eff 6-13-94]

785:30-9-6. Issuance of regular permit to temporary permit holder

(a) As soon as practical after the maximum annual yield and equal proportionate share have been determined for a groundwater basin or subbasin, the Board shall issue a regular permit to each holder of a temporary permit to use groundwater from said basin.

(b) In issuing these regular permits, the Board shall notify the temporary permit holder by first class mail that his equal proportionate share of the basin or subbasin has been determined, that a regular permit has been issued to him based on this allocation, and that his temporary permit has lapsed. A copy of the regular permit shall be included with this notification.

(c) If the temporary permit listed more than one purpose and amounts for each, and the equal proportionate share is less than the total allocated by the temporary permit, the amounts for each purpose will be adjusted proportionately in a ratio equal to the amount for each purpose and the total under the temporary permit.

(1) A request to adjust amounts may thereafter be granted without notice and hearing, provided that the maximum amount for any one of the purposes cannot be greater than the amount allocated for that purpose in the temporary permit.

(2) Such request must be filed within 30 days of receipt of the regular permit.

(d) The regular permit shall contain the condition that no new wells shall be drilled closer than the established well spacing distance, as provided in 785:30-3-6, unless a location exception is granted.

[Source: Amended at 12 Ok Reg 2689, eff 7-1-95; Amended at 13 Ok Reg 2869, eff 7-1-96; Amended at 31 Ok Reg 2506, eff 9-12-14]

SUBCHAPTER 11. ADMINISTRATIVE DETERMINATION OF PRIOR RIGHTS TO GROUNDWATER

785:30-11-1. General provisions relating to prior rights

(a) **Applications filed prior to effective date of groundwater act.** Applications filed with the Board prior to July 1, 1973, shall be used in granting permits for wells existing prior to July 1, 1973.

(b) **Prior use of groundwater.** *Nothing in [82:1020.14] 82 O.S. 1981, §§1020.1 through 1020.22 inclusive, shall be construed to deprive any person of any right of groundwater in such quantities and amounts as were used or were entitled to be used prior to enactment thereof. Any person having the right to place groundwater to beneficial use prior to the effective date [82:1020.14] of the Groundwater Act (July 1, 1973) shall have the right to bring his use under the provisions of this act [82:1020.14] as provided in these rules and regulations.*

(c) **Determination of prior rights to groundwater.**

(1) In establishing total discharges, as provided in 82 O.S. 1981, §1020.5 and 785:30-9-2, the Board shall establish the prior rights in effect on July 1, 1973, in each county.

(2) The rights to be determined are those which are protected by 82 O.S. 1981, §1020.14, and are those which are:

(A) Based on actual taking of groundwater for beneficial use prior to the date of adoption of the original Oklahoma Groundwater Law (which date was August 26, 1949) to the extent that the water was put to beneficial use within two (2) years thereafter, i.e. before August 26, 1951; or

(B) Based on an application filed with the Board subsequent to August 26, 1949, and prior to July 5, 1961 (the effective date of certain amendments of the Oklahoma Groundwater Law to be found in Laws 1961, page 615, §§5 and 6), to the extent that the water applied for was put to beneficial use within two (2) years of the filing of the application; or

(C) Based on the actual taking of groundwater for beneficial use prior to July 5, 1961 (the effective date of certain amendments to the Oklahoma Groundwater Act found in Laws 1961, page 615, §§5 and 6), to the extent that groundwater was actually taken and put to beneficial use within five (5) years of the filing of the application; or

(D) Based on an application filed with the Board after July 5, 1961 (the effective date of certain amendments to the Oklahoma Ground Water Act found in Laws 1961, §§5 and 6) and prior to July 1, 1973 (the effective date of the repeal of the Oklahoma Ground Water Act of 1949), to the extent that the water was or is put to beneficial use within five (5) years of the filing of the application; or

(E) Based on a permit issued by the Board subsequent to October 21, 1965 (the effective date of certain amendments to the Groundwater Act to be found in Laws 1965, Chapter 471, §7) and prior to July 1, 1973, to the extent that the water has been put to beneficial use pursuant to the terms of 82 O.S. 1971, §1013.

785:30-11-2. Procedure for determining prior rights to groundwater

(a) **General.**

(1) In determining prior rights to groundwater the Board shall make use of all data available to it.

(2) Such data shall include, but shall not be limited to, the names and last known mailing address of all applicants or claimants for the use of groundwater of record with the Board, including application number and date thereof, the legal description of the location of the well or wells and place of use, the quantity of water applied for or claimed in gallons or acre-

feet per year, purposes of use, and amount of water actually put to beneficial use each year.

(3) Such information shall be compiled and made a matter of record in the office of the Board.

(b) Tentative order of prior groundwater rights.

(1) As soon as data on any county has been compiled, the Board shall make an order listing the applicants or claimants who, in the Board's opinion from the information then available to it, are holders of prior water rights to use groundwater by virtue of the bases described in 785:30-11-1(c).

(2) Said order shall set out the priority date, place of well(s), parcel of land upon which the prior right was established, and the purpose and amount of water proposed to be determined for each applicant or claimant in the county.

(3) This order shall be plainly marked "Tentative Order Recognizing Prior Rights in...County."

(4) The tentative order shall be an alphabetical listing of each applicant and claimant known to the Board.

(5) The tentative order shall include the amount of groundwater the Board determines the applicant or claimant has established as a prior right, the purpose of the prior right, the location of the well or wells, and the legal description of the land on which the prior right was perfected.

(6) A subsection shall be included in the tentative order listing all applicants and claimants who, according to information on file at the Oklahoma Water Resources Board, did not perfect a prior right at the time the tentative order was prepared as determined by the Board.

(7) In determining the amount of groundwater used by an applicant or claimant to set out in the prior rights order, the Board shall use the following information and presumptions absent specific evidence to the contrary:

(A) When the amount of water is reported by number of inches over number of acres, the water will be calculated as such.

(B) Where the amount of water is reported by number of acres times the number of applications, each application will be computed as four (4) inches up to six (6) applications, three (3) inches per application from seven (7) to ten (10) applications; two (2) inches per application from eleven (11) to fifteen (15) applications; and one (1) inch per application when more than sixteen applications are applied.

(C) Where there is evidence that groundwater was put to beneficial use, however the number of inches applied or the number of applications is not known, the Board will consider one (1) application or four (4) inches was applied when the tentative order is prepared provided the number of acres irrigated is known.

(8) Where an application was filed for two (2) acre-feet per year when the intention was to file for two (2) acre-feet per acre per year, the Board will consider the application to be for two (2) acre-feet per acre per year.

(9) The following standards have been established in order to determine prior groundwater rights:

(A) When based upon making application to the Board prior to July 1, 1973, the amount of groundwater actually taken and placed to beneficial use will be calculated to the last day of the second or fifth

year.

(B) When based upon taking and using groundwater without an application to the Board prior to July 5, 1961, the priority date will be the last day of the year when the date of first beneficial use is known only to that year, and the amount of water actually taken and placed to beneficial use will be calculated to the last day of the fifth year. If a crop was reported as having been irrigated the year of first beneficial use, the priority date will be established the first day of the growing season for that crop. The following dates shall be considered as the beginning of the respective growing season:

(i) Winter Wheat–September 1

(ii) Sorghum–May 1

(iii) Cotton–May 1

(iv) Corn–April 1

(v) Maize–April 1

(vi) Alfalfa–March 15

(vii) Pasture–March 15

(C) Where more land was irrigated than was requested by the application prior to July 5, 1961, and there is no indication that the extra land is owned or leased by the applicant, the water will be split according to the amount of water applied to the excess acres in order to perfect the second prior right.

(c) **Notice by registered or certified mail of hearing on tentative order.** As soon as the tentative order as determined by the Board is prepared, a copy of said order shall be forwarded by registered or certified mail to each applicant or claimant to the use of water within the area in which prior rights are to be determined, and a notice of a hearing to be held thereon shall be enclosed which shall contain a statement of the intended action, a description of the subject and issues involved, the time when, the place where, and the manner in which interested persons may present evidence thereon.

(d) **Published notice by newspaper of hearing on tentative order.**

(1) The Board shall also give notice of such hearing by publication in a newspaper of general circulation in each county in which prior rights to groundwater are to be determined in the proceedings, once a week for two

(2) consecutive weeks prior to the hearing; and the last notice shall be published at least thirty (30) days prior to the date set for the hearing.

(2) The published notice shall contain the date and place of the hearing together with a general description of the location in which prior rights to the beneficial use of ground water are to be determined and the address to which requests for a copy of the tentative order may be sent.

(e) **Requests for tentative orders.** A copy of the tentative order shall be sent to any person requesting same in writing to the Board.

(f) **Appearance at hearing.**

(1) Any person claiming a prior right to the beneficial use of groundwater within the area for which prior rights are to be determined may appear at the hearing in person or be represented by legal counsel.

(2) For an applicant or claimant to submit evidence in support of the amount of groundwater use unknown to the Board, said individual must sign a sworn statement setting out the amount of groundwater used each year.

(g) **Impairment of rights.** Any party may present evidence in support of or opposition to the tentative order of prior rights to ground water under consideration at the hearing and shall file at the hearing, or to the Board at its office prior to the hearing, the following:

- (1) The name and post office address of the applicant or claimant.
- (2) The location of the well or wells to which the claim relates.
- (3) The amount of water claimed or disputed.
- (4) The purpose for use of the water claimed or disputed and the place of its use.
- (5) The dates of applications, if any, and the dates of beneficial uses made.
- (6) A description of the land irrigated if the claim or contested claim relates to irrigation, together with a designation of the number of irrigable acres in each forty (40) acre tract or fractional part thereof.
- (7) The population served by the amount of the claim if the claim or contest relates to municipal use.
- (8) The type or kind of industrial use if the claim or contest relates to such use.
- (9) Any additional information the Board may require.

(h) **Tentative order hearing.**

- (1) At the hearing the Board shall hear the evidence of any person interested party.
- (2) The hearing record will be left open for sixty (60) days from the hearing date to insure every party the opportunity to submit additional evidence concerning groundwater put to beneficial use under the requirements of the groundwater laws prior to July 1, 1973.
- (3) All such evidence shall be considered by the Board in its determination of prior rights to the beneficial use of groundwater.

(i) **Final order determining prior rights to groundwater.** As soon as possible after the hearing, the Board shall make and approve a final order for each county determining the prior rights to such applicants, claimants, and contestants and the dates, place of wells, parcels of land upon which the prior rights were established, purposes and amounts of their prior rights, and shall notify all applicants, claimants, and contestants as to the contents of such final order.

(j) **Service of final notice.** Service of such final notice shall be deemed completed:

- (1) Upon depositing a copy of such final order in the post office as registered or certified mail addressed to each applicant, claimant, and contestant whose name and address is known to the Board; and
- (2) Upon the filing of two (2) or more copies of the final order in the office of the county clerk of each county in which prior rights were determined by the order.

(k) **Final order conclusive.** After the final order establishing prior groundwater rights has been completed pursuant to the Administrative Procedures Act (75 O.S. 1981, §§301 et seq., as amended), no further prior groundwater rights shall be determined within the county.

785:30-11-3. Actions after prior rights are determined

(a) **Creation of file.** Claimants granted a prior right based on beneficial use with no application on file will have a file created by the Board which will contain all pertinent data presented at the public hearing and that portion of the final order which determined their prior right. Prior rights files created by the Board based on beneficial use will be given a number at the end of the year for the earliest priority

date.

(b) **Priority of prior rights.** All prior rights based on the criteria in 785:30-11-2 shall have priority over any rights acquired subsequent to July 1, 1973, the effective date of the Ground Water Act. They shall have priorities among themselves according to the date of taking for those based on actual taking and according to the date of filing of the application where based on an application.

(c) **Exercise of prior rights.**

(1) The prior rights determined by the procedures in this subchapter shall be exercised only through wells located within that segment of land relied upon for perfection of the right and which was leased or owned by the right holder on the date of the priority of the right.

(2) Application for an additional or replacement well(s) to exercise an established prior right, must be made in the same manner and procedure as in 785:30-7-4.

(3) Application for adding or changing uses to exercise an established prior right, must be made in the same manner and procedure as in 785:30-7-1.

(d) **Protection of prior rights.** The prior rights determined by this subchapter of these rules shall not include any right to be protected by requiring junior right holders or groundwater rights acquired subsequent to July 1, 1973, to curtail production of groundwater unless the prior right holder asking for that relief proves that such relief is necessary to prevent material impairment of his prior right and that such relief will, in fact, benefit his exercise of his prior right materially.

(e) **Division of right.** Where an application or permit is split which has established a prior right, the prior right is proportionately divided based on acres divided.

(f) **Maximum amount to be withdrawn under temporary permit by persons having prior right to use of groundwater.** If a person has a recognized prior right to use groundwater and applies for a temporary permit dedicating a tract of land which includes land relied upon to establish the prior right, an amount of land and water therefrom at two-acre feet per surface acre to equal the prior right amount will be excluded from the total amount of land used to calculate the water allocated by the temporary permit.

[Source: Amended at 12 Ok Reg 2689, eff 7-1-95]

SUBCHAPTER 13. MISCELLANEOUS PROVISIONS

785:30-13-1. Domestic use of groundwater

Any landowner has a right to take groundwater from land owned by him for domestic use as defined herein without a permit. Wells for domestic use are not subject to well spacing orders but are subject to sanctions against waste.

[82:1020.3] If the well is located within a municipality, the landowner may be required to obtain a municipal permit.

785:30-13-2. Taking, using, or disposal of salt water and water trapped in producing mines

These rules and regulations shall not apply to the taking, using or disposal of salt water associated with the exploration, production, or recovery of oil and gas or to the taking, using, or disposal of water trapped in producing mines.

[82:1020.2]

785:30-13-3. Metering of wells

- (a) *Upon request of a majority of the landowners residing within a basin or subbasin, the Board is authorized to require that water wells be metered and that such meters as the Board shall approve be utilized by the applicant and placed under seal, subject to reading by the agents of the Board at any time.*
- (b) *The Board may also require that the applicant report the reading of such meters at reasonable intervals.* [82:1020.19]

785:30-13-4. Unitizing and communitizing of land for water production purposes

The owners of land and the Commissioners of the Land Office are authorized to unitize and communitize lands for the purpose of production of water therefrom, provided the production therefrom does not exceed the maximum annual yield. [82:1020.20]

785:30-13-5. Allocation of municipal water

- (a) Allocation of all municipal water from beneath lands which are either inside or outside the corporate municipal limits shall be governed by 82 O.S. 1981, §1020.1 et seq., as amended.
- (b) When a municipality elects to invoke the provisions of §1020.21 (allocation of water from beneath platted lands), its allocation shall be based upon the amount of acres dedicated to the application which are platted and subdivided into lots within the corporate municipal limits and which overlie the basin or subbasin
- (c) The Board shall issue the permit if the following additional conditions can be met:
- (1) The municipality shall make water reasonably accessible and available to residents on the platted lands dedicated to the application.
 - (2) The wells are or will be located not less than six hundred (600) feet within the municipal limits.
 - (3) The wells are or will be on the platted land dedicated to the application, provided that the municipality demonstrates that it owns or otherwise has valid authority to place the wells on the land where the wells are or will be located.
- (d) The requirements of this Section have no application to water allocated to municipalities from beneath unplatted lands either inside or outside the corporate municipal limits or the use of water from wells drilled by municipalities where groundwater rights were established under prior law unless the municipality elects to bring its use from such wells under provisions of 82 O.S. 1981, §1020.1 et seq.
- (e) A municipality may not allocate groundwater from beneath lands dedicated to a permit unless the municipality acquires ownership of that previously issued permit and changes the purpose of such permit to municipal use if necessary.

[Source: Amended at 17 Ok Reg 2752, eff 7-1-00]

785:30-13-6. Drilling of wells within municipalities

- (a) The Board has jurisdiction of all wells other than domestic wells within corporate municipal limits.
- (b) Municipalities have the authority to regulate and/or permit the drilling of such domestic wells within corporate municipal limits.
- (c) The Board and municipalities have concurrent jurisdiction to regulate and/or permit industrial wells within the corporate municipal limits.

785:30-13-7. Dewatering a portion of a groundwater basin or subbasin for purposes of construction.

(a) Dewatering of a portion of a groundwater basin or subbasin for the purpose of construction is not necessarily considered either a beneficial or wasteful use of groundwater, but is a temporary necessity to be justified by the benefits accrued from its utilization, and as such does not require the issuance of a permit from the Board.

(b) If a written complaint is received by the Board concerning dewatering of a portion of a groundwater, basin or subbasin, such action is subject to investigation and review by the Board to insure that the best management practices are being utilized to prevent waste and/or pollution of fresh groundwaters.

(c) When permanent dewatering is proposed, a groundwater permit for such activity will be required if the dewatering may result in lowering the historic static water table under immediately adjacent lands.

(d) Water withdrawn in such a permanent dewatering process must be returned to the groundwater basin or subbasin from which it was drawn unless such water would otherwise naturally discharge into a stream on the property where the dewatering is taking place.

785:30-13-8. Artificial recharge requirements

The artificial recharge of a groundwater basin or subbasin must be done in compliance with 785:30-1-3(b) to prevent pollution and/or waste of water. Other than for domestic use, the use of water for this purpose requires a permit.

785:30-13-9. Reclaiming and cleaning up groundwater

(a) If a person plans to withdraw groundwater containing wastes for the sole purpose of reclaiming and/or cleaning up pollution, no permit shall be required.

(b) If the applicant proposes to use the reclaimed and treated groundwater, an appropriate permit to use groundwater shall be required.

[Source: Amended at 11 Ok Reg 2935, eff 6-13-94]

SUBCHAPTER 15. WATER TRAPPED IN PRODUCING MINES

PART 1. GENERAL PROVISIONS

785:30-15-1. Purpose, scope and applicability

(a) This Subchapter establishes rules for the taking, using and disposal of water trapped in producing mines that overlie a Sensitive Basin and that are not otherwise exempt from this Subchapter as provided in 82 O.S. 1020.2 and this Subchapter. Among other things, this Subchapter provides a framework to protect groundwater in a Sensitive Basin by gathering data from mines through monitoring and periodic reporting of groundwater disposition, and if the data shows a mine with a preexisting exemption is dewatering such a basin more than its share, then the mine loses its exemption unless it can demonstrate that such dewatering satisfies certain criteria.

(b) This Subchapter *shall not apply to the taking, using, or disposal of salt water associated with the exploration, production or recovery of oil and gas.* [82 O.S. § 1020.2(B)] This Subchapter *shall not apply to the taking, using, or disposal of water trapped in producing mines outside of a* [82 O.S. § 1020.2(B)] Sensitive

Basin.

(c) This Subchapter *shall not apply to the taking, using or disposal of water trapped in* [82 O.S. 1020.2(C)] a producing mine:

- (1) that overlies a Sensitive Basin; and
- (2) that satisfies one or more of the following tests:
 - (A) a permit that authorizes mining operations or activities for the mine was issued by the ODOM on or before August 1, 2011;
 - (B) the mine operator filed an initial application for a permit for the mine with the ODOM on or before August 1, 2011; or
 - (C) a revision to the permit for the mine is approved by the ODOM;and
- (3) for which the operator maintains the exemption as provided in 785:30-15-4.

[Source: Added at 30 Ok Reg 884, eff 6-13-13]

785:30-15-2. Definitions

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

"50% exceedance" means the median of mean daily flows.

"Act" means Enrolled Senate Bill No. 597 enacted by the First Regular Session of the 53rd Oklahoma Legislature, published at Chapter 374, Okla. Sess. Laws 2011 and codified primarily at 82 O.S. § 1020.2.

"Augmentation" means the beneficial discharge of water into a stream emanating from a Sensitive Basin or into a location where it is likely to flow or percolate into a Sensitive Basin.

"Consumptive use" means *diversion of water from a mine pit that is not returned to the groundwater basin or subbasin, or to a mine pit or holding basin, or to a definite stream, or to the land surface from which surface runoff flows into a mine pit. The term "consumptive use" includes the estimated moisture content driven off or carried away with mined material transported off the mining site, plus the amount of evaporation from the mine pit that exceeds the amount of direct precipitation and surface runoff into the mine pit, plus any amounts for other proposed beneficial uses off the mining site.* [82 O.S. §1020.2(F)]

"Groundwater augmentation basin" means an unlined pond or dedicated recharge structure used to allow water to infiltrate or recharge into a Sensitive Basin.

"Management Plan" means a site-specific water management and conservation plan that satisfies the provisions of 785:30-15-6.

"MEPS" means Mine's Equal Proportionate Share.

"Mine's Equal Proportionate Share" means the amount equivalent to the Sensitive Basin's equal proportionate share that is or would otherwise be allocated to the mine owner or operator for groundwater rights owned or leased by the owner or operator.

"ODOM" means the Oklahoma Department of Mines.

"Preexisting exemption" means an exemption from the provisions of the Act and this Subchapter as provided in 82 O.S. § 1020.2(C) and 785:30-15-1(c).

"Pit water" means groundwater trapped or collecting in a producing mine pit that emanates from a Sensitive Basin.

"Sensitive Basin" means a sensitive sole source groundwater basin or subbasin.

"USGS" means the United States Geological Survey.

PART 3. MINES WITH AND WITHOUT EXEMPTIONS

785:30-15-3. Mines with no exemption

- (a) The taking, use or disposal of pit water by an operator of a mine that does not have an exemption as provided in 82 O.S. § 1020.2(B) and 785:30-15-1(b) nor a preexisting exemption shall be in accordance with the provisions of this Subchapter.
- (b) The taking, use or disposal of pit water in an amount less than five (5) acre feet per year, or by a mine with a limited use permit from the ODOM, shall be exempt from this Subchapter as provided in 82 O.S. § 1020.2(D)(2).
- (c) The operator of a mine in a Sensitive Basin that does not have a preexisting exemption shall:
- (1) develop a Management Plan that meets the requirements of Section 785:30-15-6, and
 - (2) make quarterly and annual reports to the Board of the information described in Section 785:30-15-6(a)(7) on or before the deadlines provided by 82 O.S. § 1020.2(E)(1). The reports shall be in a form prescribed by the Board or other format satisfactory to the Board, and
 - (3) make application to and obtain a groundwater use permit from the Board prior to any taking, use or disposal of pit water.

[Source: Added at 30 Ok Reg 884, eff 6-13-13]

785:30-15-4. Mines with preexisting exemptions

- (a) To maintain the exemption, an operator of a mine with a preexisting exemption must:
- (1) adopt and implement a plan to monitor and report to the Board the accumulation and disposition of pit water during the previous calendar year; and
 - (2) make quarterly and annual reports of the measured or reasonably estimated groundwater and surface water volumes, separately stated, entering the pit, of the water that is diverted from the pit, of the disposition of the water from the pit, and of the consumptive use of the water from the pit on or before the deadlines provided by 82 O.S. § 1020.2(E)(1); and
 - (3) at any time after March 31, 2015 demonstrate to the satisfaction of the Board within the pertinent report or reports that it has not consumptively used during the previous twelve month period, from the mining site, an amount of groundwater which combined with any amounts used from permitted groundwater wells exceeds the MEPS. Such demonstration may require providing to the Board a copy of the mine's monitoring plan and all of the data collected and procedures used to support the calculations and results reported.
- (b) Subject to (c) and (d) of this Section, if at any time the mine operator fails to satisfy any of the provisions of (a) of this Section, the preexisting exemption shall be lost for that mine and the pertinent provisions of the Act and this Subchapter shall become applicable.
- (c) Whenever it may appear to the Board that a preexisting exemption has been lost for a mine due to failure under 785:30-15-4(a)(1) or (a)(2), the Board shall give the operator thereof reasonable notice and an opportunity to show cause why the

exemption should continue to apply. Absent a showing by the mine operator and a determination by the Board that the exemption should continue to apply, the exemption shall be deemed lost as of the date of the operator's failure under 785:30-15-4(a)(1) or (a)(2).

(d) Whenever it may appear to the Board that a preexisting exemption has been lost for a mine due to failure under 785:30-15-4(a)(3), the Board shall give the operator thereof reasonable notice thereof and a hearing opportunity to show cause as provided in (e) of this Section why the exemption should continue to apply.

(e) The operator may avoid loss of the preexisting exemption by submitting a Management Plan which contains the information provided in 785:30-15-6(a)(1) through (10) that demonstrates to the satisfaction of the Board that such consumptive use exceedance is:

- (1) offset by augmentation of stream water flow or of groundwater by recharge as provided in 785:30-15-5; or
- (2) not likely to reduce the natural flow of springs or streams emanating from the Sensitive Basin; or
- (3) remedied by acquisition of sufficient groundwater rights within the ninety day period after the reported exceedance.

(f) If the operator does not satisfy the preceding requirements to maintain the exemption, the operator shall come into compliance with 82 O.S. § 1020.2(D) and 785:30-15-3 ninety (90) days after the date of receipt by the operator of the notice from the Board. Upon application and good cause shown by the operator, the Board may grant additional time to come into compliance.

(g) Hearings under this Section shall be conducted in accordance with Title 785, Chapter 4 of the Oklahoma Administrative Code.

[Source: Added at 30 Ok Reg 884, eff 6-13-13]

PART 5. AUGMENTATION AND MANAGEMENT PLANS

785:30-15-5. Augmentation

(a) Stream augmentation.

(1) A mine operator may claim credit for one hundred percent (100%) of the amount of water it discharges to a stream emanating from a Sensitive Basin during a time of low flow that is less than or equal to the 50% exceedance listed by the USGS within the watershed where the mine is located. If the receiving stream or watershed is ungaged or does not have calculated median flow data available, the Board will utilize the USGS *StreamStats* extrapolation model or other method to calculate the 50% exceedance.

(2) The Board will review the 50% exceedance for gaged streams within the watershed on an annual basis.

(3) A mine operator shall monitor the flow conditions at the designated stream gage in order to determine whether and when stream augmentation credit can be obtained. The flows, dates and volumes of water discharged to a stream for augmentation credit shall be identified by the mine operator in the quarterly and annual reports required by 82 O.S. § 1020.2(E)(1).

(4) There shall be no credit for any water discharged to streams when the unaugmented flow is greater than the 50% exceedance.

(b) Groundwater augmentation.

(1) A mine operator may claim credit for one hundred percent (100%) of the amount of water that is placed in a groundwater augmentation basin that

meets the requirements of this Section, less any water diverted from such basin.

(2) To qualify for credit, the mine operator must satisfy the following:

(A) The operator shall make a one-time water balance demonstration to the satisfaction of the Board that recharge from the subject groundwater augmentation basin exceeds evaporation. Once such a demonstration has been made, no accounting for evaporation or vegetative losses will be required. If a material change is made to the groundwater augmentation basin, a new demonstration shall be made for the changed basin.

(B) Each groundwater augmentation basin shall have a staff gage or other measuring device at least as accurate installed such that the gage registers the lowest water level in the basin. The staff gage or other appropriate device must be readable from a readily accessible location adjacent to the basin.

(3) No specific design or maintenance requirements need be followed for dedicated recharge structures provided that they shall not be filled by pumping to such a level that they overflow.

(4) The amount of water recharged to the aquifer from a groundwater augmentation basin shall be calculated on a mass balance basis. The applicable equation is: $GW_a = B_a * [(h_1 - h_2) - (E * 0.7)] + (I - O)$, where:

(A) GW_a is the volume of water exiting the bottom and sides of the augmentation basin;

(B) B_a is the surface area of the augmentation basin (assumes vertical sides);

(C) h_1 is the elevation of the water level in the basin at the beginning of the applicable time period determined using the installed staff gage;

(D) h_2 is the elevation of the water level in the basin at the end of the applicable time period;

(E) 0.7 is the lake evaporation coefficient applied to pan evaporation;

(F) E is the calculated pan evaporation rate determined at the nearest Mesonet station determined as the sum of daily values for the applicable time period;

(G) I is the total inflow volume of water to the basin (it may be zero (0)) from all sources (including rainfall) for the applicable time period determined by measurement or reasonable estimation; and

(H) O is the total outflow volume of water from the basin (it may be zero (0)) by all pathways except evaporation for the applicable time period determined by measurement or reasonable estimation.

(c) Applications of augmentation credit.

(1) Credit obtained from augmentation of stream water or groundwater or both may be used by the mine operator to reduce or offset the amount of consumptive use of pit water by the operator that exceeds the MEPS.

(2) Credit obtained from augmentation of stream water or groundwater shall not be considered in the amount used pursuant to any permit to use stream water or groundwater that the mine operator may have; provided, the taking, use or disposal of pit water for stream augmentation pursuant to a Management Plan prepared in consultation with the Board may be

claimed in an annual report of stream water use in order to avoid forfeiture of a right to use stream water held by the owner or operator of the mine.

[Source: Added at 30 Ok Reg 884, eff 6-13-13]

785:30-15-6. Management Plans

(a) Management Plans shall contain the following information. The Management Plan and each of these elements must be approved by the Board prior to mine operation for each mine with no preexisting exemption.

(1) Characterization of area; plot plan of the proposed/initial mine site.

- (A) Location of the initial mining pit;
- (B) Location(s) of the processing facilities; and
- (C) Location(s) and characterization of initial collection, settling, and retention impoundments.

(2) Facility layout; water flow diagram of the proposed/initial mine site.

- (A) All water collection, settling and retention impoundments;
- (B) Direction of all major water flow between the impoundments;
- (C) All planned groundwater, mine pit water, and stream water diversion points with estimated flows;
- (D) All stream water augmentation points;
- (E) All groundwater recharge points; and
- (F) Locations and planned quantities of all points of consumptive use.

(3) Water Budget; anticipated flow of water into and out of mine site.

- (A) Water flow entry and exit points;
- (B) Groundwater;
- (C) Mine pit water;
- (D) Stream water;
- (E) Precipitation runoff;
- (F) Evaporation; and
- (G) Augmentation.

(4) Water rights information.

- (A) Permit or application number;
- (B) Entity name;
- (C) Permitted amount; and
- (D) Dedicated acres.

(5) Consumptive use of pit water. This element shall show information derived from the guidelines to estimate consumptive use of pit water set forth in Appendix C to this Chapter.

(6) Augmentation. This element shall show information regarding augmentation done in accordance with 785:30-15-5, if any.

(7) Determination of water amounts. A Management Plan shall provide for the mine operator to measure or make a reasonable estimate, utilizing methods described or approved by the Board, of the following volumes, separately stated:

- (A) Groundwater that enters the pit;
- (B) Surface water that enters the pit;
- (C) Water that is diverted from the pit;
- (D) Disposition of the water from the pit;
- (E) Consumptive use of the water from the pit;
- (F) Water diverted from a stream or pond;
- (G) Groundwater pumped from water wells;

- (H) Water discharged to a stream;
- (I) Water recharged to the aquifer;
- (J) Precipitation at the mine site;
- (K) Evaporation from all surface water; and
- (L) Water obtained from other sources, such as municipalities, rural water districts, or other entities.

(8) Monitoring groundwater levels from a groundwater observation well. A Management Plan shall provide for the operator to drill, complete and utilize one or more groundwater observation wells that satisfy the following:

- (A) **Mine site.** A groundwater observation well shall be located in the local, if known, or regional hydrological down-gradient area of the mine site.
- (B) **Adjacent to a mine site stream gage.** Additionally, if a stream gage is required to be installed on a perennial or intermittent stream on mine property, then a groundwater observation well shall be drilled adjacent to or near the stream gage as approved by the Board.
- (C) **Requirements for observation wells.**
 - (i) Each groundwater observation well shall be drilled to such depth that the well encounters 100 feet or more, if present, of the saturated portion of the Sensitive Basin.
 - (ii) Water levels in the well shall be measured hourly and recorded on a data logger.

(9) Other monitoring on a mine site.

- (A) If a mine operator installs a stream gage on the perennial portion of a tributary or main stem of a stream passing through the mine site, then daily stream flows shall be recorded.
- (B) If a mine operator installs a rain gage on the mining site, then daily precipitation data shall be recorded.

(10) Quality assurance plans. The Management Plan for each mine shall include a quality assurance plan which describes procedures and methodologies for how data will be collected, operation and maintenance of all measuring equipment, and evaluation of data to ensure data is appropriate and scientifically defensible. Such quality assurance plan shall be consistent with the Federal or State Quality Assurance Project Plan guidelines specified by the Board.

(11) Reporting. Each quarter and year in accordance with the schedule provided in 82 O.S. § 1020.2(E)(1), the mine operator shall file with the Board a report in a form prescribed by the Board or other format satisfactory to the Board. The report shall contain:

- (A) The data and information listed in (a)(7) and (a)(8) of this Section, and
- (B) Any modifications to the plot plan, facility layout, or water right details for the mine, plus an explanation of any changes in the methodologies used for the reports.
- (C) The initial annual report shall include all data upon which the summary information in the report is based. Thereafter, such data shall be provided to the Board only upon request by the Board.

(b) Data recorded pursuant to this Section shall be stored in a format readily readable by most common computer programs. All data collected must be stored

and available for inspection by the Board while the mine is in operation and for a period of five years after the mine is closed in a format directed by the Board.

(c) The operator of a mine with a preexisting exemption may, in consultation with the Board, prepare a Management Plan for the purposes provided in 82 O.S. § 1020.2(C) to ensure all use of pit water is considered "permitted beneficial use", 82 O.S. § 1020.2(E)(3) to avoid conflicting requirements between the Board and ODOM, and 82 O.S. § 1020.2(G) to ensure that augmentation of groundwater and stream water is not considered "waste" or "consumptive use". Provided, if a Management Plan is to be used by an operator of a mine with a preexisting exemption for the purpose of avoiding the loss of the exemption, then such plan shall contain the information prescribed in (1) through (10) of (a) of this Section and be subject to the approval of the Board.

[Source: Added at 30 Ok Reg 884, eff 6-13-13]

APPENDIX A. APPLICATION FOR A PERMIT TO USE GROUNDWATER [REVOKED]

[Source: Added at 12 Ok Reg 2689, eff 7-1-95; Amended at 13 Ok Reg 2869, eff 7-1-96; Revoked and reenacted at 14 Ok Reg 2767, eff 7-1-97; Revoked and reenacted at 17 Ok Reg 2752, eff 7-1-00; Revoked and reenacted at 19 Ok Reg 2481, eff 6-27-02; Revoked and reenacted at 27 Ok Reg 1305, eff 5-27-10; Revoked at 36 Ok Reg 1288, eff 8-11-19]

APPENDIX B. WATER PROTECTION PLAN FOR SUBMITTAL WITH APPLICATIONS FOR A PERMIT TO USE GROUNDWATER [REVOKED]

[Source: Added at 16 Ok Reg 3227, eff 7-12-99; Revoked at 19 Ok Reg 2481, eff 6-27-02]

APPENDIX C. GUIDELINES TO ESTIMATE CONSUMPTIVE USE OF PIT WATER

Figure 1

PIT GROUNDWATER VOLUME		
1	Total volume of water pumped from the producing mine pit(s)	
2	Volume of precipitation that falls onto the surface of water in the producing mining pit(s)	
3	Portion of total precipitation that flows over the land surface that drains into the mine pit water	
4	Other non-pit waters pumped from the producing mine pit	
5	Add lines 2 through 4	
6	Pit Groundwater Volume Line 1 minus Line 5	
DEFINED ELEMENTS OF CONSUMPTIVE USE		
7	Volume of pit groundwater that is driven off (by drying) the mined material transported off the mine site	
8	Volume of pit groundwater that is carried away with the mined material transported off the mining site (shipped)	
9	Volume of pit groundwater that evaporates from the producing mine pit, process water ponds, and lined ponds (Excluding structures used for augmentation)	
10	Volume of pit groundwater that is used for other beneficial uses off the mine site	
11	Defined Elements of Consumptive Use of Pit Groundwater Add Lines 7 through 10	
PIT GROUNDWATER BALANCE		
12	Line 6 minus Line 11	
13	Groundwater Augmentation Volume of pit groundwater returned to the groundwater basin or subbasin, pursuant to a Management Plan	Credits
14	Stream Augmentation Volume of pit groundwater discharged to a definite stream, during flow conditions that are less than or equal to 50% exceedance, pursuant to a Management Plan	
15	Precipitation & Run-off Volume of precipitation and surface run-off into a recharge pit or holding pond used for augmentation	
16	Recycled Pit Groundwater Volume of pit groundwater returned to a mine pit or holding basin (not included on lines 7 through 10)	
17	Other Non-Consumptive Losses Including pit groundwater returned to the land surface from which surface runoff flows into a mine pit, and other losses (not included in lines 7 through 10)	
18	Add lines 13 through 17	
19	Other Consumptive Use (adjusted) Line 12 minus Line 18	
TOTAL REPORTED CONSUMPTIVE USE OF PIT		
20	Total Net Reported Consumptive Use Line 11 plus Line 19	

Figure 2

Notes

Table
Line
Number

- 2 Precipitation that falls directly in contact with pit water should be measured or reasonably estimated. Precipitation measurements may be obtained from (a) on-site installed gages, if approved by the Board and if such gages are installed, calibrated and maintained according to their manufacturers' requirements, (b) Mesonet stations within 30 miles of the pit site, or (c) if approved by Board, from other appropriately instrumented, maintained and calibrated meteorological observation stations. If appropriate, estimates based on combined gages may be made utilizing an established method approved by the Board.
- 3 Includes the portion of precipitation that flows into a mining pit estimated using techniques common to hydrological practice, such as the Rational Method, the SCS Method, the Green & Ampt Method, or from runoff models.
- 7, 8 Includes the estimated moisture content driven off or carried away with the mined material transported off the mining site. Since estimates of losses are specific to each mining operation, various industrial standard measurement or calculation methods may be proposed.
- 9, 13
and
15 Evaporation includes the volume of any pit water (groundwater component only) that returns to the atmosphere as vapor, including all impoundments containing pit water in the mining facility that are not used for groundwater augmentation. The volume of pit water that is evaporated may be estimated using daily pan evaporation rates from Mesonet stations within 30 miles, or another widely available, real-time data source approved by the Board. A pan coefficient of 0.7 should be applied to obtain lake evaporation rates. Daily pan evaporation data is available online at: <http://agweather.mesonet.org/models/evapotranspiration/seasonalout.html>. Evaporation losses of the water from the mine pit, lined holding structures, and processing ponds will be included in the consumptive use calculation, but only the measured groundwater portion of this water will be counted. Evaporation of the groundwater portion of water from any pit or structure used for groundwater augmentation will not be considered as consumptive use.
- 10 Defined in the Act as "amounts for other proposed beneficial uses off the mining site" other than stream water and groundwater augmentation.

[Source: Added at 30 Ok Reg 884, eff 6-13-13]

APPENDIX D. IDENTIFIED SPRINGS THAT EMANATE FROM A SENSITIVE SOLE SOURCE GROUNDWATER BASIN

Figure 1

Table 1.
The following springs flow 50 or more gallons per minute, emanate from a Sensitive Sole Source Groundwater Basin, and are protected by the spacing provisions of Section 785.30-3.6(c) of this Chapter.

Spring Name/Other ID	USGS Site ID	Latitude	Longitude	Legal Description
Anderson Spring	342718096380401	34.454496	-96.62432	NW NW SW Sec. 24 T01S R06E1M
Arnelage Spring at Sulphur, OK	0723849	34.50444444	-96.9411111	NN NW NE Sec. 1 T01S R06E1M
Billoe Spring	342732096400001	34.4598908	-96.668162	NE SW NW Sec. 22 T01S R06E1M
Blue Hole Spring	342108096503001	34.3521	-96.92963	SE NW SW Sec. 30 T02S R06E1M
Boring Spring	342818097123001	34.4203135	-97.220464	SE SW NW Sec. 16 T01S R01E1M
Black Irving Spring	342030966504101	34.34314776	-96.9284481	NN SE NW Sec. 31 T02S R06E1M
Buffalo Spring at Sulphur, OK	0723847	34.5027	-96.9383	SE NW NE Sec. 1 T01S R06E1M
Byrns Mill Spring or Flathead, OK	07234200	34.5842434	-96.665922	SE SW SW Sec. 34 T02N R06E1M
Canyon Spring	343241096380201	34.54473886	-96.8082218	NE SE NE Sec. 19 T01N R07E1M
Chapman Spring	34192109641001	34.32446	-96.95236	NN NW SE Sec. 5 T03S R06E1M
Coffee Pot Spring	343114096337001	34.5026478	-96.8571913	SE SE SW Sec. 27 T01N R07E1M
Cold Spring	34235287169001	34.3814773	-97.2830754	SE NE SE Sec. 15 T02S R01W1M
Coleman Spring	342813096521101	34.4270357	-96.878114	NE SW SE Sec. 27 T01S R06E1M
Coleman Spring	342813096514701	34.4370356	-96.8633445	NN SW SW Sec. 27 T01S R06E1M
Cummins Spring	342712096373701	34.45342537	-96.6272283	SE NE SW Sec. 24 T01S R06E1M
Dixie Spring	341603096485101	34.2812051	-96.8144026	SW SE SE Sec. 20 T03S R06E1M
Deadmans Spring	342411096350101	34.4031200	-96.5838700	NN NW NW Sec. 9 T02S R07E1M
Desperado Spring	34168093630401	34.33304	-96.59325	SW SE SW Sec. 32 T02S R07E1M
Dixie Bathing Spring	342511097094001	34.4187000	-97.1120000	SW SE SE Sec. 32 T01S R06E1M
Diamond Spring	3424140963804701	34.40387215	-96.8132997	NN NE NW Sec. 7 T02S R07E1M
Five Mile Spring	342247037181001	34.4811988	-97.3880773	NN SW SE Sec. 9 T01S R01W1M
Gray Spring	342342096464001	34.3948888	-96.7811111	SE NW SE Sec. 9 T02S R06E1M
Greger Spring	342732096432201	34.4598907	-96.720922	NN SW NW Sec. 18 T01S R06E1M
Heave Spring	342732096380001	34.4573142	-96.820154	SE SW NW Sec. 24 T01S R06E1M
Lawrence Spring 2	342732096502701	34.45842354	-96.9411295	NN SW NE Sec. 24 T01S R06E1M
Lawrence Springs or Drake, OK	0723880	34.4589	-96.9414	NN SW NE Sec. 24 T01S R06E1M
Male Spring	343837871783001	34.47703254	-97.2403333	NN NW NE Sec. 17 T01S R01W1M
Rutherford Spring	342318096382401	34.3884267	-96.5486122	SW NW NW Sec. 14 T02S R07E1M
Savies Spring 2	342150926294002	34.3638146	-96.4782545	NN SW SW Sec. 21 T02S R06E1M
Shawnee Spring	342732096350001	34.4598908	-96.868344	NN SE NW Sec. 22 T01S R06E1M
Shaw Creek Spring	34342096385101	34.572888	-96.847785	SW SE NW Sec. 11 T01N R06E1M
Smith Spring	342718096411201	34.3717566	-96.6872286	NN SW NW Sec. 21 T02S R06E1M
South Spring	342054096514001	34.34542054	-96.8627874	SW SW SW Sec. 28 T02S R06E1M
Three Springs	342147096380301	34.36314848	-96.6911147	NN SW SE Sec. 22 T02S R06E1M
Three Springs	3421480963804001	34.36342625	-96.6913625	NN SW SE Sec. 22 T02S R06E1M
Tired Spring	3419330963630201	34.32659599	-96.888096	SW SW NW Sec. 4 T03S R06E1M
Toddler Spring	342732096402201	34.4598908	-96.6733387	NE NE NE Sec. 21 T01S R06E1M
Unnamed Spring	342734096402202	34.4597588	-96.8617622	SE SW NW Sec. 22 T01S R06E1M
Unnamed Spring	342712096374101	34.45236	-96.62848	SE NE SW Sec. 24 T01S R06E1M

Figure 2

Unnamed Spring	342254096420501	34.383738	-96.711595	NE NE SW Sec. 18 T02S R06EIM
Unnamed Spring	342757087195501	34.46591938	-97.3322444	NE SW SW Sec. 17 T01S R01WIM
Unnamed Spring	342517036454401	34.4203222	-96.7588889	SE SE SE Sec. 34 T01S R06EIM
Unnamed Spring	342377086447101	34.4055500	-96.7634840	NE NW NE Sec. 34 T01S R06EIM
Unnamed Spring	342247097143301	34.37681059	-97.2427967	NW SE SW Sec. 18 T02S R01EIM
Unnamed Spring	34233505645501	34.387148	-96.775955	NW SW SW Sec. 21 T02S R06EIM
Unnamed Spring	342680636573701	34.4573333	-96.8654444	SW SW NW Sec. 22 T01S R06EIM
Unnamed Spring	342426364444301	34.4078702	-96.7418028	NE SE SE Sec. 2 T02S R06EIM
Unnamed Spring	342727056451301	34.4276769	-96.6705058	SW SW NW Sec. 22 T01S R06EIM
Unnamed Spring	342231063000901	34.37537549	-96.5022775	NE NW NE Sec. 19 T02S R06EIM
Unnamed Spring	342342097134701	34.36508844	-97.2300180	SW NW SW Sec. 8 T02S R01EIM
Unnamed Spring	342337071734801	34.36599558	-97.2302567	NW SW SW Sec. 8 T02S R01EIM
Unnamed Spring	34311406353101	34.5205000	-96.6077778	SW SW SE Sec. 30 T01N R07EIM
Unnamed Spring	342626007165001	34.4111051	-97.2752894	NE SW SW Sec. 26 T01S R01WIM
Unnamed Spring	34380656451301	34.5917564	-96.8705053	SE SE NE Sec. 13 T02N R06EIM
Unnamed Spring	342353097045501	34.38814549	-97.0822389	SE SE NW Sec. 10 T02S R06EIM
Unnamed Spring	342350507094401	34.4181342	-97.1625182	NE NE NE Sec. 2 T02S R01EIM
Unnamed Spring	342342097135501	34.3950884	-97.2320412	SE NE SE Sec. 7 T02S R01EIM
Unnamed Spring	342421097095401	34.40592275	-97.1152051	SW SW SE Sec. 5 T02S R06EIM
Unnamed Spring	342342097104401	34.4420057	-97.1701807	SE SE NE Sec. 27 T01S R01EIM
Unnamed Spring	343818087170501	34.47175206	-97.2892113	SW SE NE Sec. 15 T01S R01WIM
Unnamed Spring	3422330644401	34.3733333	-96.7484444	NE NW NE Sec. 23 T02S R06EIM
Unnamed Spring	34183806502301	34.2773139	-96.8400776	NW SE SW Sec. 24 T02S R04EIM
Unnamed Spring	34171806520801	34.28870449	-96.8891754	NE NW NE Sec. 22 T03S R04EIM
Unnamed Spring	342346097143801	34.3763351	-97.243483	NW SE SW Sec. 16 T02S R01EIM
Unnamed Spring	342642097165001	34.44286478	-97.2689640	SE SE NE Sec. 26 T01S R01WIM
Unnamed Spring	342636097160001	34.44425353	-97.2696460	NE SE NE Sec. 28 T01S R01WIM
Unnamed Spring	34273806451401	34.4654745	-96.8708286	SW NW NW Sec. 25 T01S R06EIM
Voia Spring	342218036514001	34.37995	-96.52982	SW NE SW Sec. 13 T02S R07EIM
Washington Spring	34272606450001	34.49738889	-96.6884167	SW SW NW Sec. 22 T01S R06EIM
Wells Spring	341718065110002	34.2842497	-96.8603976	NW NE NE Sec. 22 T02S R04EIM
Williams Spring	34232306581901	34.37654716	-96.9389017	NE NW NE Sec. 24 T02S R06EIM
Wills Spring	342611065073701	34.4684698	-96.6272295	SE SE NW Sec. 12 T01S R06EIM
Wolf Spring	342118050354001	34.55453748	-96.663005	SE SE NW Sec. 27 T02S R06EIM

Figure 3

Table 2.
The following springs flow 500 or more gallons per minute, emanate from a Sensitive Sole Source Groundwater Basin, and are protected by the spacing provisions of Section 785.30-3-6(c) of this Chapter.

Spring Name	USGS Site ID	Latitude	Longitude	Legal Description
Antelope Spring at Sulphur, OK	732989	34.50444444	-96.9411111	NW NW NE Sec. 1 T01S R03EIM
Bilbo Spring	342732064600001	34.4589808	-96.6680583	NW SW NW Sec. 22 T01S R06EIM
Blue Hole Spring	34230806553801	34.3521	-96.92963	SW NE SW Sec. 30 T02S R04EIM
Buck Irving Spring	342035064534101	34.34314776	-95.9283451	NW SE NW Sec. 31 T02S R04EIM
Byrd's Mill Spring in Pittsboro, OK	7334200	34.59452434	-96.6555552	SE SW SW Sec. 34 T02N R06EIM
Cold Spring	342530671655801	34.3834773	-97.2830754	SE NE SE Sec. 35 T02S R01WIM
Colvert Spring	342613065521101	34.43703557	-96.8700114	NE SW SE Sec. 27 T01S R04EIM
Covert Spring	342613065431701	34.4370355	-96.8633495	NE SE SE Sec. 27 T01S R04EIM
Commie Spring	342722063737101	34.62432537	-96.8721553	SE SE NE Sec. 24 T01S R06EIM
Devils Bathub Spring	342511097064501	34.41981139	-97.1127954	SE SW SE Sec. 32 T01S R02EIM
Ginger Spring	342732064622101	34.4589807	-96.7236222	NW SE NE Sec. 21 T01S R06EIM
Indes Spring	342726063802001	34.4573142	-96.6339254	SW SW NW Sec. 24 T01S R06EIM
Lawrence Springs or Drake, OK	7329880	34.4620	-96.56414	NW NW NE Sec. 24 T01S R06EIM
Shadowfax Spring	342732063955001	34.4589808	-96.666394	NE SW NW Sec. 22 T01S R06EIM
Sheep Creek Spring	343422063851001	34.572868	-96.647785	SW SE NW Sec. 11 T01N R06EIM
Toddell Spring	342732064622301	34.4589808	-96.6733387	NW SE NE Sec. 21 T01S R06EIM
Unnamed Spring	342732063737401	34.64296	-96.62646	SE NE SW Sec. 24 T01S R06EIM
Unnamed Spring	34254096425501	34.38238	-96.73395	NE NE SW Sec. 38 T02S R06EIM
Unnamed Spring	342757097395501	34.46591938	-97.3324444	NE SW SW Sec. 17 T01S R01WIM
Unnamed Spring	342537064534401	34.42448107	-96.7597352	SE SE SE Sec. 34 T01S R06EIM
Unnamed Spring	342537064545001	34.4270365	-96.7633406	SE SW NE Sec. 34 T01S R06EIM
Unnamed Spring	342470971433301	34.37981089	-97.2427967	NE SW SW Sec. 18 T02S R01EIM
Unnamed Spring	342738064601401	34.46604745	-96.6708386	SW NW NW Sec. 22 T01S R06EIM
Washington Spring	342726064600001	34.49738889	-96.6884167	SW SW NW Sec. 22 T01S R06EIM

[Source: Added at 31 Ok Reg 2506, eff 9-12-14; Revoked and reenacted at 37 Ok Reg 2294, eff 9-11-20]

CHAPTER 32. AQUIFER STORAGE AND RECOVERY

[Authority: 82 O.S., § 1085.2; 82 O.S., § 1020.2A]

[Source: Codified 9-14-18]

SUBCHAPTER 1. GENERAL PROVISIONS

785:32-1-1. Purpose

Pursuant to 82 O.S. § 1020.2A, this Chapter of the Board's rules sets out the requirements to obtain a permit to conduct aquifer storage and recovery activities, and details procedures for determining the amount of stored water that may be recovered as a part of such activities.

[Source: Added at 35 Ok Reg 2214, eff 9-14-18]

785:32-1-2. Definitions

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

"Application" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"Aquifer Storage and Recovery Activities (ASR)" means activities that exclusively include activities for the storage of water in and recovery of water from an aquifer pursuant to a site-specific aquifer storage and recovery plan authorized by 82 O.S. § 1020.2A. Activities not conducted pursuant to a site-specific aquifer storage and recovery plan shall not be considered ASR activities. For purposes of this chapter, ASR activities also shall not include activities authorized pursuant to 82 O.S. 1020.2(G), storm water runoff management practices, groundwater recharge or augmentation through a natural connection with a farm pond or other impoundment otherwise authorized by law.

"Area of Hydrologic Effect" means the areal extent of all hydrologic features, including surface and groundwater, potentially influenced by ASR operations as determined by the site-specific aquifer and storage recovery plan.

"Beneficial use" means the use of such quantity of stream or groundwater when reasonable intelligence and reasonable diligence are exercised in its application for a lawful purpose and as is economically necessary for that purpose. Beneficial uses include but are not limited to municipal, industrial, agricultural, irrigation, recreation, fish and wildlife, etc.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, duties authorized by law to be delegated to the Executive Director, or any employee or agent or staff member thereof as assigned by the Executive Director.

"Dedicated land" means the tract or tracts of land which the applicant owns, leases, or from which the applicant holds a valid right to withdraw groundwater and which is listed in the application and used to calculate the amount of groundwater requested.

"Domestic use" means the use of water by a natural individual or by a family or household for household purposes, for farm and domestic animals up to the normal grazing capacity of the land whether or not the animals are actually owned by such natural individual or family, and for the irrigation of land not exceeding a total of three (3) acres in area for the growing of gardens, orchards, and lawns [82:1020.1(2)]. Domestic use also includes: (1) the use of water for agriculture purposes by natural individuals, (2) use of water for fire protection, and (3) the use of water by non-household entities for drinking water purposes, restroom use, and the watering of lawns, provided that the amount of groundwater used for any such purposes does not exceed five acre-feet per year.

"Fresh water" means water which has less than five thousand (5,000) parts per million total dissolved solids. All other water is salt water. [82:1020.1(7)]

"Groundwater" means fresh water under the surface of the earth regardless of the geologic structure in which it is standing or moving outside the cut bank of any definite stream. [82:1020.1(C)]

"Groundwater basin" means a distinct underground body of water overlain by contiguous land having substantially the same geological and hydrological characteristics and yield capabilities. [82:1020.1(3)] The area

boundaries of a major or minor basin can be determined by political boundaries, geological, hydrological, or other reasonable physical boundaries.

"Groundwater subbasin" means a subdivision of a major or minor groundwater basin overlain by contiguous land and having substantially the same geological and hydrological characteristics and yield capabilities. [82:1020.1(4)] Examples are a lateral or vertical subdivision of a groundwater basin delineated by either physical or political boundaries. Physical boundaries would be different in geological, hydrological or yield capabilities; bedrock; faults; low permeability zones or limits of pressure areas, etc. Political boundaries would be irrigation districts, planning districts, counties, city limits, etc.

"Maximum annual yield" means a determination by the Board of the total amount of fresh groundwater that can be produced from each basin or subbasin allowing a minimum twenty (20) year life of such basin or subbasin.

"Natural recharge" means all flow of water into a groundwater basin or subbasin by natural processes including percolation from irrigation.

"Party" or **"interested party"** means a person or agency named and participating, or properly seeking and entitled by law to participate, in hearings other than hearings on Board rules, regulations and standards.

"Person" means any individual, firm, partnership, association, corporation, business or public trust, federal agency, state agency, the State or any political subdivision thereof, municipalities, and any other duly constituted legal entity.

"Recharge Well" means any well by which stored water is transmitted from the surface to the subsurface.

"Sensitive sole source groundwater basin or subbasin" means a major groundwater basin or subbasin all or a portion of which has been designated as a "Sole Source Aquifer" by the United States Environmental Protection Agency, and includes any portion of an contiguous aquifer located within five (5) miles of the known areal extent of the surface outcrop of the sensitive sole source groundwater basin [82:1020.9A].

"Stored water" means water stored in an aquifer pursuant to a site-specific aquifer storage and recovery plan.

"Subsurface watershed" means the geographic area in the subsurface that contributes flowing groundwater to a specific point. The area and boundaries of the subsurface watershed can deviate from the surface watershed. The subsurface watershed is delineated using a water-table elevation map or potentiometric surface map.

"Water right" means a right to the use of stream or groundwater for beneficial purposes.

"Well" means any type of excavation for the purpose of obtaining groundwater or to monitor or observe conditions under the surface of the earth but does not include oil and gas wells.

[Source: Added at 35 Ok Reg 2214, eff 9-14-18]

SUBCHAPTER 3. PERMIT APPLICATION REQUIREMENTS AND PROCESSING

785:32-3-1. Requirement for permit

(a) General application requirements.

- (1) Any person intending to initiate an ASR project shall make an application, submit an approved site-specific ASR plan, and obtain an appropriate permit before recovery of stored water.

(2) No permit shall be issued to an applicant who is not the surface owner of the land on which the ASR structures are to be located, or hold a valid right from such surface owner allowing for the storage and recovery of water from an aquifer. A copy of the ownership documentation or notarized written permission shall be required as part of the application.

(3) In addition to the information specified in (a) and (b) of this subsection and in the application form, the applicant may be required to submit additional information necessary for proper consideration of the application.

(4) All necessary water rights permits must be obtained for the water to be used during the ASR project.

(5) If a water right permit is not applicable or needed, origin of water for ASR project must be defined.

(b) **Forms to be furnished by the Board.** The Board will furnish, without charge, blank application forms and instructions for filing for an ASR permit. Each blank on the application shall be filled in by the applicant as accurately and completely as the circumstances allow with all the relevant data. Supplements may be attached if space on the form is insufficient. If a supplement is used, the data entered thereon should be segregated into paragraphs with numbers corresponding to the paragraph numbers of the forms and properly cross-referenced thereto.

(c) **Applications to be amended by applicant.** Applications will be altered, corrected, amended or revised by the Board only upon written request signed by the applicant or his duly authorized agent. Changes may also be made directly on the application, or filed through the Board's online application service, by the applicant or his duly authorized agent or by telephone instructions to the Board from the applicant or his duly authorized agent to be followed by written confirmation.

(d) **Corrections, changes, or amendments to defective applications.** If the application is defective as to form, the Board shall advise the applicant of the corrections, amendments, or changes required and the applicant shall be allowed to refile within sixty (60) days from the date of notification of deficiency. If the application is not corrected, amended, or changed within the time required, the Board may inactivate the application.

(e) **Corrected applications not filed in time allowed.** Any corrected application filed after the time allowed shall be treated in all respects as an original application received on the date of its refiling.

(f) **Optional preliminary meeting with the Board.** Any person intending to conduct an ASR project has the option to meet with the board, at no charge, to discuss the requirements and expectations for the site-specific ASR plan.

(g) **A site-specific plan to be submitted to the Board.** Applicants must submit a site-specific aquifer and storage recovery plan that satisfies the requirements of OAC 785:31-3-2. After review by Board staff, the site-specific aquifer storage and recovery plan shall be approved by the Board as part of the ASR permit.

[Source: Added at 35 Ok Reg 2214, eff 9-14-18]

785:32-3-2. Site-specific aquifer storage and recovery plan

(a) An approvable site-specific aquifer storage and recovery plan shall include, at a minimum:

(1) a report containing hydrogeologic properties of the project area, including;

(A) description of the aquifer selected for storage, including its areal extent, any associated confining or semi-confining layer(s),

and any other aquifer(s) present in the area of hydrologic effect;
(B) description of the lithology, soil types, geochemistry, and well logs including but not limited to geologic and/or drillers' logs;
(C) location of surface water bodies including but not limited to springs, creeks, ponds, rivers, and lakes within the area of hydrologic effect;
(D) groundwater information in the area of hydrologic effect including;

- (i) elevation of groundwater;
- (ii) location of water rights and groundwater wells, including total depth, within the area of hydrologic effect;
- (iii) groundwater flow direction and hydraulic gradient determined by a sufficient number of wells in the same water bearing zone developed according to the aquifer conditions;
- (iv) assessment of previous hydrologic data;

(E) site-specific aquifer characteristics including;

- (i) storage capacity of the aquifer (storage coefficient for confined aquifers and specific yield for unconfined aquifers);
- (ii) hydraulic conductivity, transmissivity, and porosity;
- (iii) aquifer thickness and saturated thickness;
- (iv) if applicable, perched groundwater conditions;
- (v) estimated annual recharge in inches per year;

(2) a site monitoring plan for the aquifer storage and recovery system shall include, at a minimum:

(A) sufficient number of monitoring wells dependent upon aquifer type, including a minimum of three (3) monitoring in the same water bearing zone to determine if any changes to groundwater flow direction and gradient have occurred;

- (i) number, location, and design of monitoring wells; extraction wells can be used as monitoring wells;
- (ii) at least one monitoring well must be located down-gradient of the flow path through the water delivery mechanism;

(B) proposed method to demonstrate proportion of source water present at recovery;

(C) effects of the operation on groundwater elevation, aquifer leakage rates, and groundwater discharge rates;

(D) the frequency of reporting shall be a maximum of one year unless otherwise determined by the Board;

(E) methods to monitor impacts of ASR operation on nearby surface water features.

(3) impact area of proposed aquifer storage and recovery plan;

(4) anticipated effects on any hydrologic feature within the area of hydrologic effect;

(5) source of water to be used in ASR and estimated annual volumes available;

(6) description of the method for determining the amount of source water available at the proposed recovery site;

(7) accounting for changes in volume and quality of stored water;

(8) current and proposed land use within the ASR area of hydrologic effect;
(9) plan for well spacing that demonstrates that the storage and recovery of water shall not interfere with any domestic or permitted groundwater use in the basin. Unless otherwise determined by the Board, minimum spacing requirements shall be:

(A) Within bedrock groundwater basins, no new or proposed well(s), excluding observation and monitoring wells, shall be drilled and completed within one thousand three hundred twenty feet (1320') of an authorized existing well or proposed well location on lands of another.

(B) Within alluvium and terrace groundwater basins, no new or proposed well(s) shall be drilled and completed within six hundred sixty feet (660') of an authorized existing well or proposed well location on lands of another.

(C) These well spacing provisions shall not be applicable to plugged or abandoned wells.

(b) The delivery of stored water and the recovery of such water must occur within the same subsurface watershed unless otherwise determined by the Board.

(c) The proposed site-specific aquifer storage and recovery plan shall be reviewed and approved by Board staff prior to the ASR permit application being submitted to the Board for approval. Corrections, changes, or amendments to site-specific ASR plan. If the site-specific ASR plan is found defective, the board shall advise the applicant of the corrections, changes, or amendments required and the applicant shall be allowed to refile within sixty (60) days from the date of notification of deficiency. If the site-specific ASR plan is not corrected, amended, or changed within the time required, the board may inactivate the application.

(d) Final approvable site-specific aquifer storage and recovery plan shall be reviewed and approved by the Board as part of the ASR permit application.

[Source: Added at 35 Ok Reg 2214, eff 9-14-18]

785:32-3-3. Well spacing

(a) **Spacing.** Within bedrock groundwater basins where the maximum annual yield has been determined, no new or proposed well(s) shall be drilled and completed within one thousand three hundred twenty feet (1320') of an authorized existing well or proposed well location on lands of another, provided that the well on lands of another is capable of taking water from the same basin. Within alluvium and terrace groundwater basins where the maximum annual yield has been determined, no new or proposed well(s) shall be drilled and completed within six hundred sixty feet (660') of an authorized existing well or proposed well location on lands of another, provided that the well on lands of another is capable of taking water from the same basin. These well spacing provisions shall not be applicable to plugged or abandoned wells or wells authorized pursuant to a provisional temporary permit if no regular, temporary, special or limited quantity permit application requesting authorization to use the same wells is filed.

(b) **Location exceptions.** A location exception shall be granted if the person requesting the exception shows and the Board determines in an individual proceeding that drilling or completing the new or proposed well at the location required to comply with the established well spacing set forth in subsection (a) of this section would be inequitable or unreasonable, and that notice of the location exception request is provided. The following situations are examples to show that compliance with well spacing would be inequitable or unreasonable:

- (1) No objection is received from any landowner having a well located within the established well spacing distance of the proposed well requested to be authorized.
- (2) The amount or dimensions of the land dedicated to the permit precludes the drilling of a well in compliance with the spacing requirement set forth in (a) of this section.
- (3) The well requested to be authorized is a well which was drilled, completed and used prior to the date of the maximum annual yield determination and which does not meet the spacing requirements of (a) of this section.

(c) Well spacing within a sensitive sole source groundwater basin.

- (1) Within a sensitive sole source groundwater basin where the maximum annual yield has been determined:
 - (A) No new or proposed well shall be drilled and completed within a one thousand three hundred twenty feet (1320') radius of a spring that flows 50 or more gallons per minute, emanates from the basin and is identified in Appendix D to this Chapter;
 - (B) No new or proposed well shall be drilled and completed within a two (2)-mile radius of a spring that flows 500 or more gallons per minute, emanates from the basin and is identified in Appendix D to this Chapter, unless the Board first determines that the total amount of groundwater authorized to be used from all wells within that radius is no more than 1600 acre feet per year; and
 - (C) No new or proposed well shall be drilled and completed within one (1) mile of a stream segment considered to be perennial in the U.S. Geological Survey's National Hydrology Dataset and with a base flow of 500 gallons per minute that emanates from the basin.
- (2) Provided, an applicant may obtain an exception from the provisions of paragraph (1) of this subsection (c) if:
 - (A) The applicant first demonstrates to the satisfaction of the Board that the cumulative impact of pumping from the new or proposed well together with authorized pumping from existing and proposed wells will not cause a reduction of more than 25% of the base flow of the subject spring or stream; or
 - (B) The amount or dimensions of the land dedicated to the permit precludes the drilling of a well in compliance with the provisions of paragraph (1) of this subsection (c).
- (3) Notwithstanding any other provision of this subsection (c), the Board shall not authorize any new or proposed well within a sensitive sole source groundwater basin where the maximum annual yield has been determined if the use of that well is likely to degrade or interfere with springs or streams emanating in whole or in part from the basin.

[Source: Added at 35 Ok Reg 2214, eff 9-14-18]

785:32-3-4. Fees

Fees required in filing for ASR permits and other matters will be charged in accordance with Chapter 5 of this Title.

[Source: Added at 35 Ok Reg 2214, eff 9-14-18]

785:32-3-5. Acceptance of application for filing; when applications deemed withdrawn

- (a) The date of receipt of an application in the office of the Board shall be endorsed thereon and the application noted in the records.
- (b) If an applicant does not correct an application or publish notice as instructed by the Board, and no further proceedings are initiated by the applicant for six (6) months or more after last contact with the Board, the application shall be deemed withdrawn. The Board shall provide notice to the applicant that the application has been deemed withdrawn.

[Source: Added at 35 Ok Reg 2214, eff 9-14-18]

785:32-3-6. Notice of application

(a) **Application notice.** Notice of the application, including hearing date, time, and place if scheduled prior to notice, shall be provided by the applicant as required by law and Board instructions. Such notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county where each existing or proposed well is located. Notice shall also be provided by certified mail to all surface estate owners of lands located within one-thousand three hundred twenty feet (1,320') from actual locations of existing or proposed recharge well(s), withdrawal well(s), or infiltration basins shown on the application plat. Accuracy and adequacy of notice shall be the responsibility of the applicant. If deemed necessary by the Board, notice may be required to surface estate owners within one-thousand three hundred twenty feet (1,320') from the outside boundary of the area of hydrologic effect.

(b) **Proof of notice.** Adequate proof that notice was provided as instructed by the Board shall be submitted to the Board by the applicant within fifteen days after the last date of newspaper publication, or as otherwise directed by the Board. Such proof shall show the dates on which said notice was published in such newspaper and that the applicant did properly notify the surface estate owners as instructed.

(c) **Failure to give adequate notice.** If adequate notice and proof of notice is not provided by the applicant, the application may be dismissed and the application fee forfeited.

(d) **Revised published notice of hearing.** The Board may require a revised notice to be published at the applicant's expense in case material error or deviation is made in the description of the land, the well location, or the manner in which a protest to the application may be made [82:1020.8], or if the applicant makes substantial amendments to his application after notice of the original application, or fails to effect proper publication in any manner.

(e) **Protests and hearings.**

(1) If the Board does not schedule a hearing on the application before instructing the applicant to provide notice, a hearing on the application shall be scheduled by the Board upon receipt of a protest that meets the requirements of Section 785:4-5-4, and the Board shall notify the applicant and protestant of such hearing [82:1020.8].

(2) Any interested person shall have the right to protest said application and present evidence and testimony in support of such protest. Such protests shall be made in accordance with Chapter 4 of this Title.

(3) Even if no protest is received, the applicant shall be advised and given opportunity for hearing if the application cannot be recommended for approval to the Board.

[Source: Added at 35 Ok Reg 2214, eff 9-14-18]

785:32-3-7. Approval of application

(a) A permit to take and use water stored in an aquifer pursuant to a site-specific aquifer storage and recovery plan shall only be granted if substantial, competent evidence accompanying the application demonstrates:

- (1) The Board has approved a site-specific aquifer storage and recovery plan;
- (2) The applicant has legal access to the water stored in the aquifer pursuant to the plan;
- (3) The applicant stored or caused to be stored said water pursuant to and in compliance with any required authorization issued by the Oklahoma Department of Environmental Quality that is intended to protect water quality;
- (4) The stored water is available for use in the applied for amount during the period covered by, and in the manner described in, the proposed permit;
- (5) The use to which the applicant intends to put the water is a beneficial use; and
- (6) That waste by depletion and waste by pollution as specified in 82 O.S. § 1020.15 will not occur.

(b) In making the determination of whether applicant has legal access to the stored water, the Board will only consider language on the face of legal instruments used to support or oppose this element.

(c) In determining whether waste [82:1020.15] will occur, the Board shall consider the following:

- (1) Evidence concerning the manner and method of use proposed, efficiency of system proposed to be used, history and incidents of past waste, and applicant's response thereto and the amount of groundwater needed for the purpose proposed in relation to the amount allocated to the land dedicated to the application may be considered by the Board.
- (2) The Board may consider relevant and admissible evidence regarding the manner and method of all of applicant's uses of groundwater; applicant's well and water distribution system; history and incidents of permitting or causing pollution of groundwater or failure to properly plug abandoned fresh water wells in accordance with rules of the Board and file reports thereof; and anything else that tends to prove that the applicant will or will not cause or allow groundwater pollution. Provided, however, if the activity for which the applicant intends to use the water is required to comply with rules and requirements of or is within the jurisdictional areas of environmental responsibility of the Department of Environmental Quality, the Board shall be precluded from making a determination whether waste by pollution will occur as a result of such activity.

[Source: Added at 35 Ok Reg 2214, eff 9-14-18]

SUBCHAPTER 5. AQUIFER STORAGE AND RECOVERY PERMITS

785:32-5-1. Contents of permits

(a) An ASR permit issued by the Board shall contain substantially the following:

- (1) Date of filing.
- (2) The county or counties in which the ASR activity is located.
- (3) The permit number and date issued, which shall be the date the permit is approved by the Board or where appropriate, by the Executive Director.
- (4) The name and address to whom issued.

- (5) The amount of stored water in acre-feet authorized to be withdrawn annually.
 - (6) Annual total water, in acre-feet, in storage.
 - (7) The purpose for which the stored water will be used and the legal description of the land dedicated to the permit.
 - (8) The number and legal description of the recharge well location(s).
 - (9) The number and legal description of extraction well location(s).
 - (10) The level of perforating and the level of sealing the well.
 - (11) Description of storage method.
 - (12) Groundwater basin(s) from which stored water is to be withdrawn.
- (b) In addition to the above, the permit shall contain any additional terms, conditions, limitations, or restrictions the Board may prescribe and on which the applicant agrees or as ordered after notice and hearing.

[Source: Added at 35 Ok Reg 2214, eff 9-14-18]

785:32-5-2. Annual reports

- (a) ASR reports describing the amount of stored water and amount of water withdrawn in the previous calendar year shall be provided to the Board no later than January 31st of each year. Stored water use reports shall be submitted in a form approved by the Board. These reports shall become a part of each permit record.
- (b) The report shall contain a methodology for determining the proportion of stored water to ambient groundwater in recovery and the results thereof.
- (c) The report shall demonstrate that stored water was withdrawn in compliance with the methods and volumes described in OAC 785:32-3-2.
- (d) Additional reporting may be requested at the discretion of the Board.

[Source: Added at 35 Ok Reg 2214, eff 9-14-18]

785:32-5-3. Cancellation or suspension of permits

Any permit for ASR may be reopened, amended, suspended, or cancelled by the Board at any time for failure to comply with the site-specific aquifer storage and recovery plan, permit terms, limitations, or restrictions, or any provision of the relevant statutes or rules, upon proper notice and hearing as provided in the Administrative Procedures Act and the Board's rules.

[Source: Added at 35 Ok Reg 2214, eff 9-14-18]

CHAPTER 35. WELL DRILLER AND PUMP INSTALLER LICENSING

[Authority: 82 O.S., §§ 1020.16 and 1085.2]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

785:35-1-1. Purpose

- (a) Rules in this chapter set forth the requirements to obtain a license to drill certain kinds of wells and to install pumps in such wells. These rules also provide guidance and procedures followed for license renewal, revocations, and suspensions, requirements licensees must meet to retain their licenses, specify the purposes for the indemnity fund created to replace the bond requirement, and provide for the establishment of an advisory committee of well drillers and pump installers to make recommendations to the Board.

(b) The rules in this Chapter also provide minimum requirements to be followed by any person when drilling and plugging certain kinds of wells and installing pumps in such wells. Other agencies may have standards for drilling and plugging which exceed the minimum standards in this Section. These requirements are primarily promulgated to protect the quantity and quality of the fresh groundwater in the state from contamination and waste, and to provide public protection by enforcing proper construction, plugging and installing activities.

[Source: Amended at 10 Ok Reg 3299, eff 6-25-93; Amended at 11 Ok Reg 2947, eff 6-13-94]

785:35-1-2. Definitions

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

"Abandoned well" means a well that has been permanently taken out of use, or is in such a state of disrepair that using it is impracticable or threatens to contaminate the groundwaters of the State.

"APA" means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S. 1981, §§250 et seq., as amended.

"Application" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

"Cathodic protection" means a technique used to reduce the corrosion of a metal surface by making that surface the cathode of an electrochemical cell.

"Commercial drilling" means drilling and installation as a business, trade, or occupation for compensation. [82:1010.1]

"Commercial installation" means installation as a business, trade or occupation for compensation. [82:1020.1]

"Commercial plugging" means plugging wells or borings as a business, trade or occupation for compensation. [82:1020.1]

"Deep anode groundbed" means one or more anodes installed vertically at a depth of fifty (50) feet or more below the earth's surface in a drilled hole for the purpose of providing cathodic protection.

"Direct push geological boring" means a geological boring in which tools and sensors are pushed into the ground using static weight combined with percussion as the energy to remove soil or make a path for the tool to obtain geotechnical, soil, water, and/or vapor information.

"Direct push monitoring well" means a well installed by direct push technology and used to obtain a representative groundwater sample for determining groundwater chemistry or quality; for detecting, recovering, or remediation of actual or potential contamination; or for monitoring the unsaturated zone above a water table or confined aquifer, and includes site assessment observation wells and unsaturated zone monitoring wells.

"Drilling water" means water that is used in the drilling of a well which is of a quality suitable for drinking or is uncontaminated water with a residual chlorine content equal to or greater than one hundred (100) milligrams per liter.

"Domestic use" means the use of water by a natural individual or by a family or household for household purposes, for farm and domestic animals up to

the normal grazing capacity of the land whether or not the animals are actually owned by such natural individual or family, and for the irrigation of land not exceeding a total of three (3) acres in area for the growing of gardens, orchards, and lawns [82:1020.1(2)]. Domestic use also includes: (1) the use of water for agriculture purposes by natural individuals, (2) use of water for fire protection, and (3) the use of water by non-household entities for drinking water purposes, restroom use, and the watering of lawns, provided that the amount of groundwater used for any such purposes does not exceed five acre-feet per year.

"Firm" means an individual or any kind of legal entity, such as a sole proprietorship, partnership or corporation that holds a license to conduct any well drilling or pump installation activity.

"Fresh water" means water which has less than five thousand (5000) parts per million total dissolved solids. All other water is salt water. [82:1020.1(7)]

"Fresh water observation well" means any well used to measure the depth to the water table or parameters of fresh water aquifer performance.

"Geotechnical boring" means any excavation deeper than four feet (4'), that is drilled, augured, bored, cored, washed, driven, jetted or otherwise constructed and which is used or capable of being used to obtain soil or geological formation samples or information, or for the determination of groundwater quality or remediation.

"Geothermal well" means heat pump well.

"Groundwater" means fresh water and marginal water under the surface of the earth regardless of the geologic structure in which it is standing or moving outside the cut bank of any definite stream. [82:1020.1(1)]

"Groundwater well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed which is used or is capable of being used for the production of groundwater.

"Heat exchange well" means the same as, and includes, the terms "geothermal well", "heat pump well", and "heat sink well".

"Heat pump well" means a boring or cased hole that uses or is capable of using the thermal characteristics of the geologic formations or groundwater if encountered, and includes but is not limited to an open or closed loop groundwater heat pump system.

"Heat sink well" means a well utilized for heat exchange purposes, including but not limited to, a heat pump well and a geothermal well.

"License" means a certification issued by the Board to qualified persons making application therefor authorizing such persons to engage in weather modification and control operations or the business of drilling or plugging wells or borings and installing water well pumps.

"Marginal water" means water which has at least five thousand (5000) and less than ten thousand (10,000) parts per million total dissolved solids.

"Monitoring well" means a well used to obtain a representative groundwater sample for determining groundwater chemistry or quality; for detecting, recovering, or remediation of actual or potential contamination; or for monitoring the unsaturated zone above a water table or confined aquifer, and includes site assessment observation wells and unsaturated zone monitoring wells.

"Open-loop heat pump water supply well" means a well drilled to supply water for the purpose of heat transfer.

"Operator" means the individual person engaging in the actual operation and use of the well drilling equipment and facilities and who performs and supervises the actual on-site construction, completion and handling of wells or well

test holes, and conducts tests, and obtains and records well or well test hole data.

"Piezometer" means cased holes that monitor or are capable of monitoring water pressures or soil moisture tensions, primarily located at dam sites or other man-made water retention structures.

"Pump" means mechanical equipment or device used to remove water from wells and shall include, but is not limited to pumps, seals, tanks, fittings, pipes from wells to pressure tanks, pressure switches, shut off valves for pressure tanks, related equipment and controls.

"Pump installer" means a person who is qualified to engage in the installation, removal, alteration, or repair of water well pumps and pumping equipment used in connection with a water well and breaking of the water well seal.

"Sand point well" means a groundwater well with a borehole constructed by means of driving a small diameter pipe having perforations downward into a loose sandy soil or by means of forcing uncontaminated groundwater through a small diameter pipe having perforations with sufficient pressure to displace loose sandy soil with the pipe.

"Site assessment observation well" means a well used to measure the depth to the water when used for evaluation, classification or determination of the groundwater flow direction at a site that is or might be contaminated.

"Sleeve" means well casing that is installed at the surface surrounding the production casing and used solely for the purpose of attaching a pitless adapter unit and is separate from surface casing and conductor pipe.

"Soil boring" means geotechnical boring.

"Total dissolved solids" (TDS) means a measure, in parts per million, of dissolved combined organic or inorganic substances suspended in water. Total dissolved solids is used as an aggregate indicator of water quality.

"Unsaturated zone monitoring well" means any well used for the characterization, evaluation or monitoring of the unsaturated area above the water table or zone.

"Vertical closed-loop heat pump well" means the borehole perpendicular to the natural grade of the earth surface drilled deeper than ten (10) feet into which a closed-loop pipe is placed for the purpose of heat transfer.

"Water return well" means a well constructed for the purpose of returning water that has passed through the heat pump system to the same aquifer from which the water was produced by the open-loop water supply well.

"Water well test hole" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed which is used or is capable of being used to determine the location of fresh groundwater and/or the capacity of the geologic formation to yield groundwater.

"Well" means any type of excavation for the purpose of obtaining groundwater, to monitor, to remediate, or observe conditions under the surface of the earth, but does not include oil and gas wells.

"Well driller" means and refers to the individual owner-proprietor or partnership, firm or corporation engaged in the business of the commercial drilling, plugging or reconstruction and the test drilling of wells in the State of Oklahoma.

[Source: Amended at 10 Ok Reg 3299, eff 6-25-93; Amended at 11 Ok Reg 2947, eff 6-13-94; Amended at 12 Ok Reg 2703, eff 7-1-95; Amended at 14 Ok Reg 2782, eff 7-1-97; Amended at 20 Ok Reg 2608, eff 7-11-03; Amended at 21 Ok Reg 3169, eff 7-25-03 through 7-14-04 (emergency)¹; Amended at 22 Ok Reg 1598, eff 7-1-05; Amended at 23 Ok Reg 3078, eff 7-27-06; Amended at 25 Ok Reg 1444, eff 5-27-08; Amended at 27 Ok Reg 1313, eff 5-27-10; Amended at 36 Ok Reg 1299, eff 8-11-19]

EDITOR'S NOTE: ¹This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last prior permanent text is reinstated. Therefore, on 7-15-04 (after the 7-14-04 expiration of the emergency action), the text of 785:35-1-2 reverted back to the permanent text that became effective 7-11-03, as was last published in the 2003 OAC Supplement and republished in the 2004 OAC Supplement, and remained as such until amended again by permanent action on 7-1-05.

785:35-1-3. General statutory authority

The Oklahoma Water Resources Board, under directive of 82 O.S. 1991, §§1020.16 and 1085.2, as amended, is required to adopt appropriate rules and regulations governing applications for licensing persons engaged in the commercial drilling or plugging of groundwater, monitoring and fresh water or site assessment observation wells, wells utilized for heat exchange purposes, including but not limited to heat pump wells and geothermal wells, and in the drilling of geotechnical boring, for the proper completion of groundwater, monitoring and fresh water or site assessment observation wells and wells used for heat exchange purposes and geotechnical boring drilled in the State of Oklahoma, and for the licensing of pump installers and for the proper installation of pumps. The rules and regulations contained in this Chapter are adopted for the purpose of performing the duties of licensing well drillers and pump installers as directed by law.

[Source: Amended at 10 Ok Reg 3299, eff 6-25-93; Amended at 11 Ok Reg 2947, eff 6-13-94]

785:35-1-4. Violations and penalties

(a) **Misdemeanor violations.** Any person who, after notice from the Board violates or refuses or neglects to comply with any provision of 82 O.S. 1991, §§1020.1 through 1020.22, as amended and the rules of this Chapter, or who commits waste shall be guilty of a misdemeanor, and upon conviction shall be fined not less than Twenty-Five Dollars (\$25.00) nor more than Two Hundred Fifty Dollars (\$250.00) for each offense. Any person who, after notice that he is in violation thereof continues to violate any provision of this act, and fails to comply therewith within a reasonable length of time, is guilty of a separate offense for each day the violation continues.

(b) **Administrative penalties.** *The Board may, after notice and hearing, impose on any person administrative penalties of up to Five Thousand Dollars (\$5000.00) and may revoke, suspend or deny renewal of any license or operator certification for each violation of the rules regarding license or certification requirements, the requirement to obtain a license or certification, or minimum construction or installation standards. Each day a violation continues shall constitute a separate violation. Such administrative penalties shall be deposited in the Well Drillers and Pump Installers Remedial Action Indemnity Fund except as otherwise provided in 785:35-1-5(c). [82:1020.16(E)]*

(1) **Notice of violation and proposed assessment.** In addition to revoking, suspending or not renewing a license or operator certification, the Board may impose administrative penalties against drillers or operators who fail, refuse or neglect to comply with rules or orders of the Board. Such administrative penalties shall be imposed only after notice and opportunity for hearing on the proposed imposition of such penalties. The notice of the proposed assessment of administrative penalties shall inform the respondent of the provisions of the Board rules or order at issue and the proposed amount of the penalty. A letter, citation, petition, notice of violation, consent order or final order may constitute a notice of proposed assessment for purposes of initiating administrative penalty proceedings if it meets the

requirements of this section.

(2) **Administrative fine schedule.** The schedule of fines in this Section is based on violation of requirements common to the rules promulgated under authority of the 82 O.S. Section 1085.2; Oklahoma Groundwater Law in 82 O.S. Section 1020.1 and following, particularly Section 1020.16 on well driller and pump installer licensing. The fine schedule for citations issued by the Board for violations of the following requirements is:

- (A) Engaged in commercial activity without a license.
 - (i) First - \$1,000.00
 - (ii) Second or subsequent - up to \$5,000.00.
- (B) Engaged in commercial activity without an operator's certification.
 - (i) First - \$1,000.00.
 - (ii) Second or subsequent - up to \$5,000.00.
- (C) Failure to have present a certified operator at the drilling, plugging or pump installation site.
 - (i) First - \$1,000.00.
 - (ii) Second or subsequent up to \$5,000.00.
- (D) Failure to have rig used in drilling or pump installation properly identified
 - (i) First - \$1,000.00.
 - (ii) Second or subsequent up to \$5,000.00.
- (E) Failure to submit a multi-purpose completion report form or electronic version
 - (i) First - \$250.00.
 - (ii) Second or subsequent \$500.00.
- (F) Violation of groundwater well, fresh water observation well and water well test holes minimum standard
 - (i) First - \$1,000.00.
 - (ii) Second or subsequent up to \$5,000.00.
- (G) Violation of heat exchange well minimum standard
 - (i) First - \$1,000.00.
 - (ii) Second or subsequent up to \$5,000.00.
- (H) Violation of monitoring well and geotechnical boring minimum standard
 - (i) First - \$1,000.00.
 - (ii) Second or subsequent up to \$5,000.00.
- (I) Violation of pump installation minimum standard.
 - (i) First - \$1,000.00.
 - (ii) Second or subsequent up to \$5,000.00.
- (J) Violation of minimum standard for plugging and capping wells and test holes.
 - (i) First - \$1,000.00.
 - (ii) Second or subsequent up to \$5,000.00.
- (K) Violation of minimum standard for plugging site assessment observation well, monitoring well and geotechnical borings.
 - (i) First - \$1,000.00.
 - (ii) Second or subsequent up to \$5,000.00.

(3) **Administrative Citations**

- (A) Issuance of a citation. A citation which is issued to a person for violation of one or more of the compliance requirements provided

in Section 785:35-1-4(b)(2) shall advise the person of the hearing date at which the person may contest the issuance of the citation and/or the amount of the fine. Such hearings shall be conducted in compliance with the Oklahoma Administrative Procedures Act and the Oklahoma Open Meetings Act.

(B) Orders following hearing. A final order may uphold the citation as issued, reduce the amount of the fine or dismiss the action. A default order may be issued if the person cited has been advised in writing of the hearing date and fails to appear. The fine is due and payable immediately upon issuance of the order unless otherwise provided therein. A final order is appealable to the district court in accordance with the Oklahoma Administrative Procedures Act.

(4) **Payment of fines.** A person who is ordered to pay a fine shall submit the fine to the Oklahoma Water Resources Board, 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118. A person who decides not to contest the issuance of the citation shall submit payment of the fine to the same address on or before the hearing date indicated on the citation.

[Source: Amended at 11 Ok Reg 2947, eff 6-13-94; Amended at 20 Ok Reg 2608, eff 7-11-03; Amended at 26 Ok Reg 1713, eff 6-11-09; Amended at 28 Ok Reg 987, eff 7-1-11; Amended at 40 Ok Reg 1304, eff 8-11-23]

785:35-1-5. Indemnity Fund

(a) **Purpose of the Indemnity Fund.** *Monies in the Indemnity Fund shall only be expended for remedial actions necessary without notice and hearing to protect groundwater from pollution or potential pollution from wells or boreholes that do not meet the minimum standards for construction or that have been abandoned.*

[82:1020.16(B)(2)] *Expenditures from the indemnity fund...shall not exceed Ten Thousand Dollars (\$10,000.00) for each well, borehole, or pump for which action is taken.* [82:1020.16(B)(4)] Monies from the Indemnity Fund shall be expended solely for the repair or plugging of improperly constructed wells. Unless otherwise determined by the Board, a finding that a well has been improperly constructed shall be based on the rules and statutes in place at the time the well was constructed.

(b) **Reimbursement.** The establishment of the Indemnity Fund in no way relieves the driller or pump installer from liability incurred or responsibility for wells or boreholes drilled or plugged or pumps installed which are not in compliance with the Board's rules and regulations. If the Board makes an expenditure from the Indemnity Fund to remedy a deficient condition, then any driller or pump installer responsible therefor shall, within a reasonable time specified in a written notification by the Board, reimburse the Indemnity Fund for the full amount of the expenditure. If the driller or pump installer does not make such reimbursement, then the Board shall not renew the license or certification of the driller or pump installer and may pursue other available remedies. *The Board shall seek reimbursement as recommended by the Well Drillers and Pump Installers Advisory Council for any remedial action taken or required by the Board.* Any monies received as reimbursement shall be deposited in the Well Drillers and Pump Installers Remedial Action Indemnity Fund except as otherwise provided in 785:35-1-5(c). [82:1020.16(B)(5)]

(c) **Well Drillers and Pump Installers Regulation Account.** When the Well Drillers and Pump Installers Remedial Action Indemnity Fund reaches Fifty Thousand Dollars (\$50,000.00), the annual fees received from well drillers and pump installers, *monies received as reimbursement, and administrative penalties*

recovered under 785:35-1-4(b) [82:1020.16(C)] shall be deposited in a separate account in the Water Resources Board Revolving Fund designated as the Well Drillers and Pump Installers Regulation Account. Monies in said account shall be used by the Board for inspections, licensing, enforcement, and education, reimbursing per diem and travel costs for members of the Well Drillers and Pump Installers Advisory Council pursuant to the State Travel Reimbursement Act, and as otherwise determined to be necessary to implement the provisions of this section [82:1020.16(C)], including but not limited to the payment for damage or destruction of property caused by activities related to inspections and enforcement by the Board.

[Source: Amended at 10 Ok Reg 3299, eff 6-25-93; Amended at 11 Ok Reg 2947, eff 6-13-94; Amended at 14 Ok Reg 2782, eff 7-1-97; Amended at 18 Ok Reg 2246, eff 7-1-01; Amended at 19 Ok Reg 2498, eff 6-27-02; Amended at 26 Ok Reg 1713, eff 6-11-09; Amended at 36 Ok Reg 1299, eff 8-11-19]

785:35-1-6. Well Drillers and Pump Installers Advisory Council

(a) **Creation of Council.** The Well Drillers and Pump Installers Advisory Council is hereby created. The Council shall consist of eight (8) members appointed by and serving at the pleasure of the Oklahoma Water Resources Board. The Board shall seek nominations from each of the Congressional districts and the remaining members shall be appointed at large. The Executive Director of the Board shall be a member ex officio. At least one member shall represent each licensed activity. The term for a member on the advisory council shall be two (2) years. Upon the expiration of said terms, their successors shall be appointed for terms of two (2) years. Any vacancy occurring on the Council shall be filled within 60 days of such vacancy. Council members may be removed by the Board without cause.

(b) **Qualifications for Council membership.** Each Council member shall have been licensed as a well driller or pump installer by the Board for at least five (5) years prior to appointment to the Council, and must be in good standing with the Board at the time of appointment and during the term of Council membership.

(c) **Organization of Council.** The Council shall meet at least once each twelve months and otherwise at the call of the Board or Executive Director of the Board. The Executive Director or his or her designee shall chair the first Council meeting, at which the Council members may elect a chair for a term of one year from among their membership. In the event of a vacancy on the Council, the remaining Council members may make nominations or recommendations, subject to approval and appointment by the Board. The Executive Director or his or her designee will consult with an elected chair concerning meeting agendas.

(d) **Duties of the Council.** The Council shall have the following duties:

(1) Recommend new rules and rules amendments to the Board, provided such recommendations must be in writing and must be concurred in by a majority of the membership of the Council;

(2) Review and recommend approval or denial of use of monies in the Well Drillers and Pump Installers Remedial Action Indemnity Fund for:

(A) Remedial actions to protect groundwater from pollution or potential pollution from wells or boreholes under the jurisdiction of the Board which do not meet minimum standards for construction or that have been abandoned, and

(B) Inspections, licensing, enforcement and education by the Board; and

(3) Recommend seeking reimbursement for any remedial action taken or required by the Board.

(e) **Continuing Education.** Attendance by members of the Council at meetings organized in accordance with 785:35-1-6(c) shall qualify as continuing education requirements per OAC 785:35-3-5(e)(5).

(f) **Effect of rule.** Nothing in this section shall be construed to limit or restrict the Board's authority regarding water well and pump installer licensing or use of the Well Drillers and Pump Installers Remedial Action Indemnity Fund.

[Source: Amended at 10 Ok Reg 3299, eff 6-25-93; Amended at 18 Ok Reg 3375, eff 6-21-01 (emergency); Amended at 19 Ok Reg 2498, eff 6-27-02; Amended at 20 Ok Reg 2608, eff 7-11-03; Amended at 36 Ok Reg 1299, eff 8-11-19; Amended at 40 Ok Reg 1304, eff 8-11-23]

SUBCHAPTER 3. LICENSING AND CERTIFICATIONS

785:35-3-1. Licensing procedures

(a) **Who must file and types of certifications.**

(1) All persons engaged in the following categories of activities in this state shall make application for and obtain a license from the Board:

(A) Category 1: commercial drilling or plugging of groundwater wells including test drilling for groundwater, and commercial drilling or plugging of fresh water observation wells;

(B) Category 2: commercial drilling or plugging of monitoring wells and site assessment wells, and drilling or plugging of geotechnical borings;

(C) Category 3: commercial installation of water well pumps;

(D) Category 4: commercial drilling or plugging of wells utilized for heat exchange purposes including but not limited to the following:

(i) heat exchange wells; and

(ii) geothermal wells.

(E) Category 5: commercial drilling or plugging of marginal water wells.

(2) The license issued by the Board shall indicate on its face each category and specific activity or activities as described in (a)(1) of this section for which the licensee is certified to perform and conduct.

(3) Each licensed firm shall have at least one operator who may also be the licensee. Each operator shall be required to obtain a certification from the Board. An operator shall not conduct types of activities not authorized for the licensee under whom the operator works.

(4) To engage in activities for which certification is required, operators shall also have a valid license or shall be certified as an operator for a person having a valid license. An operator's certification by itself shall not constitute proper authority to engage in activities for which licensing is required.

(5) Reconditioning of wells as a trade, business or occupation for compensation shall be considered commercial drilling.

(6) No license shall be required for any person who installs vapor observation wells within the excavation of newly installed underground tank systems, provided that the bottom of the vapor observation well does not intercept the groundwater table and is above the historic high water table level in the area, and provided further that such vapor wells shall be constructed to meet or exceed the minimum standards for the construction of monitoring wells which are located in the unsaturated zone of aquifer.

(b) Application requirements for license.

- (1) Any person who intends to conduct any of the activities listed in 785:35-3-1(a)(1) must complete and file a verified application for license and activity certification on forms provided by the Board.
- (2) The license applicant shall submit the following with the application:
 - (A) verification of at least two (2) years qualified experience in the activity or activities for which certification under the license is sought, provided that education related to the activity may be substituted for up to one (1) year of the required qualified experience;
 - (B) a list of all well rigs and equipment used or to be used in conducting the activities for which certification under license is sought;
 - (C) the license fee for each activity for which certification under the license is sought;
 - (D) the indemnity fund fee for each category of activity for which certification under the license is sought;
 - (E) the examination fee.
 - (F) applicants for category 5 must also holds a category 1 certification for a minimum of 2 years.
- (3) Applicants who are partnerships, corporations or other entities that are not individuals shall additionally provide the following with the application:
 - (A) designation of one contact person who shall be an official properly authorized to act for the partnership, corporation or other entity;
 - (B) authorized signature of the contact person who shall execute and verify the application;
 - (C) a list of all persons employed who intend to become duly certified operators for the partnership, corporation or other entity.

(c) Application requirements for operator certification.

- (1) Any individual who intends to conduct any of the activities listed in 785:35-3-1(a)(1) for any person who obtains a license pursuant to these rules must complete and file an application for an operator certification on forms supplied by the Board, provided however, one operator certification shall be issued with the license to the licensee.
- (2) The applicant for an operator certification shall submit the following with the application:
 - (A) verification of at least one (1) year of qualified experience in the activity or activities for which the operator certification is sought, provided that education related to the activity may be substituted for up to six (6) months of the required qualified experience;
 - (B) the operator certification fee;
 - (C) the examination fee.

(d) Completion of application and notification.

- (1) Any application for license or operator certification not completed within six (6) months from the date of receipt shall be cancelled and fees submitted therewith forfeited.
- (2) Upon receipt of a properly completed application and all items required to be submitted, the Board shall inform said applicant of the dates, times,

and places of the examination for which he is eligible.

(e) Administration and procedures relating to examination.

(1) Upon notification of the dates, times, and places of examinations, the applicant shall notify the Board of the date, time, and place the applicant will be present to take the examination relating to the activities listed in 785:35-3-1(a)(1) for which the license or operator certification is sought.

There shall be five (5) kinds of examinations:

(A) an examination relating to groundwater wells and fresh water observation wells,

(B) an examination relating to monitoring wells, site assessment observation wells, and geotechnical boring,

(C) an examination relating to pump installation activities, including but not limited to related electrical work performed from the output side of a fused disconnect or breaker box, and

(D) an examination relating to heat exchange wells.

(E) an examination relating to marginal water wells.

(2) The applicant shall not be allowed to confer with any other person or refer to outside materials for answers to examination questions.

(3) After completion of the appropriate examination(s) within a reasonable time, the Board shall grade the examinations and pass upon qualifications of applicants for licensing and certification.

(4) An applicant, at any time within 30 days of the date he is notified of the results of an examination, may inspect his or her examination paper in the offices of the Board during the normal business hours for the purpose of challenging the propriety of the questions, the method of grading, and the accuracy of grading.

(5) Any applicant who fails an examination will be promptly notified by the Board. After a minimum time period of thirty (30) days, and if a subsequent examination is scheduled between the date of notification and the six (6) months expiration period of the application, the applicant may request to take the subsequent examination but must pay the appropriate examination fee each time the applicant requests to take the examination.

(f) Issuance of license.

(1) Upon acceptance of the applicant's qualifications the Board will issue the license with appropriate category and activity certifications to the applicant along with the required operator certifications.

(2) No license and no operator certificate shall be issued to any person who has not been a resident of the State of Oklahoma for at least ninety (90) days prior to the date of issuance of the license, unless the reciprocity provisions for nonresidents as set forth in (B) of this paragraph apply.

(A) The applicant for a license or operator certificate as the case may be, shall submit written verification of Oklahoma residency as required in this subsection.

(B) The Board may waive the ninety (90) day residency requirement as outlined in this subsection for any nonresident of the State of Oklahoma if the nonresident's particular state, territory, or possession of the United States extends similar privileges to the persons licensed under the provisions herein. If the applicant's state of residency has a licensing requirement, then the nonresident must be licensed and in good standing in that state. The license fees charged to a nonresident applicant shall be at least equal to the fees

charged for similar nonresident license by the state, territory, or possession of the United States in which the applicant is a resident, but in no case shall the fee be less than four hundred dollars (\$400.00).

(g) Changing the designation of license or moving an operator certification.

(1) Any individual licensee may request modification of the license designation to that of a partnership, corporation or other legal entity. The Board shall approve the request and issue a modified license after the following conditions are met:

- (A) the licensee holds an active valid license;
- (B) the licensee gives written notice of the request to the Board;
- (C) the licensee provides the name of the contact person who is an official properly authorized to act for the partnership, corporation or other entity;
- (D) a list of all persons employed by the partnership, corporation or other entity who are or intend to become duly certified operators.
- (E) payment of fee(s) required for change of license and any new operator certifications.

(2) An operator who has obtained a certification to drill under the license of a partnership, firm, or corporation can transfer that certification to another partnership, firm, or corporation on the following conditions provided that an operator cannot conduct activities during any period that he is not associated with a licensee, and provided further that an operator certification will not be renewed unless the operator is associated with a licensee:

- (A) the transfer fee is submitted to the Board with the transfer request, and
- (B) the operator associates with the new licensee within thirty (30) days, or has provided notice to the Board of his current address within thirty (30) days after leaving the previous licensee.

(h) Adding activities to be certified under license or operator certification.

(1) A licensee or certified operator may request to add activities to be certified under the license or operator certification.

(2) The Board shall consider approval of request after the following conditions are met:

- (A) verification of at least two (2) years qualified experience in the additional activity or activities for which the license is sought, provided that education related to the activity may be substituted for up to one (1) year of the required experience; verification of at least one (1) year qualified experience in the additional activity or activities for which certification is sought, provided that education related to the activity may be substituted for up to six (6) months of the required experience;
- (B) submittal of an update of the list of rigs or other equipment to be used in the additional activity or activities;
- (C) submittal of the additional license or operator certification fee;
- (D) submittal of the additional indemnity fund fee;
- (E) submittal of the examination fee;
- (F) passing the examination.

785:35-3-1.1. Activities authorized; electrician and plumbing license

(a) *The provisions of the Electrical License Act in Sections 1680 through 1697 of Title 59 of the Oklahoma Statutes shall not apply to . . . the installation, maintenance, repair or replacement of water supply pumps and related equipment and devices, provided such work is performed from the output side of a fused disconnect or breaker box.* [59: 1692(A)(6)]

(b) Persons holding a license or operator certification from the Board are not required to become licensed under the Electrical Licensing Act for the installation, maintenance, repair or replacement of water supply pumps, provided the work conducted by persons holding licenses or operator certifications from the Board is performed from the output side of a fused disconnect or breaker box.

(c) Persons holding a license or operator certification from the Board are not required to become licensed under the Plumbing Law of 1955 in Sections 1001 through 1023.1 of Title 59 of the Oklahoma Statutes for the installation, maintenance, repair or replacement of water supply pumps and related equipment and devices, provided the work conducted by persons holding licenses or operator certifications from the Board is performed from the water well to the pressure tank, including the shut off valve between the pressure tank and supply line on the discharge side of the pressure tank.

(d) Persons holding a license or operator certification for Category 3 Activities, Commercial Installation of Water Well Pumps, are authorized to plug permanently abandoned fresh water wells or test holes if the water in the well or test hole is uncontaminated, provided that persons shall comply with 785:35-11-1 and successfully complete a Board examination for such abandonment activities.

[Source: Added at 23 Ok Reg 3078, eff 7-27-06]

785:35-3-1.2. Military service occupation, education and credentialing

(a) **Expedited temporary, reciprocal, or comity license or certification.** Every active duty military personnel and their spouse who is licensed or certified in another state, upon receiving notice or orders for military transfer or honorable discharge to this state, may in advance of actual transfer or discharge submit a completed application to the Board to request an expedited temporary, reciprocal or comity license or certification for their currently held valid license or certification from another state or territory of the United States so such person may upon entering this state be authorized to continue their licensed or certified occupation or profession without delay.

(b) **Issuance of the license or certification.** The Board shall, upon receipt of an active duty military application submitted and presentation of satisfactory evidence of equivalent education, training and experience on such valid license or certification from another state, accept the valid license or certification and apply all its education, training and experience in the manner most favorable toward satisfying the qualifications for issuance of the requested license or certification in this state. The Board shall issue the requested Oklahoma license or certification within thirty (30) days provided the license or certification from the other state is found to be in good standing and reasonably equivalent to the requirements of this state. In addition, the applicant shall submit an affidavit stating that they have read and understand the rules and regulations of this Chapter.

(c) **Temporary, reciprocal, or comity license or certification.** The temporary, reciprocal or comity license or certification issued pursuant to this section shall be

valid for the same period as authorized for full license or certification in this state, unless the person is notified that there is cause for a denial of the application or that certain documentation required is lacking or unavailable. In such case, a temporary credential shall be issued to allow the person time to obtain the necessary requirement while continuing to be employed in his or her occupation or profession in this state. Any active duty military applicant receiving a notice of denial of full licensure or certification shall have the right to appeal the denial determination as provided in the Administrative Procedures Act to obtain and submit the documentation required to complete full license or certificate requirements in this state.

(d) **Fees.** The Board shall waive the application fee for active duty military personnel and their spouse and shall further waive the license or certificate fees for the first period of issuance for such temporary, reciprocal or comity license or certificate.

(e) **Work performed on military bases.** Any active duty military personnel who, pursuant to any federal or military law, rule, or regulation, is not required to be licensed or credentialed while employed and performing their occupation or profession only on the premises of an assigned military base, shall not be required to be licensed or credentialed in this state pursuant to the same law, rule, or regulation.

(f) **Eligibility standards, criteria, qualifications and requirements for licensure or certification.** Nothing in the Military Service Occupation, Education and Credentialing Act shall be construed to require the issuance of any license or certificate to an applicant who does not otherwise meet the stated eligibility standards, criteria, qualifications or requirements for licensure or certification, nor shall the provisions be construed to automatically allow issuance of any license or certificate without testing or examination, without proper consideration by the licensing and examination board, or without proper verification that the applicant is not subject to pending criminal charges or disciplinary actions, has not been convicted of any offense prohibiting licensure or certification, and has no other impairment which would prohibit licensure or certification in this state.

[Source: Added at 37 Ok Reg 2300, eff 9-11-20]

785:35-3-2. Expiration and renewal of licenses and certifications

(a) **Expiration.** All licenses and operator certifications issued by the Board shall expire on June 30 of the first or second year following issuance of the license or operators certification. New licenses or operator certifications shall be issued for a one or two year period, so that all odd license numbers and associated operators certifications shall expire in odd numbered years and all even numbered licenses and associated operator certifications shall expire in even numbered years.

(b) **Renewal.** All licenses and certifications may be renewed for a period of two years, subject to the rules in this Chapter. On or before May 31 of the year the license or certification is to be renewed, except as specified in this subsection, each licensee and certified operator shall submit the following:

- (1) A completed application for renewal on forms furnished by the Board with the affidavit executed by the listed contact person for the licensee, and
- (2) The license or operator certification renewal fee as provided for in these rules, provided that renewal fees shall not be due for licenses and certifications issued after January 1 of the year in which the first renewal is due, and

(3) The indemnity fund fee for those activities for which the license or operator certification is valid, and

(4) The late fee if the renewal application is submitted after May 31.

(c) **Grace period.** Any licensee or operator who allows his or her license or certification to lapse will be given until June 30 of the year in which they are scheduled to renew their license or operator certification in which to renew his or her license or certification without an examination; provided however, a late fee shall be due after May 31 as set forth in 785:5-1-11. After the grace period, the application will be treated as a new application. Provided however, any licensee or operator fulfilling a military obligation shall be granted an indefinite grace period as determined by the Board.

(d) **Board action.** The Board may grant the renewal application or deny the application as provided in this subchapter of these rules.

(e) **Continuing education requirement.**

(1) Beginning July 1, 2004, completing annual continuing education shall be required before any license or operator certification will be renewed, unless otherwise specifically determined by the Board or as set forth in paragraph (8) of this subsection. Information concerning the continuing education attended must be submitted with the application for renewal form.

(2) All licensees and all certified operators shall be required to attend at least four (4) units of approved continuing education during each year period (from July 1 through June 30) or a total of eight (8) units for each two-year period of renewal of which one unit must be comprised of an approved Oklahoma Rules and Regulations unit.

(3) Category 5 licensees shall be required to obtain at least two (2) units, of the required eight (8) units, of specialized continuing education related to the marginal water wells for each two-year period.

(4) Continuing education shall be required during the first full year that the license or operator certification is active and during each year the license or operator certification is renewed.

(5) One unit of continuing education shall equal fifty (50) minutes of approved instruction.

(6) Approved trade shows and exhibitions attended shall be counted as one unit.

(7) Continuing education instruction relating to well drilling and plugging and pump installation which are provided by or approved by another state's well drilling program are pre-approved for the Oklahoma continuing education requirement if the other state's well drilling program offers reciprocity by accepting Oklahoma's pre-approved continuing education instruction.

(8) Other continuing education instruction and trade shows and exhibitions will be considered for approval by the Board after information concerning the continuing education or trade show and exhibition is submitted to the Board for review. Pre-approval of continuing education, trade shows and exhibitions may be requested for any licensee or certified operator.

(9) Online continuing education that has been designated as pre-approved by the Board shall be accepted for no more than four (4) units of the required eight (8) units for the two-year renewal period.

(10) If a licensee or certified operator fails to attend four (4) or eight (8) units as the case may be during the renewal period, the application for

renewal may be approved after payment of \$250.00 in penalty and double the continuing education requirements eight (8) or sixteen (16) units as the case may be).

[Source: Amended at 10 Ok Reg 3299, eff 6-25-93; Amended at 11 Ok Reg 2947, eff 6-13-94; Amended at 12 Ok Reg 2703, eff 7-1-95; Amended at 14 Ok Reg 2782, eff 7-1-97; Amended at 15 Ok Reg 2440, eff 6-11-98; Amended at 19 Ok Reg 2498, eff 6-27-02; Amended at 20 Ok Reg 2608, eff 7-11-03; Amended at 25 Ok Reg 1444, eff 5-27-08; Amended at 27 Ok Reg 1313, eff 5-27-10; Amended at 36 Ok Reg 1299, eff 8-11-19]

785:35-3-3. Revocation, suspension or non-renewal of licenses and certifications

(a) **Grounds for revocation, suspension or non-renewal of licenses and certifications.** The license or certification issued under this subchapter of any person who violates any provisions of the rules and regulations of the Board may be revoked, suspended, or renewal thereof denied by the Board. Grounds for revocation, suspension or denial of renewal shall include:

- (1) Failure to submit properly completed multi-purpose completion reports in the time specified by this chapter of these rules.
- (2) Failure to advise a person for whom a well is being drilled or pump installed that polluted water has been encountered, and that the well is a pollution hazard and must be forthwith plugged in accordance with the rules of the Board in this chapter.
- (3) Being found to be incompetent at any activities for which the license or certification was issued.
- (4) Intentional misrepresentation of material fact in connection with any information or evidence furnished the Board in connection with official Board matters.
- (5) Aiding or abetting an unlicensed person to evade the provisions of this chapter of these rules; knowingly combining or conspiring with an unlicensed person; allowing one's license to be used by an unlicensed person; or acting as agent, partner, associate, or otherwise of an unlicensed person with the intent to evade the provisions of this chapter of these rules.
- (6) Failure in any material respect to comply with the provisions of this chapter of these rules, including the payment of fees.
- (7) Failure to reimburse the Indemnity Fund as required by the Board pursuant to OAC Section 785:35-1-5.

(b) **Notice and hearing on revocation, suspension or non-renewal of license.**

The Board shall, before suspending, revoking or denying renewal of any license or operator certificate, notify the licensee or operator in writing of any changes made in order to afford such licensee or operator an opportunity to be heard unless the public health, safety or welfare imperatively requires emergency action. The hearing will be conducted in accordance with Article II of the Administrative Procedures Act (75 O.S. 2001, § 308a et seq., as amended) and OAC Title 785, Chapter 4.

(c) **Board action.**

- (1) If the Board determines that the public health, safety or welfare requires emergency action, it shall issue an emergency order summarily suspending the license or operator certificate pending a hearing and order such emergency remedial measures as are deemed necessary to prevent pollution to waters of the state or other public harm.
- (2) After notice and hearing, the Board may revoke, suspend or deny renewal of the license or operator certificate or order such other action as deemed appropriate. The Board may establish a probationary period and

condition the continuing validity of the license on such probationary period and upon other actions, including but not limited to the proper casing or plugging of wells or such other remedial measures as deemed appropriate. In addition, the Board may impose administrative penalties as provided in 785:35-1-4(b).

[Source: Amended at 10 Ok Reg 3299, eff 6-25-93; Amended at 11 Ok Reg 2947, eff 6-13-94; Amended at 19 Ok Reg 2498, eff 6-27-02]

SUBCHAPTER 5. GENERAL REQUIREMENTS TO MAINTAIN LICENSES AND OPERATOR CERTIFICATIONS

785:35-5-1. General requirements for licenses

All licensees shall comply with the following to maintain their license:

- (1) Designate in a writing filed with the Board an authorized representative of the licensee who shall be deemed and treated as responsible for the exercise, use, maintenance, modification, renewal and all other respects of, and all reports and correspondence relating to, the license. The licensee representative need not be an operator.
- (2) An operator certified for the activity being conducted shall be present at the drilling, plugging or pump installation site at all times when any of the regulated activities are being conducted. The operator must have his certification in his possession anytime he is in charge of the drilling operations or pump installation activities.
- (3) Each rig used in drilling or pump installation operations shall be properly identified with letters that are a minimum of two inches (2") inches in height, with the firm name and license number in a location visible to the public.
- (4) Complete each well or install each pump as the case may be to meet or exceed the minimum standards adopted by the Board set forth in this Chapter, unless a variance has been requested and approved pursuant to 785:35-7-3 before construction begins.
- (5) Submit a multi-purpose completion report acceptable to the Board for each new well constructed, each well plugged and each well reconditioned on the appropriate form provided by the Board within sixty (60) days following the completion of new construction, plugging, or reconditioning of the well. The report shall include all applicable information required in the form. For test holes and geotechnical borings, a multi-purpose completion report for each test hole and boring, or one multiple test hole/boring report on a form provided by the Board listing the required information for each such test hole or boring on a contiguous tract of land, must be submitted to the Board within sixty (60) days after completion and plugging of the test holes or borings. Licensees are responsible for the accuracy of information in all reports submitted by certified operators.
- (6) Properly renew said license as required herein, including continuing education attendance.
- (7) Post the license issued by the Board in a conspicuous place at the business address of the licensed individual, partnership, firm or corporation.
- (8) Construct and complete water wells which are to be used for purposes other than domestic use only when an application has been made to the Board for a permit authorizing the location of the well(s).

[Source: Amended at 10 Ok Reg 3299, eff 6-25-93; Amended at 11 Ok Reg 2947, eff 6-13-94; Amended at 12 Ok Reg 2703, eff 7-1-95; Amended at 13 Ok Reg 2885, eff 7-1-96; Amended at 15 Ok Reg 2440, eff 6-11-98; Amended at 19 Ok Reg 2498, eff 6-27-02; Amended at 20 Ok Reg 2608, eff 7-11-03]

785:35-5-2. General requirements for certified operators

All certified operators shall be required to do the following to maintain their certification:

- (1) Complete each well or install each pump to meet or exceed the minimum standards adopted by the Board in this Chapter.
- (2) Provide accurate information for any reports or other documents filed with the Board.
- (3) Properly renew said certification as required herein, including continuing education attendance.
- (4) Have in his possession the operator certification any time he is in charge of drilling or pump installation operations.

[Source: Amended at 20 Ok Reg 2608, eff 7-11-03]

785:35-5-3. Requirements for completion and plugging reports

(a) **Completion and plugging reports.** Completion and plugging reports shall be filed on electronic or hardcopy forms provided by the Board and shall be filed within sixty (60) days after completion or plugging.

(b) **Groundwater wells, groundwater well test holes, fresh water observation wells, open-loop geothermal wells, and marginal quality groundwater wells.**

The operator shall file a completion or plugging report for each groundwater well, groundwater well test hole, fresh water observation well, open-loop geothermal well, or marginal quality groundwater well completed or plugged. The completion report must include the following information:

- (1) Completion or plugging date;
- (2) Latitude and longitude of the well or test hole;
- (3) A lithologic description of each stratum encountered during excavation of the borehole from the land surface to the total depth of the well;
- (4) A description of the finding location for the well;
- (5) The well owner's name, address, and telephone number;
- (6) The type of well construction;
- (7) The intended use purpose of the well;
- (8) Borehole specifications;
- (9) Surface pipe and casing construction specifications;
- (10) Screen specifications and screened interval;
- (11) Surface seal and annular seal materials and interval;
- (12) Completion type;
- (13) Hydrologic data including the depth of static water level, depth at which groundwater was encountered during construction of the well, and the estimated yield of the well;
- (14) Name of the pump installation contractor, if known and applicable;
- (15) Pump horsepower and rated flow, if applicable;
- (16) Depth of the bottom of the pump, if applicable;
- (17) Water right permit number, if applicable;
- (18) Variance request number, if applicable;
- (19) Proximity to the nearest potential pollution source and the type of pollution source;
- (20) Well disinfection procedure;

- (21) The sampled total dissolved solids concentration of the groundwater produced by the well in parts per million (ppm); and
- (22) Certification from the operator verifying the accuracy of the information on the report.

(c) Geotechnical borings, site assessment observation wells, and monitoring wells. The operator shall file a completion or plugging report for each geotechnical boring, site assessment observation well, and monitoring well completed or plugged, except as provide below. Reports for the completion or plugging of geotechnical borings, site assessment observation wells, and monitoring wells must be filed electronically. Information regarding multiple geotechnical borings, site assessment observation wells, or monitoring wells may be accumulated together in a single report if all the excavations are located in the same ten-acre tract, have substantially the same lithology encountered in the subsurface, and have substantially the same depth and construction. If more than one boring or well is included on a report, a site map shall be attached to the report which indicates the distance of each well or boring from permanent reference points such as streets, roads or section lines. A report need not be filed for a geotechnical boring 20 feet deep or less in which groundwater or contamination is not present. The completion report must include the following information:

- (1) Completion date;
- (2) Latitude and longitude of the well or test hole;
- (3) A lithologic description of each stratum encountered during excavation of the borehole from the land surface to the total depth of the well;
- (4) A description of the finding location for the boring or well;
- (5) The owner's name, address, and telephone number;
- (6) The type of boring or well construction;
- (7) The intended use purpose of the boring or well;
- (8) Borehole specifications;
- (9) Surface pipe and casing construction specifications, if applicable;
- (10) Screen specifications and screened interval, if applicable;
- (11) Surface seal and annular seal materials and interval, if applicable;
- (12) Hydrologic data including the depth of static water level and the depth at which groundwater was encountered during construction of the well;
- (13) Variance request number, if applicable; and
- (14) Certification from the operator verifying the accuracy of the information on the report.

(d) Closed-loop geothermal (heat exchange) wells. The operator shall file a completion or plugging report for each closed-loop geothermal well completed or plugged. Information regarding multiple closed-loop geothermal wells may be accumulated together in a single report if all of the excavations are located in the same ten-acre tract, have substantially the same lithology encountered in the subsurface, and have substantially the same depth and construction. If more than one well is included on a report, a site map shall be attached to the report which indicates the distance of each well or boring from permanent reference points such as streets, roads or section lines. The completion report must include the following information:

- (1) Completion date;
- (2) Latitude and longitude of the well(s);
- (3) A lithologic description of each stratum encountered during excavation of the borehole from the land surface to the total depth of the well(s);
- (4) A description of the finding location for the well(s);

- (5) The well owner's name, address, and telephone number;
- (6) Borehole specifications;
- (7) Surface pipe and casing construction specifications, if applicable;
- (8) Heat exchange loop material specifications;
- (9) Grout sealing materials and interval;
- (10) Variance request number, if applicable;
- (11) Proximity to the nearest potential pollution source and the type of pollution source; and
- (12) Certification from the operator verifying the accuracy of the information on the report.

(e) **Plugging reports.** The plugging report for groundwater wells, groundwater well test holes, fresh water observation wells, marginal quality groundwater wells, geothermal wells, monitoring wells, site assessment observation wells, and geotechnical borings must contain the following information:

- (1) Plugging date;
- (2) Latitude and longitude of the well, test hole, or boring;
- (3) A description of the finding location for the well;
- (4) The well owner's name, address, and telephone number;
- (5) The type of well construction;
- (6) The former use purpose of the well;
- (7) Casing removal or perforation interval;
- (8) Backfill material and installation depth;
- (9) Grout and sealing materials, methods, and installation depth;
- (10) Well identification number, if known and applicable;
- (11) Water right permit number, if applicable;
- (12) Variance request number, if applicable;
- (13) Proximity to the nearest potential pollution source and the type of pollution source; and
- (14) Certification from the operator verifying the accuracy of the information on the report.

[Source: Amended at 19 Ok Reg 2498, eff 6-27-02; Amended at 25 Ok Reg 1444, eff 5-27-08; Amended at 28 Ok Reg 987, eff 7-1-11; Amended at 40 Ok Reg 1304, eff 8-11-23]

SUBCHAPTER 7. MINIMUM STANDARDS FOR CONSTRUCTION OF WELLS

785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes

(a) General requirements.

- (1) **Minimum standards.** The minimum standards set forth in this subchapter apply to all groundwater wells, fresh water observation wells and water well test holes whether constructed by a person having a valid license or by any other person. More stringent construction standards may be required for areas of known contamination as identified in Chapter 45, Appendix H.
- (2) **Construction of wells.** Flowing and non-flowing groundwater wells, observation wells and water well test holes are to be constructed in a manner as to prevent waste and to prevent contamination of groundwater by pollution material either entering the ground around the casings or tubing, or entering the fresh groundwater from pollution sources below the ground, or by entering the fresh well water by leaking wells, casing pipe

fittings, pumps, or well seals.

(3) **Proper maintenance, plugging and capping.** The well driller and/or the well owner are charged with the responsibility of taking whatever steps are reasonable in a particular situation to guard against waste and contamination of the groundwater resources, and to see that unused wells are properly capped or plugged.

(4) **Minor and small public water supply wells.** Prior to drilling a well that will be used in a minor or small public water supply system, a permit from the Oklahoma Department of Environmental Quality (ODEQ) must be obtained. Minor and small public water supply systems are defined in OAC 252:624-1-2 of the ODEQ regulations.

(b) **Minimum location standards.**

(1) Every new groundwater well, fresh water observation well and water well test hole shall be located a minimum distance from possible pollution sources as prescribed in this subsection or as otherwise authorized by a variance granted by the Executive Director. Possible pollution sources include but are not limited to existing or proposed septic tanks, sewer lines, absorption fields or beds, seepage pits, building foundations, waste pits, lagoons, oil or gas wells, and landfills. The minimum distance between the possible pollution source and the well or test hole shall be as follows, provided that other governmental agencies may require wells to be located at distances greater than the minimum distances set forth in this paragraph:

(A) 10 feet from a closed or tight sanitary sewer line, 25 feet from aerobic (above ground) sprinkler spray, and 50 feet from an aerobic sprinkler head,

(B) 300 feet from the outside perimeter of an existing or proposed waste lagoon for a feedlot or confined animal feeding operation, and

(C) 50 feet from all other pollution sources, provided however, if the well is 50 feet to 75 feet and located down-gradient or level from a possible source of pollution, a twenty foot (20') surface seal shall be installed, and

(D) 75 feet from all other pollution sources if the well is level with the pollution source and 100 feet from all other pollution sources if the well is located down-gradient from the pollution source.

(2) If not prohibited by the owner of the well or other governmental agency requirements, groundwater wells which will not be used for drinking water may be located closer to a possible pollution source than the minimum distances specified in paragraph (1) of this subsection if all of the following conditions are met:

(A) the possible pollution source is not a wastewater lagoon, and not a subsurface septic system,

(B) before the well is drilled, the well driller advises the person wanting the well drilled that the well is subject to contamination,

(C) the owner of the proposed well notifies the Board that the owner will authorize the driller to drill the well closer to the possible pollution source than the minimum location standard,

(D) the outside water-tight casing is properly cement grouted or completed with ten (10) feet bentonite in the lower one-half (1/2) portion and ten (10) feet cement grout in the upper one-half (1/2) portion at least twenty (20) feet down from the land surface or

pitless adaptor connection.

- (3) If a well driller or other person proposing to drill a well encounters a structure, object or other situation and is unsure whether it may be a possible source of pollution, he shall contact Board staff and obtain approval for location of the well.

(c) Casing of groundwater and fresh water observation wells. Except for sand point wells, requirements for casing of groundwater wells and fresh water observation wells shall be as follows:

- (1) The casing shall be installed to seal off any groundwater zones containing water which does not meet the groundwater quality standards as set forth in Oklahoma's Water Quality Standards. In no case shall a well be completed in a salt or marginal water zone.

- (2) New groundwater and fresh water observation wells shall have:

(A) Outside water-tight production casing cement grouted from land surface to a minimum depth of ten (10) feet below the land surface, and to such further depth as may be necessary, depending upon the character of the underground formations, to extend into an impervious stratum, where such stratum is found above the source aquifer.

(B) Casing seated at top of the first impervious stratum suitable for casing point. Where an impervious formation or tight confined bed does not occur at the well site, the casing shall be extended as far as practicable below the water table and wherever possible, at least ten (10) feet below the minimum seasonal stage of the water table.

(C) Casing joints threaded, welded, or glued with water well construction glue so as to be water-tight.

(D) Casing that extends at least twelve (12) inches above the natural ground level or at least eight (8) inches above the floor surface (for a total of 12 inches above natural ground level) for surface pad completions. In areas where known flooding occurs, the casing shall extend twenty-four (24) inches above the maximum level of such flooding.

- (E) Casing meeting or exceeding the following:

(i) new or clean and sanitary used carbon or stainless steel,
or

(ii) new PVC fresh water well casing which has a S.D.R. rating of twenty-six or stronger and which may be plain end with threaded connector, and with all joints made water-tight by cleaning and cementing, using manufacturer's recommended thinner and cement for use in fresh water wells, or

(iii) fiberglass or other material which meets or exceeds N.S.F. approval for casing which is specially designed for use in a water well.

(d) Cement grouting and concreting. Except for sand point wells, cement grouting and concreting requirements for groundwater wells and fresh water observation wells shall be as follows. These requirements must be met before the drilling rig is taken from the site.

- (1) All new groundwater wells and fresh water observation wells shall be made water-tight around the outside of the production casing by cement grouting to such depths as may be necessary to exclude pollution, but in no

case shall the cement grout seals be less than ten (10) continuous feet in depth, provided that five (5) feet of bentonite may be installed immediately below five (5) feet of cement grout for the total 10 feet continuous seal. If surface pipe and production casing are used, the cement grouting and/or bentonite seal shall be installed outside the surface pipe casing in all instances beginning July 1, 2005, provided the following provisions apply:

- (A) a variance may be issued by the Director for an alternative completion design due to site specific conditions, and
- (B) if a sleeve is used at the surface for the sole purpose of attaching a pitless adapter, the sleeve shall be installed or embedded within the surface seal, extend a minimum of eight feet (8') below ground level in the borehole, and the surface seal shall be a minimum of one and one-half inch (1½") thick.
- (C) If the surface casing does not extend twelve inches (12") above natural ground level and a pitless cap or sanitary seal is not installed, then a ten foot (10') cement grout/bentonite surface seal shall be installed in the area between the surface and production casings terminating within four feet (4') of land surface.
- (D) When deemed necessary to utilize conductor or surface casing to control flowing material near surface, an additional cement/bentonite seal shall originate ten feet (10') below the base of the conductor/surface casing and shall terminate ten feet (10') above the base of the conductor/surface casing between the conductor/surface casing and production casing.

(2) The cement or cement/bentonite seal shall originate at a minimum ten (10) foot depth and terminate no deeper than four feet (4') from the natural land surface for a minimum total length of ten feet (10') after all settling of the cement or bentonite/cement has occurred, unless a written waiver is first obtained from the Board.

(3) The cement grout shall consist of a mix ratio of one (1) 94 pound sack of cement to a maximum of six (6) U.S. gallons of water. The cement and water must be mixed to the proper consistency as recommended by the cement manufacturer before the mixture is installed around the casing. A maximum of fifty percent (50%) aggregate by dry weight may be added to the portland cement to form the cement grout, provided the aggregate is a size that will not create a potential to cause bridging in the annular space.

(4) A maximum of twenty percent (20%) percent bentonite may be added to the slurry, which bentonite shall be prehydrated to the manufacturer's recommended consistency. Prehydration requires that the bentonite be properly mixed with the recommended amount of water before the mixture is installed.

(5) The well borehole shall be a minimum diameter of at least three (3) inches greater than the outside diameter of the well casing or production tubing adjacent to the borehole utilized in the surface seal.

(6) This annular space shall be filled with cement grout or cement/bentonite to the minimum ten (10) foot depth, or such further depth as may be necessary to exclude pollution.

(7) Where a pitless well adapter or unit is being installed, the grouting shall start below the junction of the pitless well adapter or unit where it attaches to the well casing and shall continue to at least ten (10) feet below this junction.

(8) If a high solids bentonite grout is used for the bentonite seal portion below the cement grout portion of the surface seal, the grout shall contain a minimum, twenty percent (20%) solids by dry weight.

(9) It is not an acceptable installation method to install dry cement around the casing and then add water.

(e) **Well development requirements for groundwater wells except sand point wells or fresh water observation wells.** Upon completion of the groundwater well or fresh water observation wells and before conducting the yield of drawdown tests, the well driller shall clean and develop the well to remove drill cuttings and drilling mud.

(f) **Disinfection of groundwater or fresh water observation wells.** Requirements for disinfection of groundwater or fresh water observation wells shall be as follows:

(1) All water used in the drilling of the well shall be potable water or uncontaminated chlorinated water having not less than 0.5 milligrams per liter (mg/L) chlorine.

(2) A new, repaired, or modified well shall first be thoroughly cleaned and prepared for receiving pumping equipment.

(3) Thereafter, the well and pumping equipment shall be disinfected with chlorine so applied that a concentration of at least one hundred (100) parts per million of chlorine shall be obtained in all parts of the water in the well.

(4) A minimum contact period of two (2) hours shall be provided before pumping the well to flush chlorine solution from the fresh water distribution system.

(g) **Access port or water level measuring device.** Upon completion of a new groundwater or fresh water observation well and before the well is put into service, the well driller will equip the well with either an access port that will allow for the measurement of the depth to static water surface or a static water level measuring device.

(h) **Sand point well construction requirements.** Unless otherwise approved by variance, applicable minimum standards set forth in this section and the following minimum construction requirements apply to sand point wells:

(1) The sand point well shall be drilled to a total depth of no more than thirty feet (30'); and,

(2) A pilot hole shall be constructed first, with cement installed to a depth of three feet (3') around surface casing, then the remaining bore hole can be installed then production casing installed.

[Source: Amended at 10 Ok Reg 3299, eff 6-25-93; Amended at 11 Ok Reg 2947, eff 6-13-94; Amended at 12 Ok Reg 2703, eff 7-1-95; Amended at 13 Ok Reg 2885, eff 7-1-96; Amended at 15 Ok Reg 2440, eff 6-11-98; Amended at 19 Ok Reg 2498, eff 6-27-02; Amended at 20 Ok Reg 2608, eff 7-11-03; Amended at 21 Ok Reg 2632, eff 7-1-04; Amended at 22 Ok Reg 1598, eff 7-1-05; Amended at 23 Ok Reg 3078, eff 7-27-06; Amended at 25 Ok Reg 1444, eff 5-27-08; Amended at 27 Ok Reg 1313, eff 5-27-10; Amended at 28 Ok Reg 987, eff 7-1-11; Amended at 30 Ok Reg 891, eff 6-13-13; Amended at 36 Ok Reg 1299, eff 8-11-19]

785:35-7-1.1. Minimum standards for construction of heat exchange wells

(a) General requirements.

(1) **Applicability of minimum standards.** The minimum standards set forth herein apply to all heat exchange wells as defined in 785:35-1-2, whether constructed by a person having a valid license or by any other person. Minimum standards shall include regulation of the drilling of the borehole, installation of casing, installation of heat loop pipe, grouting of the well, and installation of the heat loop pipe up to the connection of the heat loop pipe to the facility circulation equipment.

(2) **Prohibition against other uses.** Heat exchange wells shall not be used for any purpose other than heat exchange. After completion, heat exchange wells shall not be converted to any other type of well unless written approval is obtained from the Board. The licensee shall ensure that the heat exchange well is constructed according to the rules.

(3) **Maximum protection of groundwater required.** Construction of heat exchange wells shall provide maximum protection to the groundwater from surface contaminants and movement and migration of water from one zone or aquifer to another.

(b) Location of heat exchange wells.

(1) A vertical heat exchange well shall be located on a site so that surface water will not pool or pond around or within ten (10) feet of the heat exchange well location.

(2) Placement of a heat exchange well must meet or exceed standards as set forth by section 785:35-7-1(b) relating to location requirements for groundwater wells except as set forth in paragraph 3 of this subsection.

(3) If not prohibited by the owner of the well or other federal or state agency requirements, heat exchange wells may be located closer to a possible source of pollution than the minimum distances specified in Section 785:35-7-1(b) if all of the following conditions are met:

(A) The possible pollution source is not a wastewater lagoon, septic tank, absorption field, or aerobic sprinkler system.

(B) The well annulus is completely sealed as described in paragraph 7 of subsection (c) of this section.

(c) Construction standards for vertical closed-loop exchange wells. Vertical closed-loop heat exchange wells shall be constructed in accordance with this subsection. Site specific conditions shall be assessed to determine the best method and materials to be used for grouting the well annulus to provide protection of the groundwater per paragraph 3 of subsection (a). In addition, but not as an alternative, to the requirements stated in (1) through (8) of this subsection, methods and materials for construction of heat exchange wells that meet or exceed recommendations specified in "Grouting for Vertical Geothermal Heat Pump Systems Engineering Design and Field Procedures Manual", International Ground Source Heat Pump Association, Oklahoma State University, 2015, and in "ANSI/CSA/IGSHPA C448 Series-16, Design and installation of ground source heat pump systems for commercial and residential buildings", American National Standards Institute, 2016, may be used for construction of vertical closed-loop heat exchange wells.

(1) **Casing material.** If permanent casing is needed in a vertical closed-loop heat exchange well, it must meet standards set out in Section 785:35-7-1 for steel and for plastic.

(2) **Heat exchange loop material.** The material used to construct the heat exchange loop must meet or exceed standards set forth by Clause 5.4 of ANSI/CSA/IGSHPA C448.0.

(3) **Connecting closed-loop pipe.** All pipe joints and fittings installed and buried shall meet or exceed standards set forth by Clause 5.4 of ANSI/CSA/IGSHPA C448.0. Glued or clamped joints shall not be used below ground unless the joint or connection serves as a service outlet and the joint or connection is not covered with earth material. Joints must not leak after assembly. All indoor piping and fittings should meet or exceed standards set forth by Clause 5.5 of ANSI/CSA/IGSHPA C448.0.

(4) **Heat transfer fluid.** Approved fluids for use inside the heat exchange loop include potable water, food-grade or USP-grade propylene glycol, and solutions in which remediation of leaks would occur through dissipation. A release of the fluid to the groundwater must not violate Oklahoma Water Quality Standards set forth in Chapter 45, OAC 785.

(5) **Borehole specifications.**

(A) **Borehole diameter.** The borehole for vertical closed-loop heat exchange wells must have a sufficient diameter to accommodate the heat exchange loop u-bend assembly, tremie pipe, and placement of grout to surround all heat exchange loop pipe.

(B) **Exploratory borehole.** The first borehole drilled for the vertical closed-loop heat exchange system shall be considered an exploratory borehole. A subsequent borehole may also be considered an exploratory borehole if the well driller encounters subsurface conditions that include, but are not limited to, lost circulation conditions, hydrocarbons or hazardous gases, and changes in groundwater chemistry.

(C) **Lost circulation conditions.** If caves or large fractures are encountered in drilling the exploratory borehole or any subsequent borehole, grouting may not be possible and the Board must pre-approve completion of the vertical closed-loop heat exchange system in such conditions based on plans to bridge and seal zones of lost circulation.

(D) **Hydrocarbons and hazardous gases.** If hazardous gases or hydrocarbons are observed in drilling the exploratory borehole or any subsequent borehole, the Board must be notified immediately. Completion of the vertical closed-loop heat exchange system shall be prohibited without Board approval.

(E) **Groundwater chemistry.** Chemistry of groundwater encountered in drilling the exploratory borehole, or any subsequent borehole shall be used to inform grout selection. Instructions provided by the grout manufacturer must be followed to provide protection of the groundwater per paragraph 3 of subsection (c) of this section. The grout manufacturer shall be consulted as required.

(6) **Grouting of vertical heat exchange wells.** Grouting and filling the annulus of a heat exchange well must be completed immediately after the well is drilled to avoid cave-in of the uncased hole.

(7) **Grouting methods and materials for vertical closed-loop heat exchange wells.** Grouting methods for vertical closed-loop heat exchange wells shall meet or exceed standards provided by Clause 5.8 of ANSI/CSA/IGSHPA C448.0 and Clause 6.3 of ANSI/CSA/IGSHPA C448.3 except where standards set forth by this Section provide exceptions. The following methods and materials are approved for grouting the annulus of vertical closed-loop heat exchange wells, provided that standards set forth by 785:35-7-1.1(c)(5)(E) shall also apply:

(A) A grout seal shall be installed from the total depth of the borehole up to the connecting trench and must be composed of one of the following materials:

(i) Portland cement;

(ii) Sand-cement mixed at a ratio of not more than 188 pounds of sand to one 94-pound sack of Portland cement

- and seven (7) gallons of water;
- (iii) High solids bentonite grout with a minimum solids content of 20 percent by weight. Clean silica sand may be added to the slurry;
- (iv) Bentonite pellets or chips; or
- (v) Approved thermally enhanced grouts and non-cement grouts which meet standards set forth by Clause 5.8 of ANSI/CSA/IGSHPA C448.0 and Clause 6.3 of ANSI/CSA/IGSHPA C448.3

(B) Bentonite chip or pellet fill material installed shall be hydrated immediately after installation if installed in the unsaturated zone.

(C) When non-slurry sealing materials are used, only chipped or pelletized sodium bentonite varieties that are designed to fall through standing water are acceptable when sealing the annulus of a well that is below the water level in the saturated zone. The borehole shall be flushed clean of all drilling mud and debris left over from the drilling operation so that the bentonite products designed for this type of installation will gravity feed without obstruction. Material shall be introduced in a manner to prevent bridging of the materials in the borehole annulus. A measuring device such as a tagline shall be used to measure and document placement of the materials installed.

(D) Slurry mixes of bentonite grout or Portland cement shall be installed by pumping through a tremie pipe in a continuous operation using a positive displacement method. Polymer additives designed to retard swelling are acceptable for use with the bentonite grout or Portland cement. The tremie pipe will extend the full depth of the borehole before pumping begins. The borehole diameter shall be of adequate size to allow proper placement of materials using this method. Slurry volume used must equal the annulus volume of the borehole.

(8) **Concentric tube heat exchangers.** Concentric tube heat exchangers that meet or exceed the requirements of this Section are approved.

(d) Construction standards for open-loop and return heat exchange wells.

(1) Groundwater wells and water return wells used in open-loop heat exchange must meet the minimum construction standards set forth in Section 785:35-7-1 relating to groundwater.

(2) Groundwater used in the open loop heat exchange system must remain untreated and be returned to the same aquifer from which the groundwater was withdrawn.

(e) Construction standards for horizontal closed-loop heat exchange systems.

Horizontal closed-loop heat exchange systems constructed by trenching or digging are exempt from grouting requirements, provided that no part of the horizontal loop is constructed at or below the highest anticipated groundwater level. Horizontal closed-loop heat exchange systems constructed by boring or drilling must be grouted according to standards set forth by paragraph 7 of subsection (c) of this Section. All other construction for horizontal closed-loop heat exchange systems shall meet or exceed standards set forth by subsection (c) of this Section.

[Source: Added at 20 Ok Reg 2608, eff 7-11-03; Amended at 21 Ok Reg 3169, eff 7-25-03 through 7-14-04 (emergency)¹; Amended at 21 Ok Reg 3180, eff 9-13-04; Amended at 23 Ok Reg 3078, eff 7-27-06; Amended at 25 Ok Reg 1444, eff 5-27-08; Amended at 36 Ok Reg 1299, eff 8-11-19]

EDITOR'S NOTE: ¹This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last prior permanent text is reinstated. Therefore, on 7-15-04 (after the expiration of the emergency action), the text of section 785:35-7-1.1 reverted back to the permanent text that became eff 7-11-03, as was last published in the 2003 OAC Supplement, and remained as such until amended again by permanent action on 9-13-04.

785:35-7-2. Minimum standards for construction of monitoring wells and geotechnical borings

(a) General requirements.

(1) **Applicability of minimum standards.** The minimum standards set forth herein apply to all monitoring wells, including site assessment observation wells and unsaturated zone monitoring wells, and geotechnical borings, whether constructed by a person having a valid license or by any other person.

(2) **Construction.** Monitoring wells and geotechnical borings shall be constructed in such a manner as to prevent waste and contamination of groundwater by pollution material entering the ground around the casing or boring, by entering the wells or boring, or by entering the fresh groundwater from pollution sources below the ground.

(A) **Drilling equipment.** Drilling equipment shall be decontaminated if contamination is encountered in the well or borehole.

(B) **Drilling procedures.** Drilling procedures shall be carried out in such a manner that will prevent or minimize contamination.

(C) **Construction material.** All construction material shall be in a condition that will prevent or minimize contamination.

(3) **Proper maintenance and plugging.** The driller and the well owner are charged with the responsibility of taking whatever steps are reasonable in a particular situation to guard against waste and contamination of the groundwater resources and to see that unused wells and boring are properly plugged.

(4) **Other regulations.** These rules are minimum standards and other laws and regulations which are more stringent may be applicable.

(b) Minimum standards for construction of monitoring wells.

(1) Diameter of borehole.

(A) The diameter of boreholes for monitoring wells, with the exception of boreholes for unsaturated zone monitoring wells, shall be at least three inches greater than the nominal diameter of the well casing and screen for the entire length of the casing.

(B) The diameter of boreholes for unsaturated zone monitoring wells shall be at least one and one-half (1 1/2") inches greater than the nominal diameter of the well casing for the entire length of the casing.

(2) Casing selection and casing joints.

(A) All wells shall be cased. Casing material shall be selected according to groundwater geochemistry, anticipated lifetime of monitoring program, well depth, parameters to be monitored and other site specific considerations.

(B) When PVC casing is used, the casing shall meet or exceed the standard dimension ratio (SDR) of twenty-one (21).

(C) The minimum diameter for monitoring well casing shall be a nominal two (2) inches, with the exception of casing for unsaturated

zone monitoring wells. The minimum diameter for unsaturated zone monitoring well casing shall be a nominal one-half inch. Methane gas probes at solid waste management sites shall be exempt from minimum casing diameter requirements.

(D) The casing shall be connected by flush threaded joints or have the ability to be connected by another mechanical method that does not introduce pollutants into the well. Glued joint casing shall not be used when monitoring organics.

(E) The casing joints shall be made water tight by a method that does not introduce pollutants into the well (e.g. wrapping the casing joint with Teflon tape or placing an o-ring or gasket in the joint).

(3) **Bottom cap required.** A bottom cap shall be installed on each monitoring well.

(4) **Screen selection and setting.**

(A) All wells shall be screened and screen material shall be selected according to groundwater geochemistry, anticipated lifetime of monitoring program, well depth, parameters to be monitored and other site specific considerations, provided that the minimum screen depth shall be two and one-half feet (2 ½') below the land surface, provided further that the minimum screen depth shall be two feet (2') below land surface for tank pit monitoring wells at tank locations regulated by the Oklahoma Corporation Commission.

(B) The well screen shall be factory wire wrapped or factory slotted. Well screens shall not be field slotted.

(C) Slot size shall be selected to prevent or minimize infiltration of the filter pack through the well screen.

(D) Screens shall be of sufficient length to detect, monitor or otherwise describe the contaminant plume according to site specific conditions (e.g. seasonal water level fluctuations). Screen length shall be determined so that commingling of fluids from separate groundwater zones does not occur.

(E) Screen joints shall be placed in the well in such a manner as not to interfere with the accurate investigation of the groundwater quality.

(5) **Filter pack selection and placement.**

(A) All wells shall have a filter pack and aggregates used for filter pack shall consist of uncontaminated quartz sand, silica or other material that will not affect the groundwater quality.

(B) Filter pack shall be selected to prevent or minimize infiltration of the geologic formation (e.g. fines migration or sand buildup).

(C) Filter pack shall extend two (2) feet above the top of the screen unless such extension would allow vertical communication of pollution through the filter pack.

(D) Filter pack shall be placed in the annulus of the well in such a manner that bridging of the filter pack material will not occur.

(E) When water or vapor levels being monitored are encountered within five (5) feet of the land surface, the filter pack shall extend a minimum of 0.5 feet above the top of the screen.

(6) **Sealing requirements.** Requirements for proper filter pack sealing, annular sealing and surface sealing for monitoring wells shall be as follows:

(A) **Sealing material.** All sealing materials shall be compatible with ambient geological, hydrogeological and climatic conditions, as well as any man-induced conditions anticipated to occur during the life of the monitoring well. Any cement used as a sealant shall be equivalent to or have the same properties as ASTM C-150 cement types I-V (commonly known as Portland cement).

(B) **Filter pack seal.** A minimum of two (2) feet of sodium bentonite pellets, chips or granules of no less than 0.25 inches and no more than 0.75 inches in size shall be placed immediately over the filter pack in each site assessment observation well or monitoring well and properly hydrated.

(C) **Annular seal.** The annular space above the filter pack seal shall be filled with a cement grout, bentonite grout, bentonite chips or a cement/bentonite grout mixture to within two (2) feet of the surface. The cement grout shall have a mix ratio of one 94 pound sack of cement to a maximum of six U.S. gallons of water. The cement and water must be mixed to the proper consistency as recommended by the cement manufacturer before the mixture is installed around the casing. A maximum of twenty percent (20%) bentonite by dry weight may be added to the cement grout to form the cement/bentonite grout mixture. The bentonite shall be prehydrated to the manufacturer's recommended consistency. The bentonite grout shall be a high solids bentonite grout with at least twenty percent (20%) bentonite by dry weight. The bentonite shall be mixed according to the manufacturer's recommended consistency.

(D) **Surface seal.** A concrete or cement grout surface seal shall be placed around the casing immediately above the annular seal from a depth of two (2) feet to land surface.

(E) **Tremie requirements for grout.** When the placement of grout will exceed twenty (20) feet, the grout shall be placed in the annulus of the well through a tremie pipe and filled or pumped from the bottom upward.

(F) **Multiple cased or screened wells.** No adjacent or collinear casings in the same borehole shall be allowed. No multiple screened intervals in the same casing shall be allowed. Wells shall be drilled with sufficient distances between them so as to prevent the commingling of aquifer zones.

(G) **Special annular, filter pack, and surface seal conditions.** When water or vapor levels being monitored are encountered within five (5) feet of the land surface, the required depths set forth in C and D above for the filter pack and annular seals shall be reduced to fill the annular space from the top of the filter pack materials to the bottom of the cement surface seal, provided that the minimum screen depth shall be two and one-half feet (2 ½') below the land surface, provided further that the minimum screen depth shall be two feet (2') below land surface for tank pit monitoring wells at tank locations regulated by the Oklahoma Corporation Commission. The surface seal shall extend a minimum of one (1) foot below land surface.

(7) **Surface pad requirements.**

(A) A concrete or cement surface pad shall be installed around the casing at the surface with minimum dimensions of 3 feet in diameter by 3.5 inches thick.

(B) The surface pad shall be sloped so to insure that all surface water flows away from the well.

(C) The surface pad is not required if the well is completed in competent concrete or asphalt paving, or if the well is an unsaturated zone monitoring well or a site assessment well that is located in a proposed solid waste disposal site and neither is used for a period exceeding one (1) year.

(8) Top cap requirements.

(A) A threaded or flange cap or compression seal shall be installed upon completion of the well to prevent unauthorized use of the well (e.g. tampering with the well or the entrance of foreign material into the well).

(B) The cap or seal shall have the capability of being locked if the well is flush mounted and the well protector is not capable of being locked.

(9) Monitoring well and site assessment observation well protection.

Protection shall be provided for the casing of monitoring wells or site assessment observation wells by either of the following methods:

(A) An aluminum or steel surface casing shall be set a minimum of 12 inches through the cement or concrete surface pad and shall extend a minimum of 24 inches above the pad or ground. The top of the protective casing shall be fitted with a locking cap and shall be marked to clearly identify the well as a monitoring well or site assessment observation well; or

(B) If flush mounting is required, then the well shall be completed with a well protector that is capable of supporting vehicular traffic, provided that flush mounting of the casing of monitoring wells installed at concentrated animal feeding operations after July 1, 2006, shall be prohibited. The well protector shall be raised a minimum of one-half (1/2) inch above the surface pad or paving and shall be clearly marked to identify the well as a monitoring well or site assessment observation well. The surface seal shall be sloped so that surface water flows away from the well protector and the bond between the well protector and the removable cover shall be made watertight.

(10) Direct Push (DP) Monitoring Wells and Piezometers.

(A) Monitoring wells and piezometers that are installed using direct push (DP) technology shall comply with the applicable standards in 785:35-7-2 for reporting, casing, screening, filter pack, filter pack placement, filter pack seal, development, decontamination, surface seal, cleaning, protection, marking, and completion.

(B) DP monitoring wells and piezometers shall be authorized as applicable at the discretion of the state or federal agency having jurisdiction over a specific site.

(C) DP monitoring wells and piezometers shall also comply with the following additional standards:

(i) DP monitoring wells and piezometers shall only be authorized for a one (1) year term; and

- (ii) The outside diameter of the borehole shall be at least three inches (3") greater than the nominal diameter of the well casing and screen; and
- (iii) Granular bentonite shall not be used in the sealed interval below the static water level; and
- (iv) Casing diameter shall be a minimum one inch (1") and shall meet or exceed schedule 40 standards; and
- (v) Wells and piezometers shall not be constructed through more than one water bearing formation and shall not be greater than 50 feet in depth unless a variance is obtained.

[Source: Revoked and reenacted at 9 Ok Reg 1679, eff 5-11-92; Amended at 10 Ok Reg 3299, eff 6-25-93; Amended at 11 Ok Reg 2947, eff 6-13-94; Amended at 12 Ok Reg 2703, eff 7-1-95; Amended at 13 Ok Reg 2885, eff 7-1-96; Amended at 14 Ok Reg 2782, eff 7-1-97; Amended at 15 Ok Reg 2440, eff 6-11-98; Amended at 19 Ok Reg 2498, eff 6-27-02; Amended at 22 Ok Reg 1598, eff 7-1-05; Amended at 23 Ok Reg 3078, eff 7-27-06; Amended at 27 Ok Reg 1313, eff 5-27-10; Amended at 28 Ok Reg 987, eff 7-1-11]

785:35-7-3. Minimum standards for construction of marginal water wells

(a) General requirements.

(1) Intent to drill application and fee required.

- (A) The well driller who shall desire to drill marginal water well shall submit an intent to drill application prior to construction upon printed forms which will be furnished by the Board. Marginal water wells shall not be constructed for domestic use unless a variance is granted by the Board.
- (B) The well driller shall provide information on the well design and materials to be used in the well construction, including the cementing and testing procedures, and any other pertinent data required by the Board.
- (C) All supporting documentations along with the required fee as provided in 785:5-1-11 shall form a part of the intent to drill application.
- (D) The intent to drill application shall be signed by the well driller conducting the well drilling activities.
- (E) A marginal water well construction permit must be approved by the Board before the drilling of any marginal water well.
- (F) Drilling of marginal water well shall be conducted in accordance with the marginal water well construction permit as approved and conditioned by the Board.
- (G) While conducting well drilling activities the well driller shall have a copy of the approved construction permit on site and available for inspection upon request.

(2) Marginal water well construction without permit.

- (A) The licensed marginal water well driller who encounters marginal water shall cease the operation, temporarily cap the well, and must take necessary measures to prevent comingling of the marginal water with fresh water.
- (B) The well driller shall submit an intent to drill application to the Board as provided in subsection 1.
- (C) The Board may revoke, suspended, or deny the renewal of the license or certification to any well driller who fails to comply with the rules and regulations.

(b) Minimum standards.

- (1) **Longevity of casing.** The well driller must provide information that supports the longevity of the selected casing in response to potentially corrosive salt concentrations.
- (2) **Annular seals to prevent the contamination of fresh water.** The annular space between the casing and borehole shall be sealed to prevent the commingling of fresh water with marginal water by using enough cement under pressure to completely fill and seal the annular space between the casing and borehole. Unless an alternate casing and/or cementing procedure is authorized by the Board, the well casing shall be cemented in this manner from 50 feet below the deepest fresh groundwater zone or aquifer encountered while drilling to land surface or immediately below the junction of the pitless adapter.
- (3) **Well schematic.** The marginal water well intent to drill application must provide well schematic illustrating proposed construction depths, dimensions, materials, and methods as well as the target aquifer, stratigraphy and hydrogeology to be encountered during drilling.
- (4) **Sealing off formations.** Cement must be allowed to set a minimum of forty-eight (48) hours before well drilling is resumed. Shorter set times may be requested if approved alternate sealants or accelerants are used. If shorter set times are requested, documentation shall be provided in the marginal water well intent to drill application substantiating the appropriate cement curing time to meet the compressive strengths necessary, consistent with anticipated shut-in pressures. Shorter set times shall not be permitted unless prior approval is granted by the Board. Sealing off of the formations shall be checked by a method acceptable to the Board.
- (5) **Cementing service reports.** The well driller shall provide any cementing service reports with the submission of the well log within 30 days of completion. The Board may require preliminary information as it becomes available.
- (6) **Cement bond logging.** The well driller shall provide any cement bond logging results created on each well with the submission of the well log within thirty (30) days of completion. The Board may require results of cement bond logging within twenty-four (24) hours of completion.
- (7) **Mud logging and Geophysical logging.** The well driller shall provide any mud logging and geophysical logging reports created on each well with the submission of the well log within thirty (30) days of completion. The Board may require results of geophysical logging within twenty-four (24) hours of completion. The Board may require periodic mud logging or lithologic logging during the course of the project.
- (8) **Deleterious substances.** The well driller shall contain, dispose of, or remove any deleterious substances from marginal water well activities according to the state's waste management standards.
- (9) **Alternate designs.** In the event that an alternate design is required, the well driller shall submit written notification to the Board. The Board may approve or deny the alternate design within 48 hours provided it is demonstrated that the proposed construction will prevent comingling of fresh, marginal, and/or salt water.

[Source: Added at 11 Ok Reg 2947, eff 6-13-94; Amended at 12 Ok Reg 2703, eff 7-1-95; Amended at 19 Ok Reg 2498, eff 6-27-02; Amended at 28 Ok Reg 987, eff 7-1-11; Amended at 36 Ok Reg 1299, eff 8-11-19]

785:35-7-4. Variances to minimum standards for construction of wells

- (a) Variances from any of the minimum standards for construction of wells set forth in this subchapter may be granted by the Board when it is demonstrated that the construction proposed will protect the quantity and quality of the groundwater from contamination and waste. Requests for variances must be completed on forms provided by the Board and submitted prior to beginning any work related to the variance, unless otherwise approved by the Executive Director of the Board as provided in this section.
- (b) Requests for variances shall be accompanied by any plans, specifications or other information detailing the type of variance requested and reasons for the variance request.
- (c) Requests for variances must be signed by the licensed well driller, contain a signature from the landowner of the land where the work is being done, and contain a certification signed by a licensed professional engineer that activities allowed by such variance will not cause pollution; provided however, a certification from a licensed professional engineer shall not be mandatory for a variance request to water well construction minimum standards unless otherwise required by the Executive Director.
- (d) Staff shall review the plans, specifications and data for purposes of determining the potential impacts on the groundwater and, if deemed advisable, may consult with all person requesting the variance, landowner and licensed professional engineer or hydrogeologist. Staff shall then make a recommendation to the Executive Director about the request for variance.
- (e) The Executive Director may approve the requested variance, deny the requested variance, or approve the requested variance subject to certain conditions being met.

[Source: Added at 36 Ok Reg 1299, eff 8-11-19]

SUBCHAPTER 9. MINIMUM STANDARDS FOR PUMP INSTALLATION

785:35-9-1. Minimum standards for pump installation

(a) General requirements.

- (1) **Minimum standards.** The minimum standards set forth in this subchapter apply to the installation of all water well pumps and pumping equipment, whether installed by a person having a valid license or by any other person.
- (2) **Pump installation practices.** All pump installations shall be completed in such a manner as to prevent waste and contamination of groundwater by pollution material entering the well from pumping equipment, casing connectors, fittings, piping, sanitary seals or caps.
- (3) **Construction materials.** All materials used in the construction of the pumping system shall be of a type and strength to prevent waste or pollution of the groundwater of the state.
- (4) **Temporary abandonment practices.** When a well is to be temporarily removed from service, the top of the well casing shall be properly sealed with a water-tight cap that cannot be easily removed.

(b) Well casing connections. Minimum standards for well casing connections are as follows:

- (1) **Above-grade connection.** An above-grade connection into the top or side of a well casing shall be twelve inches (12") above the land surface and shall be constructed so as to exclude dirt or other foreign matter by at least one of the following methods, as may be applicable:

- (A) Threaded connection;

- (B) Welded connection;
- (C) Rubber expansion sealer;
- (D) Bolted flanges with rubber gaskets;
- (E) Overlapping well cap; or
- (F) If a water well pump is mounted or sealed on a concrete pedestal, the casing shall extend at least one inch (1") into the base of the pedestal and at least eight inches (8") above the land surface.

(2) **Below-grade connection.** A connection to a well casing made below ground, or made less than twelve inches (12") above the land surface, shall be protected by a pitless adapter or pitless unit. Such pitless adapters shall be installed below the frost line. A below-ground connection shall not be submerged in water at the time of installation. Holes cut in the casing through which the pitless adapters are installed must be sized and constructed so as to guarantee a watertight seal with the pitless adapter in place.

(3) **Above-grade capping.** For water wells with pitless adapters, the portion of the well casing above the land surface shall be capped with a water-tight, vented pitless adapter cap that cannot be easily removed.

(c) **Pump installation.** The minimum standards for installation of pumps and pumping systems are as follows:

(1) **Pumps and pumping equipment.**

(A) **Priming requirements.** A pump shall be designed, installed, and maintained so that priming is not required for ordinary use. Pumps installed on irrigation systems may be primed, but the priming water shall contain a chlorine residual and be clear and free of contamination. An irrigation well equipped with a centrifugal pump may be primed without chlorination when the pump is filled with water taken directly from the well.

(B) **Cross connections prohibited.** Cross connections between water wells and other systems or equipment containing substances such as wastewater, pesticides or fertilizers are prohibited unless equipped with a protective device such as a break tank or backflow preventer, which the owner agrees to install, test and maintain to assure proper operation.

(2) **Pump discharge lines.** A buried discharge line between the well casing and the pressure tank in any installation, including a deep well turbine or a submersible pump, shall not be under negative pressure at any time.

(3) **Vents.** All wells shall be vented with watertight joints terminating at least two feet (2') above the 100 year flood elevation or twelve inches (12"), above the land surface. The casing vent shall be screened. Vents may be offset. All submersible pumps shall be installed with a vented cap on the top of the well casing or pitless unit to prevent drawing surface water, mud, sand, or other substances into the well. Where the well casing on small diameter wells is used as a suction pipe, the casing need not be equipped with a vented cap, provided the casing is properly sealed or capped. If toxic or flammable gases are present, they shall be vented from the well. The vent shall extend to the outside atmosphere at least six (6) feet above land surface or to a point where the gases will not present a hazard. Openings in pump bases shall be sealed watertight.

(4) **Disinfection.** The well and pumping equipment shall be disinfected with a chlorine concentration of at least one hundred (100) parts per million

of chlorine throughout the well. The chlorine solution shall be introduced into the well in a manner to flush the well casing surfaces above the static water level. A minimum contact period of two (2) hours shall be provided before purging and flushing the chlorine solution from the distribution system. Disinfection in a well repair operation may be accomplished at the beginning of the operation with chlorine applied to obtain a concentration of two hundred (200) parts per million for the period of the well repair operation. The water shall be purged prior to taking of water samples or use being made of the water. The licensee or operator shall be responsible for disinfecting the well, pump or pumping equipment. The well owner may pump and flush the well following disinfection, provided the owner has been instructed regarding the proper procedures by the licensee or operator.

(d) Windmill Driven Pumps. Surface completion must be constructed with cover plate designed to exclude pollution.

[Source: Added at 10 Ok Reg 3299, eff 6-25-93; Amended at 12 Ok Reg 2703, eff 7-1-95; Amended at 19 Ok Reg 2498, eff 6-27-02; Amended at 21 Ok Reg 2632, eff 7-1-04; Amended at 25 Ok Reg 1444, eff 5-27-08; Amended at 30 Ok Reg 891, eff 6-13-13]

785:35-9-2. Variances to minimum standards for pump installations

(a) Variances from any of the minimum standards for pump installations set forth in this subchapter may be granted by the Board when it is demonstrated that the installation method proposed will protect the quantity and quality of the groundwater from contamination and waste. Requests for variances must be completed on forms provided by the Board and submitted prior to beginning any work related to the variance, unless otherwise approved by the Executive Director as provided in this section.

(b) Requests for variances shall be accompanied by any plans, specifications or other information detailing the type of variance requested and reasons for the variance request.

(c) Requests for variances must be signed by the licensed well driller, contain a notarized signature from the landowner of the land where the work is being done, and contain a certification that activities subject of the variance request will not cause pollution.

(d) Staff shall review the plans, specifications and data for purposes of determining the potential impacts on the groundwater and, if deemed advisable, may consult with all person requesting the variance, landowner and licensed professional engineer or hydrogeologist. Staff shall then make a recommendation to the Executive Director about the request for variance.

(e) The Executive Director may approve the requested variance, deny the requested variance, or approve the requested variance subject to certain conditions being met.

[Source: Amended at 12 Ok Reg 2703, eff 7-1-95; Amended at 19 Ok Reg 2498, eff 6-27-02]

SUBCHAPTER 11. PLUGGING AND CAPPING REQUIREMENTS FOR WELLS AND TEST HOLES

785:35-11-1. Plugging and capping requirements for groundwater wells, fresh water observation wells, heat exchange wells and water well test holes

(a) Temporary capping. When a groundwater well or fresh water observation well is temporarily removed from service, the top of the well casing will be properly sealed with a pitless adapter cap, sanitary well seal, or well casing cap that cannot easily be removed. A new well shall be properly capped before the well driller

leaves the drilling site.

(b) **Time for plugging or completing water well test holes.** Water well test holes shall be properly plugged as provided in this section by the well driller prior to removal of drilling equipment unless the test hole is completed as an observation well for aquifer testing, including the installation of surface casing and cement seals. In the alternative and prior to drilling equipment being removed from site, water well test holes may be temporarily cased with SDR 26 water well casing a minimum of 10 feet below ground and 12 inches above ground. Bentonite shall be installed from 10 feet to 2 feet below land surface and cement grout installed from 2 feet to land surface. The top of casing shall be properly sealed or capped. Permanent completion or plugging shall become the responsibility of the landowner and shall be completed within 60 days of drilling equipment being removed from the site. A written statement from the landowner acknowledging such responsibility shall be obtained and submitted to the Board with the multipurpose completion report. The multi-purpose completion report shall be submitted to the Board within sixty (60) days after plugging or temporary completion of each water well test hole.

(c) **Permanent abandonment.** The following plugging requirements apply if a groundwater well, fresh water observation well, heat exchange well or water well test hole is permanently abandoned, was drilled by a person not holding a valid license or operator certification from the Board, or if the Board determines that the well or test hole was not drilled or completed in compliance with the applicable minimum standards set forth in this Chapter or may otherwise allow pollution to groundwater.

(1) The well driller shall be responsible for plugging the well or test hole if the well drilling equipment is on the drilling site. If a well is abandoned after the well drilling equipment has been removed from the drilling site, the owner of the land where the well or test hole is located shall be responsible for plugging.

(2) If the well or test hole is uncontaminated and unless paragraph 3 or paragraph 5 below applies, fill such well or water well test hole with uncontaminated, compacted drill cuttings and/or uncontaminated surface clay, cement, bentonite pellets or granules, or high solids (a minimum of twenty percent (20%) solids by dry weight) bentonite grout to within fourteen (14) feet of the land surface, and a minimum of ten (10) feet of the annular space and interior of the well casing shall be filled with cement grout to at least four (4) feet below the land surface.

(3) To plug uncontaminated groundwater wells, fresh water observation wells, or heat exchange wells in the alluvium and terrace deposits of the Arkansas, Cimarron, Salt Fork of the Arkansas, North Canadian, Canadian, Washita, North Fork of the Red, Salt Fork of the Red River, Red River, and other streams or rivers authorized by the Board, fill the well with clean, uncontaminated silica sand to within sixteen (16) feet of the land surface, then two (2) feet of bentonite pellets or granules shall be placed on the uncontaminated silica sand, and finally, a minimum of ten (10) feet of cement grout shall be installed in the annular space and interior of the well casing to at least four (4) feet below the land surface.

(4) Hand dug water wells shall be filled with uncontaminated surface clay or grout to within six (6) feet of land surface. The lining of the well shall be removed from the top five (5) feet and a minimum of two (2) feet of cement grout shall be installed. The top four (4) feet shall be filled with compacted

uncontaminated native soil, unless otherwise directed by the Board.

(5) If the well or water well test hole is contaminated, or if the well or test hole is located at an underground tank site or within 300 feet of the outside perimeter of an existing wastewater lagoon or is located on a tract of land where a wastewater lagoon is proposed, the casing shall be removed or perforated from the bottom of the casing to twenty (20) feet below land surface. The well or test hole shall be plugged with cement grout from the bottom to within four (4) feet of the land surface. If the total depth of the well is in excess of twenty feet (20') below land surface, the cement grout shall be placed by pumping from the bottom of the hole to within four (4) feet of the land surface. If the well does not meet current minimum construction standards for grouting and sealing the annulus, the casing shall be removed from twenty (20) feet below land surface to the surface.

(6) Vertical closed loop heat exchange wells shall be plugged according to standards set forth by Clause 10.9 of ANSI/CSA/IGSHPA C448.3.

[Source: Amended at 10 Ok Reg 3299, eff 6-25-93; Amended at 11 Ok Reg 2947, eff 6-13-94; Amended at 12 Ok Reg 2703, eff 7-1-95; Amended at 15 Ok Reg 2440, eff 6-11-98; Amended at 16 Ok Reg 2686, eff 7-1-99; Amended at 22 Ok Reg 1598, eff 7-1-05; Amended at 25 Ok Reg 1444, eff 5-27-08; Amended at 30 Ok Reg 891, eff 6-13-13; Amended at 36 Ok Reg 1299, eff 8-11-19; Amended at 37 Ok Reg 2300, eff 9-11-20]

785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings

(a) Monitoring wells, direct push monitoring wells and site assessment observation wells. Monitoring wells, direct push monitoring wells and site assessment observation wells shall be plugged to prevent pollution of groundwater within three (3) days after completion of use or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter. The following are minimum requirements for plugging monitoring wells and site assessment observation wells, and the owner of such wells or other federal or state agency may specify more stringent requirements:

(1) If no contaminated soil or contaminated groundwater is present in the well, cement grout shall be placed in the well through a tremie pipe and filled or pumped from the bottom of the well to an elevation four (4) feet below the land surface. In the alternative, bentonite pellets, granules or high solids (a minimum of twenty percent (20%) solids by dry weight) bentonite grout shall be placed from the bottom of the well to an elevation fourteen (14) feet below land surface and a minimum of ten (10) feet shall be filled with cement grout to an elevation four (4) feet below land surface, unless contaminated soil or contaminated groundwater is present in the well. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil. If the depth of the well is fourteen (14) feet or less, cement grout shall be placed from the bottom of well to land surface.

(2) If contaminated soil or contaminated groundwater is present or was previously present in the well and the top of the screen is less than 20 feet below land surface, overdrilling of the well is required. The casing shall be removed or drilled out and the same size auger used to drill the borehole or larger shall be used to drill out the casing and associated seals, annular space and filter pack. Cement grout shall be placed from the bottom of the well to an elevation four (4) feet below land surface effectively grouting a minimum of 95% of the original drilled borehole depth. If the total depth of the well is in excess of twenty feet (20') below land surface, the cement

grout shall be placed by pumping from the bottom of the hole to within four (4) feet of the land surface. If the top of the well screen is 20 feet or more below land surface and the well meets current minimum construction standards, then the casing need not be removed and cement grout shall be placed in the well through a tremie pipe and filled or pumped from the bottom upward to within four (4) feet of land surface. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(b) Geotechnical borings except direct push geotechnical borings. Geotechnical borings shall be plugged to prevent pollution of groundwater within thirty (30) days after completion of drilling or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter. The following are minimum requirements for plugging geotechnical borings, and the owner of the boring or other federal or state agency may specify more stringent requirements:

(1) If no contaminated soil and groundwater is encountered in the boring, uncontaminated drill cuttings, uncontaminated surface clay, cement, and/or high solids (a minimum of twenty percent (20%) solids by dry weight) bentonite grout, pellets, or granules shall be placed from the bottom of the boring to an elevation fourteen (14) feet below land surface and a minimum of ten (10) feet shall be filled with cement grout to an elevation four (4) feet below land surface. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(2) If contaminated soil or contaminated groundwater is encountered in the boring, or if the boring is located at an underground storage tank site or within 300 feet of the outside perimeter of an existing wastewater lagoon or is located on a tract of land where a wastewater lagoon is proposed, cement grout shall be placed from the bottom of the borehole to an elevation four (4) feet below land surface. Cement grout shall be placed in the borehole through a tremie pipe and filled or pumped from the bottom upward. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(3) If the boring is twenty (20) feet or less in total depth and groundwater has not been encountered, the boring shall, at a minimum, be filled with compacted uncontaminated cuttings from the bottom of the boring to land surface.

(c) Direct push geotechnical borings. Direct push geotechnical borings shall be plugged to prevent pollution of groundwater within thirty (30) days after completion of drilling or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter as follows:

(1) Bentonite chips shall be placed and effectively compressed within the annulus space from the bottom of the borehole to within ten (10) feet of the land surface.

(2) Cement grout shall be installed through a tremie pipe in the remaining annulus space from ten (10) feet to land surface, provided that no cement grout shall be required if the boring is less than ten feet (10') in total depth and no groundwater and no contaminated soil was encountered.

(d) Cement grout requirements. If cement grout is used, the grout shall have a mix ratio of one 94 pound sack of cement to a maximum of six U.S. gallons of water.

(e) **Abandonment after equipment removed.** If a site assessment observation well, monitoring well or geotechnical boring is abandoned after the drilling equipment has been removed from the site, responsibility for proper plugging within the applicable time period specified in this section shall lie with the owner of the land where the well or boring is located

[Source: Revoked and reenacted at 9 Ok Reg 1679, eff 5-11-92; Amended at 10 Ok Reg 3299, eff 6-25-93; Amended at 11 Ok Reg 2947, eff 6-13-94; Amended at 12 Ok Reg 2703, eff 7-1-95; Amended at 15 Ok Reg 2440, eff 6-11-98; Amended at 16 Ok Reg 2686, eff 7-1-99; Amended at 19 Ok Reg 2498, eff 6-27-02; Amended at 20 Ok Reg 2608, eff 7-11-03; Amended at 21 Ok Reg 2632, eff 7-1-04; Amended at 22 Ok Reg 1598, eff 7-1-05; Amended at 23 Ok Reg 3078, eff 7-27-06; Amended at 25 Ok Reg 1444, eff 5-27-08; Amended at 27 Ok Reg 1313, eff 5-27-10; Amended at 30 Ok Reg 891, eff 6-13-13]

785:35-11-3. Variances to plugging requirements

(a) Variances from any of the minimum standards for plugging set forth in this subchapter may be granted by the Board when it is demonstrated that the plugging method or actions proposed will protect the quantity and quality of the groundwater from contamination and waste. Requests for variances must be completed on forms provided by the Board and submitted prior to beginning any work related to activities subject of the variance request, unless otherwise approved by the Executive Director as provided in this section.

(b) Requests for variances shall be accompanied by any plans, specifications or other information detailing the type of variance requested and reasons for the variance request.

(c) Requests for variances must be signed by the licensed well driller, contain a notarized signature from the landowner of the land where the work is being done, and contain a certification that activities subject of the variance request will not cause pollution.

(d) Staff shall review the plans, specifications and data for purposes of determining the potential impacts on the groundwater and, if deemed advisable, may consult with all person requesting the variance, landowner and licensed professional engineer or hydrogeologist. Staff shall then make a recommendation to the Executive Director about the request for variance.

(e) The Executive Director may approve the requested variance, deny the requested variance, or approve the requested variance subject to certain conditions being met.

[Source: Added at 12 Ok Reg 2703, eff 7-1-95; Amended at 19 Ok Reg 2498, eff 6-27-02]

SUBCHAPTER 13. AUTHORIZATION TO DRILL GROUNDWATER WELLS

785:35-13-1. Authorization to drill groundwater wells

(a) Any person who intends to construct any new or replacement groundwater well(s) subject to the provisions of this Chapter shall, before commencing such activity, apply for authorization from the Board on forms provided by the Board, and receive approval from Board staff. Authorizations are not required for groundwater wells completed for domestic use, test holes, geotechnical borings, or heat exchange well, monitoring wells, and temporary dewatering wells.

(b) Drilling authorizations will not be issued for construction of a well that requires another separate approval from the Board, such as a water right authorization, transfer, amendment or injection well authorization, until the other separate permitting requirements have been satisfied. A drilling authorization does not constitute a water right, injection well authorization, or other authorization that may be required.

(c) Any person who has failed or in the future fails to obtain an authorization as required by this section shall make application for a late authorization on forms provided by the Board. The late authorization application shall contain the same information as required by subsection (d). The application for a late authorization shall be accompanied by an additional fee payable to the Board. Failure to make an application for an intent to drill for a well requiring a water right shall be subject to administrative fines.

(d) The application shall be accompanied by a non-refundable fee payable to the Board and shall contain:

- (1) the name and post office address of the applicant or applicants,
- (2) the name and post address of the well owner,
- (3) the intended use,
- (4) the intended latitude/longitude location of the proposed groundwater well (within 10 feet),
- (5) the intended borehole diameter, casing diameter, casing type, estimated depth of well, and screened/perforated if known,
- (6) the estimated or desired capacity in gallons per minute,
- (7) the groundwater well identification number of the water well being replaced if applicable,
- (8) the water right application number if applicable, and
- (9) such other information as the Board requires.

(e) Applications for an authorization to drill a groundwater well will be given a timestamp upon their arrival at the Board offices and will be reviewed according to the time they were received. Applications meeting all the criteria set forth in this section shall be approved by Board staff and those failing to meet the criteria shall be denied or approved with conditions within five (5) business days of receipt by the Board. Expedited, same-day applications that meet the above criteria may be approved for an additional filing fee.

(f) If the application is incomplete or needs corrections, Board staff shall return the application to the applicant for any necessary corrections. Corrections must be made within sixty (60) days or the application will be cancelled. No refund of any application fees shall be made regardless of whether the application is approved, cancelled, or denied.

(g) An application for an authorization or late authorization for a groundwater well shall be denied only if Board staff finds:

- (1) Applications failing to meet the criteria set forth in Chapter 35,
- (2) That the location or operation of the proposed groundwater well would conflict with any regulations adopted by the Board or of other applicable laws of the State of Oklahoma,
- (3) The applicant refuses to agree to the conditions set forth in the approval,
- (4) That the application includes any intentionally misleading or falsified data.

(h) When an application for authorization to drill a groundwater well is approved the applicant shall commence construction of the water well as soon as possible after the date of approval. A drilling authorization may not be assigned from one owner to another or from one driller to another. For wells requiring a water right application, the applicant shall have one (1) year after the approval of the water right application by the Board to complete construction of the groundwater well. If the applicant fails to complete the well under the terms of the authorization, the Board will cancel the authorization. The applicant can request, in writing, a 1-year continuance of the authorization.

[Source: Added at 39 Ok Reg 2444, eff 9-11-22]

CHAPTER 40. POLLUTION REMEDIES [REVOKED]

[Authority: 27A O.S.Supp.1993, § 6; 82 O.S.1991, § 1085.2]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

785:40-1-1. Purpose [REVOKED]

[Source: Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-1-2. Definitions [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-1-3. Statutory provisions on actions and enforcement [REVOKED]

[Source: Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-1-4. Policy [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-1-5. Water quality standards [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-1-6. Water quality certifications [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-1-7. General pollution abatement [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-1-8. Nonpoint source pollution [REVOKED]

[Source: Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-1-9. Emergency Board orders [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-1-10. Enforcement actions for violations [REVOKED]

[Source: Added at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

SUBCHAPTER 3. WASTE DISPOSAL PERMITS [REVOKED]

PART 1. PERMIT PROGRAM [REVOKED]

785:40-3-1. Program implementation [REVOKED]

[Source: Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-2. Requirements to obtain a permit [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-3. Fees [REVOKED]

[Source: Revoked at 12 Ok Reg 607, eff 1-13-95]

PART 3. APPLICATION REQUIREMENTS [REVOKED]

785:40-3-10. Requirements for all applications [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-11. Direct discharges of wastes to waters of the state [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-12. Surface impoundments [REVOKED]

[Source: Amended at 9 Ok Reg 1891, eff 5-26-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-13. Land application [REVOKED]

[Source: Amended at 9 Ok Reg 1891, eff 5-26-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-14. Stormwater runoff disposal [REVOKED]

[Source: Revoked at 12 Ok Reg 607, eff 1-13-95]

PART 5. [RESERVED]

PART 7. DISPOSAL SYSTEM CONSTRUCTION AND OPERATION [REVOKED]

785:40-3-30. Treatment of industrial wastewater [REVOKED]

[Source: Revoked at 12 Ok Reg 607, eff 1-13-95]

PART 9. DECISION MAKING PROCESS [REVOKED]

785:40-3-40. Initial action on application [REVOKED]

[Source: Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-41. Draft permits [REVOKED]

[Source: Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-42. Statements of basis, fact sheets, and rationales [REVOKED]

[Source: Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-43. Public notice [REVOKED]

[Source: Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-44. Public hearing [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-45. Action by the Board [REVOKED]

[Source: Amended at 9 Ok Reg 3048, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

PART 11. TYPES OF PERMITS AND CONDITIONS [REVOKED]

785:40-3-50. Types of permits issued [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-51. Conditions applicable to all permits and authorizations [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-52. Other permit conditions [REVOKED]

[Source: Amended at 9 Ok Reg 1891, eff 5-26-92; Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-53. Surface impoundments [REVOKED]

[Source: Amended at 9 Ok Reg 1891, eff 5-26-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-54. Land application of wastes [REVOKED]

[Source: Amended at 9 Ok Reg 1891, eff 5-26-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-55. Special permit conditions [REVOKED]

[Source: Revoked at 12 Ok Reg 607, eff 1-13-95]

PART 13. STORMWATER [REVOKED]

785:40-3-60. Stormwater runoff [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

PART 15. CONTINUATION, MODIFICATIONS, REVOCATION, NON-RENEWAL AND TRANSFER OF PERMITS [REVOKED]

785:40-3-65. Continuation of expiring permits [REVOKED]

[Source: Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-66. Permit modification, revocation and non-renewal [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-3-67. Transfer of permits [REVOKED]

[Source: Revoked at 12 Ok Reg 607, eff 1-13-95]

PART 17. EFFLUENT LIMITS [REVOKED]

785:40-3-75. Development of effluent limitations [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

**785:40-3-76. Effluent limitation guidelines for wastewater discharges
[REVOKED]**

[Source: Revoked at 12 Ok Reg 607, eff 1-13-95]

**785:40-3-77. Additional information to establish constituent limitations
[REVOKED]**

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

**SUBCHAPTER 5. UNDERGROUND PIPE, FITTINGS, AND STORAGE
TANKS [REVOKED]**

**785:40-5-1. Underground pipe, fittings, and tank installations including
industrial septic tanks [REVOKED]**

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

**785:40-5-2. Underground storage tank program and L.U.S.T. Trust Fund
[REVOKED]**

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

SUBCHAPTER 7. LABORATORY CERTIFICATION [REVOKED]

785:40-7-1. General program provisions [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-7-2. Applications for certification [REVOKED]

[Source: Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-7-3. Categories of certification [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-7-4. Laboratory operations [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-7-5. Proficiency testing [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

**785:40-7-6. Certification renewals, new laboratories and changes to be
reported [REVOKED]**

[Source: Revoked at 12 Ok Reg 607, eff 1-13-95]

785:40-7-7. Inspections and enforcement [REVOKED]

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

SUBCHAPTER 9. [RESERVED]

**APPENDIX A. GENERAL WASTE DISPOSAL PERMIT FOR
PETROLEUM STORAGE AND TRANSFER (PST) FACILITIES
[REVOKED]**

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

**APPENDIX B. GENERAL WASTE DISPOSAL PERMIT FOR DISCHARGE
FROM GROUNDWATER REMEDIATION PROJECTS (UST
CONTAMINATION SITES ONLY) [REVOKED]**

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

**APPENDIX C. GENERAL WASTE DISPOSAL PERMIT FOR DISCHARGE
FROM AQUATIC ANIMAL PRODUCTION FACILITIES (POND
CULTURES ONLY) [REVOKED]**

[Source: Amended at 9 Ok Reg 3043, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

**APPENDIX D. GENERAL WASTE DISPOSAL PERMIT FOR DISCHARGE
OF HYDROSTATIC TEST WATER [REVOKED]**

[Source: Amended at 9 Ok Reg 3042, eff 7-13-92; Revoked at 12 Ok Reg 607, eff 1-13-95]

**CHAPTER 45. OKLAHOMA'S WATER QUALITY STANDARDS
[REVOKED]**

[Authority: 27A O.S., § 1-3-101; 82 O.S., §§ 1085.2, 1085.30, and 1085.30a]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

785:45-1-1. Purpose [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 12 Ok Reg 3305, eff 7-27-95; Amended at 18 Ok Reg 3377, eff 8-13-01; Amended at 19 Ok Reg 2511, eff 7-1-02; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-1-2. Definitions [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 9 Ok Reg 2625, eff 6-25-92; Amended at 11 Ok Reg 2959, eff 6-13-94; Amended at 12 Ok Reg 3305, eff 7-27-95; Amended at 14 Ok Reg 2786, eff 7-1-97; Amended at 15 Ok Reg 2872, eff 7-1-98; Amended at 16 Ok Reg 3236, eff 7-12-99; Amended at 17 Ok Reg 1717, eff 7-1-00; Amended at 18 Ok Reg 3377, eff 8-13-01; Amended at 19 Ok Reg 2511, eff 7-1-02; Amended at 20 Ok Reg 1364, eff 7-1-03; Amended at 23 Ok Reg 1488, eff 7-1-06; Amended at 24 Ok Reg 2442, eff 7-1-07; Amended at 25 Ok Reg 1454, eff 7-1-08; Amended at 27 Ok Reg 2017, eff 7-1-10; Amended at 33 Ok Reg 1950, eff 9-11-16; Amended at 34 Ok Reg 2170, eff 9-11-17; Amended at 36 Ok Reg 1312, eff 8-11-19; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-1-3. Adoption and enforceability of the standards [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 12 Ok Reg 3305, eff 7-27-95; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-1-4. Testing procedures [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 18 Ok Reg 3377, eff 8-13-01; Amended at 19 Ok Reg 2511, eff 7-1-02; Amended at 20 Ok Reg 1364, eff 7-1-03; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-1-5. Revision procedures [REVOKED]

[Source: Amended at 12 Ok Reg 3305, eff 7-27-95; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-1-6. Errors and separability [REVOKED]

[Source: Revoked at 40 Ok Reg 1308, eff 8-11-23]

SUBCHAPTER 3. ANTIDEGRADATION REQUIREMENTS [REVOKED]

785:45-3-1. Purpose; antidegradation policy statement [REVOKED]

[Source: Amended at 15 Ok Reg 2872, eff 7-1-98; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-3-2. Applications of antidegradation policy [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 9 Ok Reg 2625, eff 6-25-92; Amended at 15 Ok Reg 2872, eff 7-1-98; Amended at 21 Ok Reg 1838, eff 7-1-04; Amended at 24 Ok Reg 2442, eff 7-1-07; Amended at 33 Ok Reg 1950, eff 9-11-16; Revoked at 40 Ok Reg 1308, eff 8-11-23]

SUBCHAPTER 5. SURFACE WATER QUALITY STANDARDS [REVOKED]

PART 1. GENERAL PROVISIONS [REVOKED]

785:45-5-1. Declaration of policy; authority of Board [REVOKED]

[Source: Amended at 12 Ok Reg 3305, eff 7-27-95; Amended at 18 Ok Reg 3377, eff 8-13-01; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-5-2. Beneficial uses: existing and designated [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 12 Ok Reg 3305, eff 7-27-95; Amended at 15 Ok Reg 2872, eff 7-1-98; Amended at 17 Ok Reg 1717, eff 7-1-00; Amended at 18 Ok Reg 3377, eff 8-13-01; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-5-3. Beneficial uses: default designations [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 11 Ok Reg 2959, eff 6-13-94; Amended at 14 Ok Reg 2786, eff 7-1-97; Amended at 18 Ok Reg 3377, eff 8-13-01; Amended at 19 Ok Reg 2511, eff 7-1-02; Amended at 20 Ok Reg 1364, eff 7-1-03; Amended at 25 Ok Reg 1454, eff 7-1-08; Amended at 27 Ok Reg 2017, eff 7-1-10; Revoked at 40 Ok Reg 1308, eff 8-11-23]

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

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 10 Ok Reg 3311, eff 6-25-93; Amended at 12 Ok Reg 3305, eff 7-27-95; Amended at 15 Ok Reg 2872, eff 7-1-98; Amended at 18 Ok Reg 3377, eff 8-13-01; Amended at 19 Ok Reg 2511, eff 7-1-02; Amended at 20 Ok Reg 1364, eff 7-1-03; Amended at 24 Ok Reg 2442, eff 7-1-07; Amended at 36 Ok Reg 1312, eff 8-11-19; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-5-5. Water quality standard variance [REVOKED]

[Source: Added at 36 Ok Reg 1312, eff 8-11-19; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-5-6. Compliance schedules [REVOKED]

[Source: Added at 36 Ok Reg 1312, eff 8-11-19; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-5-7. Site-specific criteria [REVOKED]

[Source: Added at 36 Ok Reg 1312, eff 8-11-19; Revoked at 40 Ok Reg 1308, eff 8-11-23]

PART 3. BENEFICIAL USES AND CRITERIA TO PROTECT USES [REVOKED]

785:45-5-9. General narrative criteria [REVOKED]

[Source: Added at 21 Ok Reg 1838, eff 7-1-04; Amended at 24 Ok Reg 2442, eff 7-1-07; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-5-10. Public and private water supplies [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 12 Ok Reg 3305, eff 7-27-95; Amended at 14 Ok Reg 2786, eff 7-1-97; Amended at 15 Ok Reg 2872, eff 7-1-98; Amended at 17 Ok Reg 1717, eff 7-1-00; Amended at 18 Ok Reg 3377, eff 8-13-01; Amended at 19 Ok Reg 2511, eff 7-1-02; Amended at 23 Ok Reg 1488, eff 7-1-06; Amended at 24 Ok Reg 2442, eff 7-1-07; Amended at 33 Ok Reg 1950, eff 9-11-16; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-5-11. Emergency public and private water supplies [REVOKED]

[Source: Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-5-12. Fish and wildlife propagation [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 11 Ok Reg 2959, eff 6-13-94; Amended at 12 Ok Reg 3305, eff 7-27-95; Amended at 14 Ok Reg 2786, eff 7-1-97; Amended at 15 Ok Reg 2872, eff 7-1-98; Amended at 16 Ok Reg 3240, eff 7-12-99; Amended at 17 Ok Reg 1717, eff 7-1-00; Amended at 18 Ok Reg 3377, eff 8-13-01; Amended at 19 Ok Reg 2511, eff 7-1-02; Amended at 20 Ok Reg 1364, eff 7-1-03; Amended at 23 Ok Reg 1488, eff 7-1-06; Amended at 24 Ok Reg 2442, eff 7-1-07; Amended at 28 Ok Reg 994, eff 7-1-11; Amended at 30 Ok Reg 896, eff 7-1-13; Amended at 32 Ok Reg 2338, eff 9-11-15; Amended at 33 Ok Reg 1950, eff 9-11-16; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-5-13. Agriculture [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 12 Ok Reg 3305, eff 7-27-95; Amended at 14 Ok Reg 2786, eff 7-1-97; Amended at 15 Ok Reg 2872, eff 7-1-98; Amended at 19 Ok Reg 2511, eff 7-1-02; Amended at 21 Ok Reg 1838, eff 7-1-04; Amended at 23 Ok Reg 1488, eff 7-1-06; Amended at 24 Ok Reg 2442, eff 7-1-07; Amended at 25 Ok Reg 1454, eff 7-1-08; Amended at 28 Ok Reg 994, eff 7-1-11; Amended at 30 Ok Reg 896, eff 7-1-13; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-5-14. Hydroelectric power generation [REVOKED]

[Source: Revoked at 24 Ok Reg 2442, eff 7-1-07]

785:45-5-15. Industrial and municipal process and cooling water [REVOKED]

[Source: Revoked at 24 Ok Reg 2442, eff 7-1-07]

785:45-5-16. Primary Body Contact Recreation [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 19 Ok Reg 2511, eff 7-1-02; Amended at 21 Ok Reg 1838, eff 7-1-04; Amended at 28 Ok Reg 994, eff 7-1-11; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-5-17. Secondary Body Contact Recreation [REVOKED]

[Source: Amended at 21 Ok Reg 1838, eff 7-1-04; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-5-18. Navigation [REVOKED]

[Source: Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-5-19. Aesthetics [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 14 Ok Reg 2786, eff 7-1-97; Amended at 19 Ok Reg 2511, eff 7-1-02; Amended at 20 Ok Reg 1364, eff 7-1-03; Amended at 21 Ok Reg 1838, eff 7-1-04; Amended at 25 Ok Reg 1454, eff 7-1-08; Amended at 27 Ok Reg 2017, eff 7-1-10; Amended at 30 Ok Reg 896, eff 7-1-13; Amended at 38 Ok Reg 2759, eff 9-11-21; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-5-20. Fish consumption [REVOKED]

[Source: Added at 17 Ok Reg 1717, eff 7-1-00; Amended at 18 Ok Reg 3377, eff 8-13-01; Amended at 19 Ok Reg 2511, eff 7-1-02; Amended at 23 Ok Reg 1488, eff 7-1-06; Amended at 30 Ok Reg 896, eff 7-1-13; Revoked at 40 Ok Reg 1308, eff 8-11-23]

PART 5. SPECIAL PROVISIONS [REVOKED]

785:45-5-25. Implementation Policies for the Antidegradation Policy Statement [REVOKED]

[Source: Amended at 9 Ok Reg 2625, eff 6-25-92; Amended at 12 Ok Reg 3305, eff 7-27-95; Amended at 16 Ok Reg 3240, eff 7-12-99; Amended at 18 Ok Reg 3377, eff 8-13-01; Amended at 19 Ok Reg 2511, eff 7-1-02; Amended at 20 Ok Reg 1364, eff 7-1-03; Amended at 24 Ok Reg 2442, eff 7-1-07; Amended at 33 Ok Reg 1950, eff 9-11-16; Amended at 35 Ok Reg 2219, eff 9-14-18; Amended at 38 Ok Reg 2759, eff 9-11-21; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-5-26. Mixing zones and zones of passage [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 16 Ok Reg 3240, eff 7-12-99; Amended at 18 Ok Reg 3377, eff 8-13-01; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-5-27. Site-specific criteria [REVOKED]

[Source: Revoked at 9 Ok Reg 1889, eff 5-26-92]

785:45-5-28. Implementation policy for total phosphorus criterion [EXPIRED]

[Source: Added at 19 Ok Reg 1589, eff 5-6-02 through 7-14-03 (emergency)¹]

***AGENCY NOTE:** ¹This emergency rule expired on 7-14-03. While this emergency rule was not directly superseded by a permanent rule at Section 785:45-5-28, its substance was amended and promulgated in permanent amendments codified at Section 785:45-5-19(c)(2)(B) and Section 785:45-5-25(d), which became effective 7-1-03. For the official text of the emergency rule that was in effect from 5-6-02 through 7-14-03, see 19 Ok Reg 1589.*

785:45-5-29. Delineation of NLW areas [REVOKED]

[Source: Added at 23 Ok Reg 1488, eff 7-1-06; Amended at 24 Ok Reg 2442, eff 7-1-07; Revoked at 40 Ok Reg 1308, eff 8-11-23]

SUBCHAPTER 7. GROUNDWATER QUALITY STANDARDS [REVOKED]

785:45-7-1. Scope and Applicability; Purpose [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 17 Ok Reg 2766, eff 7-1-00; Amended at 34 Ok Reg 2170, eff 9-11-17; Amended at 35 Ok Reg 2219, eff 9-14-18; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-7-2. Groundwater Quality Antidegradation Policy [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 17 Ok Reg 2766, eff 7-1-00; Amended at 19 Ok Reg 2511, eff 7-1-02; Amended at 34 Ok Reg 2170, eff 9-11-17; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-7-3. Groundwater classifications, beneficial uses and vulnerability levels [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 16 Ok Reg 3240, eff 7-12-99; Amended at 17 Ok Reg 2766, eff 7-1-00; Amended at 19 Ok Reg 2511, eff 7-1-02; Amended at 34 Ok Reg 2170, eff 9-11-17; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-7-4. Criteria for groundwater quality protection [REVOKED]

[Source: Added at 34 Ok Reg 2170, eff 9-11-17; Revoked at 40 Ok Reg 1308, eff 8-11-23]

785:45-7-5. Corrective action [REVOKED]

[Source: Added at 34 Ok Reg 2170, eff 9-11-17; Revoked at 40 Ok Reg 1308, eff 8-11-23]

APPENDIX A. DESIGNATED BENEFICIAL USES FOR SURFACE WATERS [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Amended at 9 Ok Reg 2625, eff 6-25-92; Amended at 10 Ok Reg 3311, eff 6-25-93; Revoked and reenacted at 11 Ok Reg 2959, eff 6-13-94; Revoked and reenacted at 12 Ok Reg 3305, eff 7-27-95; Revoked and reenacted at 14 Ok Reg 2786, eff 7-1-97; Revoked and reenacted at 15 Ok Reg 2872, eff 7-1-98; Revoked and reenacted at 16 Ok Reg 3240, eff 7-12-99; Revoked and reenacted at 17 Ok Reg 1717, eff 7-1-00; Revoked and reenacted at 18 Ok Reg 3377, eff 8-13-01; Revoked and reenacted at 19 Ok Reg 2511, eff 7-1-02; Revoked and reenacted at 20 Ok Reg 1364, eff 7-1-03; Revoked and reenacted at 21 Ok Reg 1838, eff 7-1-04; Revoked and reenacted at 23 Ok Reg 1488, eff 7-1-06; Revoked and reenacted at 24 Ok Reg 2442, eff 7-1-07; Revoked and reenacted at 25 Ok Reg 1454, eff 7-1-08; Revoked and reenacted at 30 Ok Reg 896, eff 7-1-13; Revoked and reenacted at 33 Ok Reg 1950, eff 9-11-16; Revoked at 40 Ok Reg 1308, eff 8-11-23]

APPENDIX A.1. DESIGNATED BENEFICIAL USES OF SURFACE WATERS WATER QUALITY MANAGEMENT BASIN 1, MIDDLE ARKANSAS RIVER [REVOKED]

[Source: Added at 25 Ok Reg 1454, eff 7-1-08; Revoked and reenacted at 28 Ok Reg 994, eff 7-1-11; Revoked and reenacted at 30 Ok Reg 896, eff 7-1-13; Revoked and reenacted at 33 Ok Reg 1950, eff 9-11-16; Revoked at 40 Ok Reg 1308, eff 8-11-23]

APPENDIX A.2. DESIGNATED BENEFICIAL USES OF SURFACE WATERS WATER QUALITY MANAGEMENT BASIN 2, LOWER ARKANSAS RIVER BASIN [REVOKED]

[Source: Added at 25 Ok Reg 1454, eff 7-1-08; Revoked and reenacted at 30 Ok Reg 896, eff 7-1-13; Revoked and reenacted at 33 Ok Reg 1950, eff 9-11-16; Revoked at 40 Ok Reg 1308, eff 8-11-23]

APPENDIX A.3. DESIGNATED BENEFICIAL USES OF SURFACE WATERS WATER QUALITY MANAGEMENT BASIN 3, UPPER RED RIVER BASIN [REVOKED]

[Source: Added at 25 Ok Reg 1454, eff 7-1-08; Revoked and reenacted at 30 Ok Reg 896, eff 7-1-13; Revoked and reenacted at 33 Ok Reg 1950, eff 9-11-16; Revoked at 40 Ok Reg 1308, eff 8-11-23]

APPENDIX A.4. DESIGNATED BENEFICIAL USES OF SURFACE WATERS WATER QUALITY MANAGEMENT BASIN 4, LOWER RED RIVER [REVOKED]

[Source: Added at 25 Ok Reg 1454, eff 7-1-08; Revoked and reenacted at 30 Ok Reg 896, eff 7-1-13; Revoked and reenacted at 33 Ok Reg 1950, eff 9-11-16; Revoked at 40 Ok Reg 1308, eff 8-11-23]

APPENDIX A.5. DESIGNATED BENEFICIAL USES OF SURFACE WATERS WATER QUALITY MANAGEMENT BASIN 5, CANADIAN RIVER [REVOKED]

[Source: Added at 25 Ok Reg 1454, eff 7-1-08; Revoked and reenacted at 30 Ok Reg 896, eff 7-1-13; Revoked and reenacted at 33 Ok Reg 1950, eff 9-11-16; Revoked at 40 Ok Reg 1308, eff 8-11-23]

APPENDIX A.6. DESIGNATED BENEFICIAL USES OF SURFACE WATERS WATER QUALITY MANAGEMENT BASIN 6, UPPER ARKANSAS RIVER [REVOKED]

[Source: Added at 25 Ok Reg 1454, eff 7-1-08; Revoked and reenacted at 30 Ok Reg 896, eff 7-1-13; Revoked and reenacted at 33 Ok Reg 1950, eff 9-11-16; Revoked at 40 Ok Reg 1308, eff 8-11-23]

APPENDIX A.7. DESIGNATED BENEFICIAL USES OF SURFACE WATERS WATER QUALITY MANAGEMENT BASIN 7, PANHANDLE REGION [REVOKED]

[Source: Added at 25 Ok Reg 1454, eff 7-1-08; Revoked and reenacted at 30 Ok Reg 896, eff 7-1-13; Revoked and reenacted at 33 Ok Reg 1950, eff 9-11-16; Revoked at 40 Ok Reg 1308, eff 8-11-23]

APPENDIX B. AREAS WITH WATERS OF RECREATIONAL AND/OR ECOLOGICAL SIGNIFICANCE [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Revoked and reenacted at 12 Ok Reg 3305, eff 7-27-95; Revoked and reenacted at 16 Ok Reg 3240, eff 7-12-99; Revoked and reenacted at 21 Ok Reg 1838, eff 7-1-04; Revoked and reenacted at 24 Ok Reg 2442, eff 7-1-07; Revoked and reenacted at 33 Ok Reg 1950, eff 9-11-16; Revoked at 40 Ok Reg 1308, eff 8-11-23]

8-11-23]

APPENDIX C. SUITABILITY OF WATER FOR LIVESTOCK AND IRRIGATION USES [REVOKED]

[Source: Amended at 12 Ok Reg 3305, eff 7-27-95; Revoked at 23 Ok Reg 1488, eff 7-1-06]

APPENDIX D. CLASSIFICATIONS FOR GROUNDWATER IN OKLAHOMA [REVOKED]

[Source: Amended at 9 eff 5-26-92; Revoked and reenacted at 16 Ok Reg 3240, eff 7-12-99; Revoked and reenacted at 17 Ok Reg 2766, eff 7-1-00; Revoked at 40 Ok Reg 1308, eff 8-11-23]

APPENDIX E. REQUIREMENTS FOR DEVELOPMENT OF SITE SPECIFIC CRITERIA FOR CERTAIN PARAMETERS [REVOKED]

[Source: Revoked at 9 Ok Reg 1889, eff 5-26-92 ¹; Added at 14 Ok Reg 2786, eff 7-1-97; Revoked and reenacted at 15 Ok Reg 2872, eff 7-1-98; Revoked and reenacted at 16 Ok Reg 3240, eff 7-12-99; Revoked and reenacted at 17 Ok Reg 1717, eff 7-1-00; Revoked and reenacted at 18 Ok Reg 3377, eff 8-13-01; Revoked and reenacted at 19 Ok Reg 2511, eff 7-1-02; Revoked and reenacted at 20 Ok Reg 1364, eff 7-1-03; Revoked and reenacted at 21 Ok Reg 1838, eff 7-1-04; Revoked and reenacted at 23 Ok Reg 1488, eff 7-1-06; Revoked and reenacted at 24 Ok Reg 2442, eff 7-1-07; Revoked and reenacted at 25 Ok Reg 1454, eff 7-1-08; Revoked and reenacted at 27 Ok Reg 2017, eff 7-1-10; Revoked and reenacted at 32 Ok Reg 2338, eff 9-11-15; Revoked and reenacted at 33 Ok Reg 1950, eff 9-11-16; Revoked and reenacted at 35 Ok Reg 2219, eff 9-14-18; Revoked at 40 Ok Reg 1308, eff 8-11-23]

Editor's Note: ¹Revoked Appendix was entitled "Site Specific Criteria for Streams."

APPENDIX F. STATISTICAL VALUES OF THE HISTORICAL DATA FOR MINERAL CONSTITUENTS OF WATER QUALITY (BEGINNING OCTOBER 1976 ENDING SEPTEMBER 1983, EXCEPT AS INDICATED) [REVOKED]

[Source: Amended at 9 Ok Reg 1889, eff 5-26-92; Revoked and reenacted at 18 Ok Reg 3377, eff 8-13-01; Revoked and reenacted at 19 Ok Reg 2511, eff 7-1-02; Revoked and reenacted at 23 Ok Reg 1488, eff 7-1-06; Revoked and reenacted at 25 Ok Reg 1454, eff 7-1-08; Revoked at 40 Ok Reg 1308, eff 8-11-23]

APPENDIX G. NUMERICAL CRITERIA TO PROTECT BENEFICIAL USES [REVOKED]

[Source: Added at 19 Ok Reg 2511, eff 7-1-02; Revoked and reenacted at 21 Ok Reg 1838, eff 7-1-04; Revoked and reenacted at 24 Ok Reg 2442, eff 7-1-07; Revoked and reenacted at 27 Ok Reg 2017, eff 7-1-10; Revoked and reenacted at 30 Ok Reg 896, eff 7-1-13; Revoked and reenacted at 32 Ok Reg 2338, eff 9-11-15; Revoked and reenacted at 33 Ok Reg 1950, eff 9-11-16; Revoked at 40 Ok Reg 1308, eff 8-11-23]

APPENDIX H. BENEFICIAL USE DESIGNATIONS FOR CERTAIN LIMITED AREAS OF GROUNDWATER [REVOKED]

[Source: Reserved at 19 Ok Reg 2511, eff 7-1-02; Added at 23 Ok Reg 1488, eff 7-1-06; Revoked and reenacted at 24 Ok Reg 2442, eff 7-1-07; Revoked and reenacted at 27 Ok Reg 2017, eff 7-1-10; Revoked and reenacted at 30 Ok Reg 896, eff 7-1-13; Revoked and reenacted at 36 Ok Reg 1312, eff 8-11-19; Revoked at 40 Ok Reg 1308, eff 8-11-23]

APPENDIX I. CRITERIA FOR GROUNDWATER PROTECTION [REVOKED]

[Source: Added at 34 Ok Reg 2170, eff 9-11-17; Revoked at 40 Ok Reg 1308, eff 8-11-23]

CHAPTER 46. IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS

[Authority: 27A O.S., § 1-3-101; 82 O.S., §§ 1085.30 and 1085.2]

[Source: Codified 7-1-96]

SUBCHAPTER 1. GENERAL PROVISIONS

785:46-1-1. Purpose, scope and applicability [REVOKED]

785:46-1-2. Definitions

In addition to definitions of terms found in OAC 785:45-1-2, which are incorporated herein by reference, the following words, terms and notations, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

"7T2" means the seven-day maximum temperature likely to occur with a 50% probability each year. The 7T2 is calculated using a moving average of seven consecutive days for each year in a given record. These seven day receiving stream temperature values are ranked in descending order. An order number, m, is calculated based on the number of years of record, n, with a recurrence interval of 2 years, as $m = (n+1)/2$. The m^{th} highest average temperature is the 7T2.

"A" means mean annual average flow.

"ACR" means acute to chronic ratio.

"Acute to chronic ratio" means LC50/NOEC. The NOEC is the highest concentration at which no effect on test organisms is observed over a relatively long period. Quarterly biomonitoring over the life of the permit is sufficient to determine the ACR if the NOEC and LC50 may be determined. If the ACR is unknown, a default value of 10 may be used for implementation purposes.

"Background" means the ambient condition upstream or upgradient from a facility, practice or activity which has not been affected by that facility, practice or activity.

"Beneficial use limitation" means a more stringent restriction than that required to protect the beneficial use. A prohibition on new point sources is an example of a beneficial use limitation.

"Board" means Oklahoma Water Resources Board.

"BOD" means biochemical oxygen demand.

"C" means maximum concentration on the mixing zone boundary.

"C95" means the 95th percentile maximum likelihood concentration.

"Cb" means background concentration.

"Ce" means effluent concentration.

"cfs" means cubic feet per second.

"Cmean" means the geometric mean of all effluent concentrations analyzed for the toxicant.

"Ct" means the appropriate criterion listed in OAC 785:45.

"CBOD" means carbonaceous biochemical oxygen demand.

"Coefficient of variation" means standard deviation divided by the mean.

"Continuing Planning Process (CPP)" means the most recent edition of the document produced annually by the Oklahoma Department of Environmental Quality which describes water quality programs implemented within the State.

"Continuing toxicity" means a tendency to be toxic.

"Control" means test organisms exposed to 0% effluent as part of the whole effluent toxicity testing procedure.

"Cooling water reservoir" means a privately owned reservoir used in the process of cooling water for industrial purposes.

"CPP" means the Continuing Planning Process document.

"CV" means coefficient of variation.

"D" means diameter of the discharge pipe in feet.

"df" means dilution factor.

"Dilution capacity" means a measure of the ability of the receiving stream to dilute effluent, defined as the ratio of the regulatory effluent flow to the regulatory receiving stream flow.

"Dilution factor" means a measure of the minimum dilution that occurs on the mixing zone boundary.

"Discharge to a lake" means a discharge within the lake's normal pool elevation as listed in the Oklahoma Water Atlas, Oklahoma Water Resources Board Publication 135, May 1990, excluding discharges to lock and dam reservoirs.

"Discharge to a stream" means (1) any discharge outside the normal pool elevation of a lake as such elevation is listed in the Oklahoma Water Atlas, Oklahoma Water Resources Board Publication 135, May 1990, and (2) any discharge to a lock and dam reservoir, such as Webbers Falls Reservoir and Robert S. Kerr Reservoir.

"DO" means dissolved oxygen.

"Drainage area" means the area above the discharge drained by the receiving stream.

"Event mean concentration" means the flow-weighted average for a given storm event. The flow-weighted average is represented as the sum of the loads calculated for a series of storm samples divided by the sum of the discharges calculated for each of the storm samples.

"EPA" means the United States Environmental Protection Agency.

"HQW" means high quality waters as defined in OAC 785:45-3-2(b).

"Implementation Plan" means a Water Quality Standards Implementation Plan developed and promulgated by a state environmental agency as required by 27A O.S. § 1-1-202.

"Increased load" means the mass of pollutant discharged which is greater than the permitted mass loadings and concentrations, as appropriate, in the discharge permit effective when the SWS, SWS-R, HQW, or ORW beneficial use limitation was assigned.

"Lake mixing zone" means a volume extending one hundred feet from the source for implementation purposes, unless otherwise specified in OAC 785:45.

"LC50" means the lethal concentration as defined in OAC 785:45-1-2.

"LMFO" means licensed managed feeding operation as defined in 2 O.S. 9-202.

"Mean annual average flow" means the annual mean flow found in "Statistical Summaries", USGS publication no. 87-4205, or most recent version thereof, or other annual mean flow as approved by the Oklahoma Water Resources Board or the permitting authority.

"Monthly average level" means the concentration of a toxicant in the permit which may not be exceeded by the observed effluent concentration averaged over a calendar month.

"Naturally occurring condition" means any condition affecting water quality which is not caused by human influence, including, but not limited to, soils, geology, hydrology, climate, wildlife, and water flow with specific consideration given to seasonal and other natural variations.

"NLW" means nutrient-limited watershed as defined in OAC 785:45-1-2.

"NOEC" means no observed effect concentration.

"NPDES" means National Pollutant Discharge Elimination System.

"Normal pool elevation" means the elevations listed in the "Oklahoma Water Atlas", Oklahoma Water Resources Board publication no. 135, or most

recent version thereof.

"ORW" means Outstanding Resource Waters as defined in OAC 785:45-3-2(a).

"Outfall" means a point source which contains all the effluent being discharged to the receiving water.

"OWQS" means Oklahoma Water Quality Standards.

"Permitting authority" means state environmental agency as defined or provided in Title 27A of the Oklahoma Statutes having jurisdiction as provided by law.

"Persistent toxicity" means toxicity due to effluent constituents which are not subject to decay, degradation, transformation, volatilization, hydrolysis, or photolysis.

"Q*" means dilution capacity.

"Q_e" means the regulatory effluent flow.

"Q_{el}" means long term average effluent flow.

"Q_{es}" means short term average effluent flow.

"Q_u" means the regulatory receiving stream flow.

"Regulatory mixing zone" means the volume of receiving water described in 785:45-5-26.

"Reasonable potential factor" means the 95th percentile maximum likelihood estimator for a lognormal distribution.

"SS" means sample standard as defined in OAC 785:45-1-2.

"Storm event" means precipitation, after a minimum of 72 hours has elapsed since cessation of previous precipitation, in the watershed of a stream segment that produces a 30 percent rise in stream flow over the average flow of the preceding 72 hours resulting from surface run-off.

"SWS" means Sensitive Public and Private Water Supplies.

"SWS-R" means waterbodies classified as sensitive public and private water supplies that may be augmented with reclaimed municipal water for the purpose of indirect potable reuse.

"T" means maximum temperature difference at the edge of the mixing zone boundary.

"T_a" means regulatory ambient temperature.

"T_c" means the temperature criterion.

"T_f" means the 95th percentile maximum observed effluent temperature.

"TDS" means total dissolved solids at 180C.

"TMDL" means total maximum daily load.

"Total maximum daily load" means the sum of individual wasteload allocations for point sources, safety reserves, and loads from nonpoint source and natural backgrounds.

"Trophic State Index" means a numerical quantification of lake productivity. The Trophic State Index shall be determined by $TSI = 9.81 \times \ln(\text{chlorophyll-a}) + 30.6$.

"TSI" means Trophic State Index.

"TSS" means total suspended solids.

"USGS" means United States Geological Survey.

"W" means canal width in feet.

"YMS" means yearly mean standard as defined in OAC 785:45-1-2.

1429, eff 7-1-03; Amended at 21 Ok Reg 1910, eff 7-1-04; Amended at 22 Ok Reg 1607, eff 7-1-05; Amended at 23 Ok Reg 1568, eff 7-1-06; Amended at 24 Ok Reg 2445, eff 7-1-07; Amended at 25 Ok Reg 1455, eff 7-1-08; Amended at 33 Ok Reg 1951, eff 9-11-16]

785:46-1-3. Procedural and substantive authority

The rules in OAC 785:46 provide for implementation of the "Oklahoma Water Quality Standards". The rules in this Chapter are promulgated as rules by the Oklahoma Water Resources Board pursuant to the procedures specified in the Oklahoma Administrative Procedures Act, 75 O.S. Section 250 et. seq.

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 40 Ok Reg 1438, eff 8-11-23]

785:46-1-4. Testing procedures [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 22 Ok Reg 1607, eff 7-1-05; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-1-5. Errors and separability

(a) Any errors in OAC 785:46 resulting from inadequate and erroneous data or human or clerical oversight will be subject to correction by the Oklahoma Water Resources Board. Discovery of any such errors does not render the remaining and unaffected implementation rules in OAC 785:46 invalid.

(b) If any implementation rule in OAC 785:46 is held to be invalid, the application of such rule to other circumstances and the remainder of OAC 785:46 shall not be affected thereby.

[Source: Added at 13 Ok Reg 2891, eff 7-1-96]

785:46-1-6. Determination of Regulatory Low Flow [REVOKED]

[Source: Added at 19 Ok Reg 2512, eff 6-27-02; Amended at 20 Ok Reg 1429, eff 7-1-03; Amended at 23 Ok Reg 1568, eff 7-1-06; Amended at 30 Ok Reg 974, eff 7-1-13; Revoked at 40 Ok Reg 1438, eff 8-11-23]

SUBCHAPTER 3. IMPLEMENTATION OF NARRATIVE TOXICS CRITERIA TO PROTECT AQUATIC LIFE USING WHOLE EFFLUENT TOXICITY (WET) TESTING [REVOKED]

785:46-3-1. Applicability and scope [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 19 Ok Reg 2512, eff 6-27-02; Amended at 20 Ok Reg 1429, eff 7-1-03; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-3-2. Dilutions for whole effluent toxicity testing [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 16 Ok Reg 3253, eff 7-12-99; Amended at 17 Ok Reg 1785, eff 7-1-00; Amended at 18 Ok Reg 3379, eff 8-13-01; Amended at 19 Ok Reg 2512, eff 6-27-02; Amended at 20 Ok Reg 1429, eff 7-1-03; Amended at 25 Ok Reg 1455, eff 7-1-08; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-3-3. Sampling for whole effluent toxicity testing [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 17 Ok Reg 1785, eff 7-1-00; Amended at 20 Ok Reg 1429, eff 7-1-03; Amended at 24 Ok Reg 2445, eff 7-1-07; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-3-4. Toxicity reduction evaluation [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Revoked at 20 Ok Reg 1429, eff 7-1-03]

785:46-3-5. Reasonable potential to exceed narrative toxicity criterion for Fish and Wildlife Propagation [REVOKED]

[Source: Added at 19 Ok Reg 2512, eff 6-27-02; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-3-6. Regulatory flow determination [REVOKED]

[Source: Added at 20 Ok Reg 1429, eff 7-1-03; Revoked at 40 Ok Reg 1438, eff 8-11-23]

SUBCHAPTER 5. IMPLEMENTATION OF NUMERICAL CRITERIA TO PROTECT FISH AND WILDLIFE FROM TOXICITY DUE TO CONSERVATIVE SUBSTANCES [REVOKED]

785:46-5-1. Applicability and scope [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 18 Ok Reg 3379, eff 8-13-01; Amended at 20 Ok Reg 1429, eff 7-1-03; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-5-2. Regulatory flow determination [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 15 Ok Reg 2873, eff 7-1-98; Amended at 18 Ok Reg 3379, eff 8-13-01; Amended at 20 Ok Reg 1429, eff 7-1-03; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-5-3. Reasonable potential [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 15 Ok Reg 2873, eff 7-1-98; Amended at 16 Ok Reg 3253, eff 7-12-99; Amended at 17 Ok Reg 1785, eff 7-1-00; Amended at 18 Ok Reg 3379, eff 8-13-01; Amended at 19 Ok Reg 2512, eff 6-27-02; Amended at 20 Ok Reg 1429, eff 7-1-03; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-5-4. Wasteload allocations [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 16 Ok Reg 3253, eff 7-12-99; Amended at 17 Ok Reg 1775, eff 7-1-00; Amended at 18 Ok Reg 3379, eff 8-13-01; Revoked at 20 Ok Reg 1429, eff 7-1-03]

785:46-5-5. Long term average to protect against chronic toxicity [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 16 Ok Reg 3253, eff 7-12-99; Revoked at 20 Ok Reg 1429, eff 7-1-03]

785:46-5-6. Long term average to protect against acute toxicity [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Revoked at 20 Ok Reg 1429, eff 7-1-03]

785:46-5-7. Obtaining permit limits from long term averages [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Revoked at 20 Ok Reg 1429, eff 7-1-03]

785:46-5-8. pH and hardness dependent toxicity [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 18 Ok Reg 3379, eff 8-13-01; Amended at 21 Ok Reg 1910, eff 7-1-04; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-5-9. Consideration of background concentration [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Revoked at 20 Ok Reg 1429, eff 7-1-03]

SUBCHAPTER 7. IMPLEMENTATION OF NUMERICAL CRITERIA TO PROTECT HUMAN HEALTH FROM TOXICITY DUE TO CONSERVATIVE SUBSTANCES [REVOKED]

785:46-7-1. Applicability and scope [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 17 Ok Reg 1775, eff 7-1-00; Amended at 20 Ok Reg 1429, eff 7-1-03; Amended at 21 Ok Reg 1910, eff 7-1-04; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-7-2. Determination and use of regulatory flow [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 15 Ok Reg 2873, eff 7-1-98; Amended at 17 Ok Reg 1775, eff 7-1-00; Amended at 18 Ok Reg 3379, eff 8-13-01; Amended at 20 Ok Reg 1429, eff 7-1-03; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-7-3. Reasonable potential [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 15 Ok Reg 2873, eff 7-1-98; Amended at 19 Ok Reg 2512, eff 6-27-02; Amended at 20 Ok Reg 1429, eff 7-1-03; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-7-4. Performance of wasteload allocation; implementation into permitting [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 15 Ok Reg 2873, eff 7-1-98; Revoked at 20 Ok Reg 1429, eff 7-1-03]

SUBCHAPTER 9. IMPLEMENTATION OF CRITERIA TO PROTECT THE AGRICULTURE BENEFICIAL USE [REVOKED]

785:46-9-1. Applicability and scope [REVOKED]

[Source: Added at 15 Ok Reg 2873, eff 7-1-98; Amended at 20 Ok Reg 1429, eff 7-1-03; Amended at 24 Ok Reg 2445, eff 7-1-07; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-9-2. Applicable mineral criteria [REVOKED]

[Source: Added at 15 Ok Reg 2873, eff 7-1-98; Amended at 22 Ok Reg 1607, eff 7-1-05; Amended at 24 Ok Reg 2445, eff 7-1-07; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-9-3. Regulatory flows [REVOKED]

[Source: Added at 15 Ok Reg 2873, eff 7-1-98; Amended at 24 Ok Reg 2445, eff 7-1-07; Amended at 30 Ok Reg 974, eff 7-1-13; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-9-4. Background concentration [REVOKED]

[Source: Added at 15 Ok Reg 2873, eff 7-1-98; Revoked at 20 Ok Reg 1429, eff 7-1-03]

785:46-9-5. Reasonable potential [REVOKED]

[Source: Added at 15 Ok Reg 2873, eff 7-1-98; Amended at 20 Ok Reg 1429, eff 7-1-03; Amended at 21 Ok Reg 1910, eff 7-1-04; Amended at 23 Ok Reg 1568, eff 7-1-06; Amended at 24 Ok Reg 2445, eff 7-1-07; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-9-6. Wasteload allocations [REVOKED]

[Source: Added at 15 Ok Reg 2873, eff 7-1-98; Revoked at 20 Ok Reg 1429, eff 7-1-03]

785:46-9-7. Long term average [REVOKED]

[Source: Added at 15 Ok Reg 2873, eff 7-1-98; Revoked at 20 Ok Reg 1429, eff 7-1-03]

785:46-9-8. Obtaining permit limits from long term averages [REVOKED]

[Source: Added at 15 Ok Reg 2873, eff 7-1-98; Revoked at 20 Ok Reg 1429, eff 7-1-03]

SUBCHAPTER 11. IMPLEMENTATION OF TEMPERATURE CRITERIA TO PROTECT FISH AND WILDLIFE PROPAGATION [REVOKED]

785:46-11-1. Applicability and scope [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 15 Ok Reg 2873, eff 7-1-98; Amended at 18 Ok Reg 3379, eff 8-13-01; Amended at 20 Ok Reg 1429, eff 7-1-03; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-11-2. Applicable temperatures [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 18 Ok Reg 3379, eff 8-13-01; Amended at 21 Ok Reg 1910, eff 7-1-04; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-11-3. Regulatory flows [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 15 Ok Reg 2873, eff 7-1-98; Amended at 25 Ok Reg 1455, eff 7-1-08; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-11-4. Permitting strategy to protect temperature criteria [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Revoked at 20 Ok Reg 1429, eff 7-1-03]

785:46-11-5. Reasonable potential [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-11-6. Reasonable potential equations [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 16 Ok Reg 3253, eff 7-12-99; Amended at 19 Ok Reg 2512, eff 6-27-02; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-11-7. Wasteload allocation [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 16 Ok Reg 3253, eff 7-12-99; Revoked at 20 Ok Reg 1429, eff 7-1-03]

SUBCHAPTER 13. IMPLEMENTATION OF ANTIDEGRADATION POLICY [REVOKED]

785:46-13-1. Applicability and scope [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 33 Ok Reg 1951, eff 9-11-16; Amended at 35 Ok Reg 2238, eff 9-14-18; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-13-2. Definitions [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Revoked at 40 Ok Reg 1438, eff 8-11-23]

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

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 16 Ok Reg 3253, eff 7-12-99; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-13-4. Tier 2 protection; maintenance and protection of Sensitive Water Supply-Reuse and other Tier 2 waterbodies [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 18 Ok Reg 3379, eff 8-13-01; Amended at 19 Ok Reg 2512, eff 6-27-02; Amended at 33 Ok Reg 1951, eff 9-11-16; Amended at 35 Ok Reg 2238, eff 9-14-18; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-13-5. Tier 2.5 protection; maintenance and protection of high quality waters, sensitive water supplies, and other tier 2.5 waterbodies [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 16 Ok Reg 3253, eff 7-12-99; Amended at 19 Ok Reg 2512, eff 6-27-02; Amended at 35 Ok Reg 2238, eff 9-14-18; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-13-6. Tier 3 protection; prohibition against degradation of water quality in outstanding resource waters [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Amended at 18 Ok Reg 3379, eff 8-13-01; Amended at 35 Ok Reg 2238, eff 9-14-18; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-13-7. Protection for Appendix B areas [REVOKED]

[Source: Added at 35 Ok Reg 2238, eff 9-14-18; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-13-8. Antidegradation review in surface waters [REVOKED]

[Source: Added at 35 Ok Reg 2238, eff 9-14-18; Revoked at 40 Ok Reg 1438, eff 8-11-23]

SUBCHAPTER 15. USE SUPPORT ASSESSMENT PROTOCOLS

785:46-15-1. Scope and applicability

(a) **General.** The rules in this Subchapter provide protocols which shall be used on and after October 1, 2000 to determine whether certain beneficial uses of waters of the state designated in OAC 785:45 are being supported. Such determinations shall be made only to the extent that pertinent provisions of OAC 785:45 apply to a waterbody or its designated uses. The rules in this Subchapter are not intended and should not be construed to limit any actions by federal or state agencies or citizens to prevent pollution or to limit remedies to abate pollution from a single incident or activity or series of incidents or activities.

(b) **Significance of assessment that a use is other than fully supported.** A determination based upon application of the rules in this Subchapter that a waterbody's beneficial use is not supported or is partially supported creates a presumption that the use is impaired or not attained for that waterbody and that the waterbody segment is a water quality limited segment.

(c) **Agency discretion to consider additional data.** An agency with jurisdiction may consider other relevant data meeting the requirements of this Subchapter in addition to that required by the rules in this Subchapter for any particular parameter to determine full support or non-support.

[Source: Added at 17 Ok Reg 1775, eff 7-1-00; Amended at 21 Ok Reg 1910, eff 7-1-04; Amended at 25 Ok Reg 1455, eff 7-1-08]

785:46-15-2. Definitions

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

"Ecoregion" means a geographical area within which ecosystems and the type, quality and quantity of environmental resources are generally similar, as more specifically described in EPA's 1997 revision of Omernick, "Ecoregions of the Conterminous United States", Annals of the Association of American Geographers.

"Impaired" means one or more designated beneficial uses are not being attained.

"MQL" means minimum quantification level.

"Non-wadable" means a stream which is not wadable.

"Rolling average" means the mathematical average of data values across a fixed length of time that incrementally changes its starting point but retains a fixed length of time by also incrementally changing its end point for each recalculation of the average. This term is also known as "moving average".

"Screening level" means an evaluation threshold based upon criteria prescribed in OAC 785:45 to protect a designated beneficial use.

"Seasonal base flow" means the sustained or fair-weather runoff, which includes but is not limited to groundwater runoff and delayed subsurface runoff.

"303(d) List" means the list of waterbodies with uses that are either threatened or impaired, developed for the State of Oklahoma in accordance with Section 303(d) of the federal Clean Water Act.

"305(b) Report" means the report of water quality in the State of Oklahoma developed in accordance with Section 305(b) of the federal Clean Water Act.

"Trophic State Index" means the results of the calculation for chlorophyll-a concentration using both Carlson, R.E. 1977, A Trophic State Index For Lakes, Limnology and Oceanography, 22:361-369 and the methods outlined in the Board guidance document "Guidance For Determining Lake Trophic State For Determination Of Nutrient Limited Waters Status".

"Wadable" means a stream or segment thereof, at least 10 percent of which under seasonal base flow conditions is:

"Waterbody" means a body of waters of the state.

[Source: Added at 17 Ok Reg 1775, eff 7-1-00; Amended at 18 Ok Reg 3379, eff 8-13-01; Amended at 19 Ok Reg 2512, eff 6-27-02; Amended at 24 Ok Reg 2445, eff 7-1-07; Amended at 25 Ok Reg 1455, eff 7-1-08]

785:46-15-3. Data requirements

(a) **General.** In order to determine whether a given beneficial use of a waterbody is supported, scientific data from the waterbody shall be used as prescribed in this Section. Data shall be collected and analyzed in a manner consistent with testing procedures provided in 785:45-1-4 or practices that are institutionally recognized and appropriate for the parameter of concern and documented in accordance with 785:46-15-3(g). All existing data available for a waterbody shall be used in the analysis, subject to the spatial, temporal and other requirements of this Section.

(b) **Spatial coverage.**

(1) **General for streams.** The spatial extent of assessment of use support in terms of stream miles shall be determined after taking into account existing data, spatial distribution of monitoring sites, sources of pollution and influence of tributaries. Major hydrological features, such as the confluence of a major tributary or a dam, may limit the spatial extent of an assessment based on one station.

(2) **Non-wadable streams.** Unless it is demonstrated to the contrary, a single monitoring site shall be considered representative of no more than 25 stream miles for non-wadable streams.

(3) **Wadable streams.** Unless it is demonstrated to the contrary, a single monitoring site shall be considered representative of no more than 10 stream miles for wadable streams.

(4) **Lakes.** The spatial extent of assessment of use support in terms of lake surface acres shall be estimated based on the spatial distribution of monitoring sites having the requisite number of samples, sources of pollution, influence of tributaries and best professional judgment. Arms or portions of lake may be treated separately from the main body of a lake.

Unless it is demonstrated to the contrary, a single site shall be considered representative of an entire lake or an arm of no more than two hundred and fifty surface acres in size.

(5) **Spatial limitation for sampling sites.** For purposes of this Subchapter, observations, samples, and other data shall not be taken within any regulatory mixing zone.

(c) Temporal coverage.

(1) **General.** Observations, samples or other data collected for purposes of assessing use support shall be taken to avoid temporal bias, and seasonality shall be represented in the sampling scheme.

(2) **Streams.** Data no older than five years old shall be utilized in assessing use support for a stream unless

(A) the data available from the preceding five year period is insufficient to satisfy the requirements of 785:46-15-3(d) or other more specific minimum requirements provided in this Subchapter, in which case data older than five years old may be utilized, or

(B) the provisions of 785:46-15-4(b)(3) or 785:46-15-4(c)(3) apply.

(3) **Lakes.** Data no older than ten years old shall be utilized in assessing use support for a lake unless

(A) the data available from the preceding ten year period is insufficient to satisfy the requirements of 785:46-15-3(d) or other more specific minimum requirements provided in this Subchapter, in which case data older than ten years old may be utilized, or

(B) the provisions of 785:46-15-4(b)(3) or 785:46-15-4(c)(3) apply.

(d) Minimum number of samples.

(1) Except when (f) of this Section applies, or unless otherwise noted in subchapter 785:46-15 for a particular parameter, a minimum number of samples shall be required to assess beneficial use support.

(A) For streams and rivers, a minimum of 10 samples shall be required.

(B) For lakes greater than 250 surface acres, a minimum of 20 samples shall be required.

(C) For lakes 250 surface acres or smaller, a minimum of 10 samples shall be required.

(D) For toxicants for the protection of the Fish and Wildlife Propagation and Public and Private Water beneficial uses, a minimum of 5 samples shall be required.

(2) In order to satisfy the minimum sample requirements of this subsection, samples may be aggregated consistent with the spatial and temporal requirements prescribed in (b), (c), and (d) of this Section.

(3) The prescribed minimum samples shall not be necessary if the available samples already assure exceedance of the applicable percentage for beneficial use assessment.

(4) If a mathematical calculation including, but not limited to, a mean, median, or quartile, is required for assessment, a minimum of ten samples shall be required, regardless of the parameter type.

(5) Additional samples for the calculation of temperature, pH and hardness dependent acute and chronic criteria shall be collected as required by OAC 785:46-5-8.

(e) Application of PQL.

(1) **Criteria above PQL.**

- (A) If sample values are below the PQL for a parameter whose criterion is above the PQL, appropriate nonparametric statistical measures shall be used to determine the reporting value.
- (B) For waterbodies identified as impaired on the current 303(d) List or 305(b) Report, if sample values are nondetectable for a parameter whose criterion is above the PQL, then such value shall be deemed to be one-half (1/2) of the parameter PQL.
- (C) All sample values that are above the PQL shall be the reported values.

(2) Criteria equal to or below PQL.

- (A) If sample values are below the PQL for a criterion which is less than one-half (1/2) of the PQL, then the values shall be deemed to be zero (0) until the first test result above the PQL appears. After that time, sample values which are below the PQL shall be deemed to be equal to the criterion value until four (4) subsequent contiguous samples are shown to be below the PQL. Any subsequent sample values which are nondetectable may be treated as zero (0) until the next test result appears above the PQL.
- (B) For those parameters whose criteria are at least two (2) orders of magnitude below the PQL, evidence considered with respect to assessment of use support shall include fish tissue analysis, biological community analysis, biological thresholds wherever available, or other holistic indicators which are appropriate for the beneficial use in question.
- (C) If sample values are below the PQL for a criterion which is greater than or equal to one-half (1/2) of the PQL but less than the PQL, then the values shall be deemed to be one-half (1/2) of the criterion value until the first test result above the PQL appears. After that time, sample values which are below the PQL shall be deemed to be equal to the criterion value until four (4) subsequent contiguous samples are shown to be below the PQL. Any subsequent sample values which are nondetectable may be treated as equal to one-half (1/2) of the criterion value until the next test result appears above the PQL.
- (D) For waterbodies identified as impaired on the current 303(d) List or 305(b) Report, if sample values are nondetectable for a parameter whose criterion is below the PQL, then such value shall be deemed to be one-half (1/2) of the criterion value.
- (E) All sample values that are above the PQL shall be the reported values.

(f) Magnitude of criteria exceedance.

- (1) **General.** The magnitude of exceedance, as well as frequency of exceedances, shall be used in determining beneficial use support. Samples shall be taken only during conditions when criteria apply.
- (2) **Toxicants.** If two or more concentrations of toxicants exceed criteria or screening levels to protect human health or aquatic life by two orders of magnitude or more, the associated beneficial use shall be deemed to be not supported.
- (3) **Dissolved oxygen.** If more than two concentrations of DO in a stream are observed to be below 2 mg/L in any given year, the Fish and Wildlife Propagation beneficial use shall be deemed to be not supported.

(4) **Other parameters.** The magnitude and frequency of exceedances to be used for determining beneficial use support for parameters other than toxicants and DO shall be as prescribed in the rules elsewhere in this Subchapter.

(g) **Quality assurance.** On and after July 1, 2002, data collected for purposes of use support assessment shall be collected using documented programmatic quality assurance and quality control methods substantially in accordance with those required by "EPA Requirements for Quality Assurance Project Plans", EPA publication no. EPA/240/B-01/003 (March 2001). The sampling and testing methods used shall protect the integrity of the sample and provide detailed documentation of analysis.

[Source: Added at 17 Ok Reg 1775, eff 7-1-00; Amended at 18 Ok Reg 3379, eff 8-13-01; Amended at 19 Ok Reg 2512, eff 6-27-02; Amended at 20 Ok Reg 1429, eff 7-1-03; Amended at 22 Ok Reg 1607, eff 7-1-05; Amended at 23 Ok Reg 1568, eff 7-1-06; Amended at 36 Ok Reg 1330, eff 8-11-19]

785:46-15-4. Default protocols

(a) **General.** The protocols prescribed in this Section shall apply whenever the more specific protocols prescribed elsewhere in this Subchapter do not apply.

(b) **Short term average numerical parameters.**

(1) Short term average numerical parameters are based upon exposure periods of less than seven days. Short term average parameters to which this Section applies include, but are not limited to, sample standards and turbidity.

(2) A beneficial use shall be deemed to be fully supported for a given parameter whose criterion is based upon a short term average if 10% or less of the samples for that parameter exceed the applicable screening level prescribed in this Subchapter.

(3) A beneficial use shall be deemed to be fully supported but threatened if the use is supported currently but the appropriate state environmental agency determines that available data indicate that during the next five years the use may become not supported due to anticipated sources or adverse trends of pollution not prevented or controlled. If data from the preceding two year period indicate a trend away from impairment, the appropriate agency shall remove the threatened status.

(4) A beneficial use shall be deemed to be not supported for a given parameter whose criterion is based upon a short term average if at least 10% of the samples for that parameter exceed the applicable screening level prescribed in this Subchapter.

(c) **Long term average numerical parameters.**

(1) Long term average numerical parameters are based upon exposure periods of seven days or longer. Assessment decisions shall be based upon the mean of all data meeting the temporal and spatial data requirements described elsewhere in this Subchapter.

(2) A beneficial use shall be deemed to be fully supported for a given parameter whose criterion is based upon a long term average if the mean of the sample results does not exceed the long term criterion.

(3) A beneficial use shall be deemed to be fully supported but threatened if the use is supported currently but the appropriate state environmental agency determines that available data indicate that during the next five years the use may become not supported due to anticipated sources or adverse trends of pollution not prevented or controlled. If data from the

preceding two year period indicate a trend away from impairment, the appropriate agency shall remove the threatened status.

(4) A beneficial use shall be deemed to be not supported for a given parameter whose criterion is based upon a long term average if the mean of the sample results exceeds the criterion or screening level.

[Source: Added at 17 Ok Reg 1775, eff 7-1-00; Amended at 19 Ok Reg 2512, eff 6-27-02; Amended at 25 Ok Reg 1455, eff 7-1-08; Amended at 28 Ok Reg 1017, eff 7-1-11]

785:46-15-5. Assessment of Fish and Wildlife Propagation support

(a) **Scope.** The provisions of this Section shall be used to determine whether the beneficial use of Fish and Wildlife Propagation or any subcategory thereof designated in OAC 785:45 for a waterbody is supported.

(b) **Dissolved oxygen.** For purposes of assessment, listing and reporting under sections 303(d) and 305(b) of the federal Clean Water Act as amended, the procedure for determining use support of the Fish and Wildlife Propagation beneficial use or any subcategory thereof with respect to dissolved oxygen shall be as follows:

(1) Support tests for HLAC streams.

(A) The HLAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be fully supported with respect to the DO criterion if 10% or less of the samples across all life stages and seasons exhibit DO concentrations below the following season-specific thresholds:

(i) April 1 through June 15: 4.0 mg/L

(ii) June 16 through March 31: 3.0 mg/L

(B) The HLAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be not supported with respect to the DO criterion if more than 10% of the samples across all seasons exhibit DO concentrations below the following season-specific thresholds due to other than naturally occurring conditions:

(i) April 1 through June 15: 4.0 mg/L

(ii) June 16 through March 31: 3.0 mg/L

(2) Support tests for WWAC streams.

(A) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be fully supported with respect to the DO criterion if 10% or less of the samples across all life stages and seasons exhibit DO concentrations below the following season-specific thresholds:

(i) April 1 through June 15: 6.0 mg/L

(ii) June 16 through March 31: 5.0 mg/L

(B) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be undetermined with respect to the DO criterion if more than 10% of the samples across all life stages and seasons exhibit DO concentrations below the upper DO threshold and 10% or less of the samples across all seasons exhibit DO concentrations below the lower DO threshold considering the following season-specific ranges:

(i) April 1 through June 15: 5.0 mg/L to 6.0 mg/L

(ii) June 16 through October 15: 4.0 mg/L to 5.0 mg/L

(C) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be not supported with respect to the DO criterion if more than 10% of the samples across all life stages and seasons exhibit DO concentrations below the following season-specific thresholds due to other than naturally occurring conditions:

- (i) April 1 through June 15: 5.0 mg/L
- (ii) June 16 through October 15: 4.0 mg/L
- (iii) October 16 through March 31: 5.0 mg/L

(3) Support tests for CWAC and Trout streams.

(A) The CWAC or Trout subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be fully supported with respect to the DO criterion if 10% or less of the samples across all life stages and seasons exhibit DO concentrations below the following season-specific thresholds:

- (i) March 1 through May 31: 7.0 mg/L
- (ii) June 1 through last day of February: 6.0 mg/L

(B) The CWAC or Trout subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be undetermined with respect to the DO criterion if more than 10% of the samples across all life stages and seasons exhibit DO concentrations below the upper DO threshold and 10% or less of the samples across all seasons exhibit DO concentrations below the lower DO threshold considering the following season-specific ranges:

- (i) March 1 through May 31: 7.0 mg/L to 6.0 mg/L
- (ii) June 1 through October 15: 6.0 mg/L to 5.0 mg/L

(C) The CWAC or Trout subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be not supported with respect to the DO criterion if more than 10% of the samples across all life stages and seasons exhibit DO concentrations below the following season-specific thresholds due to other than naturally occurring conditions:

- (i) March 1 through May 31: 6.0 mg/L
- (ii) June 1 through October 15: 5.0 mg/L
- (iii) October 16 through the last day of February: 6.0 mg/L

(4) Support tests for WWAC lakes. The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be fully supported with respect to the DO criterion if both the Surface and Water Column criteria prescribed in (5)(A) and (6)(A) of this subparagraph (b) are satisfied. If either of the Surface or Water Column criteria prescribed in (5)(B) or (6)(B) produce a result of undetermined, then the WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be undetermined with respect to the DO criterion; provided, if either of the Surface or Water Column criteria prescribed in (5)(C) or (6)(C) produce a result of not supported, then the WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be not supported with respect to the DO criterion.

(5) Surface criteria for WWAC lakes.

(A) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be fully supported with respect to the DO criterion if 10% or less of the surface samples across life stages and all seasons exhibit DO concentrations below the following season-specific thresholds:

(i) April 1 through June 15: 6.0 mg/L

(ii) June 16 through March 31: 5.0 mg/L

(B) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be undetermined with respect to the DO criterion if more than 10% of the surface samples across all life stages and seasons exhibit DO concentrations below the upper DO threshold and 10% or less of the surface samples across all seasons exhibit DO concentrations below the lower DO threshold considering the following season-specific ranges:

(i) April 1 through June 15: 5.0 mg/L to 6.0 mg/L

(ii) June 16 through October 15: 4.0 mg/L to 5.0 mg/L

(C) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be not supported with respect to the DO criterion if more than 10% of the surface samples across all life stages and seasons exhibit DO concentrations below the following season-specific thresholds due to other than naturally occurring conditions:

(i) April 1 through June 15: 5.0 mg/L

(ii) June 16 through October 15: 4.0 mg/L

(iii) October 16 through March 31: 5.0 mg/L

(D) "Surface," when used in this Section, means surface waters or the mixed surface layer, typically represented by a sample taken at least 0.5 m below the surface.

(6) Water Column criteria for WWAC lakes.

(A) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be fully supported with respect to the DO criterion if less than 50% of the volume (if volumetric data is available) or 50% or less of the water column (if no volumetric data is available) of all sample sites in the lake are less than 2.0 mg/L.

(B) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be undetermined with respect to the DO criterion (if no volumetric data is available) if 50% or more, but not greater than 70%, of the water column at any given sample site in the lake is less than 2.0 mg/L due to other than naturally occurring conditions.

(C) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be not supported with respect to the DO criterion if 50% or more of the water volume (if volumetric data is available) or more than 70% of the water column (if no volumetric data is available) at any given sample site is less than 2.0 mg/L.

(D) If a lake specific study including historical analysis produces a support status which is contrary to an assessment obtained from the application of (A), (B) or (C) of (b)(6) of this section, then that lake

specific result will control.

(7) **Additional application/exercise when support undetermined.** In instances where application of the tests in this subsection (b) initially produce a result that the pertinent subcategory is undetermined with respect to the DO criterion, such shall be subject to additional investigation that considers diurnal data for further application of such tests in order to resolve the determination of use support.

(c) Toxicants.

(1) Test for Full Support.

(A) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to any individual toxicant parameter if no more than one of the sample concentrations from the waterbody exceeds the acute criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5- 12(f)(6)(D) and (E) and 785:45 Appendix G, Table 2.

(B) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to any individual toxicant parameter if not more than 1 sample concentration or not more than 10% of the sample concentrations from the waterbody exceeds the chronic criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(D), (E) and 785:45 Appendix G, Table 2.

(2) Test for Non-Support.

(A) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to any individual toxicant parameter if more than one of the sample concentrations from the waterbody exceed the acute criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5- 12(f)(6)(D) and (E) and 785:45 Appendix G, Table 2.

(B) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to any individual toxicant parameter if more than 10 % of the sample concentrations from the waterbody exceed chronic criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5- 12(f)(6)(D) and (E) and 785:45 Appendix G, Table 2.

(d) pH.

(1) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to pH occurring other than by naturally occurring conditions if no more than 10% of the sample concentrations from that waterbody fall outside the criteria range prescribed in 785:45-5-12(f)(3).

(2) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to pH occurring other than by naturally occurring conditions if greater than 10% of the sample concentrations from that waterbody fall outside the criteria range prescribed in 785:45-5-12(f)(3).

(e) Turbidity. The criteria for turbidity stated in 785:45-5-12(f)(7) shall constitute the screening levels for turbidity. The tests for use support shall follow the default

protocol in 785:46-15-4(b).

(f) Oil and grease.

(1) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in 10% or less of the observations.

(2) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in more than 10% of the observations.

(g) Suspended and Bedded Sediments.

(1) If a stream is supporting the biological criteria assigned to that stream as provided in (e) and (i) through (n) of this section, then that stream will be deemed to be supporting its assigned Fish and Wildlife Propagation beneficial use with respect to suspended and bedded sediments.

(2) If a stream is not supporting the biological criteria assigned to that stream as provided in (e) and (i) through (n) of this section, then a habitat assessment must be conducted using the habitat assessment protocols found in OWRB Technical Report TRWQ2001-1, "Unified Protocols for Beneficial Use Assignment for Oklahoma Wadable Streams." The results of the habitat assessment shall then be compared to either historical conditions or regional reference conditions in order to determine attainment with respect to suspended and bedded sediments in that stream.

(3) The method for establishing reference conditions shall meet the following requirements:

(A) a minimum of five (5) reference streams or reaches shall be assessed;

(B) all of the reference streams or reaches must be within the same ecoregion as the test stream;

(C) all of the reference streams or reaches must be streams with similar flow regimes no more than two (2) stream orders removed from the test stream; and

(D) the reference streams shall be selected from the least impacted streams in the ecoregion whose watersheds contain soils, vegetation, land uses, and topography typical of the watershed of the test stream(s).

(4) The Fish and Wildlife Propagation beneficial use will be considered to be not supported with respect to suspended and bedded sediments if any of the following habitat parameters deviate from the reference conditions by the specified amount:

(A) The total percent of clay, silt, and loose sand in the pool bottom substrate of the test stream is increased by more than 30% over the reference condition;

(B) Cobble embeddedness in the test stream is increased by 15% or more over the reference condition;

(C) The percentage of the length of the reach containing fresh (non-vegetated) point bars and/or islands in the test stream is 20 or more percentage points above that of the reference condition; or

(D) The percentage of the length of the reach dominated by pools of a depth of 0.5 meters or more in the test stream is less than 70% of that of the reference condition.

(5) If all of the habitat parameters identified in (h)(4) of this section deviate from the reference conditions by less than the amounts specified in (h)(4) of this section, then the Fish and Wildlife Propagation beneficial use is not impaired due to suspended and bedded sediments.

(h) **Metals.** The Fish and Wildlife Propagation beneficial use designated for a waterbody may be assessed using either total recoverable or dissolved metals. When available, the concentrations of dissolved metals shall be compared following the provisions of (c) of this subsection to the criteria in OAC 785:45 Appendix G converted to dissolved criteria by multiplying the total metal criterion listed in table 2 by the appropriate conversion factor listed in Table 3. Preference shall be given to the beneficial use determinations based upon dissolved metals. For those metals criteria requiring a hardness component, individual assessment results may be calculated using the average of all hardness data meeting the requirements of OAC 785:46-15-3. The segment-averaged hardness in Appendix B of this Chapter shall be used in the determination of the criterion if there is insufficient site-specific data to determine stream hardness.

(i) **Biological criteria.**

(1) If data demonstrate that an assemblage of fish or macro invertebrates from a waterbody is significantly degraded, according to 785:45-5-12(f)(5), from that expected for the subcategory of Fish and Wildlife Propagation designated in OAC 785:45 for that waterbody, then that subcategory may be deemed by the appropriate state environmental agency to be not supported.

(2) All physical assessments and biological collections shall be performed in accordance with the requirements set forth in OWRB Technical Report No. 99-3 entitled "Standard Operating Procedures for Stream Assessments and Biological Collections Related to Biological Criteria in Oklahoma".

(3) Evaluation of the biological collections shall include identification of fish samples to species level. Determinations of tolerance level shall be made according to Jester et al. 1992, "The Fishes of Oklahoma, Their Gross Habitats, and Their Tolerance of Degradation in Water Quality and Habitat", Proceedings of Oklahoma Academy of Sciences, 72:7-19.

(4) The determination of whether the use of Fish and Wildlife Propagation is supported in wadable streams in Oklahoma ecoregions shall be made according to all of the requirements of this subsection (e), the application of Appendix C of this Chapter, and the special provisions in subsections (i) through (o), where applicable, of this Section. Streams with undetermined use support status shall be subject to additional investigation that considers stream order, habitat factors and local reference streams before the use support determination is made. A finding of impairment for biocriteria due to any one of the parameters listed in this section shall trigger an evaluation of all likely causes, not precluding monitoring, assessment, and subsequent support determination of the Fish and Wildlife beneficial use for any of the other parameters in this section.

(j) **Special provisions for Ouachita Mountains wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Ouachita Mountains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces

a score of 35 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 24 or less. If a score is 25 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 27 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 18 or less. If a score is 19 to 26 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(k) **Special provisions for Arkansas Valley wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Arkansas Valley ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 35 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 24 or less. If a score is 25 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 27 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 18 or less. If a score is 19 to 26 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(l) **Special provisions for Boston Mountains and Ozark Highlands wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Boston Mountains and Ozark Highlands ecoregions shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Cool Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 37 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 29 or less. If a score is 30 to 36 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 31 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 22 or less. If a score is 23 to 30 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(m) **Special provisions for Central Irregular Plains wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Central Irregular Plains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Cool Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 35 or more. Such subcategory shall be deemed not supported if

the application of Appendix C produces a score of 28 or less. If a score is 29 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 30 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 22 or less. If a score is 23 to 29 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(3) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 25 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 16 or less. If a score is 17 to 24 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(n) Special provisions for Central Oklahoma - Texas Plains wadable streams.

The determination of whether the Warm Water Aquatic Community subcategory of the Fish and Wildlife Propagation beneficial use is supported for wadable streams located in the Central Oklahoma - Texas Plains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Such subcategory shall be deemed fully supported if the application of Appendix C produces a score of 26 or more.

(2) Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 19 or less.

(3) If the application of Appendix C produces a score of 20 to 25 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(o) Special provisions for Central Great Plains wadable streams. The subcategory of Warm Water Aquatic Community of the beneficial use of Fish and Wildlife Propagation in the wadable streams located in the Central Great Plains ecoregion shall be deemed fully supported if the application of Appendix C of this Chapter produces a score of 22 or more. Such subcategory shall be deemed not supported for the streams in the ecoregion of the application of Appendix C produces a score of 18 or less. If the application of Appendix C produces a score of 19 to 21 inclusive, the issue of whether this subcategory is supported for the streams in this ecoregion shall be deemed undermined. Provided, however, this subsection does not apply to the area bounded by State Highway 54 on the west, U.S. Highway 62 on the south, U.S. Highway 281 on the east and State Highway 19 on the north.

[Source: Added at 17 Ok Reg 1775, eff 7-1-00; Amended at 18 Ok Reg 171, eff 10-25-00 (emergency); Amended at 18 Ok Reg 3379, eff 8-13-01; Amended at 19 Ok Reg 2512, eff 6-27-02; Amended at 20 Ok Reg 1429, eff 7-1-03; Amended at 21 Ok Reg 1910, eff 7-1-04; Amended at 22 Ok Reg 1607, eff 7-1-05; Amended at 24 Ok Reg 2445, eff 7-1-07; Amended at 25 Ok Reg 1455, eff 7-1-08; Amended at 28 Ok Reg 1017, eff 7-1-11; Amended at 32 Ok Reg 2365, eff 9-11-15]

785:46-15-6. Assessment of Primary Body Contact Recreation support

(a) Scope. The provisions of this Section shall be used to determine whether the subcategory of Primary Body Contact of the beneficial use of Recreation designated in OAC 785:45 for a waterbody is supported during the recreation season from May 1 through September 30 each year. Where data exist for multiple bacterial indicators on the same waterbody or waterbody segment, the

determination of use support shall be based upon the use and application of all applicable tests and data.

(b) *Escherichia coli* (*E. coli*).

(1) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be fully supported with respect to *E. coli* if the geometric mean of 126 colonies per 100 ml is met. These values are based upon all samples collected over the recreation period in accordance with OAC 785:46-15-3(c).

(2) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be not supported with respect to *E. coli* if the geometric mean of 126 colonies per 100 ml is not met. These values are based upon all samples collected over the recreation period in accordance with OAC 785:46-15-3(c).

(c) Enterococci.

(1) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be fully supported with respect to enterococci if the geometric mean of 33 colonies per 100 ml is met. These values are based upon all samples collected over the recreation period in accordance with OAC 785:46-15-3(c).

(2) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be not supported with respect to enterococci if the geometric mean of 33 colonies per 100 ml is not met. These values are based upon all samples collected over the recreation period in accordance with OAC 785:46-15-3(c).

[Source: Added at 17 Ok Reg 1775, eff 7-1-00; Amended at 21 Ok Reg 1910, eff 7-1-04; Amended at 25 Ok Reg 1455, eff 7-1-08; Amended at 28 Ok Reg 1017, eff 7-1-11]

785:46-15-7. Assessment of Public and Private Water Supply support

(a) Scope. The provisions of this Section shall be used to determine whether the beneficial use of Public and Private Water Supply or any subcategory thereof designated in OAC 785:45 for a waterbody is supported.

(b) Toxicants.

(1) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be fully supported with respect to any substance with criteria for such use listed in OAC 785:45 Appendix G if the sample concentrations from that waterbody do not exceed the criterion for that substance prescribed in OAC 785:45 Appendix G more than 10% of the measurements, or drinking water use restrictions are not in effect.

(2) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be not supported with respect to any substance with criteria for such use listed in OAC 785:45 Appendix G if the sample concentrations from that waterbody exceed the criterion for that substance prescribed in OAC 785:45 Appendix G more than 10% of the measurements, or drinking water use restrictions imposed by an agency with jurisdiction in effect require closure of the water supply.

(c) Bacteria. The screening level for total coliform bacteria shall be 5000 colonies per 100 ml. The tests for use support shall follow the default protocol in 785:46-15-4.

(d) Threatened water supplies. Waters of the state designated in OAC 785:45 as Public and Private Water Supply shall be presumed to be threatened when toxicants are detected but do not exceed the applicable criteria prescribed in OAC 785:45

Appendix G, or some drinking water use restrictions have been put into effect by an agency with jurisdiction, or the potential for adverse impacts to water quality exists, or more than one such conditions exist.

(e) Oil and grease.

(1) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be fully supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in 10% or less of the observations, and drinking water use restrictions that require more than conventional treatment related to oil and grease have not been put into effect by an agency with jurisdiction.

(2) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be not supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in more than 10% of the observations, or drinking water use restrictions that require more than conventional treatment related to oil and grease have been put into effect by an agency with jurisdiction.

[Source: Added at 17 Ok Reg 1775, eff 7-1-00; Amended at 21 Ok Reg 1910, eff 7-1-04; Amended at 25 Ok Reg 1455, eff 7-1-08; Amended at 28 Ok Reg 1017, eff 7-1-11; Amended at 30 Ok Reg 974, eff 7-1-13]

785:46-15-8. Assessment of Agriculture support

(a) **Scope.** The provisions of this Section shall be used to determine whether the beneficial use of Agriculture designated in OAC 785:45 for a waterbody is supported.

(b) General support tests for chlorides, sulfates and TDS.

(1) The Agriculture beneficial use designated for a waterbody shall be deemed to be fully supported with respect to chloride if the mean of all chloride sample concentrations from that waterbody do not exceed the yearly mean standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45 and no more than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45.

(2) The Agriculture beneficial use designated for a waterbody shall be deemed to be not supported with respect to chloride if the mean of all chloride sample concentrations from that waterbody exceeds the yearly mean standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45, or greater than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45. Provided, if the chloride sample concentrations are each less than 250 mg/L, then the Agriculture beneficial use shall be deemed to be fully supported with respect to chloride.

(3) The Agriculture beneficial use designated for a waterbody shall be deemed to be fully supported with respect to sulfate if the mean of all sulfate sample concentrations from that waterbody do not exceed the yearly mean standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45 and no more than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45.

(4) The Agriculture beneficial use designated for a waterbody shall be deemed to be not supported with respect to sulfate if the mean of all sulfate sample concentrations from that waterbody exceeds the yearly mean standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45, or greater than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45. Provided, if the sulfate sample concentrations are each less than 250 mg/L, then the Agriculture beneficial use shall be deemed to be fully supported with respect to sulfate.

(5) The Agriculture beneficial use designated for a waterbody shall be deemed to be fully supported with respect to TDS if the mean of all TDS sample concentrations from that waterbody do not exceed the yearly mean standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45 and no more than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45.

(6) The Agriculture beneficial use designated for a waterbody shall be deemed to be not supported with respect to TDS if the mean of all TDS sample concentrations from that waterbody exceeds the yearly mean standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45, or greater than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45. Provided, if the TDS sample concentrations are each less than 700 mg/L, then the Agriculture beneficial use shall be deemed to be fully supported with respect to TDS.

(c) **Use of site specific data.** If the appropriate state environmental agency determines that the stream segment averages prescribed in Appendix F of OAC 785:45 are not appropriate for the entirety of a given stream segment or there is no value listed in Appendix F or site specific criteria promulgated in Appendix E for the stream segment average for the parameter of concern, then yearly mean standards and sample standards developed from site specific data may be used to assess whether the use of Agriculture is supported for that waterbody.

(d) **Use of data for lakes.**

(1) **Lakes with one WBID segment.** For support assessment in lakes with a single WBID segment, the segment averaged value prescribed in Appendix F to that same WQM segment shall be used.

(2) **Lakes with multiple WBID segments.** For support assessment in lakes with multiple WBID segments, each segment shall use the segment averaged value prescribed in Appendix F to that same WQM segment when available. If a WBID segment in a lake has no corresponding WQM segment data available in Appendix F, the segment averaged value prescribed in Appendix F to the WQM segment immediately downstream of the lake shall be used.

[Source: Added at 17 Ok Reg 1775, eff 7-1-00; Amended at 22 Ok Reg 1607, eff 7-1-05; Amended at 24 Ok Reg 2445, eff 7-1-07; Amended at 25 Ok Reg 1455, eff 7-1-08; Amended at 28 Ok Reg 1017, eff 7-1-11]

785:46-15-9. Assessment of Fish Consumption support

(a) **Scope.** The provisions of this Section shall be used to determine whether the beneficial use of Fish Consumption designated in OAC 785:45 for a waterbody is supported.

(b) **Support tests.**

(1) The Fish Consumption beneficial use designated for a waterbody shall be deemed to be partially supported if restricted consumption as imposed by an agency with jurisdiction is in effect or if a fish or shellfish ban is in effect for a sub-population thereof.

(2) The Fish Consumption beneficial use designated for a waterbody shall be deemed to be not supported if an aquatic life closure or if a "no consumption" advisory imposed by an agency with jurisdiction is in effect.

(3) The water column criteria for protection of the Fish Consumption beneficial use stated in 785:45 Appendix G Table 2 shall be used according to the default protocol in 785:46-15-4(c) to determine use support.

[Source: Added at 17 Ok Reg 1775, eff 7-1-00; Amended at 19 Ok Reg 2512, eff 6-27-02]

785:46-15-10. Nutrients

(a) **General.** OAC 785:45-3-2(c) prohibits water quality degradation by nutrients which will interfere with the attainment or maintenance of any existing or designated beneficial use. OAC 785:46-13-3(a)(1) requires maintenance of any existing or designated beneficial use. This Section provides a framework which shall be used in assessing threats or impairments to beneficial uses and waterbodies and watersheds caused by nutrients, and the consequences of such assessments.

(b) **Determining whether a stream is nutrient-threatened.** The dichotomous process stated in this subsection shall be used in the determination of whether a stream is nutrient-threatened.

(1) The stream order shall be identified. If the stream order is 1, 2 or 3, then proceed to paragraph (2). If the stream order is not 1, 2 or 3, then proceed to paragraph (9).

(2) The stream slope shall be identified. If the stream slope is greater than or equal to 17 feet per mile, then proceed to paragraph (3). If the stream slope is less than 17 feet per mile, then proceed to paragraph (4).

(3) Subject to the application of the foregoing paragraphs of this subsection, if phosphorus concentrations in the stream are greater than 0.24 mg/L or if nitrite plus nitrate concentrations in the stream are greater than 4.95 mg/L, then proceed to paragraph (5). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(4) Subject to the application of the foregoing paragraphs of this subsection, if phosphorus concentrations in the stream are greater than 0.15 mg/L or if nitrite plus nitrate concentrations in the stream are greater than 2.4 mg/L, then proceed to paragraph (5). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(5) Subject to the application of the foregoing paragraphs of this subsection, if the percentage of canopy shading is greater than or equal to 80%, then the stream is not threatened by nutrients. If the percentage of canopy shading is less than 80%, then proceed to paragraph (6).

(6) Subject to the application of the foregoing paragraphs of this subsection, if the stream's turbidity is organic, then proceed to paragraph (7). If the stream's turbidity is inorganic, then proceed to paragraph (8).

(7) Subject to the application of the foregoing paragraphs of this subsection, if turbidity measured at seasonal base flow conditions is less than 20 NTU, then the stream is not threatened by nutrients. If turbidity measured at seasonal base flow conditions is 20 or more NTU, then the stream is threatened by nutrients.

(8) Subject to the application of the foregoing paragraphs of this subsection, if turbidity measured at seasonal base flow conditions is less than 20 NTU, then the stream is threatened by nutrients. If turbidity measured at seasonal base flow conditions is 20 or more NTU, then the stream is not threatened by nutrients.

(9) Subject to the application of the foregoing paragraphs of this subsection, if the stream slope is greater than or equal to 17 feet per mile, then proceed to paragraph (10). If the stream slope is less than 17 feet per mile, then proceed to paragraph (11).

(10) Subject to the application of the foregoing paragraphs of this subsection, if phosphorus concentrations in the stream are greater than 1.00 mg/L, or if nitrite plus nitrate concentrations in the stream are greater than 4.65 mg/L, then proceed to paragraph (12). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(11) Subject to the application of the foregoing paragraphs of this subsection, if phosphorus concentrations in the stream are greater than 0.36 mg/L, or if nitrite plus nitrate concentrations in the stream are greater than 5.0 mg/L, then proceed to paragraph (12). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(12) Subject to the application of the foregoing paragraphs of this subsection, if the stream's inorganic turbidity measured at seasonal base flow conditions is greater than or equal to 20 NTU, then the stream is not threatened by nutrients. If the stream's inorganic turbidity measured at seasonal base flow conditions is less than 20 NTU, then the stream is threatened.

(c) Alternative to dichotomous process for streams.

(1) A wadable stream shall be deemed threatened by nutrients if the arithmetic mean of benthic chlorophyll-a data exceeds 100 mg per square meter under seasonal base flow conditions, or if two or more benthic chlorophyll-a measurements exceed 200 mg per square meter under seasonal base flow conditions. A non-wadable stream shall be deemed threatened by nutrients if planktonic chlorophyll-a values in the water column indicate it has a Trophic State Index of 62 or greater.

(2) If clear and convincing evidence indicates a result for a stream different from that obtained from application of the dichotomous process in (b) of this Section, then the appropriate state environmental agency may, after completing the public participation process developed by the Secretary of Environment pursuant to 27A O.S. 1-2-101, accordingly identify the stream as threatened or not threatened by nutrients.

(d) Demonstration that nutrients may be adversely impacting a beneficial use.

If it is demonstrated by the Trophic State Index or by other relevant data as provided in 785:46-15-1(c) that nutrient loading in a waterbody may be adversely impacting a beneficial use designated for that waterbody, then the Board may determine that the waterbody and its watershed is an NLW, and shall identify the

waterbody and watershed as NLW in Appendix A of OAC 785:45.

(e) **Consequence of identification as NLW.** If a waterbody or its watershed is identified as NLW in Appendix A of OAC 785:45, then the Board or other appropriate state environmental agency may cause an impairment study to be performed. Provided, if an impairment study demonstrates that the uses are not threatened, then the Board shall consider deleting the NLW identification.

(f) **Consequence of assessment that use is threatened by nutrients.** If it is determined that one or more beneficial uses designated for a waterbody are threatened by nutrients, then that waterbody shall be presumed to be nutrient-threatened. If it is determined or presumed, in accordance with this Section, that a waterbody is nutrient-threatened, then before the waterbody is determined to be nutrient-impaired, an impairment study must be completed by the appropriate state environmental agency.

(g) **Result of impairment study.**

(1) **Impaired.** If, independent of or in addition to the process set forth in this Section, an impairment study of a waterbody demonstrates that any beneficial use designated for a waterbody is impaired by nutrients, then the appropriate state environmental agency shall initiate the appropriate listing procedure in accordance with the public participation process developed by the Secretary of Environment pursuant to 27A O.S. 1-2-101 for each such beneficial use.

(2) **Not impaired.** If, independent of or in addition to the process set forth in this Section, an impairment study of a waterbody demonstrates that all beneficial uses designated for that waterbody are not impaired by nutrients, then the appropriate state environmental agency shall initiate the appropriate de-listing procedure in accordance with the public participation process developed by the Secretary of Environment pursuant to 27A O.S. 1-2-101.

[Source: Added at 17 Ok Reg 1775, eff 7-1-00; Amended at 18 Ok Reg 171, eff 10-25-00 (emergency); Amended at 18 Ok Reg 3379, eff 8-13-01; Amended at 21 Ok Reg 1910, eff 7-1-04; Amended at 22 Ok Reg 1607, eff 7-1-05; Amended at 25 Ok Reg 1455, eff 7-1-08; Amended at 28 Ok Reg 1017, eff 7-1-11]

785:46-15-11. Assessment of Hydroelectric Power Generation support [REVOKED]

[Source: Added at 21 Ok Reg 1910, eff 7-1-04; Revoked at 24 Ok Reg 2445, eff 7-1-07]

785:46-15-12. Assessment of Industrial and Municipal Process and Cooling Water support [REVOKED]

[Source: Added at 21 Ok Reg 1910, eff 7-1-04; Revoked at 24 Ok Reg 2445, eff 7-1-07]

785:46-15-13. Assessment of Navigation support [REVOKED]

[Source: Added at 21 Ok Reg 1910, eff 7-1-04; Revoked at 24 Ok Reg 2445, eff 7-1-07]

785:46-15-13.1. Assessment of Navigation support

The beneficial use of Navigation designated for a waterbody shall be deemed to be fully supported for the purpose of water quality reporting.

[Source: Added at 28 Ok Reg 1017, eff 7-1-11]

785:46-15-14. Assessment of Aesthetics Support

(a) **General provisions for all waterbodies other than Scenic Rivers.** The tests prescribed in OAC 785:46-15-4 may be used to determine whether the beneficial use of Aesthetics designated in OAC 785:45 for a waterbody other than the Scenic Rivers is supported.

(b) **Special provisions for Scenic River reaches of Mountain Fork River, Lee Creek and Little Lee Creek.**

(1) **Scope and applicability.** This subsection shall be used to determine whether the Aesthetics beneficial use designated in OAC 785:45 is supported with respect to the total phosphorus criterion for Mountain Fork River, Lee Creek and Little Lee Creek.

(2) **Data and procedure.**

(A) The data used shall satisfy all of the requirements of 785:46-15-3 except subsection (f) thereof. Notwithstanding such requirements, the data shall include samples collected from stream flow of at least six (6) storm events per calendar year or, if fewer than nine (9) storm events occurred in that year, then the majority of the storm events that occurred that year.

(B) Whenever multiple samples are taken from a single storm event, the event mean concentration shall be determined and used as representative of that storm event.

(C) A three-calendar-month geometric mean concentration shall be determined each month using the total phosphorus data from that month together with such data from the preceding two calendar months.

(3) **Support tests.**

(A) The Aesthetics beneficial use designated for a segment of a Scenic River shall be deemed to be supported with respect to total phosphorus if less than 25% of the monthly determinations made in accordance with (b)(2)(C) of this Section exceed 0.037 mg/L total phosphorus.

(B) The Aesthetics beneficial use designated for a segment of a Scenic River shall be deemed to be not supported with respect to total phosphorus if 25% or greater of the monthly determinations made in accordance with (b)(2)(C) of this Section exceed 0.037 mg/L total phosphorus.

(c) **Special provisions for Scenic River reaches of Illinois River, Flint Creek, and Barren Fork Creek.**

(1) **Scope and applicability.** This subsection shall be used to determine whether the Aesthetics beneficial use designated in OAC 785:45 is supported with respect to the total phosphorus criterion for Illinois River, Flint Creek, and Barren Fork Creek.

(2) **Data and procedure.**

(A) The data used must satisfy all the requirements of 785:46-15-3, unless otherwise specified in this subsection.

(B) A rolling 6-month arithmetic mean must be calculated based on data from the current month and the five (5) preceding months. The calculation of a rolling 6-month arithmetic mean must include at least four values from four separate months. All available individual data values from any given month must be included in the rolling 6-month arithmetic mean calculation.

(C) A minimum of ten (10) rolling 6-month arithmetic means are required to assess the Aesthetic beneficial use within a one-year period. The minimum of ten (10) rolling 6-month arithmetic means shall not be required upon affirmation that the beneficial use is not supported per of 785:46-5-14(c)(3)(B).

(D) A minimum of thirty (30) rolling 6-month arithmetic means are required to assess the Aesthetic beneficial use within a five-year period. The minimum of thirty (30) rolling 6-month arithmetic means shall not be required upon affirmation that the beneficial use is not supported per of 785:46-5-14(c)(3)(B).

(3) Support Tests.

(A) If no more than one rolling 6-month arithmetic mean in any one-year period and not more than three rolling 6-month arithmetic means in any 5-year period exceed the total phosphorus criterion magnitude of 0.037 mg/L, the Aesthetic beneficial use is supported.

(B) If more than one rolling 6-month arithmetic mean in any one-year period or more than three rolling 6-month arithmetic means in any 5-year period exceed the total phosphorus criterion magnitude of 0.037 mg/L, the Aesthetic beneficial use is not supported.

[Source: Added at 25 Ok Reg 1455, eff 7-1-08; Amended at 38 Ok Reg 2762, eff 9-11-21]

SUBCHAPTER 17. OWRB WATER QUALITY STANDARDS IMPLEMENTATION PLAN

785:46-17-1. Purpose and scope

According to Title 27A O.S., §§ 1-1-202 and 1-3-101, the Board is required to promulgate a Water Quality Standards Implementation Plan for its jurisdictional areas of environmental responsibility. The elements of the Plan are dictated by Title 27A O.S. § 1-1-202. The rules in this Subchapter prescribe the elements of the Board's Plan.

[Source: Added at 18 Ok Reg 3379, eff 8-13-01]

785:46-17-2. Definitions

In addition to terms defined in Title 27A O.S. § 1-1-201 and Title 82 O.S. § 1084.2, the following words or terms, when used in this Subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"CWA" means Clean Water Act.

"DEQ" means the Department of Environmental Quality.

"NPDES" means National Pollutant Discharge Elimination System.

"NPS" means nonpoint source.

"OWRB" means the Oklahoma Water Resources Board.

"Plan" means the Water Quality Standards Implementation Plan, or portion thereof, promulgated by the Board in this Subchapter for the programs that affect water quality within the Board's jurisdictional areas of environmental responsibility.

"SRF" means a fund or program used for loans to eligible entities for qualified projects in accordance with Federal law, rules and guidelines administered by the U.S. Environmental Protection Agency and state law and rules administered by the Board. "SRF" is a Federal term referring to a state revolving fund. There are two separate SRF programs administered in Oklahoma: one is for the purpose of

controlling water pollution (the Clean Water SRF) and the other is for the purpose of providing safe drinking water (the Drinking Water SRF).

"USAP" means use support assessment protocols promulgated by the Board and codified at OAC 785:46 Subchapter 15.

"WQS" means the water quality standards promulgated by the Board in OAC 785:45.

"WQSIP" means Water Quality Standards Implementation Plan.

[Source: Added at 18 Ok Reg 3379, eff 8-13-01; Amended at 19 Ok Reg 2512, eff 6-27-02; Amended at 25 Ok Reg 1455, eff 7-1-08]

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

(a) In the course of determining applications for stream water permits, the Board evaluates or calculates runoff data, available stream gauge data, lake storage volumes and dependable yield data for reservoirs, and the watershed above the proposed diversion point. The Board protects against degradation by appropriating no more than the mean annual flow of a stream. After July 1, 2000, the Board will also evaluate whether an application will cause a potential impact on beneficial uses.

(b) In the course of determining maximum annual yields of groundwater basins, the Board assumes 100 percent development within the basin; this ensures a longer basin life because current basin development is typically less than 20 percent of the entire basin. The maximum annual yield procedure also identifies potential sources of contamination within the basin. The basin studies will further determine the level of decline in storage in the basin which could impact historic low base flow discharge such that flow in that stream could potentially begin to be reduced due to groundwater withdrawals. In the course of determining applications for groundwater permits where the maximum annual yield has been determined, the Board protects against degradation by limiting the permitted withdrawal to the maximum annual yield allocated to the land covered by the permit, and avoiding withdrawal that would cause contaminated groundwater or surface water to be moved into groundwater that is not already contaminated.

(c) The Board's Clean Water SRF loans for projects comply with antidegradation standards and lead to maintaining water quality where beneficial uses are supported, removal of threats to water quality where beneficial uses are in danger of not being supported, and restoration of water quality where beneficial uses are not being supported, based upon the following procedures:

(1) In the course of determining eligibility of applications, the Board reviews the proposed project's consistency with water quality management plans developed under sections 205(j), 208, 303(e), 319 and 320 of the Clean Water Act. The Clean Water SRF Integrated Priority Ranking System ranks projects for funding based on human health protection, the "fishable/swimmable" goals of the Clean Water Act, the WQS, and Oklahoma's Nonpoint Source Management Program led by the Oklahoma Conservation Commission. All projects are placed on a five-year Clean Water SRF Project Priority List and funded in priority order. Proposed projects receive points based on the four major factors of project type, water quality restoration, water quality protection, and readiness to proceed, all as provided in 785:50-9-23.

(2) Wastewater projects under Section 212 of the Clean Water Act are reviewed by Board staff engineers for compliance with applicable DEQ rules, including but not limited to the Public Water Supply Construction Standards in OAC 252:626 and the Water Pollution Control Facility Construction rules in OAC 252:656; and consistency with the system owner's 208 water quality management plan, NPDES permit, and sludge management plans, if required by DEQ, all designed to protect the beneficial uses of the receiving waters. Approval of preliminary engineering design is made by the Board following approval by DEQ. Additional preventative measures may include, but are not limited to, design measures to prevent erosion during construction and to prevent wastewater bypasses during construction.

(3) Recipients of loans for Section 212 wastewater projects are required to construct the projects in accordance with plans and specifications approved by DEQ and the Board. The recipients are required to employ a full time resident inspector. The projects are periodically inspected by the Board staff during construction. Upon completion, the project is placed into operation, at which time it is evaluated by the consulting engineer and DEQ for compliance with construction and discharge standards.

(4) Recipients of loans for Section 319 NPS pollution control projects are required to implement the projects in accordance with State-approved BMP to control pollution for various NPS categories in accordance with TMDLs or other plans established to control NPS runoff.

(d) The Board's loans from revenue bond proceeds for construction of projects comply with antidegradation standards and lead to maintaining water quality where beneficial uses are supported, removal of threats to water quality where beneficial uses are in danger of not being supported, and restoration of water quality where beneficial uses are not being supported, based upon the following procedures:

(1) **Pre-approval procedures.** Sections 785:50-7-1 and 785:50-7-2 of the OAC provide general rules and criteria for review and approval of proposed bond loan projects. Among other requirements, the project is reviewed for feasibility and identification of water quality mitigative measures necessary to protect the beneficial uses of receiving waters. These measures may include, but are not limited to, design measures to prevent erosion during construction and to prevent wastewater bypasses during construction. Additionally, all projects are reviewed by Board staff engineers for compliance with applicable rules of the DEQ, including but not limited to the Public Water Supply Construction Standards in OAC 252:626, and the Water Pollution Control Facility Construction rules in OAC 252:656; and for consistency with the system owner's 208 water quality management plan, NPDES permit, and sludge management plans issued by DEQ, all designed to protect the beneficial uses of receiving waters. Approval of preliminary engineering design is made by the Board following approval by DEQ.

(2) **Procedures following approval.** After a revenue bond loan project is approved by the Board, it is monitored to assure it is constructed in accordance with planning documents and plans and specifications approved by the Board and DEQ. Loan recipients are required to employ a full time resident inspector to oversee construction progress. In addition, construction projects receive periodic oversight from a consulting engineer and the Board staff engineer. Upon completion, the project is placed into

operation, at which time it is evaluated by the consulting engineer and DEQ for compliance with construction and discharge standards.

(e) The Board's emergency grants for construction of projects comply with antidegradation standards and lead to maintaining water quality where beneficial uses are supported, removal of threats to water quality where beneficial uses are in danger of not being supported, and restoration of water quality where beneficial uses are not being supported, based upon the following procedures:

(1) **Pre-approval procedures.** Section 785:50-7-5 of the OAC provides a priority system which ranks proposed emergency grant projects for review and approval according to certain factors and criteria. Among other requirements, the project is reviewed for feasibility and identification of water quality mitigative measures necessary to protect the beneficial uses of receiving waters. These measures may include, but are not limited to, design measures to prevent erosion during construction and to prevent wastewater bypasses during construction. Additionally, all projects are reviewed by Board staff engineers for compliance with applicable rules of the DEQ, including but not limited to the Public Water Supply Construction Standards in OAC 252:626 and the Water Pollution Control Facility Construction rules in OAC 252:656; and for consistency with the system owner's 208 water quality management plan, NPDES permit, and sludge management plans issued by DEQ, all designed to protect the beneficial uses of receiving waters. Approval of preliminary engineering design is made by the Board following approval by DEQ.

(2) **Procedures following approval.** After an emergency grant project is approved by the Board, it is monitored to assure it is constructed in accordance with plans and specifications approved by the Board and DEQ. Emergency grant recipients are required to employ a full time resident inspector to oversee construction progress. In addition, construction projects receive periodic oversight from a consulting engineer and the Board staff engineer. Upon completion, the project is placed into operation, at which time it is evaluated by the consulting engineer and DEQ for compliance with construction and discharge standards.

(f) The Board's Rural Economic Action Plan (REAP) Grant Program for construction of projects complies with antidegradation standards and leads to maintaining water quality where beneficial uses are supported, removal of threats to water quality where beneficial uses are in danger of not being supported, and restoration of water quality where beneficial uses are not being supported, based upon the following procedures:

(1) **Pre-approval procedures.** Sections 785:50-8-3 and 785:50-8-4 of the OAC provide general rules and criteria for review and approval of proposed REAP projects, while Section 785:50-8-5 provides a priority system which ranks proposed REAP grant projects according to certain factors and criteria. Among other requirements, the project is reviewed for feasibility and identification of water quality mitigative measures necessary to protect the beneficial uses of receiving waters. These measures may include, but are not limited to, design measures to prevent erosion during construction and to prevent wastewater bypasses during construction. Additionally, all projects are reviewed by Board staff engineers for compliance with applicable rules of the DEQ, including but not limited to the Public Water Supply Construction Standards in OAC 252:626 and the Water Pollution Control Facility Construction rules in OAC 252:656; and for consistency

with the system owner's 208 water quality management plan, NPDES permit, and sludge management plans issued by DEQ, all designed to protect the beneficial uses of receiving waters. Approval of preliminary engineering design is made by the Board following approval by DEQ.

(2) **Procedures following approval.** After a REAP grant project is approved by the Board, it is monitored to assure it is constructed in accordance with plans and specifications approved by the Board and DEQ. REAP grant recipients are required to employ a full time resident inspector to oversee construction progress. In addition, construction projects receive periodic oversight from a consulting engineer and the Board staff engineer. Upon completion, the project is placed into operation, at which time it is evaluated by the consulting engineer and DEQ for compliance with construction and discharge standards.

(g) In carrying out its various clean lakes programs, the Board complies with antidegradation standards, and leads to maintenance of water quality where beneficial uses are supported, removal of threats to water quality where beneficial uses are in danger of not being supported, and restoration of water quality where beneficial uses are not being supported, in the following ways:

(1) The Board participates with municipalities and federal agencies in conducting lake water quality assessments and studying the problems causing impairment or pollution.

(2) The Board makes recommendations for removal of pollutants, watershed restoration and management activities, and controlling nonpoint source pollution through implementation of best management practices.

(3) In some instances the Board enters into contracts for implementation of pollution control measures on threatened or impaired waterbodies.

[Source: Added at 18 Ok Reg 3379, eff 8-13-01; Amended at 22 Ok Reg 1607, eff 7-1-05; Amended at 25 Ok Reg 1455, eff 7-1-08]

785:46-17-4. Procedures to be utilized in application of USAP

The procedures to be utilized by the Board in the application of USAP are prescribed in Subchapter 15 of this Chapter.

[Source: Added at 18 Ok Reg 3379, eff 8-13-01]

785:46-17-5. List and description of programs affecting water quality

(a) **List of programs.** The Board's programs affecting water quality may be referred to as the Stream Water Rights Program, the Groundwater Quantity Program, the Dam Safety Program, the Revenue Bond Loan Program, the Emergency Grant Program, the REAP Grant Program, the Drinking Water SRF Loan Program, the Clean Water SRF Loan Program, the Well Drillers Program, and the Clean Lakes Restoration Program. These programs are described in their respective subsections in this Section.

(b) **Stream Water Rights Program.** The program referred to in this Subchapter as the Stream Water Rights Program is the Board's program for administration of rights to use water from streams as provided in Title 82 O.S. § 105.1 and following, and OAC 785:20. This program includes the process of determining applications for stream water permits, the review of usage of existing stream water rights, the process of declaring reduction or cancellation of stream water rights due to nonuse, and the administration of competing stream water rights during periods of shortages.

(c) **Groundwater Quantity Program.** The program referred to in this Subchapter as the Groundwater Quantity Program is the Board's program for administration of rights to use groundwater as provided in Title 82 O.S. § 1020.1 and following, and OAC 785:30. It includes the process of determining applications for groundwater permits and amendments thereof, the administration of groundwater rights, the study of groundwater basins, and the process of determining the maximum annual yield of groundwater basins.

(d) **Dam Safety Program.** The program referred to in this Subchapter as the Dam Safety Program is the Board's program for maintenance of safety of dams and reservoir structures as provided in Title 82 O.S. § 110.1 and following, and OAC 785:25. It includes the process of determining applications for construction or modification of dams; inspection of dams; and regulating the construction, modification, operation, maintenance and repair of dams.

(e) **Revenue Bond Loan Program.** The program referred to in this Subchapter as the Revenue Bond Loan Program is the Board's program for making loans from revenue bond proceeds to eligible public entities for water and sewer projects and refinancings as provided in Title 82 O.S. § 1085.31 and following, and OAC 785:50. It includes the issuance of obligations to provide funds for loans; the review and determination of applications for loans; the closing of loans and the administration of the loan agreements; and the evaluation of proposed water and sewer projects and inspection of finished projects.

(f) **Emergency Grant Program.** The program referred to in this Subchapter as the Emergency Grant Program is the Board's program for making grants for water and sewer projects to assist eligible public entities in emergency situations as provided in Title 82 O.S. § 1085.31 and following, and OAC 785:50. It includes the review and determination of applications for emergency grants; the funding of grants and the administration of the grant agreements; and the evaluation of proposed water and sewer projects and inspection of finished projects.

(g) **REAP Grant Program.** The program referred to in this Subchapter as the REAP Grant Program is the Board's program for making grants to eligible public entities for water and sewer projects as provided in Title 62 O.S. § 2003 and OAC 785:50. It includes the review and determination of applications for REAP grants; the funding of grants and the administration of the grant agreements; and the evaluation of proposed water and sewer projects and inspection of finished projects.

(h) **Drinking Water SRF Loan Program.** The program referred to in this Subchapter as the Drinking Water SRF Loan Program is the Board's program for making loans from the Drinking Water SRF account in the State Treasury to eligible public entities for projects and refinancings as provided in Title 82 O.S. § 1085.71 and following, and OAC 785:50. It includes the issuance of obligations to make federal and state funds available for loans; the review and determination of certain criteria in applications for loans; and the closing of loans and the administration of the loan agreements.

(i) **Clean Water SRF Loan Program.** The program referred to in this Subchapter as the Clean Water SRF Loan Program is the Board's program for making loans from the Clean Water SRF account in the State Treasury to eligible public entities for projects and refinancings as provided in Title 82 O.S. § 1085.51 and following, and OAC 785:50. It includes the issuance of obligations to make federal and state funds available for loans; the review and determination of applications for loans; and the closing of loans and the administration of the loan agreements; and the evaluation of proposed projects and inspection of finished projects.

(j) **Well Drillers Program.** The program referred to in this Subchapter as the Well Drillers Program is the Board's program for licensing and regulating persons engaged in the commercial drilling or plugging of wells, monitoring wells, observation wells, wells for heat exchange purposes, and geotechnical borings, and the commercial installation of water well pumps, as provided in Title 82 O.S. § 1020.16 and OAC 785:35.

(k) **Clean Lakes Restoration Program.** The program referred to in this Subchapter as the Clean Lakes Restoration Program is the Board's program for assessing, monitoring, studying and restoring Oklahoma lakes as provided in Title 27A O.S. § 1-3-101.

[Source: Added at 18 Ok Reg 3379, eff 8-13-01; Amended at 19 Ok Reg 2512, eff 6-27-02]

785:46-17-6. Technical information and procedures to implement Plan

In implementing its Plan, the Board will utilize stream gauge data from the U.S. Geological Survey, U.S. Army Corps of Engineers, and the Board itself; watershed delineation and runoff estimation model; Informix and Oracle databases for water rights and well logs; Optika eMedia software for review of images of water rights files; ArcInfo and ArcView GIS software and associated hydrologic development tools for data analysis and mapping; precipitation and evaporation data from the National Weather Service and Oklahoma Climatological Survey; MODFLOW modeling software; ACCESS database for groundwater quality data; analytical models such as capture zone analysis, TWODAN or other models to determine well interference, potential capture of stream water or movement of contaminated groundwater; National Inventory of Dams database; DOS based QuickRoute software for the evaluation of spillway and freeboard adequacy and overtopping failure analysis of dam impoundments; data collected by the Clean Lakes Diagnostic Studies Program, Oklahoma Water Watch Program, Beneficial Use Monitoring Program, Oklahoma Conservation Commission, Oklahoma Department of Mines, Oklahoma Corporation Commission, DEQ, and local and county cooperators.

[Source: Added at 18 Ok Reg 3379, eff 8-13-01]

785:46-17-7. Plan integration into water quality management activities

Many of the operative portions of this Plan are already integrated into the Board's water quality management activities through codification as rules in other Chapters. As this Plan changes from time to time, rules in the pertinent Chapters will be added or amended as appropriate. Other methods to integrate the Plan will be through internal policies and guidance to be utilized by Board staff in carrying out its programs.

[Source: Added at 18 Ok Reg 3379, eff 8-13-01]

785:46-17-8. Compliance with other agencies' mandatory statewide requirements

(a) The Board ensures that applicants who seek stream water or groundwater permits will obtain any permits or approvals which may be necessary from other state environmental agencies, including but not limited to public water supply system permits from DEQ and waste management and disposal permits or licenses from DEQ or the Oklahoma Department of Agriculture.

(b) The Board requires wastewater projects financed through the Clean Water SRF Loan Program to be planned, designed and constructed to comply with the Section

208 Water Quality Management Plan, any applicable total maximum daily loads, and discharge permit requirements developed by DEQ. The Board requires water projects funded through any of its other loan or grant programs to be permitted by DEQ as required by law for public water supply systems.

[Source: Added at 18 Ok Reg 3379, eff 8-13-01]

785:46-17-9. Summary of written comments received

Appendix D of this Chapter contains a summary of the written comments and testimony received by the Board in the course of all public meetings held or sponsored for providing the public and other state agencies an opportunity to comment on the Board's Plan.

[Source: Added at 18 Ok Reg 3379, eff 8-13-01]

785:46-17-10. Evaluation of effectiveness

The Board may utilize discharge monitoring reports submitted to DEQ, and may compare previous effluent limits with effluent produced after project completion and operation, to evaluate the effectiveness of wastewater projects constructed with funding from the Board. The Board may also utilize pertinent data from its Beneficial Use Monitoring Program to evaluate the effectiveness of these projects.

[Source: Added at 18 Ok Reg 3379, eff 8-13-01; Amended at 25 Ok Reg 1455, eff 7-1-08]

SUBCHAPTER 19. IMPLEMENTATION OF DISSOLVED OXYGEN CRITERIA TO PROTECT FISH AND WILDLIFE PROPAGATION [REVOKED]

785:46-19-1. Applicability and scope [REVOKED]

[Source: Added at 19 Ok Reg 2512, eff 6-27-02; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-19-2. Regulatory flows [REVOKED]

[Source: Added at 19 Ok Reg 2512, eff 6-27-02; Amended at 23 Ok Reg 1568, eff 7-1-06; Revoked at 40 Ok Reg 1438, eff 8-11-23]

785:46-19-3. Reasonable potential determination [REVOKED]

[Source: Added at 19 Ok Reg 2512, eff 6-27-02; Amended at 23 Ok Reg 1568, eff 7-1-06; Amended at 28 Ok Reg 1017, eff 7-1-11; Amended at 30 Ok Reg 974, eff 7-1-13; Revoked at 40 Ok Reg 1438, eff 8-11-23]

APPENDIX A. DILUTIONS FOR CHRONIC TOXICITY TESTING [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Revoked and reenacted at 16 Ok Reg 3253, eff 7-12-99; Revoked at 20 Ok Reg 1429, eff 7-1-03]

APPENDIX B. MEAN HARDNESS AND PH BY STREAM SEGMENT [REVOKED]

[Source: Added at 13 Ok Reg 2891, eff 7-1-96; Revoked at 40 Ok Reg 1438, eff 8-11-23]

APPENDIX C. INDEX OF BIOLOGICAL INTEGRITY [REVOKED]

[Source: Added at 18 Ok Reg 3379, eff 8-13-01; Revoked and reenacted at 19 Ok Reg 2512, eff 6-27-02; Revoked at 40 Ok Reg 1438, eff 8-11-23]

APPENDIX D. SUMMARY OF COMMENTS ON OWRB'S WATER QUALITY STANDARDS IMPLEMENTATION PLAN

Figure 1

Title 27A O.S. § 1-1-202(B)(3)(g) provides that each *Water Quality Standards Implementation Plan* shall include a brief summary of the written comments and testimony received pursuant to all public meetings held or sponsored by the agency for the purpose of providing the public and other state environmental agencies an opportunity to comment on the plan.

I. Summary of Comments Received During 2000-2001 Rulemaking

The OWRB proposed new rules prescribing its Water Quality Standards Implementation Plan as described in a notice of rulemaking intent published at 18 Ok Reg 333 on January 2, 2001. During the January 2 through February 5, 2001 comment period on those new rules, the OWRB received written comments which are summarized or quoted below.

Ron Suttles, Oklahoma Department of Wildlife Conservation, submitted written comments which stated:

"Our last comment deals with language in Chapter 46 Subchapter 17-3. There is new wording specifying that, 'The Board protects against degradation by appropriating no more than the mean annual flow of a stream.' We believe that this will not provide sufficient protection for 'waters of the state' and barring [sic] clarification to the contrary must object to what appears to be an appropriation provision that will cause WQS to be violated."

Kelly Burch, Assistant Attorney General in the Oklahoma Attorney General's Office, submitted written comments which stated:

"Senate Bill 549 requires the OWRB to promulgate an implementation plan which includes the processes, procedures and methodologies that will be utilized to ensure that the surface water permitting program will comply with anti-degradation standards and lead to maintenance of water quality, removal of threats to water quality and restoration of water quality. Stream water appropriations can degrade water quality and impair beneficial uses if not managed properly. The OWRB is required to develop an implementation plan demonstrates [sic] how the standards will be used in the program to prevent these impacts.

"The current proposal does not meet the requirements of Senate Bill 549. The proposal simply states that compliance with anti-degradation standards is already assured because the OWRB only appropriates the mean annual flow of a stream. As your recent study of the Baron Fork Creek demonstrates, the current system of appropriating the mean annual flow of a stream does not necessarily protect against degradation of water quality. There are several methods available to evaluating flow necessary to prevent degradation which you may want to consider using for permitting decisions.

Figure 2

"It is also insufficient to say that the OWRB will begin looking at impacts on beneficial uses without any clarification of which 'processes, procedures and methodologies' will be used to assess these impacts. It is already clear that the OWRB is required to ensure that beneficial uses are protected when issuing permits. The question is how is the agency going to comply with that requirement. The current proposal needs to be amended in order to meet the mandates of Senate Bill 549."

Margaret Ruff, Oklahoma Wildlife Federation, submitted written comments which stated:

"785-46-17. Overall, the OWF does not see that this language assures in any way that OWRB's implementation plans will uphold water quality standards. In (a), stating the Board 'protects against degradation by appropriating no more than the mean annual flow of a stream' is not necessarily protective of Oklahoma's water quality standards. Further, if a potential impact on beneficial uses is found, there is no language mandating any action taken to rectify the situation; this needs to be added. In (b), there needs to be language mandating that actual effects [sic] to water quality from groundwater allocation is assessed and specifying action is taken if such an assessment finds withdrawals are negatively affecting water quality. In (c), language states that the program complies with antidegradation standards but does not say how - this needs to be included.

"For does this section overall address antidegradation in High Quality Waters of Oklahoma. This is a higher standard than beneficial use attainment, and antidegradation should mean no backsliding is allowed in those waters.

"785-46-17.5. The list is missing language spelling out how these programs meet Water Quality Standards.

"785-46-17-7. Should spell out what links are there to assure the plan is integrated into management activities.

"785-46-17-8(a) Such permits from other agencies have not assured compliance with water quality standards and OWF does not believe that OWRB should assume this. In fact, the Oklahoma Supreme Court has suggested that in at least some areas, the OWRB should not assume another agency's permit means compliance.

"785-46-17-10. OWF recommends changing the 'mays' to 'shall's'. Also, OWF recommends adding all the other sources as cited in 785-46-17-6." (Emphasis in original.)

Upon consideration of these comments, the OWRB staff concurred that the appropriate implementation of water quality standards into the process of stream water permitting is in its infancy. The staff expects to be working over the next several years to involve all agency programs to assure that the Oklahoma Water Quality Standards are protected.

II. Summary of Comments Received During 2007-2008 Rulemaking

No comments on the OWRB's Water Quality Standards Implementation Plan were received during the 2007-2008 rulemaking.

[Source: Added at 18 Ok Reg 3379, eff 8-13-01; Revoked and reenacted at 25 Ok Reg 1455, eff 7-1-08]

CHAPTER 50. FINANCIAL ASSISTANCE

[Authority: 82 O.S., §§ 1085.2, 1085.31 et seq., 1085.51 et seq., 1085.71 et seq.]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

785:50-1-1. Purpose

The rules in this Chapter are promulgated to provide standards, guidelines and policy statements related to the Board's Financial Assistance Program. The instant rules and regulations have been enacted for the purpose of implementing

and administering the powers, duties and responsibilities of the Board as provided by 82 O.S. Sections 1085.31 through 1085.84, and other applicable laws, which provides generally for Board approved financial assistance in certain works and projects for the enhancement, development and utilization of water resources and sewage treatment facilities within the State of Oklahoma.

[Source: Amended at 12 Ok Reg 2715, eff 7-1-95]

785:50-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise, or unless defined differently in Subchapters 8 and 9 when used in those subchapters:

"Applicant" means the entity applying or having applied to the Board for financial assistance under the provisions of this Chapter.

"Application" means the application process or procedure through which an applicant applies to the Board for financial assistance. In context, this word shall also be understood to refer to the written application document(s), with attachments, through which application for financial assistance is made to the Board.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

"Board Staff" means the Chief of Financial Assistance or the Chief's designee.

"Clean Water SRF" means that fund or program created by Title 82 Oklahoma Statutes, Sections 1085.51 and following.

"CWSRF" means Clean Water SRF.

"Department" means the Oklahoma Department of the Environmental Quality.

"Drinking Water SRF" means that fund or program created by Title 82 Oklahoma Statutes, Section 1085.71 and following.

"Drinking Water Treatment Project" means:

- (A) any engineering undertaking or work to control or develop drinking water treatment facilities of eligible entities for all useful and lawful purposes,
- (B) any system necessary to improve or develop drinking water supply, treatment or distribution capabilities, or
- (C) any implementation of water source protection programs as authorized by the federal Safe Drinking Water Act.

"DWSRF" means Drinking Water SRF.

"Eligible entity" means those entities determined by the Board to be eligible to obtain financial assistance from the Board for the financing of approved projects, all being as is more specifically provided for under Subchapter 3 of this Chapter.

"Emergency" means any situation where the life, health or property of the persons being served by an entity are endangered.

"Financial assistance" means the act, process or program of Board participation in the loaning, granting of, or contracting for, financial assistance funds to an applicant for the financing of a Board approved project, the same being as authorized and contemplated under the provisions of Title 82 O.S. Sections

1085.31 through 1085.84.

"Investment Certificate" means any note or bond, including any renewal note or refunding bond, authorized and issued by the Board pursuant to the provisions of Title 82 O.S. Sections 1085.31 through 1085.84.

"Loan closing" means the act and process of the loan transaction parties executing all required and final loan transaction documents, instruments and contracts at a designated point in time subsequent to financial assistance approval by the Board.

"Participating lender" means any entity, institution, person, firm or corporation, public, governmental or private, other than the Board, which is participating in the financing or funding of a project for which application is made to the Board.

"Pledge" means the act or process through which an applicant commits, obligates and encumbers its property, real or personal, or its revenues, existing or anticipated, all being of or from the projects or otherwise, to the Board as security and means for repayment of the loan made to the applicant by the Board.

"Project" means the applicant's works or undertaking for which application for financial assistance has been made to or approved by the Board. In this connection, projects and project purposes for which financial assistance may be obtained shall be those described and defined in Subchapter 3 of this Chapter.

"Project cost" means applicant's direct and incidental costs of acquiring, constructing and furnishing the project for which assistance is sought and to those items of cost for which Board- provided financial assistance funds may be utilized and expended by an applicant for an approved project, all being as is more specifically described and contemplated within 785:50-3-1.

"REAP" means the Rural Economic Action Plan created by Title 62 Oklahoma Statutes, Sections 2003 and following, and the funding and grant program administered by the Board pursuant thereto.

"Safe Drinking Water Act" means the federal Safe Drinking Water Act as may be amended, or any successor statute.

"Security" means those items of real or personal property or money revenues in which an applicant possesses legal right, title and interest and which are pledged, committed and encumbered by the applicant to the Board to secure applicant's loan indebtedness and repayment to the Board.

"SRF" means a fund or program to be used for loans to eligible entities for qualified projects in accordance with Federal law, rules and guidelines administered by the U.S. Environmental Protection Agency and state law and rules in this Chapter administered by the Board. "SRF" is a Federal term referring to a state revolving fund. There are two separate SRF programs administered in Oklahoma: one is for the purpose of controlling water pollution (the CW SRF) and the other is for the purpose or providing safe drinking water (the DW SRF).

"Water and Sewer program" means the loan and grant program administered by the Board for making loans from bond proceeds, emergency grants from the Grant Account of the Water Resources Fund in the State Treasury, contract financial assistance, and related financial assistance for water and sewer projects.

[Source: Amended at 10 Ok Reg 3361, eff 6-25-93; Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 16 Ok Reg 2691, eff 7-1-99; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-1-3. Program authority and description

(a) The rules in this Chapter have been promulgated and adopted pursuant to and as authorized by 82 O.S. 1981, §1085.2, 75 O.S. 1981, §302, 82 O.S. 1981, §§1085.31 through 1085.49, §§1085.51 through 1085.65 as amended, 82 O.S. Supp. 1994, §§1085.71 through 1085.84, and as otherwise authorized under the laws of the State of Oklahoma.

(b) There are four major sources of financial assistance described as follows:

(1) The Water and Sewer program created under Sections 1085.31 through 1085.49 of Title 82 of the Oklahoma Statutes. That program consists of the following:

(A) Loans made pursuant to 82 O.S. Section 1085.36.

(B) Grants from the Grant Account of the Water Resources Fund pursuant to 82 O.S. Section 1085.39.

(2) The Clean Water SRF loan program created under Sections 1085.51 through 1085.65 of Title 82 of the Oklahoma Statutes.

(3) The Drinking Water SRF Loan program created under Sections 1085.71 through 1085.84 of Title 82 of the Oklahoma Statutes.

(4) The Rural Economic Action Plan ("REAP") grant program created under Sections 2003 and following of Title 62 of the Oklahoma Statutes.

[Source: Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 13 Ok Reg 3733, eff 7-18-96 (emergency); Amended at 14 Ok Reg 2788, eff 7-1-97; Amended at 15 Ok Reg 2881, eff 7-1-98]

785:50-1-4. Application of rules

Due to the very specialized nature of the financial assistance program the rules provided in this Chapter shall in all instances be subject to and given a liberal, reasonable, fair and impartial construction, interpretation and application to the end that the intent and purposes hereof may be obtained in compliance with the laws of the State of Oklahoma and the public purposes sought to be served thereby. If an emergency is declared by the federal or state government, Board Staff may waive some requirements as allowed under federal law, state law, and/or EPA regulations for applicants affected by the declared emergency.

[Source: Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 17 Ok Reg 2772, eff 7-1-00; Amended at 36 Ok Reg 1332, eff 8-11-19]

SUBCHAPTER 3. PROJECTS AND ENTITIES ELIGIBLE

785:50-3-1. Project eligibility

(a) **Purposes for which assistance may be provided.**

(1) The financial assistance contemplated under the Water and Sewer program may be made available for the purpose of providing or assisting in providing for the acquisition, development and utilization of water and sewage storage and control facilities for the use and benefit of the public and for the conservation and distribution of water for beneficial purposes in or from reservoirs or other storage facilities constructed or hereafter constructed, modified or enlarged within the State of Oklahoma by the United States of America or Oklahoma or any agency, department, subdivision or instrumentality thereof and for the refinancing of existing indebtedness related to water and sewer systems.

(2) The financial assistance contemplated under the Clean Water SRF and Drinking Water SRF programs may be made available for projects as provided and authorized under the applicable federal legislation, and Sections 1085.51 through 1085.65 and Sections 1085.71 through 1085.84

of Title 82 of the Oklahoma Statutes.

(b) Projects for which assistance may be obtained.

(1) Water and Sewer, REAP projects; exception for certain unqualified projects.

(A) Financial assistance may be obtained through the Water and Sewer program and REAP grant program for any project within the State of Oklahoma which qualifies as *any engineering undertaking or work to conserve and develop surface or subsurface water resources or to control or develop sewage treatment facilities of the State for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including but not limited to underground storage projects, filtration and water treatment plants, including any system necessary to distribute water from storage or filtration plants to points of distribution, or from storage to filtration and treatment plants, facilities for distributing water therefrom to wholesale or retail purchasers, [82:1085.32(1)] floodplain restoration including but not limited to home relocations, bank stabilization, storm sewer and drainage improvements and any system necessary to improve or develop sewage treatment, collection or distribution capabilities [82:1085.32(1)]* of any area of the State. Such qualified projects are additionally understood to include financial assistance to acquire and own the lands required for the project, and to obtain the water supply and to construct appropriate treatment facilities.

(B) Notwithstanding any of the foregoing, a project is not qualified to receive financial assistance by emergency grant pursuant to Title 82 O.S. Section 1085.39 or REAP grant pursuant to Title 62 O.S. Section 2003 if the project is or would be subject to an arrangement whereby a person who is not a state or local governmental entity has or would have a right to use or make use of the project on a basis not available to members of the general public.

(2) CWSRF projects. Financial assistance may be obtained through the CWSRF program for any project within the State of Oklahoma which qualifies as any engineering undertaking or work to control or develop sewage treatment facilities of the state for all useful and lawful purposes, any system necessary to improve or develop sewage *treatment, collection or distribution capabilities, stormwater and Brownfield activities that are administered under the Oklahoma Brownfields Voluntary Redevelopment Act for eligible entities that have obtained a draft or final permit pursuant to the National Pollution Discharge Elimination Act or the Oklahoma Pollution Discharge Elimination Act, or any implementation of nonpoint source management programs as authorized by the federal Water Quality Act of 1987 and Section [82:1085.52(1)] 1085.65* of Title 82 of the Oklahoma Statutes.

(3) DWSRF projects. Financial assistance may be obtained through the DWSRF program for any project within the State of Oklahoma which qualifies as any engineering undertaking or work to control or develop drinking water facilities of the State for all useful and lawful purposes, any system necessary to improve or develop drinking water treatment, collection or distribution capabilities as authorized by the federal Drinking

Water Act and Section 1085.72 of Title 82 of the Oklahoma Statutes.

(c) Project costs for which assistance funds may be expended.

(1) Project financial assistance funds made available by the Board to an applicant for approved projects may be utilized and expended by an applicant toward applicant's payment and financing of project costs, as approved by the Board.

(2) Eligibility for project costs funded under the CWSRF program described in 785:50-1-3(b)(2) is limited to the restrictions of the federal Water Quality Act as amended.

(3) Eligibility for drinking water project costs funded under the DWSRF program described in 785:50-1-3(b)(3) is limited to the restrictions of the federal State Drinking Water Act as amended.

(4) For purposes of the Water and Sewer program, the REAP grant program, and subject to controlling federal and state law for the CWSRF and DWSRF programs, project costs include, but shall not be limited to, the following miscellaneous and general project cost items:

(A) Costs of acquiring the facilities comprising the project;

(B) Costs of acquiring and constructing other items included in the facilities, including obligations incurred for labor and materials by contractors, builders and materialmen;

(C) Costs of restoration or relocation of property damaged or destroyed in connection with any construction;

(D) Costs of premiums of contractors' performance, payment and completion bonds;

(E) Costs of title insurance premiums;

(F) Costs of machinery, equipment and related facilities acquired or purchased for inclusion in and identification primarily with the facilities and the cost of shipping, transportation and installation thereof;

(G) Taxes or other municipal or governmental charges levied or lawfully assessed against the facilities acquired during the period of acquisition;

(H) Costs of insurance premiums in connection with acquisition of the facilities;

(I) Costs of architects' and engineers' services related to the project prior to and during the period of acquisition;

(J) Payment or reimbursement of the applicant for interim financing loans and advances and all costs thereof made in contemplation of receiving financial assistance;

(K) Abstract and title opinion costs;

(L) Costs of project legal fees and expenses of counsel for the applicant;

(M) Costs of fees of other consultants of applicant;

(N) Recording fees;

(O) Loan insurance expenses;

(P) Other costs of publishing and printing proceedings incident thereto; and

(Q) Such other reasonable and necessary expenses as may be required to complete the proposed project.

(5) Force account labor costs may be eligible, under certain conditions as determined by the Board, for project financial assistance.

[Source: Amended at 9 Ok Reg 1683, eff 5-11-92; Amended at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 14 Ok Reg 2788, eff 7-1-97; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 16 Ok Reg 2691, eff 7-1-99; Amended at 17 Ok Reg 2772, eff 7-1-00; Amended at 28 Ok Reg 1026, eff 7-1-11; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 33 Ok Reg 1954, eff 9-11-16]

785:50-3-2. Eligible entities

(a) **Entities eligible for assistance.** The financial assistance made available through the Water and Sewer program, the REAP grant program, the CWSRF program, and the DWSRF program may be obtained, for an eligible project, by any duly constituted and existing political subdivision of the State of Oklahoma, including but not limited to counties, cities, towns and municipalities, and, by any duly constituted and existing special purpose water resource district, including but not limited to rural water districts, irrigation conservancy districts, and by any duly qualified and existing public trusts or authorities, individually or as agents, representatives or instrumentalities of any political subdivision.

(b) **Combination of eligible entities.** For purposes of qualifying for and obtaining the financial assistance contemplated herein, any group of eligible entities may combine and join in making application for project assistance, provided, each separate entity within the group so combined is eligible under (a) of this Section.

(c) **Proof of eligibility.** For purposes of qualifying for and obtaining the financial assistance contemplated in this Chapter, entities shall submit appropriate proof of eligibility.

[Source: Amended at 16 Ok Reg 2691, eff 7-1-99; Amended at 18 Ok Reg 2247, eff 7-1-01; Amended at 28 Ok Reg 1026, eff 7-1-11]

SUBCHAPTER 5. APPLICATIONS FOR FINANCIAL ASSISTANCE

785:50-5-1. Application form and required information

(a) Application form.

(1) Printed financial assistance application forms for the Water and Sewer program shall be, to the extent deemed appropriate, furnished by the Board.

(2) Printed financial assistance application forms for the CWSRF program authorized in 82 O.S., §§1085.51 through 1085.65 shall be developed by the Board and furnished to applicants to be completed by the applicants and submitted to the Board.

(3) Printed financial assistance application forms for the DWSRF program authorized in 82 O.S. §§1085.71 through 1085.84 shall be developed by the Board and furnished to Department and applicants to be completed by the applicants and submitted to the Board.

(4) Printed financial assistance application forms for the Rural Economic Action Plan grant program shall be developed by the Board and furnished to qualified entities and COGs to be completed by the qualified entities or COGs and submitted to the Board.

(5) All applications for financial assistance must be completed by the applicant either on written forms as may be provided by the Board or in such other written form as the Board may require.

(b) **Required general information.** The following general information must be submitted by applicant within each application for financial assistance unless deemed inapplicable and waived by the Board Staff:

(1) Applicant's full, true and correct legal name, official residence and mailing address if different from official residence.

- (2) Authority of law under which applicant was created and established and applicant's independent legal authority under which application is made. Applicant must identify and describe the nature of its legal identification as a political subdivision, special purpose district or public trust.
- (3) Applicant must provide certified copy of the resolution or other specific authorizing instrument reflecting applicant's authorization for making the subject application to the Board.
- (4) Name and address of applicant's project engineer.
- (5) Total amount of funds requested by applicant for project assistance from the Board including a statement of the specific uses and purposes for which such funds are intended to be applied.
- (6) Applicant's anticipated project commencement and completion date.
- (7) Applicant's firm estimate of annual (or other interval) revenues to be derived from the project or other available sources or revenue to be pledged by applicant to the Board for loan repayment and such additional project revenue information as may be necessary to evaluate general economic feasibility of the project.
- (8) Information regarding the ability of the applicant to finance project development for which assistance is sought without Board participation.
- (9) A statement of the manner and means by which applicant intends to finance the entire project including a statement when appropriate of the specific manner and means by which applicant proposes to make repayment to the Board from project revenues.
- (10) Information reflecting whether applicant has any type of reserve or contingency funds available which could and would be used to meet actual project costs which may exceed applicant's original total estimated costs of the project (reserve or contingency fund for cost overrun). Such information should include the nature, source, amount and liquidity of such reserve or contingency funds and applicant's commitment and ability to utilize such funds when and if necessary for such purposes.
- (11) A certified copy of applicant's previous four (4) years' annual audits, if available, and a statement of applicant's financial condition including a current statement of all outstanding indebtedness of applicant or related entities, including but not limited to all outstanding general obligation or revenue debt which such indebtedness might affect applicant's overall financial condition. In this connection, applicant must list the security given for all such indebtedness.
- (12) A brief but adequate description of the proposed project for which application is made, including but not limited to the following:
 - (A) Project location.
 - (B) Nature of project, including a detailed project description with such tentative project plans and specifications as may be necessary to reflect general engineering feasibility of the project.
 - (C) Comprehensive statement clearly demonstrating project need.
 - (i) Such statement must be in sufficient detail to support and justify the project and should describe approval for the project.
 - (ii) Applicant may include letters or statement of support from any interested persons or agencies.
 - (D) Anticipated total project cost.

(E) Listing of all financing institutions, lender, or other funding sources participating in financing the project, with, where applicable, the following related information:

- (i) Statement by each participating entity reflecting the relative interest, support and commitment of the participating lender or other funding source in and to the project.
- (ii) Statement reflecting total project cost allocation between lenders or other funding sources, and,
- (iii) A statement and description of all project security or project revenues already pledged or to be pledged to other participating lenders or fund sources.

(13) Nature and amount of security to be pledged to the Board for the financial assistance requested.

(14) If real or personal property, or any interest therein, is to be pledged by applicant to the Board for security, applicant must submit a current statement of the nature and extent of all outstanding liabilities or indebtedness against such property. If applicant is not the owner of such real or personal property to be pledged, applicant must state and describe the nature and extent of applicant's legal or equitable interest in such property, and, provide a statement setting forth who or what entity owns such property with a statement of all outstanding liabilities or indebtedness against such property.

(15) Description of nature and division of contemplated project ownership or other legal or equitable interest in the project if other than complete ownership by applicant.

(16) A statement reflecting the relevant history or current status of applicant's efforts toward obtaining all necessary and incidental rights and privileges needed for project commencement, completion and cooperation. This requirement includes but is not limited to all necessary legal rights including water rights, licenses or permits, whether existing under federal, state or local law or regulation, the relative status of secured or outstanding contracting arrangements, and the status of any incidental legal proceedings including, but not limited to any authorizations required by residents of the applicant.

(17) All applicants should submit, if not otherwise submitted, a comprehensive statement of project overview setting forth group effort in the project, debt, revenue and commitments the project and applicant's future capital improvement plans as may relate to the applicant's proposed project or the applicant generally.

(18) Where applicable to the particular project for which financial assistance is sought, the following additional information must be submitted with the application:

- (A) All estimated firm annual yields and proposed reservoir capacities for storage if assistance is sought for reservoir or storage facilities construction or if assistance is sought for a project incidental to an existing storage facility or reservoir.
- (B) A statement containing the proposed purposes for which water will be stored or used and places of use or potential use for such water.

(C) A statement of relative allocation of project costs to each project purpose if for more than one purpose.

(D) A brief description of existing or proposed improvements in the project area and a description of all such improvements which may require relocation.

(19) The Board may require applicant to submit such further or additional project information as may be deemed necessary for proper project review under the particular facts and circumstances of any specific project financial assistance proposal.

[Source: Amended at 10 Ok Reg 3333, eff 7-1-93; Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 13 Ok Reg 3733, eff 7-18-96 (emergency); Amended at 14 Ok Reg 2788, eff 7-1-97; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 16 Ok Reg 2691, eff 7-1-99; Amended at 35 Ok Reg 2243, eff 9-14-18; Amended at 36 Ok Reg 1332, eff 8-11-19]

785:50-5-2. Application verification and approval

All applications for financial assistance must be duly verified and acknowledged by the applying entity (authorized representative) at the time of submission.

[Source: Amended at 35 Ok Reg 2243, eff 9-14-18]

SUBCHAPTER 6. WATER AND SEWER PROGRAM EMERGENCY GRANTS REQUIREMENTS AND PROCEDURES

785:50-6-1. Approval criteria

(a) **General approval standards and criteria.** In the review and consideration of applications for financial assistance under the emergency grant program, the Board shall give consideration to the following general and non-exclusive criteria for application approval:

(1) **Compliance with laws.** The application and proposed project must be found to be in compliance with all applicable and relevant federal, state and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(2) **Eligibility.** The applicant and proposed project must be determined to be eligible for the assistance sought.

(3) **Local need, support and priority.** The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs. The Board shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants.

(4) **Availability of other assistance.** The Board shall consider the feasibility and availability of alternative sources of revenue which could be obtained and utilized by applicant for project financing.

(5) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project as a whole including proposed revenues from the project and the adequacy and reliability of estimated revenues necessary for loan repayment when indicated.

(6) **Project feasibility.** The Board shall consider from the engineering data submitted and otherwise available whether the proposed project appears to be feasible, and must determine as a prerequisite for approval and funding that it is cost effective.

(7) **Statewide needs and public interest.** The Board shall give consideration to the relationship between the proposed project and the overall water resource development needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.

(8) **Availability of funds.** The Board shall take into consideration the current and anticipated availability of assistance funds needed to provide the financial assistance requested.

(b) Criteria applicability.

(1) The general criteria set forth in (a) and (c) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board.

(2) Such criteria shall not be deemed appropriate for strict application and interpretation nor shall such criteria be deemed exclusive.

(3) In all instances, each individual application and project must be reviewed and considered on its own individual merits.

(4) The criteria and standards set forth in (a) and (c) of this Section shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of Board's judgment and discretion.

(c) Criteria for denying an application. The Board may deny an application for an emergency grant for any of the following reasons:

(1) The applicant or the entity which stands to receive the benefit of the financial assistance is not an eligible entity.

(2) The applicant has had improper or unsound management in the past.

(3) The project is not cost effective.

(4) Any other reason based upon applicable law, applicable requirements of the pertinent bond resolution governing use of the bond proceeds, or the Board's judgment and discretion.

[Source: Added at 35 Ok Reg 2243, eff 9-14-18; Amended at 36 Ok Reg 1332, eff 8-11-19]

785:50-6-2. Evaluation procedures for grant applications

(a) In evaluating a grant request under the water and sewer program, a determination shall be made as to whether an emergency situation exists. For the purposes of this determination, an emergency situation shall be a situation where the life, health or property of the persons served by the entity are endangered. An emergency will be deemed no longer to exist, and a grant application based thereon will not be approved nor funded, after the passage of 180 days following the date the emergency last occurred, unless the Board finds, upon evidence satisfactory to the Board, that the emergency continues to exist as the date of approval and the date of funding.

(b) No emergency may be determined by the Board to exist absent an official declaration of emergency by the entity requesting the grant. The entity's declaration of emergency must be furnished to the Board and must set forth and described, among other matters, the nature and circumstances of the emergency.

(c) In addition to determining whether an emergency situation exists, the Board shall, in evaluating a grant request, take into consideration the following:

(1) The needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance;

(2) Whether the political subdivision can reasonably finance the project without assistance from the state;

- (3) The relationship of the project to the overall statewide water and sewage treatment needs; and
 - (4) Whether or not the applicant has taken all reasonable measure to limit waste and conserve water.
- (d) Upon a determination that an emergency situation does exist, the priority point system set forth in 785:50-7-5 shall be utilized to review pending grant applications and grant applications filed after the effective date of these rules.
- (e) For purposes of evaluating, approving and funding an application for a grant, eligible project costs shall include, in addition to those project costs described in 785:50-3-1:
- (1) Architecture and/or engineer fees related to the project.
 - (2) Fees for soil testing.
 - (3) Fees for surveying.
 - (4) Payments to contractor(s) for construction of the improvements.
 - (5) Legal fees and expenses of counsel for the applicant which are related to the project.
 - (6) Services of full-time or part-time inspector.
 - (7) Administrative expenses shall not be eligible project costs.
- (f) Grant application must be fully completed including the verification form signed and notarized by the applicant representative, and must have a signature of an attorney representing applicant.

[Source: Added at 35 Ok Reg 2243, eff 9-14-18]

785:50-6-3. Emergency grant priority point system

(a) Basis of priority system and formula.

- (1) **General description.** The priority system consists of a mathematical equation rating the applicants and the proposed project in accordance with the requirements of the statutes by means of a formula awarding points for each criteria used in the evaluation. The maximum point total under the system is one hundred twenty (120). The Board may consider each month, and in order from the highest rating, those applications awarded point ratings of 60 or more priority points. If the Board determines that the applicant with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration. Applications preliminarily determined by Board staff to have point ratings of 59 or fewer shall be deemed denied; provided, such applications may be reevaluated if the applicant submits additional information showing changed circumstances within 120 days after the date of staff's determination, and such information improves the applicant's preliminary point rating.
- (2) **Statutory criteria.** The basis of the priority formula has been developed from the enacting legislation. The two primary statutory criteria are:
 - (A) The emergency situation of the applicant.
 - (B) Whether or not the applicant can reasonably finance the project without assistance from the state.

(3) **Total priority points.** Total priority points will be calculated and awarded for individual projects; therefore, eligible entities will be required to complete separate applications for each project for which grant funds are requested. Priority lists compiled and published by other Oklahoma State agencies and/or seniority dates of applications submitted shall be utilized to decide ties in point totals among applicants.

(b) **Priority formula for eligible entities other than school districts.**

(1) **Formula.** The following formula has been devised to rank grant applications: $P + E + WR + I + L + MHI + FP + AR + BP - AN$, where:

- (A) P = Priority ranking
- (B) E = Emergency ranking
- (C) W R = Water and sewer rate
- (D) I = Indebtedness per customer
- (E) L = Amount of local contribution toward project
- (F) MHI = Median Household Income
- (G) FP = Applicant's ability to finance project
- (H) AR = Amount of grant requested
- (I) BP = Benefit of project to other systems
- (J) AN = Application number

(2) **Explanation.** Each of these criteria are explained below:

(A) **Emergency rankings (E).** Emergencies are ranked by severity with Category 1 being the most severe and Category 2 being the least severe. Points awarded range from a maximum of 50 points for Category 1 and a minimum of 40 points for Category 2. If an applicant requests funds to correct more than one emergency category need, only the amount of assistance needed to correct the most severe need will be considered in the calculation for the application ranking. The applicant will be informed that separate and additional applications must be filed for other needs and projects. An applicant who receives funding for a project under any of the listed emergencies may not reapply under the same emergency. The two (2) emergency ranking categories are as follows:

(i) **Category 1.** Total loss of a water supply or sewage system or loss of a major component of a system due to a natural or unforeseen disaster which could not have been prevented by the exercise of reasonable care by the applicant. Examples of such disasters may include but are not necessarily limited to: tornado; flood; fire; severe weather; landslide; sudden loss of a water supply system; sudden collapse of a major structural portion of a system; signs of imminent failure of a public water supply lake dam, spillway or outlet structure such as settlement or slumping of the crest, excessive seepage, slides, cracks or sloughs along the upstream and downstream slopes of the dam. Also included under this category is the construction of a new water system to serve areas where residents are supplied by domestic sources or domestic systems whose quantity does not supply the basic needs of the residents. In such cases where new or extended systems are proposed, the Board shall consider and determine whether an adequate

population density is available to utilize the proposed system. Notwithstanding any other provisions of this Chapter, if the density is preliminarily determined by Board staff to be inadequate for the applicant to feasibly provide operation and maintenance of the new or extended system, then the application will not be recommended for approval until the proper density, which will make the extension feasible, is achieved. Category 1 emergencies receive 50 points.

(ii) **Category 2.** Water or sewer emergencies which could not have been prevented by the exercise of reasonable care by the applicant and which cause immediate danger or an imminent health hazard to the community or other nearby citizens. Such emergencies may include but are not necessarily limited to: users or systems whose water supply is deemed to be dangerous or unhealthy; systems whose supply source becomes contaminated by man-made pollution caused by a person other than the applicant; overflow of raw sewage into homes or streets due to structural failure in the collection mains and/or structural, mechanical, or electrical failure at a lift station due to disasters which could not have been prevented by the exercise of reasonable care by the applicant, including but not limited to tornado, flooding, fire, or landslides; sewage treatment systems which discharge raw or inadequately treated sewage effluent whose quality and/or quantity causes an immediate and imminent health or safety danger to a public water supply due to a structural, mechanical or electrical failure of a process unit(s) caused by disasters which could not have been prevented by the exercise of reasonable care by the applicant, including but not limited to tornado, flooding, fire, or landslides. Also included under this category is the construction of a new water system to serve areas where residents are supplied by domestic sources or domestic systems whose quality is dangerous or unhealthy as a consequence of circumstances that could not have been prevented by the exercise of reasonable care by the applicant. In such cases where new or extended systems are proposed, the Board shall consider and determine whether an adequate population density is available to utilize the proposed system. Notwithstanding any other provision of this Chapter, if the density is preliminarily determined by Board staff to be inadequate for the applicant to feasibly provide operation and maintenance of the new or extended system, then the application will not be recommended for approval until the proper density, which will make the extension feasible, is achieved. Category 2 emergencies receive 40 points.

(B) Water and sewer rate structure (WR).

(i) For systems providing water service only:

- (I) If the cost per 5000 gallons is \$50.00 or greater, the applicant shall be given 10 points.
 - (II) If the cost per 5000 gallons is \$45.00 to \$49.99, the applicant shall be given 9 points.
 - (III) If the cost per 5000 gallons is \$40.00 to \$44.99, the applicant shall be given 8 points.
 - (IV) If the cost per 5000 gallons is \$35.00 to \$39.99, the applicant shall be given 7 points.
 - (V) If the cost per 5000 gallons is \$30.00 to \$34.99, the applicant shall be given 6 points.
 - (VI) If the cost per 5000 gallons is \$25.00 to \$29.99, the applicant shall be given 5 points.
 - (VII) If the cost per 5000 gallons is \$23.00 to \$24.99, the applicant shall be given 4 points.
 - (VIII) If the cost per 5000 gallons is \$21.00 to \$22.99, the applicant shall be given 3 points.
 - (IX) If the cost per 5000 gallons is \$19.00 to \$20.99, the applicant shall be given 2 points.
 - (X) If the cost per 5000 gallons is \$18.00 to \$18.99, the applicant shall be given 1 point.
 - (XI) If the cost per 5000 gallons is less than \$18.00, the applicant shall be given 0 points.
- (ii) For systems providing water and sewer services:
- (I) If the cost per 5000 gallons is \$56.00 or greater, the applicant shall be given 10 points.
 - (II) If the cost per 5000 gallons is \$53.00 to \$55.99, the applicant shall be given 9 points.
 - (III) If the cost per 5000 gallons is \$49.00 to \$52.99, the applicant shall be given 8 points.
 - (IV) If the cost per 5000 gallons is \$45.00 to \$48.99, the applicant shall be given 7 points.
 - (V) If the cost per 5000 gallons is \$41.00 to \$44.99, the applicant shall be given 6 points.
 - (VI) If the cost per 5000 is \$37.00 to \$40.99, the applicant shall be given 5 points.
 - (VII) If the cost per 5000 gallons is \$34.00 to \$36.99, the applicant shall be given 4 points.
 - (VIII) If the cost per 5000 gallons is \$32.00 to \$33.99, the applicant shall be given 3 points.
 - (IX) If the cost per 5000 gallons is \$31.00 to \$31.99, the applicant shall be given 2 points.
 - (X) If the cost per 5000 gallons is \$30.00 to \$30.99, the applicant shall be given 1 point.
 - (XI) If the cost per 5000 gallons is less than \$30.00, the applicant shall be given 0 points.
- (iii) For systems providing sewer service only:
- (I) If the cost per connection per month is \$34.00 or greater, the applicant shall be given 10 points.
 - (II) If the cost of connection per month is \$32.00 to \$33.99, the applicant shall be given 9 points.

- (III) If the cost of connection per month is \$30.00 to \$31.99, the applicant shall be given 8 points.
- (IV) If the cost of connection per month is \$28.00 to \$29.99, the applicant shall be given 7 points.
- (V) If the cost of connection per month is \$26.00 to \$27.99, the applicant shall be given 6 points.
- (VI) If the cost of connection per month is \$24.00 to \$25.99, the applicant shall be given 5 points.
- (VII) If the cost of connection per month is \$22.00 to \$23.99, the applicant shall be given 4 points.
- (VIII) If the cost of connection per month is \$20.00 to \$21.99, the applicant shall be given 3 points.
- (IX) If the cost of connection per month is \$18.00 to \$19.99, the applicant shall be given 2 points.
- (X) If the cost of connection per month is \$16.00 to \$17.99, the applicant shall be given 1 point.
- (XI) If the cost of connection per month is less than \$16.00, the applicant shall be given 0 points.

(iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat water or sewer rate (unmetered) without regard to the amount of water or sewer used, and 2 points for a decreasing block rate which lowers the cost per 1000 gallons for customers using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons above the minimum. Two points will be added for systems using an increasing block rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under the category the maximum number of points is 13 and the minimum is -3 points.

(C) Indebtedness per customer (I). The indebtedness per customer ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of customers served.

- (i) If the indebtedness per customer is \$20.00 or greater, the applicant shall be given 10 points.
- (ii) If the indebtedness per customer is \$17.50 to \$19.99, the applicant shall be given 9 points
- (iii) If the indebtedness per customer is \$16.00 to \$17.49, the applicant shall be given 8 points.
- (iv) If the indebtedness per customer is \$14.50 to \$15.99, the applicant shall be given 7 points.
- (v) If the indebtedness per customer is \$13.00 to \$14.49, the applicant shall be given 6 points.
- (vi) If the indebtedness per customer is \$11.50 to \$12.99, the applicant shall be given 5 points.
- (vii) If the indebtedness per customer is \$10.00 to \$11.49, the applicant shall be given 4 points.
- (viii) If the indebtedness per customer is \$8.50 to \$9.99, the applicant shall be given 3 points.

- (ix) If the indebtedness per customer is \$7.00 to \$8.49, the applicant shall be given 2 points.
- (x) If the indebtedness per customer is \$5.50 to \$6.99, the applicant shall be given 1 point.
- (xi) If the indebtedness per customer is less than \$5.50, the applicant shall be given 0 points.

(D) Local participation (L).

- (i) The Board will not approve nor fund any grant application unless the applicant contributes at least fifteen percent (15%) of the total cost of the proposed project.
- (ii) The local participation ranking is based on the percent of the total project cost which is locally funded through cash contributions, or incurrence of additional debt through a loan. Grant funds received through other agencies will not be counted as local funding. Points awarded for participation are as follows:

- (I) If the percentage of the project cost locally funded is 90% or greater, the applicant shall be given 10 points.
- (II) If the percentage of the project cost locally funded is at least 80% but less than 90%, the applicant shall be given 9 points.
- (III) If the percentage of the project cost locally funded is at least 70% but less than 80%, the applicant shall be given 8 points.
- (IV) If the percentage of the project cost locally funded is at least 60% but less than 70%, the applicant shall be given 7 points.
- (V) If the percentage of the project cost locally funded is at least 50% but less than 60%, the applicant shall be given 6 points.
- (VI) If the percentage of the project cost locally funded is at least 40% but less than 50%, the applicant shall be given 5 points.
- (VII) If the percentage of the project cost locally funded is at least 30% but less than 40%, the applicant shall be given 4 points.
- (VIII) If the percentage of the project cost locally funded is at least 25% but less than 30%, the applicant shall be given 3 points.
- (IX) If the percentage of the project cost locally funded is at least 20% but less than 25%, the applicant shall be given 2 points.
- (X) If the percentage of the project cost locally funded is at least 15% but less than 20%, the applicant shall be given 1 point.
- (XI) If the percentage of the project cost locally funded is less than 15%, the application shall not be approved nor funded.

(E) Median Household Income (MHI). The median household income is calculated according to the most current federal decennial

census or American Community Survey data available.

(i) The county median figure for median household income will be used in cases where data for the applicant's service area is not available.

(ii) Points are awarded as follows:

(I) If the median household income is less than \$17,000, the applicant shall be given 10 points.

(II) If the median household income is \$17,000 to \$20,999, the applicant shall be given 9 points.

(III) If the median household income is \$21,000 to \$23,999, the applicant shall be given 8 points.

(IV) If the median household income is \$24,000 to \$28,999, the applicant shall be given 7 points.

(V) If the median household income is \$29,000 to \$31,999, the applicant shall be given 6 points.

(VI) If the median household income is \$32,000 to \$36,999, the applicant shall be given 5 points.

(VII) If the median household income is \$37,000 to \$39,999, the applicant shall be given 4 points.

(VIII) If the median household income is \$40,000 to \$44,999, the applicant shall be given 3 points.

(IX) If the median household income is \$45,000 to \$47,999, the applicant shall be given 2 points.

(X) If the median household income is \$48,000 to \$51,999, the applicant shall be given 1 point.

(XI) If the median household income is \$52,000 or greater, the applicant shall be given 0 points.

(F) Ability to finance project (FP).

(i) The maximum points possible under this criterion for the ability of the applicant to finance the project without assistance from the state is 12.

(ii) The FP ranking gives a standardized account of the amount the existing water/sewer rates would have to be raised in order for the applicant to finance the project through a loan. A standard interest rate and term of 5% for 25 years is assumed. The cost per customer per month is calculated using the following formula: FP equals the product of AR multiplied by (0.0710), divided by the product of (12) multiplied by (C), where:

(I) FP = Estimate of the amount monthly water/sewer rates would have to be raised to finance the amount of grant request for the project.

(II) AR = Amount of grant request. For this calculation, the amount of available reserve not dedicated to the project will be deducted from the amount requested.

(III) (0.0710) = Annual rate factor for a 25 year loan at 5%

(IV) (12) = Number of months per year.

(V) (C) = Number of customers

(iii) In cases where the applicant's current revenues exceed expenses by a large margin, the Board will appropriately adjust the (AR) figure to accurately represent the applicant's ability to finance the project.

(iv) Points in the FP ranking are awarded as follows:

- (I) If the ability to finance the project is \$10.00 or greater, the applicant shall be given 12 points.
- (II) If the ability to finance the project is \$8.00 to \$9.99, the applicant shall be given 11 points.
- (III) If the ability to finance the project is \$6.00 to \$7.99, the applicant shall be given 10 points.
- (IV) If the ability to finance the project is \$5.00 to \$5.99, the applicant shall be given 9 points.
- (V) If the ability to finance the project is \$4.00 to \$4.99, the applicant shall be given 8 points.
- (VI) If the ability to finance the project is \$3.00 to \$3.99, the applicant shall be given 7 points.
- (VII) If the ability to finance the project is \$2.00 to \$2.99, the applicant shall be given 6 points.
- (VIII) If the ability to finance the project is \$1.75 to \$1.99, the applicant shall be given 5 points.
- (IX) If the ability to finance the project is \$1.50 to \$1.74, the applicant shall be given 4 points.
- (X) If the ability to finance the project is \$1.25 to \$1.49, the applicant shall be given 3 points.
- (XI) If the ability to finance the project is \$1.00 to \$1.24, the applicant shall be given 2 points.
- (XII) If the ability to finance the project is \$0.75 to \$0.99, the applicant shall be given 1 point.
- (XIII) If the ability to finance the project is less than \$0.75, the applicant shall be given 0 points.

(G) Amount of grant requested (AR).

(i) Points under this category for amount of grant requested are distributed as follows:

- (I) \$95,001 to \$100,000: -5
- (II) \$90,001 to \$95,000: -4
- (III) \$85,001 to \$90,000: -3
- (IV) \$80,001 to \$85,000: -2
- (V) \$75,001 to \$80,000: -1
- (VI) \$70,001 to \$75,000: 0
- (VII) \$65,001 to \$70,000: +1
- (VIII) \$60,001 to \$65,000: +2
- (IX) \$55,001 to \$60,000: +3
- (X) \$50,001 to \$55,000: +4
- (XI) \$45,001 to \$50,000: +5
- (XII) \$40,001 to \$45,000: +6
- (XIII) \$35,001 to \$40,000: +7
- (XIV) \$30,001 to \$35,000: +8
- (XV) \$25,001 to \$30,000: +9
- (XVI) \$25,000 or less: +10

(ii) If a project exceeds \$75,000 and the amount of funds needed over and above the OW RB grant request are being secured through a loan from OWRB, then there will be no deduction of points under this category.

(H) **Project benefit to other systems (BP).** If the applicant's project will benefit other adjacent systems as well as applicant's, or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.

(I) **Number of grants.** Since it is anticipated that entities who have received emergency grants might submit additional grant applications for approval, points will be deducted from such applications according to the following schedule; provided, points shall not be deducted from such any emergency grant which was funded 10 or more years prior to the date of Board action on the pending application and which has been subjected to a Board audit:

- (i) 1 prior grant = 5 reduction points
- (ii) 2 prior grants = 8 reduction points
- (iii) 3 prior grants = 10 reduction points
- (iv) 4 prior grants = 12 reduction points
- (v) 5 or more prior grants = 14 reduction points

(c) Priority formula for school districts.

(1) School districts, created under Article V of the 1971 School Code, 70 O.S. 1981, §5-101 et seq., are political subdivisions of the State, and therefore are eligible for financial assistance under the Board's program.

(2) In evaluating and prioritizing grant applications from school districts similar criteria to those applied to municipalities, towns and rural water districts will be utilized.

(3) In developing a priority formula for school district applicants, again, the two primary statutory criteria are:

- (A) The emergency situation of the school district.
- (B) Whether the school district can reasonably finance the emergency project without the Board's assistance.

(4) The emergency aspect of each project is ranked with a maximum of 50 points being given to the most serious situations and a minimum of 30 points to the least serious. The emergency categories and points given for each are the same as those listed in (b)(2) of this Section.

(5) The school district's financial situation is given a maximum of 66 points and is derived by analyzing the following:

- (A) Local tax levies
- (B) Bonded indebtedness
- (C) Local contribution
- (D) Median household income within the school district's geographical area
- (E) Applicant's ability to finance project
- (F) Amount of grant requested
- (G) Application number

(6) Priority lists compiled and published by other Oklahoma state agencies shall be utilized to assess the seriousness of the emergency.

(7) Using the previously mentioned analysis, the following formula has been devised to rank school districts' grant applications: $P = E + LT + BI +$

$L + MHI + FP + AR - AN$, where:

- (A) P = Priority ranking total points
- (B) E = Emergency ranking
- (C) LT = Local tax levies
- (D) BI - Bonded indebtedness
- (E) L = School's contribution toward the project
- (F) MHI = Median household income of population within a school district
- (G) FP = Applicant's ability to finance project
- (H) AR = Amount of grant requested
- (I) AN = Application number

(8) The criteria E, MHI, FP, AR and AN are the same as that set forth in (b) of this section. LT, BI and L are explained as follows:

(A) **Local tax levies (LT).** Points awarded under this category for local tax levies are based on the total amount of mills levied, as follows:

- (i) 95 to 100.00 mills = 13 points
- (ii) 90 to 94.99 mills = 11 points
- (iii) 85 to 89.99 mills = 10 points
- (iv) 80 to 84.99 mills = 8 points
- (v) 70 to 79.99 mills = 6 points
- (vi) 60 to 69.99 mills = 4 points
- (vii) 55 to 59.99 mills = 2 points
- (viii) 50 to 54.99 mills = 1 point
- (ix) 45 to 49.99 mills = 0 points
- (x) 40 to 44.99 mills = -1 points
- (xi) Less than 40 mills = -2 points

(B) **Bonded indebtedness (BI).**

(i) Priority points for Bonded Indebtedness are as follows:
Percentage of Indebtedness Points

- (I) 95% to 100% of debt limitation = 10 points
- (II) 90% to 94.99% of debt limitation = 8 points
- (III) 80% to 89.99% of debt limitation = 7 points
- (IV) 75% to 79.99% of debt limitation = 6 points
- (V) 70% to 74.99% of debt limitation = 5 points
- (VI) 65% to 69.99 of debt limitation = 4 points
- (VII) 60% to 64.99% of debt limitation = 3 points
- (VIII) 55% to 59.99% of debt limitation = 2 points
- (IX) 50% to 54.99% of debt limitation = 1 point
- (X) 45% to 49.99% of debt limitation = 0 points
- (XI) 40% to 44.99% of debt limitation = -1 point
- (XII) 30% to 39.99% of debt limitation = -2 points
- (XIII) Less than 30% of debt limitation = -3 points

(ii) A deduction of one (1) point from the indebtedness ranking total will be made for applicants with 75% of existing debts financed at rates of 5% or less, and one (1) point will be added if 75% of existing debts are financed at rates greater than 10%.

(C) **Local participation (L).**

(i) In order to achieve the maximum benefit from available grant funds, the Board will not approve nor fund any grant

application unless the applicant contributes at least fifteen percent (15%) of the total cost of the proposed project.

(ii) The local participation ranking is based on the percent of the total project cost which is locally funded through cash contributions or incurrence of additional debt through a loan. Points awarded are as follows:

(I) If the percentage of the project cost locally funded is 90% or greater, the applicant shall be given 10 points.

(II) If the percentage of the project cost locally funded is at least 80% but less than 90%, the applicant shall be given 9 points.

(III) If the percentage of the project cost locally funded at least 70% but less than 80%, the applicant shall be given 8 points.

(IV) If the percentage of the project cost locally funded at least 60% but less than 70%, the applicant shall be given 7 points.

(V) If the percentage of the project cost locally funded at least 50% but less than 60%, the applicant shall be given 6 points.

(VI) If the percentage of the project cost locally funded is at least 50% but less than 60%, the applicant shall be given 5 points.

(VII) If the percentage of the project cost locally funded is at least 40% but less than 50%, the applicant shall be given 4 points.

(VIII) If the percentage of the project cost locally funded is at least 25% but less than 30%, the applicant shall be given 3 points.

(IX) If the percentage of the project cost locally funded is at least 20% but less than 25%, the applicant shall be given 2 points.

(X) If the percentage of the project cost locally funded is at least 15% but less than 20%, the applicant shall be given 1 point.

(XI) If the percentage of the project cost locally funded is less than 15%, the application shall not be approved nor funded.

(iii) Under the Ability to Finance Project (FP) category the Number of Customers (C) as previously discussed will be replaced by the Number of Families within a school district. Points awarded under the FP category are the same as discussed and shown in (b) of this Section.

[Source: Added at 35 Ok Reg 2243, eff 9-14-18; Amended at 36 Ok Reg 1332, eff 8-11-19]

785:50-6-4. Disbursement of grant funds

(a) Notwithstanding and in addition to the provisions set out in (a) of this Section, the following specific provisions shall apply in all instances of the disbursement of grant (financial assistance) funds under the Water and Sewer Financial Assistance Program.

(b) Upon approval of a grant application, the Board shall furnish to the applicant a letter notice of grant approval and Board commitment. The notice and commitment shall advise the applicant that the grant application has been formally and officially approved by the Board and that the grant funds approved shall be made available to the applicant by the Board for such purposes and upon such other terms and conditions as the Board may require.

(c) Within ninety (90) days following the date of the letter notice of approval, the applicant shall file with the Board an acceptable bid for completion of the proposed project. Where determined necessary and appropriate, the Board or its staff may permit additional time to file such a bid; provided, notwithstanding any approval of additional time, if such a bid is not filed within one (1) year following the date of Board approval of the application, then the Board's approval shall expire and no funds shall be released; provided, however, if an acceptable bid for completion has not been filed due to circumstances that lay outside the applicant's control, the applicant may request, and the Board may approve or deny, a one-time extension of time not to exceed six months to file an acceptable bid. Provided further, in the event of such expiration the applicant may file a new application which shall be subject to due consideration on its own merit.

(d) For purposes of final disbursement of funds to the applicant, the grant amount initially approved may be lowered by the Board based on actual project costs.

(e) As the Board may determine and direct, grant funds may be disbursed to the applicant in installments or in lump sum, and may be disbursed prior to, during or upon completion of the project, all as deemed appropriate under the project circumstances presented. However, prior to the disbursement of any grant funds to the applicant, the applicant must:

(1) Submit to the Board such evidence as the Board may require to establish that the emergency continues to exist; and

(2) Establish, in such manner as is acceptable to the Board or its staff, a special and separate federally insured fund or account (within applicant's accounting system) in and through which the grant proceeds shall be administered and accounted for by the applicant.

(f) In all instances, the Board reserves the right to impose additional reasonable and necessary conditions or requirements for the disbursement of grant funds, all as may be deemed appropriate by the Board under the circumstances of the project for which grant assistance is made available.

[Source: Added at 35 Ok Reg 2243, eff 9-14-18]

SUBCHAPTER 7. WATER AND SEWER PROGRAM (STATE LOAN PROGRAM REVENUE BOND) REQUIREMENTS AND PROCEDURES

785:50-7-1. General procedures

(a) **General procedures.** The general procedure to be followed in the financial assistance application, review and consideration process for financial assistance under the water and sewer program authorized by 82 O.S., §§1085.31 through 1085.49 shall be as follows:

(1) Pre-application conference.

(A) While not specifically required, all potential applicants are encouraged to initially contact the Board for purposes of making arrangements for participating in a pre-application conference between Board staff, applicant (or representative), applicant's legal, financial, engineering advisors, and such other persons whose

attendance and participation may be deemed appropriate and beneficial.

(B) At the pre-application conference, preliminary matters respecting the applicant, the proposed project and the application for assistance may be generally discussed in an effort to familiarize all concerned parties with the financial assistance program and applicable application requirements and procedures.

(2) Application.

(A) Applicant shall initiate application review and consideration by submission to the Board of applicant's application for financial assistance.

(B) In all instances, applications must be written and in a form which meets the requirements of Subchapter 5.

(3) Submittal to Board. Upon completion of staff review, the submitted application (with staff recommendations, if any) shall be placed upon the Board's agenda for the next regular (or special) Board meeting and shall be thereby submitted to the Board for action as described in (b) below.

(b) Board action.

(1) After reviewing and considering the submitted application, the Board may proceed to take one of the following alternative forms of Board action on the application:

(A) The Board may approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be necessary to effectuate loan closing and/or the disbursement of funds.

(B) The Board may retain the application under advisement for further consideration or continue hearing on same for later ruling and disposition, and, the Board may withhold ruling on the application pending further hearing and/or submission to the Board of such further or additional information as the Board may require for application consideration purposes.

(C) The Board may reject and deny the application, in whole or in part.

(D) The Board may approve and grant the application, in whole or in part, such approval being conditioned and contingent upon the existence of adequate and available loan and/or grant funds or conditioned and contingent upon receipt and approval by Board staff of any outstanding and necessary material, information, documents, verifications or other authorization.

(2) Upon approval and grant of an application, the Board may authorize loan closing and the execution of all necessary closing documents and instruments by the Chairman of the Board, or other designated Board member, and may accordingly authorize and provide for disbursements and may authorize such further or additional action as may be necessary to complete and implement the approved transaction.

[Source: Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 31 Ok Reg 2512, eff 9-12-14; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-7-2. Approval criteria

(a) General approval standards and criteria. In the review and consideration of applications for financial assistance under the water and sewer program, the Board

shall give consideration to the following general and non-exclusive criteria for application approval:

- (1) **Compliance with laws.** The application and proposed project must be found to be in compliance with all applicable and relevant federal, state and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.
- (2) **Eligibility.** The applicant and proposed project must be determined to be eligible for the assistance sought.
- (3) **Local need, support and priority.** The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs. The Board shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants.
- (4) **Availability of other assistance.** The Board shall consider the feasibility and availability of alternative sources of revenue which could be obtained and utilized by applicant for project financing.
- (5) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project as a whole including proposed revenues from the project and the adequacy and reliability of estimated revenues necessary for loan repayment when indicated.
- (6) **Project feasibility.** The Board shall consider from the engineering data submitted and otherwise available whether the proposed project appears to be feasible, and must determine as a prerequisite for approval and funding that it is cost effective.
- (7) **Statewide needs and public interest.** The Board shall give consideration to the relationship between the proposed project and the overall water resource development needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.
- (8) **Availability of funds.** The Board shall take into consideration the current and anticipated availability of assistance funds needed to provide the financial assistance requested.

(b) Criteria applicability.

- (1) The general criteria set forth in (a) and (c) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board.
- (2) Such criteria shall not be deemed appropriate for strict application and interpretation nor shall such criteria be deemed exclusive.
- (3) In all instances, each individual application and project must be reviewed and considered on its own individual merits.
- (4) The criteria and standards set forth in (a) and (c) of this Section shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of Board's judgment and discretion.

(c) Criteria for denying an application. The Board may deny an application for a State Loan Program Revenue Bond Loan for any of the following reasons:

- (1) The applicant or the entity which stands to receive the benefit of the financial assistance is not an eligible entity.
- (2) The applicant has had improper or unsound management in the past.
- (3) The applicant's financial condition is not sound enough to assure the Board that the loan would be satisfactorily repaid (including but not limited

to circumstances such as inability to meet debt service, inability to meet any applicable rate covenant or additional indebtedness requirements, a substantial increase in operator and maintenance costs due to the proposed project, substantial revenue collection problems, substantial negative financial trends, a default or record of late payment(s) on previous indebtedness, etc.)

(4) The economic conditions pertinent for the applicant show negative trends (including but not limited to conditions such as substantial declines in sales tax revenues, population, per capita income, building permits, or water and/or sewer connections; a substantial increase in unemployment; or detrimental changes in the bases of ten largest customers or ten largest taxpayers).

(5) The project is not cost effective.

(6) Any other reason based upon applicable law, applicable requirements of the pertinent bond resolution governing use of the bond proceeds, or the Board's judgment and discretion.

[Source: Amended at 14 Ok Reg 2788, eff 7-1-97; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 35 Ok Reg 2243, eff 9-14-18; Amended at 36 Ok Reg 1332, eff 8-11-19]

785:50-7-3. Evaluation procedures for grant applications [REVOKED]

[Source: Amended at 9 Ok Reg 1683, eff 5-11-92; Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 13 Ok Reg 777, eff 11-29-95 (emergency); Amended at 13 Ok Reg 1753, eff 5-28-96; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 18 Ok Reg 2247, eff 7-1-01; Amended at 24 Ok Reg 2453, eff 6-25-07; Amended at 31 Ok Reg 2512, eff 9-12-14; Revoked at 35 Ok Reg 2243, eff 9-14-18]

785:50-7-4. Evaluation procedures for funding special projects

The following evaluation and selection criteria shall be considered by the Board in reviewing applications for special projects contract financial assistance under the water and sewer program:

- (1) The needs of the area to be served by the project in relation to the needs of other areas requiring state assistance;
- (2) The benefit of the project to the area to be served by the project;
- (3) Whether the applicant has previously received financial assistance by a grant from the Board;
- (4) The extent of local participation, if any, in the project.
- (5) As a prerequisite for application approval and funding, the project must be cost effective.

[Source: Amended at 15 Ok Reg 2881, eff 7-1-98]

785:50-7-5. Emergency grant priority point system [REVOKED]

[Source: Amended at 9 Ok Reg 1683, eff 5-11-92; Amended at 10 Ok Reg 3361, eff 6-25-93; Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 13 Ok Reg 777, eff 11-29-95 (emergency); Amended at 13 Ok Reg 1753, eff 5-28-96; Amended at 14 Ok Reg 2788, eff 7-1-97; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 16 Ok Reg 2691, eff 7-1-99; Amended at 17 Ok Reg 2772, eff 7-1-00; Amended at 18 Ok Reg 2247, eff 7-1-01; Amended at 23 Ok Reg 3086, eff 7-27-06; Amended at 24 Ok Reg 2453, eff 6-25-07; Amended at 26 Ok Reg 1715, eff 6-11-09; Amended at 30 Ok Reg 976, eff 6-13-13; Amended at 31 Ok Reg 2512, eff 9-12-14; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 33 Ok Reg 1954, eff 9-11-16; Revoked at 35 Ok Reg 2243, eff 9-14-18]

785:50-7-6. Terms and conditions

(a) Limitation.

- (1) For an approved project and application for financial assistance under the water and sewage program, the Board is authorized to loan and advance to the applicant sufficient funds as are necessary and approved for the

project in compliance with applicable provisions of indentures for bonds or investments certificates issued by the Board to provide funding for such loans.

(2) The Board may not make grants exceeding the total amount of One Hundred Thousand Dollars (\$100,000.00) to any single eligible entity during any fiscal year.

(3) The Board shall not approve nor fund more than one emergency grant to any eligible entity in any twelve month period.

(b) Evidence of indebtedness. The financial assistance loans contemplated within this Chapter of these rules shall be provided by the Board for approved projects pursuant to such notes, bonds, revenue bonds or other appropriate form of evidence of indebtedness from the applicant as the Board may require.

(c) Loan interest and repayment.

(1) The financial assistance loan repayment interest rate to be paid by applicant to the Board shall be as determined by the Board and shall be payable by applicant under such terms and conditions as the Board may require.

(2) The Board may, in its judgment and discretion, provide for the term, condition, manner, form and schedule of applicant's repayment to the Board of principal and interest, and the Board may, in its discretion, defer the repayment of principal or an installment on such assistance for a total cumulative deferment period not to exceed five (5) years.

(d) Security for assistance.

(1) As security for the assistance loan provided by the Board to an approved applicant, applicant must provide if required by the Board a mortgage on any or all facilities of the project for which application is made.

(2) The Board shall require a pledge and lien on revenues to be derived from the operation of the project.

(3) For purposes of this rule, the pledge of and lien on project revenues shall be a pledge of and lien on such project revenues as is necessary to secure repayment of the loan obligation of applicant.

(4) Also, for purposes of this section, if the specific project for which application is made and approved is not of itself a revenue producing unit, then such pledge of and lien on revenues shall be on the revenues of the revenue producing system of which the specific project is a part: and on such other additional revenue sources or systems which may be pledged by applicant to satisfy the loan security requirements necessary to obtain assistance from the Board.

(5) The Board may require additional security which the Board deems necessary, which such additional security may include such pledges, liens, revenues and/or mortgages on additional facilities or systems of and as may be tendered by the applicant.

[Source: Amended at 15 Ok Reg 2881, eff 7-1-98]

785:50-7-7. Disbursement of funds

(a) Conditions for disbursement.

(1) After an application for financial assistance under the program authorized by Sections 1085.31 through 1085.49 of Title 82 of the Oklahoma Statutes has been approved by the Board, the following conditions and requirements shall be met prior to the release and

disbursement of any assistance funds:

(A) Unless otherwise provided and approved by the Board Staff, applicant must submit to the Board all plans, specifications and engineering reports for the project for staff approval all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project.

(B) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents for loan closing, including but not limited to all mortgages, notes, financing statements and pledges of project security and revenues where appropriate.

(C) If not previously provided, applicant shall provide Board with a written and verified statement setting forth:

- (i) the amount of funds necessary for release and disbursement at closing which funds are needed for initial commencement of the project; and,
- (ii) information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project.

(2) At the time of and upon compliance with the requirements in (1) of this subsection, the Board may release, advance and disburse financial assistance funds to the applicant for the approved project.

(b) Disbursement of assistance funds.

(1) Unless otherwise provided and approved by the Board, the total amount of financial assistance funds authorized for loan or grant under the program authorized by Sections 1085.31 through 1085.49 of Title 82 of the Oklahoma Statutes to the applicant shall not be released and disbursed to applicant in a total lump sum but instead shall be disbursed to applicant in partial amounts at agreed upon intervals and stages of construction, all as provided within the financial assistance agreement.

(2) In conjunction with the rule, the Board may require applicant to submit to the Board prior to any release or disbursement of funds such invoices, receipts, contracts, verifications, evidence of expenditure or encumbrance, construction status and progress reports or other information as the Board may require.

(3) Unless otherwise provided and approved by the Board Staff, the Board shall not approve the release nor disbursement of more than ninety-five percent (95%) of the total loan funds authorized for loan until such time as the project has been completed, inspected by the project engineer and the Board, and accepted by the applicant. Furthermore, unless otherwise provided and approved by the Board, the Board shall not release nor disburse more than ninety-five percent (95%) of the total loan funds authorized for engineering services until the project engineer has prepared and submitted three sets of as built project plans (if different from original plans) to the applicant and one set to the Board.

(c) Disbursement of contract funding.

(1) Upon approval of an application for contract funding under the Water and Sewer Financial Assistance Program, the Board shall furnish to the applicant a letter containing notice of application approval and a draft contract.

- (2) The contract shall contain, among others, the following provisions:
- (A) A description of the project;
 - (B) The requirement that the applicant comply with applicable competitive bidding provisions in the acquisition of materials and services used for the project;
 - (C) The requirement that all projects less than \$50,000.00 shall have a maintenance bond, letter of credit, or the equivalent equal to the project cost for a period of one year after construction has been completed
 - (D) The requirement that proper invoices be submitted monthly to the Board as funds are expended;
 - (E) The requirement that all books and records of applicant containing information pertaining to the project be available for inspection and audit.
- (3) The funding contemplated by approval of the application and execution of the contract shall be paid to applicant upon submittal and acceptance of invoices for the work performed.

[Source: Amended at 9 Ok Reg 1683, eff 5-11-92; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 13 Ok Reg 777, eff 11-29-95 (emergency); Amended at 13 Ok Reg 1753, eff 5-28-96; Amended at 26 Ok Reg 1715, eff 6-11-09; Amended at 33 Ok Reg 1954, eff 9-11-16; Amended at 34 Ok Reg 2179, eff 9-11-17; Amended at 35 Ok Reg 2243, eff 9-14-18]

SUBCHAPTER 8. RURAL ECONOMIC ACTION PLAN (REAP) GRANT PROGRAM REQUIREMENTS AND PROCEDURES

785:50-8-1. Program description

The Rural Economic Action Plan ("REAP") grant program is authorized by 62 O.S., §2003 and following. This law authorizes the Board and other governmental persons to make grants to certain qualified entities for qualified project purposes according to certain requirements. This Subchapter interprets and implements the law authorizing this grant program by the Board. The Board's rules applicable to REAP grants shall be construed so as to consider only the REAP grant program administered by the Board, and shall not be construed so as to consider REAP grant programs administered by other governmental persons.

[Source: Added at 13 Ok Reg 3733, eff 7-18-96 (emergency); Added at 14 Ok Reg 2788, eff 7-1-97; Amended at 15 Ok Reg 54, eff 10-3-97 (emergency); Amended at 15 Ok Reg 2881, eff 7-1-98]

785:50-8-2. Definitions

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

"Applicant" means a qualified entity which submits an application for a REAP grant on its own behalf, or for whom an application is submitted by a COG; a COG shall be deemed not to be an applicant.

"COG" means one of the following organizations:

- (A) Association of Central Oklahoma Governments;
- (B) Association of South Central Oklahoma Governments; (C) Central Oklahoma Economic Development District;
- (D) Eastern Oklahoma Economic Development District;
- (E) Grand Gateway Economic Development Association;
- (F) Indian Nations Council of Governments;
- (G) Kiamichi Economic Development District;
- (H) Northern Oklahoma Development Association;

- (I) Oklahoma Economic Development Association;
- (J) Southern Oklahoma Development Association; and
- (K) South Western Oklahoma Development Authority.

"Customer" means a single household or commercial unit, and does not mean any service unit which provides or enables utility service for more than one household, residence, or industry.

"Project" means, in addition to those purposes and works described in 785:50-3-1, *sewer line construction or repair and related storm or sanitary sewer [62:2003] works, water line construction or repair, water treatment, water acquisition, distribution or recovery and related [62:2003] works.*

"Qualified entity" means any eligible entity as defined in 785:50-3-2; provided, any city or town with a population of 7001 or more according to the Census Population shall not be a qualified entity.

[Source: Added at 13 Ok Reg 3733, eff 7-18-96 (emergency); Added at 14 Ok Reg 2788, eff 7-1-97; Amended at 15 Ok Reg 54, eff 10-3-97 (emergency); Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 33 Ok Reg 1954, eff 9-11-16]

785:50-8-3. Application review and disposition

(a) **General procedures.** The general procedure to be followed in the financial assistance application, review and consideration process for financial assistance under the REAP grant program shall be as follows:

(1) **Pre-application conference.**

(A) While not specifically required, all potential applicants are encouraged to initially contact the Board for purposes of making arrangements for participating in a pre- application conference between Board staff, applicant (or representative), applicant's legal, financial and engineering advisors and such other persons whose attendance and participation may be deemed appropriate and beneficial.

(B) At the pre-application conference, preliminary matters respecting the applicant, the proposed project and the application for assistance may be generally discussed in an effort to familiarize all concerned parties with the financial assistance program and applicable application requirements and procedures.

(2) **Application.**

(A) Applicant shall initiate application review and consideration by submission to the Board of applicant's application for financial assistance. An application may be submitted directly by the qualified entity or, at the qualified entity's discretion, may be submitted by a COG for the benefit or on behalf of a qualified entity. A COG may assist a qualified entity in filling out or filing an application, but a COG may not exercise any power of review, approval or disapproval over an application. All applications filed with any COG shall be submitted by the COG to the Board. If an application submitted by a COG is approved, the money shall be disbursed directly to the qualified entity.

(B) In all instances, applications must be written and in a form which meets the requirements of Subchapter 5.

(C) All applicants must have the verification form signed and notarized by the applicant representative, and must have a signature of an attorney representing applicant.

(3) **Submittal to Board.** Upon completion of staff review, the submitted application (with staff recommendations, if any) shall be placed upon the Board's agenda for the next regular (or special) Board meeting and shall be thereby submitted to the Board for action as described in (e) below.

(b) **General approval standards and criteria.** In the review and consideration of applications for financial assistance under the REAP grant program, the Board shall follow the priority point system set forth in 785:50-8-5. The Board shall also give consideration to the following general and non-exclusive criteria for application approval:

(1) **Compliance with laws.** The application and proposed project must be found to be in compliance with all applicable and relevant federal, state and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(2) **Eligibility.** The applicant must be a qualified entity (or a COG applying on behalf of a qualified entity) and the proposed project must be for a qualified purpose as defined in 785:50-3-1 or 785:50-8-2.

(3) **Local need, support and priority.** The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs. The Board shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants.

(4) **Availability of other assistance.** The Board shall consider the feasibility and availability of alternative sources of revenue which could be obtained and utilized by applicant for project financing.

(5) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project as a whole.

(6) **Project feasibility.** The Board shall consider from the engineering data submitted and otherwise available whether the proposed project appears to be feasible, and must determine as a prerequisite to application approval and funding that the project is cost effective.

(7) **Statewide needs and public interest.** The Board shall give consideration to the relationship between the proposed project and the overall water resource development needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.

(8) **REAP grant amount; availability of funds.** In sizing a REAP grant, the Board shall take into consideration the current and anticipated availability of REAP program funds.

(9) **Conservation Measures.** The Board shall consider whether or not the applicant has taken all reasonable measures to limit waste and conserve water.

(c) **Criteria applicability.**

(1) The general criteria set forth in (b) and (d) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board.

(2) Such criteria shall not be deemed exclusive.

(3) In all instances, each individual application and project must be reviewed and considered on its own individual merits.

(4) The criteria and standards set forth in (b) and (d) of this Section shall accordingly be interpreted and applied so as to allow sufficient flexibility in

the ultimate exercise of Board's judgment and discretion.

(d) Criteria for denying an application. The Board may deny an application for a REAP grant for any of the following reasons:

- (1) The applicant or the entity which stands to receive the benefit of the grant assistance is not an eligible entity.
- (2) Any other reason based upon applicable law or the Board's judgment and discretion.

(e) Board action.

(1) After reviewing and considering the submitted application, the Board may proceed to take one of the following alternative forms of Board action on the application:

(A) The Board may approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be necessary to effectuate the disbursement of funds.

(B) The Board may retain the application under advisement for further consideration or continue hearing on same for later ruling and disposition, and, the Board may withhold ruling on the application pending further hearing and/or submission to the Board of such further or additional information as the Board may require for application consideration purposes.

(C) The Board may reject and deny the application, in whole or in part, based upon any criteria described in (d) of this Section which may be applicable.

(D) The Board may approve and grant the application, in whole or in part, such approval being conditioned and contingent upon the existence of adequate and available grant funds or conditioned and contingent upon receipt and approval by Board staff of any outstanding and necessary material, information, documents, verifications or other authorization.

(2) Upon approval of an application, the Board may authorize the execution of all necessary grant documents and instruments by the Chairman of the Board, or other designated Board member, and may accordingly authorize and provide for disbursements and may authorize such further or additional action as may be necessary to complete and implement the approved transaction.

[Source: Added at 13 Ok Reg 3733, eff 7-18-96 (emergency); Added at 14 Ok Reg 2788, eff 7-1-97; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 16 Ok Reg 2691, eff 7-1-99; Amended at 33 Ok Reg 1954, eff 9-11-16; Amended at 35 Ok Reg 2243, eff 9-14-18; Amended at 36 Ok Reg 1332, eff 8-11-19]

785:50-8-4. Applicable law; deadline for applications; eligible project costs

(a) The Board shall administer applications for REAP funds in accordance with any provisions of law applicable to such applications and REAP funds.

(b) To be considered for and receive funding from funds available for REAP in any given fiscal year, an application must be completed in accordance with the Board's rules and prescribed application form in all material respects with all attachments, and filed by the applicant and received by the Board on or before 5 p.m. the first business day of September of that fiscal year. However, if the deadline cannot be met due to circumstances beyond the applicant's control, the application may be accepted by the Board through the last business day of September with written proof of said circumstances. Any application not properly completed and filed shall not be considered for or funded from funds that may become available during that

fiscal year. Furthermore, if no applications are received before the deadline from the area of a given COG, then the Board staff may extend the deadline for that COG through the first business day of November and contact an appropriate official for the COG and notify him or her of the available funds.

(c) A REAP grant application submitted for consideration in a prior fiscal year that was not approved for funding out of funds made available in that prior fiscal year shall expire and be deemed denied unless the applicant files and the Board receives a timely written request to consider said application during the current fiscal year, together with updated application materials as may be reasonably required by the Board. To be timely, such request and updated application materials must be received by the board on or before the first business day of September, of the current fiscal year.

(d) For purposes of evaluating, approving and funding an application for a REAP grant, categories of project costs which are eligible for assistance shall including, in addition to those project costs described in 785:50-3-1:

(1) Architecture and/or engineer fees related to the project. Provided, however, that in order for these costs to be eligible for award, applicants shall provide documentation that all construction funding is available. If construction funding is not available the request for these costs will be placed in a "pending" status until such time as the construction funding is available. If, however, an Engineering Report is a requirement of a Consent Order, an applicant under Consent Order may be awarded a grant to cover the engineering costs without construction funding being available.

(2) Fees for soil testing.

(3) Fees for surveying.

(4) Payments to contractor(s) for construction of the improvements.

(5) Legal fees and expenses of counsel for the applicant which are related to the project.

(6) Services of full-time or part-time inspector.

(7) Administrative expenses shall not be eligible project costs.

[Source: Added at 13 Ok Reg 3733, eff 7-18-96 (emergency); Added at 14 Ok Reg 2788, eff 7-1-97; Amended at 15 Ok Reg 54, eff 10-3-97 (emergency); Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2269, eff 6-23-99 (emergency); Amended at 17 Ok Reg 2772, eff 7-1-00; Amended at 18 Ok Reg 2247, eff 7-1-01; Amended at 19 Ok Reg 2531, eff 6-27-02; Amended at 30 Ok Reg 976, eff 6-13-13; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 33 Ok Reg 1954, eff 9-11-16]

785:50-8-5. REAP grant priority point system

(a) Basis of priority system and formula.

(1) **General description.** The priority system consists of a mathematical equation rating the qualified entities and the proposed project in accordance with the requirements of state law by means of a formula awarding points for each criterion used in the evaluation. The maximum point total under the system is one hundred twenty-five(125). The Board may consider each month, and in order from the highest rating, those applications awarded point ratings of 40 or more priority points. If the Board determines that the qualified entity with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration. Applications preliminarily

determined by Board staff to have point ratings of applicant submits additional information showing changed circumstances within 120 days after the date of staff's determination, and such information improves the applicant's preliminary point rating.

(2) **Statutory criteria.** The basis of the priority formula has been developed from the enacting legislation. The primary statutory criteria are:

(A) There shall be a higher priority for any city or town with a population less than one thousand seven hundred fifty (1,750) according to the Census Population than for any jurisdiction with a greater population; and

(B) *Among other cities or towns, those municipalities having relatively weaker fiscal capacity shall have a priority for project funding in preference to other municipalities* [62:2003]. In order to give a priority evaluation to each applicant, the Board shall evaluate all applications according to the fiscal capacity criteria set forth in this Section.

(3) **Total priority points.** Total priority points will be calculated and awarded for individual projects. Therefore, qualified entities will be required to complete separate applications for each project for which grant funds are requested. Priority lists compiled and published by other Oklahoma State agencies and/or seniority dates of applications submitted shall be utilized to decide ties in point totals among qualified entities.

(b) Priority formula for eligible entities other than school districts and counties.

(1) **Formula.** The following formula has been devised to rank grant applications: $T = P + WR + I + MHI + FP + N + AR + BP + PG + S$, Where:

(A) T = Total of priority points

(B) P = Population

(C) WR = Water and sewer rate structure

(D) I = Indebtedness per customer

(E) MHI = Median household income

(F) FP = Applicant's ability to finance project

(G) N = Need

(H) AR = Amount of grant requested

(I) BP = Project benefit to other systems

(J) PG = Previous grant assistance

(K) S = Sustainability

(2) **Explanation.** Each of these criteria are explained below:

(A) **Population (P).** Municipalities which have a population of less than 1,750 according to the latest Census Population shall be given 55 priority points. Rural water or sewer districts which have less than 525 non-pasture customers shall be given 55 points.

(B) **Water and Sewer rate structure (WR).**

(i) For systems providing water service only, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(i).

(ii) For systems providing both water and sewer services, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(ii).

(iii) For systems providing sewer service only, points are figured according to the same scale set forth in Section 50-

7-5(b)(2)(B)(iii).

(iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat water rate (unmetered) without regard to the amount of water used, and 2 points for a decreasing block rate which lowers the cost per 1000 gallons for customers using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under this category the maximum number of points is 13 and the minimum is -3 points.

(C) Indebtedness per customer (I). The indebtedness per customer ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of customers served.

(i) If the indebtedness per customer is \$20.00 or greater, the applicant shall be given 10 points.

(ii) If the indebtedness per customer is \$17.50 to \$19.99, the applicant shall be given 9 points

(iii) If the indebtedness per customer is \$16.00 to \$17.49, the applicant shall be given 8 points.

(iv) If the indebtedness per customer is \$14.50 to \$15.99, the applicant shall be given 7 points.

(v) If the indebtedness per customer is \$13.00 to \$14.49, the applicant shall be given 6 points.

(vi) If the indebtedness per customer is \$11.50 to \$12.99, the applicant shall be given 5 points.

(vii) If the indebtedness per customer is \$10.00 to \$11.49, the applicant shall be given 4 points.

(viii) If the indebtedness per customer is \$8.50 to \$9.99, the applicant shall be given 3 points.

(ix) If the indebtedness per customer is \$7.00 to \$8.49, the applicant shall be given 2 points.

(x) If the indebtedness per customer is \$5.50 to \$6.99, the applicant shall be given 1 point.

(xi) If the indebtedness per customer is less than \$5.50, the applicant shall be given 0 points.

(D) Median household income (MHI). The median household income is calculated according to the most current United States Decennial Census or American Community Survey data available.

(i) The county median figure for median household income will be used in cases where data for the applicant's service area is not available.

(ii) Points for this MHI criterion are awarded according to the scale set forth in Section 50-7-5(b)(2)(E)(ii).

(E) Ability to finance project (FP).

(i) The maximum points possible under this criterion for the ability of the applicant to finance the project without assistance from the state is 12.

(ii) The FP ranking gives a standardized account of the amount the existing water/sewer rates would have to be raised in order for the applicant to finance the project through a loan. A standard interest rate and term of 5% for 25 years is assumed. The cost per customer per month is calculated using the following formula: $FP = AR$

$(0.0710)/(12)(C)$, Where:

(I) FP = Estimate of the amount monthly water/sewer rates would have to be raised to finance the amount of grant requested for the project.

(II) AR = Amount of grant requested.

(III) 0.0710 = Annual rate factor for a 25 year loan at 5%.

(IV) 12 = Number of months per year.

(V) C = Number of customers.

(iii) In cases where the applicant's current revenues exceed expenses by a large margin, the Board will appropriately adjust the (AR) figure to accurately represent the applicant's ability to finance the project.

(iv) Points in the FP ranking, based upon the cost per customer per month calculated as set forth in (ii) of this subparagraph, are awarded as follows:

(I) If the FP is \$10.00 or greater, the applicant shall be given 12 points.

(II) If the FP is \$8.00 to \$9.99, the applicant shall be given 11 points.

(III) If the FP is \$6.00 to \$7.99, the applicant shall be given 10 points.

(IV) If the FP is \$5.00 to \$5.99, the applicant shall be given 9 points.

(V) If the FP is \$4.00 to \$4.99, the applicant shall be given 8 points.

(VI) If the FP is \$3.00 to \$3.99, the applicant shall be given 7 points.

(VII) If the FP is \$2.00 to \$2.99, the applicant shall be given 6 points.

(VIII) If the FP is \$1.75 to \$1.99, the applicant shall be given 5 points.

(IX) If the FP is \$1.50 to \$1.74, the applicant shall be given 4 points.

(X) If the FP is \$1.25 to \$1.49, the applicant shall be given 3 points.

(XI) If the FP is \$1.00 to \$1.24, the applicant shall be given 2 points.

(XII) If the FP is \$0.75 to \$0.99, the applicant shall be given 1 point.

(XIII) If the FP is less than \$0.75, the applicant shall be given 0 points.

(F) Need (N). An applicant who is subject to an enforcement order issued by a governmental agency with environmental jurisdiction shall be given 5 priority points for a proposed project which will

remedy the violation out of which the order arose if the order specifies a project construction start date which is on or before June 30 of the Board's current fiscal year for funding REAP grants.

(G) Amount of grant requested (AR). Points under this category for amount of grant requested are determined as follows:

- (i) If the AR is \$140,001 to \$150,000, the applicant shall be given -5 points.
- (ii) If the AR is \$130,001 to \$140,000, the applicant shall be given -4 points.
- (iii) If the AR is \$120,001 to \$130,000, the applicant shall be given -3 points.
- (iv) If the AR is \$110,001 to \$120,000, the applicant shall be given -2 points.
- (v) If the AR is \$100,001 to \$110,000, the applicant shall be given -1 point.
- (vi) If the AR is \$100,000, the applicant shall be given 0 points.
- (vii) If the AR is \$80,000 to \$99,999, the applicant shall be given 1 point.
- (viii) If the AR is \$60,000 to \$79,999, the applicant shall be given 2 points.
- (ix) If the AR is \$40,000 to \$59,999, the applicant shall be given 3 points.
- (x) If the AR is \$20,000 to \$39,999, the applicant shall be given 5 points.
- (xi) Any portion of an AR that is more than \$150,000 shall be denied.

(H) Project benefit to other systems (BP). If the applicant's project will benefit other adjacent systems as well as applicant's or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.

(I) Previous grant assistance (PG). No qualified entity shall receive more than \$150,000 in REAP grant assistance in any twelve (12) month period. For purposes of this subparagraph a political subdivision and all its public trusts and similar subordinate entities together shall be treated as one and the same qualified entity; provided, rural water or sewer districts shall not be construed to be subordinate entities of counties unless the effect would be to make multiple grants to substantially the same entity and/or service area. If a qualified entity has received one (1) or more REAP grants from the Board in the past, points shall be deducted from the application according to all of the following provisions that apply, provided points shall not be deducted from any such REAP grant which was funded 10 or more years prior to the date of Board action on the pending application, and has been subject to Board audit:

- (i) If the qualified entity has received one (1) REAP grant in the preceding twelve (12) month period, the application will be given -8 points.
- (ii) If the qualified entity has received more than one (1) REAP

- (iii) If the qualified entity has received one (1) REAP grant more than twelve (12) months in the past, the application will be given -5 points.
- (iv) If the qualified entity has received two (2) REAP grants more
- (v) If the qualified entity has received three (3) REAP grants more than twelve (12) months in the past, the application will be given -10 points.
- (vi) If the qualified entity has received four (4) REAP grants more than twelve (12) months in the past, application will be given -12 points.
- (vii) If the qualified entity has received five (5) or more REAP grants more than twelve (12) months in the past, the application will be given -14 points.

(J) Sustainability. Points will be awarded for an applicant's sustainability and long range planning as follows:

- (i) Have and have implemented a Fiscal Sustainability Plan that meets the requirements of the Board Staff shall be awarded 10 points
- (ii) Have but have not implemented a Fiscal Sustainability Plan that meets the requirements of the Board Staff shall be awarded 6 points
- (iii) Applicant is willing to develop and implement a Fiscal Sustainability Plan prior to funding that meets the requirements of the Board Staff shall be awarded 3 points

(c) Priority formula for school districts and counties.

- (1) School districts created under Article V of the School Code, 70 O.S. 1991, §5-101 et seq., and counties are political subdivisions of the State, and therefore are eligible for financial assistance under the Board's REAP grant program.
- (2) In evaluating and prioritizing grant applications from school districts and counties, similar criteria to those applied to municipalities and rural water districts will be utilized.
- (3) In developing a priority formula for school district and county applicants, the primary criteria are average daily membership (for schools only), fiscal capacity, need, amount requested, and previous grant assistance.
- (4) The following formula has been devised to rank REAP grant applications by counties and school districts: $T = ADM + LT + BI + MHI + FP + N + AR + PG$, Where:

- (A) T = Total of priority points
- (B) ADM = Average daily membership
- (C) Lt = Local tax levies
- (D) BI = Bonded indebtedness
- (E) MHI = Median household income of population within the school district or area of county to be served
- (F) FP = Applicant's ability to finance project
- (G) N = Need
- (H) AR = Amount of grant requested
- (I) PG = Previous grant assistance

(5) The criteria MHI, FP, N, AR and PG are the same as that set forth in (b) of this Section. The criteria ADM, LT and BI are explained as follows:

(A) **Average daily membership (ADM).** School districts with an average daily membership of less than 525 students shall be given 55 priority points.

(B) **Local tax levies (LT).** Points awarded under this category for local tax levies are based on the total amount of mills levied, as follows:

(i) If the mills are 95 to 100; the applicant shall be given 13 points.

(ii) If the mills are 90 to 94.99, the applicant shall be given 11 points.

(iii) If the mills are 85 to 89.99, the applicant shall be given 10 points.

(iv) If the mills are 80 to 84.99, the applicant shall be given 8 points.

(v) If the mills are 70 to 79.99, the applicant shall be given 6 points.

(vi) If the mills are 60 to \$69.99, the applicant shall be given 4 points.

(vii) If the mills are 55 to 59.99, the applicant shall be given 2 points.

(viii) If the mills are 50 to 54.99, the applicant shall be given 1 point.

(ix) If the mills are 45 to 49.99, the applicant shall be given 0 points.

(x) If the mills are 40 to 44.99, the applicant shall be given - 1 point.

(xi) If the mills are less than 40, the applicant shall be given -2 points.

(C) **Bonded indebtedness (BI).**

(i) Priority points for Bonded Indebtedness are as follows:

(I) If the percentage is 95% to 100%, the applicant shall be given 10 points.

(II) If the percentage is 90% to 94.99%, the applicant shall be given 8 points.

(III) If the percentage is 80% to 89.99%, the applicant shall be given 7 points.

(IV) If the percentage is 75% to 79.99%, the applicant shall be given 6 points.

(V) If the percentage is 70% to 74.99%, the applicant shall be given 5 points.

(VI) If the percentage is 65% to 69.99%, the applicant shall be given 4 points.

(VII) If the percentage is 60% to 64.99%, the applicant shall be given 3 points.

(VIII) If the percentage is 55% to 59.99%, the applicant shall be given 2 points.

(IX) If the percentage is 50% to 54.99%, the applicant shall be given 1 point.

- (X) If the percentage is 45% to 49.99%, the applicant shall be given 0 points.
- (XI) If the percentage is 40% to 44.99%, the application shall be given -1 point.
- (XII) If the percentage is 30% to 39.99%, the applicant shall be given -2 points.
- (XIII) If the percentage is less than 30%, the applicant shall be given -3 points.
- (ii) A deduction of one (1) point from the indebtedness ranking total will be made for applicants with 75% of existing debts financed at rates of 5% or less, and one (1) point will be added if 75% of existing debts are financed at rates greater than 10%.

[Source: Added at 13 Ok Reg 3733, eff 7-18-96 (emergency); Added at 14 Ok Reg 173, eff 10-24-96 (emergency); Added at 14 Ok Reg 2788, eff 7-1-97; Amended at 15 Ok Reg 635, eff 11-11-97 (emergency); Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 16 Ok Reg 2691, eff 7-1-99; Amended at 17 Ok Reg 2772, eff 7-1-00; Amended at 18 Ok Reg 2247, eff 7-1-01; Amended at 20 Ok Reg 2617, eff 7-11-03; Amended at 23 Ok Reg 3086, eff 7-27-06; Amended at 24 Ok Reg 2453, eff 6-25-07; Amended at 25 Ok Reg 1473, eff 5-27-08; Amended at 30 Ok Reg 976, eff 6-13-13; Amended at 31 Ok Reg 2512, eff 9-12-14; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 33 Ok Reg 1954, eff 9-11-16; Amended at 36 Ok Reg 1332, eff 8-11-19]

785:50-8-6. Disbursement of funds

(a) Action following Board approval and prior to disbursement of funding.

- (1) **Notification of approval.** Upon approval of a REAP grant application, the Board shall furnish to the applicant a written notice of grant approval. The notice shall advise the applicant that the grant application has been formally and officially approved by the Board and that the grant funds approved shall be made available to the applicant by the Board for such purposes and upon such other terms and conditions as the Board may require.
- (2) **Bid filing.** Within ninety (90) days following the date of the written notice of approval, the applicant shall file with the Board an acceptable bid for completion of the proposed project. Where determined necessary and appropriate, the Board or its staff may permit additional time to file such a bid; provided, notwithstanding any approval of additional time, if such a bid is not filed within one (1) year following the date of Board approval of the application, then the Board's approval shall expire and no funds shall be released provided however, if an acceptable bid for completion has not been filed due to circumstances that lay outside the applicant's control, the applicant may request, and the Board may approve or deny, a one-time extension of time not to exceed six months to file an acceptable bid. Provided further, in the event of such expiration the applicant may file a new application which shall be subject to due consideration on its own merits.

(3) Additional conditions prior to disbursement of grant funds.

- (A) Applicant shall establish, in such manner as is acceptable to the Board or its staff, a special and separate federally insured account in and through which the grant proceeds shall be administered and accounted for by the applicant.
- (B) Unless otherwise provided and approved by the Board, applicant shall submit to the Board all plans, specifications and engineering reports, for the project for staff approval, all of which shall be complete and in sufficient detail as would be required for

submission of the project to a contractor for bidding or contracting the project. If not previously provided, applicant shall provide Board with a written and verified statement setting forth:

- (i) the amount of funds necessary for release and disbursement at closing which funds are needed for initial commencement of the project, and
- (ii) information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project.

(C) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents, including but not limited to a grant agreement.

(4) Board action on request for increase in approved amount. If prior to disbursement of the grant monies to the applicant, the project bids exceed the engineer's estimates or it otherwise develops that the REAP grant amount approved by the Board, when combined with any other sources of funding, will be insufficient to complete the approved project, then the applicant may file a written request:

- (A) to amend the scope of the approved project in a manner consistent with (a)(5) of this Section; or
- (B) decline funding and withdraw its application for the current fiscal year and request that the Board reconsider the application with an increased REAP grant amount during the following fiscal year. The request for an increased REAP grant amount shall be treated as a new application on its own merits; provided, the original application shall not be counted for purposes of the previous grant assistance portion of the priority point determination.

(5) Board action on request for change in scope of approved project. If prior to disbursement of the grant monies to the applicant, it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. Provided, however, the Board shall not approve a change in scope of project if the change, if considered as part of the original application, would have resulted in a lower priority point determination on the application.

(b) Disbursement of funding to applicant; action following disbursement.

(1) Disbursement contingent on completion of conditions; reduction from approved amount. At the time and upon compliance by the applicant with the applicable requirements in (a) of this Section, the Board may disburse the approved amount of REAP grant funds to the applicant for the approved project.

(2) Disbursement in whole or part; timing. As the Board may direct, grant funds may be disbursed to the applicant in installments or in lump sum, and may be disbursed prior to, during or upon completion of the project, all as deemed appropriate by the Board under the project circumstances presented.

(3) **Post-disbursement requests for increases in funding amount.** If after disbursement of the grant monies to the applicant it develops that the applicant needs more money for the project than the REAP grant amount disbursed by the Board, then any request for additional REAP grant money shall follow the rules in this Subchapter governing, and shall be treated as, a new application on its own merits.

(4) **Post-disbursement requests for changes in scope of approved project.** If after disbursement of the grant monies to the applicant it develops that the applicant wishes to change the scope of the project from that approved by the board, then the applicant may file a written request for approval of such a change. If the applicant successfully demonstrates reasonably unforeseeable or extraordinary circumstances that in the Board's judgment and sound discretion represent a better utilization of REAP grant funds by the applicant to serve the public interest and welfare, then the Board shall approve the change in project scope. If the applicant does not make such a demonstration, then the Board shall deny the request and the applicant shall either proceed with the project as approved or abandon the project and return the grant monies to the Board within thirty days after the date of the Board's action.

(5) **Post-disbursement action regarding unexpended funding.** If following completion of the project it develops that the applicant needed less money for the project than disbursed by the Board, the applicant shall return the unexpended amount to the Board.

(6) **Additional requirements.** The Board may impose additional reasonable and necessary conditions or requirements for the disbursement to the applicant or expenditure by the applicant of REAP grant funds, all as may be deemed appropriate by the Board.

(c) Completion of Project after receipt of Bid Tabulation.

(1) All projects under \$500,000 must be completed within 180 days of receipt of the bid tabulation or the date of completion on the notice to proceed, whichever is later, unless the delay is caused by circumstances outside the control of the grant recipient shown by written documentation thereof. If these provisions are not met, the funds will be deobligated and the grant will expire.

(2) All projects over \$500,000 must be completed within 365 days of the receipt of the bid tabulation, or the completion date on the notice to proceed, whichever is later, unless the delay is caused by circumstances outside the control of the grant recipient shown by written documentation thereof. If these provisions are not met, the funds will be deobligated and the grant will expire.

(3) In the case where the documented circumstances are beyond the control of the grant recipient, an extension will be allowed based on the circumstances surrounding the project, but never beyond one (1) year of the Notice to Proceed date of completion.

[Source: Added at 13 Ok Reg 3733, eff 7-18-96 (emergency); Added at 14 Ok Reg 2788, eff 7-1-97; Amended at 16 Ok Reg 2691, eff 7-1-99; Amended at 19 Ok Reg 2531, eff 6-27-02; Amended at 27 Ok Reg 1321, eff 5-27-10; Amended at 33 Ok Reg 1954, eff 9-11-16; Amended at 34 Ok Reg 2179, eff 9-11-17]

SUBCHAPTER 9. CLEANWATER STATE REVOLVING FUND REGULATIONS

PART 1. GENERAL PROVISIONS

785:50-9-1. General program description and procedures [REVOKED]

[Source: Revoked at 10 Ok Reg 3333, eff 7-1-93]

785:50-9-2. General approval standards and criteria [REVOKED]

[Source: Revoked at 10 Ok Reg 3333, eff 7-1-93]

785:50-9-3. Terms and conditions [REVOKED]

[Source: Revoked at 10 Ok Reg 3333, eff 7-1-93]

785:50-9-4. Disbursement of funds and conditions for disbursement [REVOKED]

[Source: Revoked at 10 Ok Reg 3333, eff 7-1-93]

785:50-9-5. Purpose

The purpose of this subchapter is to facilitate the administrative and technical management of the Oklahoma Clean Water State Revolving Fund Loan Account as required by 82 O.S., Section 1085.51 et seq.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 20 Ok Reg 2622, eff 7-11-03]

785:50-9-6. Introduction [REVOKED]

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 12 Ok Reg 2715, eff 7-1-95; Revoked at 15 Ok Reg 2881, eff 7-1-98]

785:50-9-7. Applicability to projects

This subchapter shall apply to all public projects for which application is made for financial assistance from the Clean Water State Revolving Fund Loan Account for the purposes authorized by law.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2772, eff 7-1-00; Amended at 20 Ok Reg 2622, eff 7-11-03]

785:50-9-8. Authority

In order to implement the Clean Water State Revolving Fund program in Oklahoma, the Legislature created the Clean Water State Revolving Fund Loan Account to be administered by the Board. The rules in this Subchapter are authorized by 82 O.S., Sections 1085.51 et seq. These regulations are necessary for determining the eligibility and priority of entities to receive financial assistance pursuant to the Federal Clean Water Act as amended and from the Clean Water State Revolving Fund Loan Account.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 15 Ok Reg 2881, eff 7-1-98]

785:50-9-9. Definitions

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

"**303(d) List**" means the list of impaired waters of the State, or most recent approved revision thereof, developed pursuant to Section 303(d) of the Clean Water Act as amended and maintained on file at the Board.

"Applicant" means any municipality, as defined, that submits a preapplication/application for financial assistance in accordance with this subchapter.

"Architectural or engineering services" means consultation, investigations, reports, or services for design-type projects within the scope of the practice of architecture or professional engineering.

"As a result of" means funds in the Clean Water SRF including the capitalization grant, repayments of first round loans, bond proceeds, and the State match.

"Binding commitment" means binding commitments are legal obligations by the State to the local recipient that define the terms and the timing for assistance under Clean Water SRF.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

"Board Staff" means the Chief of Financial Assistance or the Chief's designee.

"Brownfield" means an abandoned, idled or underused industrial or commercial facility or other redevelopment of the real property is complicated by environmental contamination caused by regulated substances [27A:2-15-103(2)].

"Brownfield activities" means those activities which are conducted under the Oklahoma Brownfields Voluntary Redevelopment Act for eligible entities that have obtained a draft or final permit pursuant to the National Pollution Discharge Elimination Act or Oklahoma Pollutant Discharge Elimination System Act, which are designed to improve water quality, and which are exempt from funds administered under the Nonpoint Source Management Program of the federal Clean Water Act.

"Brownfield assessment" means any phase I, phase II, phase III or other study required by the Department which is used to assess a brownfield.

"Building" means the erection, acquisition, alteration, remodeling, improvement or extension of treatment works.

"Capitalization grant" means an agreement between EPA and State whereby federal dollars are made available to partially fund a Clean Water SRF.

"Collector sewer" means the common lateral sewers, within a publicly owned treatment system which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections designed for connection with those facilities including:

- (A) Crossover sewers connected more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when more cost effective than parallel sewers; and
- (B) Pumping units and small diameter lines serving individual structures or groups of structures.

"Combined sewer" means a sewer that is designed as a sanitary sewer and a storm sewer.

"Conservation Commission" means the Oklahoma Conservation Commission.

"Construction" means any one or more of the following: brownfield assessment; preliminary planning to determine feasibility, engineering,

architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other actions or undertakings necessary to a project; erection, building, acquisition, alteration, remodeling, improvement, or extension of a project; or the inspection or supervision of any of the foregoing items.

"Consultant" means a person duly licensed, registered or certified to practice a profession as required by Oklahoma law who is providing services or advice in that professional capacity. Examples include, but are not limited to, accountants, architects, attorneys, engineers, and financial advisors.

"Contingency section" means that portion of the planning portion of the priority list consisting of projects which may receive loans due to bypass provision or due to additional funds becoming available.

"Cross-cutting laws and orders" means Federal laws and authorities that apply to all activities supported with funds "directly made available by" capitalization grants.

"DBE" means Disadvantaged Business Enterprises.

"DBE participation" means the federal requirement for negotiation of a "fair share" objective for minority, disadvantaged and women owned businesses applies to assistance in an amount equal to the capitalization grant.

"Department" means the Oklahoma Department of Environmental Quality.

"Enforceable requirements of the Clean Water Act" means those conditions or limitations of NPDES or other discharge permits which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action. If a permit has not been issued, the term shall include any requirement which would be included in the permit when issued. Where no permit applies, the term shall include any requirement which is necessary to meet applicable criteria for best practicable wastewater treatment technology (BPWTT).

"Equivalency projects" means project cited by the Board as meeting the requirement of the capitalization grant.

"Excessive infiltration/inflow" means the quantities of infiltration/inflow above 120 gallons per capita per day (GPCD), which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

"Fundable portion" means that portion of the Project Priority List which includes projects scheduled for financial assistance during the funding year.

"Funding year" means the first year of the planning period represented by a project priority list.

"Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from inflow.

"Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from infiltration.

"In perpetuity" means maintaining the principal amounts of the federal capitalization grants and state matching funds within the CWSRF.

"Intended Use Plan" means a document prepared each year by the State, which identifies the intended uses of the funds in the CWSRF and describes how those uses support the goals of the CWSRF.

"Interceptor sewer" means a sewer which is designed for one or more of the following purposes:

(A) To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor.

(B) To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant.

(C) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment.

(D) To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

"Loan" means an agreement between the State and the local recipient through which the Clean Water SRF provides funds for eligible assistance on terms consistent with the federal Water Quality Act of 1987 or otherwise approved by the Environmental Protection Agency.

"MGD" means millions of gallons per day.

"Municipality" means a city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency consistent with the State Water Quality Management Plan.

"NEPA" means the National Environmental Policy Act.

"Nonexcessive infiltration" means the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost effectiveness analysis.

"Nonexcessive inflow" means the rainfall induced peak inflow rate which does not result in chronic operational problems related to hydraulic overloading of the treatment works during storm events. These problems may include surcharging, backups, bypasses, and overflows.

"Nonpoint source" means a source of pollution which is diffuse and does not have a single point of origin or is introduced into a receiving stream from a specific outlet.

"Nonpoint source activities" means capital works, capital improvements, capital equipment, environmental cleanups, land acquisition, or implementation of management practices for the purpose of protecting or improving surface or underground water quality through watershed management or reduction of nonpoint source pollution as authorized by the Clean Water Act.

"NPDES" means National Pollutant Discharge Elimination System.

"Operable treatment works" means a treatment works that, upon completion, will meet the enforceable requirements of the Clean Water Act.

"Operation and maintenance" means activities required to assure the dependable and economical function of treatment works.

(A) **"Maintenance"** means preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of

equipment.

(B) **"Operation"** means control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

"OWQS" means the Oklahoma Water Quality Standards promulgated by the Board at Oklahoma Administrative Code Title 785, Chapter 45, as amended.

"Planning" means the process of evaluating alternative solutions to water pollution problems, and through a systematic screening procedure, selecting the most cost effective environmentally sound alternative.

"Planning portion" means that part of the Project Priority List containing all projects outside the fundable portion of the list that may, under anticipated allotment levels, receive funding during the five-year planning period represented by the list.

"Project" means the water quality project for which Clean Water SRF assistance is provided. Water quality projects include:

(A) construction and design, or construction of an operable treatment works or segment thereof the principal purpose of which is for the treatment of domestic users' discharges within the jurisdiction, community, sewer service area, region or district concerned;

(B) storm water and Brownfield activities;

(C) nonpoint source activities; or

(D) other water quality projects as defined by 82 O.S. §1085.52, as amended.

"Project completion" means the date operations of the project are initiated or are capable of being initiated, whichever is earlier.

"Project Priority List" means a contiguous list of projects in order of priority for which Clean Water SRF assistance is expected during a five-year planning period.

"Project priority points" means the total number of points assigned to a project by using the priority ranking formula.

"Reallotment" means allotment of previously allotted unused funds.

"Recipient" means a municipality or other entity which receives assistance under the Clean Water SRF program.

"Repayment" means principal and interest payments on loans which must be credited directly to the Clean Water SRF.

"Replacement" means those expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed.

"Responsible bidder" means a prospective contractor that currently meets the minimum standards of financial and technical ability to perform the tasks identified in the project specifications.

"Revenue programs" means a formally documented determination of sewer use charges which is designed to provide revenues for operation and maintenance (including replacement) cost, and/or any combination of revenue generating programs necessary to meet local debt service requirements.

"Sewer System Evaluation Survey (SSES)" means a study which shall identify the location, estimated flow rate, method of rehabilitation, and cost of rehabilitation versus the cost of transportation and treatment for each defined

source of infiltration/inflow.

"State match" means funds equaling at least 20% of the amount of the capitalization grant which the State must deposit into the Clean Water SRF.

"State Revolving Fund" or "SRF" means funds for loans or providing other assistance for pollution control projects established through capitalization grants from EPA and State matching funds.

"Storm sewer" means a sewer designed to carry only storm waters, surface runoff, street wash waters, and drainage.

"Treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances. In addition **"treatment works"** means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, including on-site systems and waste in combined storm water and sanitary sewer systems.

"User charge" means a charge levied on users of a treatment works for the user's share of the cost of operation and maintenance (including replacement) of such works.

"Water Reuse" means wastewater that is treated to be used for other purposes, may also be called recycled water or reclaimed water.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2772, eff 7-1-00; Amended at 20 Ok Reg 2622, eff 7-11-03; Amended at 23 Ok Reg 3086, eff 7-27-06; Amended at 25 Ok Reg 1473, eff 5-27-08; Amended at 26 Ok Reg 1715, eff 6-11-09; Amended at 27 Ok Reg 1321, eff 5-27-10; Amended at 28 Ok Reg 1026, eff 7-1-11; Amended at 30 Ok Reg 976, eff 6-13-13; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 33 Ok Reg 1954, eff 9-11-16; Amended at 35 Ok Reg 2243, eff 9-14-18]

PART 3. GENERAL PROGRAM REQUIREMENTS

785:50-9-20. Program requirements

Projects which are funded in whole or in part with assistance from the SRF will be required to comply with the requirements of this Subchapter.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93]

785:50-9-21. Eligible project

(a) The categories of wastewater projects eligible for assistance are as described in the Clean Water Act Section 603(c) and other water quality projects as defined under 82 O.S. §1085.51 as amended.

(b) The Board will determine annually the amount of funding necessary and the project categories that will be placed on the fundable portion of the Priority List.

(c) Costs associated with the planning or assessing, design and building of the eligible categories of projects are considered allowable by the Board. Eligible construction costs will be based on the lowest responsible bidder.

(d) Eligibility for equivalency projects is subject to the applicable Federal requirements under the Clean Water Act.

(e) Additionally, the Board shall consider the following issues in determining project eligibility:

(1) **Capacity funding limitations.** The eligible capacity shall be determined using average dry weather flow and peak flows in accordance with population and per capita flow estimates provided by the applicant. Project capacity must be consistent with environmental constraints.

(2) **Collection systems.** The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections.

(3) **Population and flow projections.** Section 208 Areawide Water Quality Management Plan population and flow projections will be used to determine the eligible project capacity. A discussion of the local projections should be included in the planning document.

(4) **Land costs.** The Clean Water Act Section 212(2)(A) states land costs are allowed to include acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land, and interests in land, that are necessary for construction. The Clean Water Act expands the definition of treatment works to include land necessary for construction, leasing and fee-simple purchase of land, surface and subsurface easements, a place to store equipment and material during construction and land needed to locate eligible projects.

(5) **On-site systems.** Treatment and collection systems constructed at or near the wastewater source where the system serving individual structures or groups of structures are cost-effective and are owned and operated by the loan recipient.

(6) **Brownfield remediation.** The types of storm water and Brownfield activities that may be qualified for Clean Water SRF funding include, but are not limited to: excavation and disposal of underground storage tanks; constructing wetlands or other filtering mechanisms; capping wells; excavation, removal and disposal of contaminated soil or sediments; tunnel demolition; well abandonment; and all phases of brownfield assessments or planning required by the Department.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2772, eff 7-1-00; Amended at 19 Ok Reg 2531, eff 6-27-02; Amended at 20 Ok Reg 2622, eff 7-11-03; Amended at 23 Ok Reg 3086, eff 7-27-06; Amended at 28 Ok Reg 1026, eff 7-1-11; Amended at 30 Ok Reg 976, eff 6-13-13; Amended at 31 Ok Reg 2512, eff 9-12-14; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 33 Ok Reg 1954, eff 9-11-16; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-22. Revenue program

(a) The applicant must demonstrate that it has legal, institutional, managerial and financial capability to construct, operate and maintain the treatment works. The applicant will be, required to establish a user charge system which will generate sufficient revenues for the operation, maintenance (including reasonable replacement cost) and to establish an acceptable dedicated source or sources of revenue to repay the loan.

(b) As indicated, the applicant will be required to demonstrate, at the time of the actual application, that a "dedicated" source of revenue is available to repay the loan. Revenue will be considered dedicated when the recipient passes an ordinance or a resolution committing a source or sources of funds for repayment. The resolution or ordinance dedicating a source of funding for repayment of the loan must be adopted before finalization of the loan agreement.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93]

785:50-9-23. Clean Water SRF Project Priority System

(a) **Preparation.** The Board shall prepare and maintain a current Clean Water SRF Project Priority Listing of potential eligible projects in the order of priority.

(b) **Projects included.**

(1) **Fundable portion.** The fundable portion includes projects scheduled for financial assistance during the current fiscal year, and which are within the limits of currently available funds.

(2) **Planning portion.** The planning portion includes that portion of the priority list containing all of those projects outside the fundable portion of the list, and which are anticipated to receive financial assistance in future fiscal years. The planning portion may also include contingency projects which are scheduled for assistance during the current fiscal year, but for which adequate funds are not available to provide financial assistance. Contingency projects may receive assistance due to bypass provisions or due to additional funds becoming available.

(c) **Public participation.** Before the beginning of each fiscal year, the Board shall ensure that adequate public participation has taken place. A public meeting will be held to discuss the Clean Water SRF Project Priority List and any revisions that were made to the Clean Water SRF Project Priority System. The notice of public meeting shall precede the public meeting by 30 days and shall be published in a statewide publication. At this time, the Board shall circulate information about the Project Priority List including a description of each proposed project. Attendees of the public meeting will be allowed to express their views concerning the list and system.

(d) **Clean Water SRF Project Priority List.** A Clean Water SRF Project Priority List shall become effective and supersede all previous lists upon the beginning of the fiscal year for which it is designated. A Clean Water SRF Project Priority List, as updated during the funding year, shall remain effective until such time as it is superseded by a new list.

(e) **CWSRF Integrated Priority Rating System.** The Board will utilize an integrated priority ranking system to evaluate and rank proposed projects, including treatment works, Brownfield activities, and stormwater activities, based on the relative impact of the project in achieving the water quality objectives of the Clean Water Act. This system consists of criteria integrating public health protection and Oklahoma's Water Quality Standards beneficial use maintenance and protection goals and Anti-degradation policy, including project type, water quality restoration, water quality protection, programmatic priorities, and readiness to proceed.

(1) **Project Type Factor.** The Project Type Factor provides a maximum of seventy (70) points for proposed water quality projects based on the following:

(A) Treatment works or water quality projects designed to effectively eliminate or reduce a documented source of human health threat and/or discharge permit limit violation within a watershed of a waterbody being utilized as a public water supply shall receive seventy (70) points.

(B) Treatment works or water quality projects designed to effectively eliminate or reduce a documented source of human health threat and/or discharge permit limit violation shall receive sixty (60) points.

(C) Treatment works or water quality projects designed to sustain compliance with or provide a degree of treatment beyond permit limits; increase capacity, reliability, or efficiency; reclaim/reuse wastewater; reduce a documented water quality threat, or otherwise maintain beneficial uses shall receive thirty (30) points.

(D) All other eligible treatment works or pollution control projects shall receive twenty (20) points.

(2) Water Quality Restoration Factor. The Water Quality Restoration Factor provides a maximum of twenty (20) points for proposed projects located on waterbodies which are not meeting the beneficial uses assigned to them in Oklahoma's Water Quality Standards and which are listed on Oklahoma's 303(d) list as threatened or impaired. The water quality restoration factor will be subject to change whenever the 303(d) List is revised. Water quality projects meeting the following criteria shall receive additional priority points:

(A) A project located in a watershed listed as a "NPS Priority Watershed" in Oklahoma's Nonpoint Source Management Program shall receive an additional ten (10) points.

(B) A project listed on Oklahoma's 303(d) list of threatened or impaired stream segments shall receive an additional five (5) points.

(C) A project that implements the recommendations of a conservation plan, site-specific water quality remediation plan, TMDL, storm water management program, water audit or modified 208 water quality management plan, which has been approved by an agency of competent jurisdiction, in a sub-watershed where discharge or runoff from nonpoint sources are identified as causing, or significantly contributing to water quality degradation shall receive an additional five (5) points.

(3) Water Quality Protection Factor. The Water Quality Protection Factor provides a maximum of ten (10) priority points to proposed water quality projects that provide maintenance of beneficial uses and protection for water bodies afforded special protection under OWQS. Projects shall receive ten (10) points for satisfying the following criteria:

(A) A water quality project located within the watershed of a stream segment or in a groundwater basin underlying a watershed of a stream segment (known as "Special Source" groundwater):

(i) listed in OWQS Appendix A. as an Outstanding Resources Water, High Quality Water, Sensitive Water Supply, Scenic River, Culturally Significant Water or Nutrient Limited Watershed;

(ii) listed in OWQS Appendix B.--"Areas with Waters of Recreational and/or Ecological Significance"; or

(iii) located in a delineated "source water protection area";
or

(B) A water quality project located in an area overlying a groundwater classified in OWQS with a vulnerability level of Very High, High, Moderate, or Nutrient Vulnerable.

(4) Programmatic Priority Factor. The Programmatic Priority Factor provides a maximum of one hundred (100) priority bonus points to projects that address specific programmatic priorities set forth by the Environmental Protection Agency or Board and detailed in the Annual Intended Use Plan.

(5) **Readiness to Proceed Factor.** The Readiness to Proceed Factor provides a maximum of four hundred (400) points depending on the relative "readiness to proceed" with a loan commitment among proposed projects.

(A) A project requesting to be considered for funding within the five-year planning period shall receive one hundred (100) points.

(B) In addition to a request for funding, a project for which preliminary planning documents have been submitted shall receive two hundred (200) points. Preliminary planning documents include a preliminary engineering report and a preliminary environmental information document, and must be submitted to the Board and to the Department or the Conservation Commission as appropriate.

(C) In addition to a request for funding and preliminary planning documents, a project for which a completed loan application has been submitted shall receive three hundred (300) points.

(D) In addition to a request for funding, preliminary planning documents, and a completed loan application, a project for which the appropriate technical plans and specifications necessary to implement the project have been approved by the Department or the Conservation Commission, as appropriate, shall receive four hundred (400) points.

(f) **Management of the Project Priority List.**

(1) **Tie breaking procedure.** A tie breaking procedure shall be utilized when two or more projects have equal points under the Project Priority System and are in competition for funds. Projects will be ranked according to existing population. According to the most recent federal decennial census or American Community Survey data available, the project with the greatest existing population will receive the higher ranking.

(2) **Project bypass.** A project on the fundable portion of the list may be bypassed if it is determined that the project will not be ready to proceed during the funding year. This determination will be made on projects that are unable to meet the schedule established on the priority list. The applicant whose project is affected shall be given written notices that the project is to be bypassed. Projects that have been bypassed may be reinstated on the funded portion of the list if sufficient funds are available, and the project completes the necessary tasks to proceed. Funds which become available due to the utilization of these bypass procedures will be treated in the same manner as additional allotments.

(3) **Project Priority List update.** The priority list is continually reviewed and changes (i.e., loan award dates, estimated construction assistance amounts, project bypass, addition of new projects, etc.) may occur as necessary.

(4) **Additional allotments.** After defining the fundable portion of the Clean Water SRF Project Priority List, the Board may determine that it is necessary or desirable to obligate additional funds that are available and the list may be extended to include the next highest ranked project or projects on the planning portion of the list. Any sum made available to a state by reallocation or deobligation shall be treated in the same manner as the most recent allotment.

(5) **Project removal.** The Board may remove a project from the Clean Water SRF Project Priority List when the project has been funded, the

project is found to be ineligible, it is indicated that the applicant does not intend to continue in the Clean Water State Revolving Loan Program, or the Board has determined that the applicant does not have financial, legal, or managerial capability to construct the project.

(6) **Amount of financial assistance.** The amount of financial assistance shall be the sum of the total eligible costs related to construction. The amount is contingent upon the availability of funds for this purpose. During each funding year, loans totaling twenty-five (25) percent of the funds available from the capitalization grant and state match for that year shall be provided to those eligible small municipalities with a population of 10,000 or less. However, if the state has not met the federal requirement of making binding commitments in an amount equal to one hundred and twenty (120) percent of each quarterly grant payment within one year of receipt of each quarterly payment, other eligible applicants may apply for a loan or an increase to an existing loan to utilize the small community set aside, if such actions will permit the state to comply with the federal binding commitment requirement.

(7) **Addition of new projects to the Clean Water SRF Project Priority List.**

(A) **General.** Prior to the placement of any new projects on the Clean Water SRF Project Priority List, the applicant must submit a request for such placement to the Board. The Programmatic Application must specify that the applicant intends to apply for financial assistance from the Clean Water SRF. The Board will evaluate the Programmatic Application. If it is indicated that a viable project could result which would be in conformance with Clean Water SRF requirements, the potential project will be added to the Clean Water SRF Priority List.

(B) **Brownfield Activities.** Requests received for Brownfield activity projects must satisfy the following requirements before they will be placed on the Clean Water SRF fundable portion of the project priority list:

- (i) Submit a certification from the Department that the project is a Brownfield project;
- (ii) Submit a certification from the Department that urban runoff from the project site potentially impacts water quality; and
- (iii) Submit project documents which determine the water quality benefits of the proposed project.

(C) **Nonpoint source and Watershed Management activities.**

Requests received for nonpoint source and watershed management projects must satisfy the requirements of 82 O.S. §1085.58(G), as amended, before they will be placed on the Clean Water SRF fundable portion of the project priority list.

(8) **Categories of need.** All projects receiving financial assistance must fit into at least one of the categories of need listed in 785:50-9-21(a).

(A) A project may include all eligible categories of need.

(B) If a point source project consists of more than one category including a nonpoint source project, its project ranking calculation will be based on that category which will result in the greatest priority points.

(9) **Change of scope.** A change of scope, such as the addition of new construction items, will not be eligible after loan closing unless:

- (A) The change of scope is necessary to result in an operable treatment works due to an oversight and not to replace faulty construction or equipment already funded, or
- (B) The change of scope is necessary due to changes in Federal or State requirements

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2772, eff 7-1-00; Amended at 19 Ok Reg 2531, eff 6-27-02; Amended at 20 Ok Reg 2622, eff 7-11-03; Amended at 27 Ok Reg 1321, eff 5-27-10; Amended at 28 Ok Reg 1026, eff 7-1-11; Amended at 31 Ok Reg 2512, eff 9-12-14; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 33 Ok Reg 1954, eff 9-11-16; Amended at 34 Ok Reg 2179, eff 9-11-17; Amended at 36 Ok Reg 1332, eff 8-11-19]

785:50-9-24. Intended use plan

Each fiscal year the Board shall prepare an Intended Use Plan (IUP) which shall be subjected to public participation. The IUP will identify projects anticipated to receive financial assistance from that year's available funds. The IUP will comply with Federal Clean Water Act SRF guidance.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2772, eff 7-1-00; Amended at 28 Ok Reg 1026, eff 7-1-11; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 33 Ok Reg 1954, eff 9-11-16; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-25. Legislative Report [REVOKED]

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Revoked at 17 Ok Reg 2772, eff 7-1-00]

785:50-9-26. EPA annual report [REVOKED]

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Revoked at 17 Ok Reg 2772, eff 7-1-00]

785:50-9-27. Types of assistance

The Fund may be used for the following purposes:

- (1) To make loans on the condition that:
 - (A) Such loans are made at or below market interest rates, including interest free loans at terms consistent with the Clean Water Act.
 - (B) Principal and interest payments will commence not later than one year after project completion and all loans will be fully amortized consistent with the Clean Water Act.
 - (C) The recipient of a loan will establish a dedicated source of revenue for repayment of loans.
- (2) To buy or refinance the debt obligation of eligible applicants within the State at or below market rates, when such debt obligations were incurred and construction started after March 7, 1985, for the sole purpose of funding projects that meet the following requirements:
 - (A) The applicant is the approved designated management agency.
 - (B) The project is consistent with the water quality management plan.
 - (C) The project must be listed on the State priority list.
 - (D) The project has complied with requirements of these regulations and has been approved by the Board.
 - (E) The project must have approved plans and specifications and construction permit issued by the Department.
- (3) For the reasonable costs of administering the fund and conducting activities under Title VI of the Clean Water Act, not to exceed 4% of the

federal capitalization grant awards.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 25 Ok Reg 1473, eff 5-27-08; Amended at 33 Ok Reg 1954, eff 9-11-16]

785:50-9-28. Pre-application for funding

(a) The applicant will complete the programmatic application, and submit applicable documents to the Board. The applicant must demonstrate that it has the legal, managerial, and financial capability to assure adequate construction, operation, and maintenance of the treatment works throughout the applicant's jurisdiction.

(b) Receipt of programmatic applications that are acceptable to the Board will be sufficient for remaining on the State's priority list.

(c) The Board shall make an initial determination of whether *an entity meets the criteria to receive funding* [82:1085.58(B)] and the Board shall advise the applicants whether or not to proceed with planning documents for financial assistance based on the information provided in the programmatic application.

(d) The Board staff shall make a preliminary recommendation for approval or rejection of the loan application.

(1) If the preliminary recommendation is for rejection, the Board shall provide a written recommendation including the reasons for rejection. The entity may then be allowed to modify or supplement any documents in order to comply with Board requirements and resubmit the same to the Board.

(2) If the preliminary recommendation is for approval, the Board shall notify the applicant.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 31 Ok Reg 2512, eff 9-12-14; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-29. Pre-planning conference [REVOKED]

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Revoked at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-30. Planning documents

The purpose of the planning document is to present the findings of the engineer or other qualified professional as approved by the Board in a precise fashion with enough attention given to detail so as to allow adequate review of the project by the owner and applicable regulatory agencies. A planning document must be submitted to the Board. The document shall contain but not be limited to the following information:

(1) Identification of the planning area boundaries and characteristics, the existing problems and needs related to wastewater management, and the projected needs and problems through the design life of the project.

(2) Cost and effectiveness analysis certification of meeting State and federal water quality and public health requirements.

(3) All basic information necessary for the design of the sewage system and/or treatment works.

(4) Adequate evaluation of the environmental impacts of alternatives in accordance with Part 7 of this subchapter (relating to Environmental Review and Determination) to support the cost effectiveness analysis together with a resolution passed by the applicant which accepts the planning documents and provides a commitment to build the proposed project.

(5) A demonstration that the project is consistent with the State's approved Water Quality Management Plan established by Section 208 of the Clean Water Act.

(6) The applicant shall submit a statement of the project engineer's most current estimate of project cost itemized as to major facilities or items including land and right-of-way costs, fees of engineers, brownfield assessment fees, all legal fees, fees of registered financial advisors and/or consultants, contingencies and interest during construction.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2772, eff 7-1-00; Amended at 28 Ok Reg 1026, eff 7-1-11; Amended at 31 Ok Reg 2512, eff 9-12-14; Amended at 33 Ok Reg 1954, eff 9-11-16; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-31. Pre-application conference [REVOKED]

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Revoked at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-32. Plans and specifications

(a) **Submittal.** The applicant shall prepare plans and specifications based on the final engineering report on all significant elements of the project. These documents shall conform to the Water Pollution Control Facility Standards, and brownfield cleanup standards which may apply, and a permit to construct or a concurrence must be issued by the Department.

(b) **Additional requirements.** The plans and specifications shall contain the following:

- (1) Provisions assuring compliance with the Board rules and regulations and the Oklahoma Bidding Laws.
- (2) Forms by which the bid bond, statutory, performance and maintenance bonds will be provided. Bonding requirements outlined in 61 O.S., Section 113(B), are as amended.
- (3) Provisions requiring the contractor to obtain and maintain the appropriate insurance coverage.
- (4) Provisions giving authorized representatives of the Board access to all such construction activities, books, records, documents, and other evidence of the contractor for the purpose of inspection, audit and copying during normal business hours.
- (5) Those conditions, specifications, and other provisions provided by or requested by the Board to comply with State law and Part 5 of this Subchapter.
- (6) Bid proposal that separates eligible construction from ineligible construction.

(c) Approval of plans and specifications.

- (1) The Board will approve the plans and specifications if they:
 - (A) Conform to the requirements listed in (a) of this Section (relating to the permit to construct or concurrence issued by the Department).
 - (B) Are consistent with all relevant statutes.
 - (C) Pass a biddability, operability, and constructability review by the Board.
 - (D) Are consistent with Board approved planning documents and environmental determinations required by Part 9 of this Subchapter (relating to Required Environmental Review and Determinations) and 785:50-9-3 (relating to planning document).

- (2) Approval of the plans and specifications does not relieve the applicant of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.
- (3) The applicant shall obtain authorization from the Board before advertising for bids on the project.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2772, eff 7-1-00; Amended at 31 Ok Reg 2512, eff 9-12-14]

785:50-9-33. Application for financial assistance

(a) **Application filing.** An application shall be filed with the Board. The information required on all applications for financial assistance must meet the requirements of the Board presented to the applicant and must be on the project priority list and included on the current year Intended Use Plan. A copy of the adopted generating program necessary to meet local debt service requirement will be submitted with the application.

(b) **Action on application.**

(1) After an application is filed as provided in (a) of this Section, the Board shall conduct an in-depth review and evaluation of the application and wastewater project to determine whether it complies with applicable state and federal laws. Board staff may request additional information from the applicant and have further conferences as deemed necessary and beneficial to complete the application review.

(2) In the review and consideration for financial assistance under the Clean Water SRF Program, the Board shall give consideration to the following general and non-exclusive criteria for application approval:

(A) **Compliance with laws.** The application and proposed project must be found to be in compliance with all applicable and relevant federal, state and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(B) **Eligibility.** The applicant and proposed project must be determined to be eligible for the assistance sought.

(C) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project as a whole including proposed revenues from the project and the adequacy and reliability of estimated revenues necessary for loan repayment when indicated.

(D) **Availability of funds.** The Board shall take into consideration the current and anticipated availability of assistance funds needed to provide the financial assistance requested.

(E) **Planning Documents.** The applicant shall submit such planning documents as may be required by Board Staff.

(3) The Board may deny an application for a loan from the Clean Water SRF program for any of the following reasons:

(A) The applicant or the entity which stands to receive the benefit of the financial assistance is not an eligible entity.

(B) The applicant does not have a demonstrated history of sound management.

(C) The applicant's financial condition is not sound enough to assure the Board that the loan would be satisfactorily repaid (including but not limited to circumstances such as inability to meet

debt service, inability to meet any applicable rate covenant or additional indebtedness requirements, a substantial increase in operation and maintenance costs due to the proposed project, substantial revenue collection problems, substantial negative financial trends, a default or record of late payment(s) on previous indebtedness, etc.)

(D) The economic conditions pertinent for the applicant show negative trends (including but not limited to conditions such as substantial declines in sales tax revenues, population, per capita income, building permits, or water and/or sewer connections; a substantial increase in unemployment; or detrimental changes in the bases of ten largest customers or ten largest taxpayers).

(E) Any other reason based upon applicable law or the Board's judgment and discretion.

(4) Once the Board staff deems its review complete, the matter will be placed on the Board's agenda for consideration. The Board may approve the application, reject the application, or request additional information. The Board shall notify the applicant as to any such action taken.

(c) **Continuing review after approval of application.** If the application and loan receives final approval, the Board and applicant will coordinate the setting of the date, time and place for the closing of the loan. In the period between the date the application and loan were approved and the date of loan closing, the Board shall continue to review loan documents and shall consult with the applicant's representatives as deemed necessary.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 14 Ok Reg 2788, eff 7-1-97; Amended at 17 Ok Reg 2772, eff 7-1-00; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 33 Ok Reg 1954, eff 9-11-16; Amended at 34 Ok Reg 2179, eff 9-11-17; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-34. Binding commitment

Upon approval of the application by the Board, the Board will issue a letter of binding commitment. This will be a commitment of financial assistance and shall contain those conditions deemed necessary by the Board.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93]

785:50-9-35. Loan closing and Disbursement of SRF funds

(a) **Documentation to be submitted prior to loan closing.** Prior to loan closing the applicant will submit to the Board, the following:

- (1) Information requested by the Board regarding loan closing documents.
- (2) All necessary and incidental instruments and documents executed for loan closing by applicant, Board and all other necessary parties, including but not limited to all mortgages, notes, financing statements and pledges of project security and revenues where appropriate.

(b) **Documentation to be submitted prior to disbursement of funds.** The applicant will submit to the Board, the following documents unless waived by Board Staff:

- (1) Bidding documents, including all addenda, approved in accordance with 785:50-9-32.
- (2) A tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders.
- (3) Other or additional engineering data and information, if deemed necessary by the Board staff.

- (4) A certification that all required acquisitions, leases, easements, rights-of-way, relocations, (both voluntary and involuntary) have been obtained for the project to be built.
- (5) Evidence that the applicant has obtained all required permits and financing to build the project.
- (6) Copies of all legal, financial, engineering and inspection contracts that will be paid in whole or in part from the loan proceeds.
- (7) Recipient sends ORF-271 disbursement request based on costs incurred to the Board, who shall review the requests and approve them as appropriate.
- (8) Executed contract and agreements to be entered into by the applicant for building of the projects containing the appropriately executed bonds, insurance certificates, act of assurance, and other documents required by this chapter.

(c) **General conditions for all loans.** Under the Clean Water Act and 82 O.S., §1085.54, the Board is authorized to make available financial assistance from the Clean Water State Revolving Fund Loan Account under the following conditions:

- (A) The financial assistance application, project and planning documents have been approved by the Board pursuant to Section 1085.58 of Title 82 or the Oklahoma Conservation Commission pursuant to Section 1085.65 of Title 82 of the Oklahoma Statutes.
 - (B) The loan is made at or below market interest rates, including interest-free loans, at terms consistent with the Clean Water Act.
 - (C) Principal and interest payments will begin not later than one year after completion of any project, which completion date shall be determined by the Board, and all loans will be fully amortized consistent with the Clean Water Act.
 - (D) The applicant demonstrates to the satisfaction of the Board the financial capability to assure sufficient revenues to pay debt service.
 - (E) The recipient of the loan establishes a dedicated source of revenue for payment of debt service for the loan.
 - (F) The recipient agrees to maintain financial records in accordance with governmental accounting standards, to conduct an annual audit of the financial records relating to the wastewater project and to submit the audit report to the Board on a scheduled annual basis, and
 - (G) The project is identified in the Board's current Intended Use Plan.
 - (H) The recipient of funds directly made available by the federal capitalization grant (equivalency projects) agrees to comply with the DBE participation requirements as well as other requirements of the federal capitalization grant as applicable and in compliance with requirements of the Clean Water Act, the EPA and the State.
- (2) Financial assistance shall not be made from the Clean Water State Revolving Loan Account until the conditions in (1) of this subsection are met.

(d) **Evidence of indebtedness.** The financial assistance loans contemplated within this subchapter shall be provided by the Board for approved projects pursuant to such notes, bonds, revenue bonds or other appropriate form of evidence of indebtedness from the applicant as the Board may require.

(e) **Criteria for determining interest rates.** The interest rates on loans to be made from the Clean Water State Revolving Fund Loan Account shall be at or below market rates for similar indebtedness by eligible entities.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2772, eff 7-1-00; Amended at 20 Ok Reg 2622, eff 7-11-03; Amended at 23 Ok Reg 3086, eff 7-27-06; Amended at 27 Ok Reg 1321, eff 5-27-10; Amended at 31 Ok Reg 2512, eff 9-12-14; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 33 Ok Reg 1954, eff 9-11-16; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-36. Refinancing construction loans

If the project includes the refinancing of a loan, the applicant shall submit all of the items specified in 785:50-9-33 and any records, assurances, or appraisals concerning the construction of the project as required by Board Staff, and said project is subject to inspection by Board Staff.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-37. Minimum assistance agreement conditions [REVOKED]

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2772, eff 7-1-00; Revoked at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-38. Construction phase

(a) **Inspection during construction.** During the building phase of the project, the recipient shall provide independent engineering or other professional services necessary to assure completion of the project in accordance with the loan agreement and the approved plans and specifications.

(b) **Resident inspection.** After the construction contract is awarded, the recipient shall provide for adequate full-time independent resident inspector of the project and require assurance that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, approved alterations, and in accordance with sound engineering principles and building practices. The Board is authorized to inspect the building of any project at any time in order to assure that plans and specifications are being followed and that the works are being built in accordance with sound engineering principles and building practices, but such inspection shall never subject the State of Oklahoma to any action for damages. The Board shall bring to the attention of the recipient and the project engineer any variances from the approved plans and specifications. The recipient and the project engineer shall immediately initiate necessary action rectifying construction deficiencies.

(c) Inspection of materials.

(1) The Board is also authorized to inspect all materials furnished, including inspection of the preparation or manufacture of the materials to be used. The state inspector is to report the manner and progress of the building or to report conditions relating to the materials furnished and the compliance by the contractor with approved plans and specifications for the project. Such inspection will not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents or the project engineer from determining compliance with the requirements of the contract documents.

(2) In the event building procedures or materials are determined by the Board to be substandard or otherwise unsatisfactory and/or not in conformity with approved plans and specifications, the Board may order the recipient to take such action in the manner provided for in the construction contract to correct any such deficiency.

(3) In those instances of dispute between the recipient project engineer and the Board's representative as to whether material furnished or work

performed conforms with the terms of the construction contract, the Board may order the recipient to direct the project engineer to reject questionable materials and/or initiate other action provided for in the construction contract, including suspension where necessary, until all disputed issues are resolved in accordance with the terms of the construction contract.

(4) The contractor and recipient shall furnish the Board's representative with every reasonable facility for ascertaining whether the work as performed is in accordance with the requirements and intent of the contract.

(5) In addition to normal testing procedures required of the recipient, the Board may require reasonable additional tests of building materials of processes which the Board determines to be necessary during the building of projects financed in whole or in part by Clean Water SRF funds. All tests, whether for the Board or the project engineer, will conform to current American Water Works Association, American Association of State Highway and Transportation Officials, American Society of Testing and Materials, and the Oklahoma Department of Transportation published procedures, or similar criteria. The Board shall specify which tests are applicable. Samples for testing shall be furnished free of cost to the Board upon request on the construction site.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2772, eff 7-1-00; Amended at 26 Ok Reg 1715, eff 6-11-09; Amended at 31 Ok Reg 2512, eff 9-12-14; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-39. Project changes

(a) Minor changes in the project work that are consistent with the objectives of the project and within the scope of the assistance agreement do not require the approval of the Board before the applicant's implementation of the change. However, the amount of the funding provided by the assistance agreement may be increased only by a formal amendment which will require Board approval.

(b) The recipient must receive approval from the Board Staff and the Department as applicable before implementing changes which:

- (1) Alter the project design standards.
- (2) Significantly delay or accelerate the project schedule.
- (3) Substantially alter the design drawings and specifications, or the location, size, capacity, or quality of any major part of the project.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-40. Building phase submittal [REVOKED]

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 23 Ok Reg 3086, eff 7-27-06; Revoked at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-41. Progress payments [REVOKED]

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 23 Ok Reg 3086, eff 7-27-06; Revoked at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-42. Final release of retainage

After completion of construction, acceptance by the applicant, and receipt of satisfactory test results that all work has been performed according to specifications (if such tests are required), the final release of retainage may be made with approval of the project by the Board.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 23 Ok Reg 3086, eff 7-27-06; Amended at 31 Ok Reg 2512, eff 9-12-14; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-43. Post building phase responsibilities of the recipient

- (a) After the satisfactory completion of the project, the recipient shall be held accountable by the Board for the continued validity of all representations and assurances made to the Board. Continuing cooperation with the Board is required. To facilitate such cooperation and to enable the Board to protect the State's investment and public interest, the provisions of this subsection shall be observed.
- (b) The Board is authorized to inspect the project and the records of operation and maintenance of the project at any time. If it is found that the project is being improperly or inadequately operated and maintained to the extent that the project purposes are not being properly fulfilled or that integrity of the State's investment is being endangered, the Board shall require the recipients to take appropriate action.
- (c) The Board may request certified copies of all minutes, operating budgets, monthly operating statements, contracts, leases, deeds, audit reports, and other documents concerning the operation and maintenance of the project in addition to the requirements of the covenants of applicable bond indenture and/or the loan agreement. The financial assistance provided by the Board is based on the project's economic feasibility, and the Board shares the recipient's desire to maintain this feasibility in the project's operation and maintenance at all times. The Board may periodically inspect, analyze, and monitor the project's revenues, operation, and any other information the Board requires in order to perform its duties and to protect the public interest.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 17 Ok Reg 2772, eff 7-1-00; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-44. Accounting

Upon completion of the project a final accounting will be made to the Board. The final accounting shall provide:

- (1) That an annual audit of the recipient, prepared by a certified public accountant or licensed public accountant be provided to the Board.
- (2) That the recipient shall maintain adequate insurance coverage on the project in an amount adequate to protect the State's interest.
- (3) That the recipient will comply with any special conditions specified by the Board's environmental determination until all financial obligations to the State have been discharged.
- (4) That the recipient covenants to continually abide by the terms of the financial assistance agreement, the Board's rules and regulations, and relevant State statutes for operation and maintenance of the facility.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 23 Ok Reg 3086, eff 7-27-06; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-45. Compliance with federal authorities

The recipients who construct equivalency projects must comply with all applicable federal laws, executive orders, and other sources of authority.

[Source: Added at 15 Ok Reg 2881, eff 7-1-98; Amended at 27 Ok Reg 1321, eff 5-27-10; Amended at 28 Ok Reg 1026, eff 7-1-11; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 33 Ok Reg 1954, eff 9-11-16; Amended at 35 Ok Reg 2243, eff 9-14-18]

PART 5. MANDATORY FEDERAL REQUIREMENTS [REVOKED]

785:50-9-50. Applicability [REVOKED]

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 13 Ok Reg 1385, eff 5-13-96; Revoked at 15 Ok Reg 2881, eff 7-1-98]

785:50-9-51. Planning documents [REVOKED]

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 13 Ok Reg 1385, eff 5-13-96; Revoked at 15 Ok Reg 2881, eff 7-1-98]

785:50-9-52. Design [REVOKED]

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Revoked at 15 Ok Reg 2881, eff 7-1-98]

785:50-9-53. User charge [REVOKED]

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Revoked at 15 Ok Reg 2881, eff 7-1-98]

785:50-9-54. Construction [REVOKED]

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 12 Ok Reg 2715, eff 7-1-95; Revoked at 15 Ok Reg 2881, eff 7-1-98]

785:50-9-55. Allowable land and right-of-way costs [REVOKED]

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Revoked at 15 Ok Reg 2881, eff 7-1-98]

785:50-9-56. Compliance with federal laws and orders [REVOKED]

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Revoked at 15 Ok Reg 2881, eff 7-1-98]

PART 7. SRF ENVIRONMENTAL REVIEW PROCESS

785:50-9-60. Requirement of environmental review

As required by the provisions of Section 602(b) (6) of the Clean Water Act, the Board shall conduct an interdisciplinary environmental review consistent with the National Environmental Policy Act of the project proposed for funding through the Clean Water State Revolving Fund Loan Account. This review will insure that the project will comply with the applicable local, state and federal laws and Board regulations relating to the protection and enhancement of the environment. Based upon the staff's review, the Board will make formal determinations regarding the potential social and environmental impacts of the proposed project. As necessary, the determination will include mitigative provisions as a condition of financial assistance for building and no financial assistance will be provided until a final environmental determination has been made. Nothing in this Part shall prohibit any public, private or governmental party from seeking administrative or legal relief from the determinations of the Board. Potential applicants to the Clean Water State Revolving Fund Loan Account should obtain guidance from the staff regarding the scope of the environmental review to be conducted by the Board and the environmental information which the applicant will be required to submit in support of the proposed project.

(1) **Basic environmental determination.** There are three (3) basic environmental determinations that will apply to projects proposed to be implemented with assistance from the Clean Water State Revolving Fund Loan Account. These are: a determination to categorically exclude a project

from a formal environmental review; a finding of no significant impact (FONSI) based upon a formal environmental review supported by an environmental information assessment (EA); and a determination to provide or not to provide financial assistance based upon a Record of Decision (ROD) following the preparation of an environmental impact statement (EIS). The appropriate determination will be based on the following criteria.

(A) The categorical exclusion determination applies to categories of projects that have shown over time not to entail significant impacts on the quality of the human environment. Documentation required in this subsection will be submitted to the Board.

(i) Applicants seeking a categorical exclusion will provide the Board with sufficient documentation to demonstrate compliance with the criteria of this Chapter and shall satisfy the provisions of 40 C.F.R. Section 6.204. At a minimum, this will consist of:

(I) a brief, complete description of the proposed project and its costs;

(II) statement identifying the categorical exclusion that applies to the action;

(III) a statement explaining why no extraordinary circumstances apply to the proposed action; and

(IV) a plan map or maps of the proposed project showing the location of all construction areas, the planning area boundaries, and any known environmentally sensitive areas.

(ii) A proposed project can be categorically excluded from a full environmental review if the proposed project:

(I) fits within the category of action that is eligible for exclusion,

(II) will not result in significant impacts on the quality of the human environment; and

(III) does not involve extraordinary circumstances, as listed in 40 CFR Section 6.204.

(iii) The project is in a community of less than 10,000 population and is for minor expansions or upgrading of existing treatment works or on-site disposal systems are proposed.

(iv) The Board may exclude, by amendment to these regulations, other categories of projects for which there is sufficient documentation demonstrating that they are not likely to have significant effects on the quality of the human environment.

(B) The FONSI will be based upon an environmental review by the staff supported by an Environmental Information Document (EID) in conformance with 785:50-9-61 and 40 CFR 6.206. Upon review of the EID the staff will issue either a FONSI or a public notice that the preparation of an EIS will be required. All applicants whose projects do not meet the criteria for a categorical exclusion will be required to prepare an EID. The Board's issuance of a FONSI will be based upon an EA documenting that the potential environmental

impacts will not be significant or that they may be mitigated without extraordinary measures.

(C) The ROD may only be based upon an EIS in conformance with the format and guidelines described in 785:50-9-61 and 40 CFR 6.208. A ROD results from an extensive environmental review of a proposed project's potential environmental impacts as detailed in an EIS.

(2) Other determinations of the Board.

(A) Recognizing that a project may be altered at some time after an environmental determination on the project has been issued prior to approval, the plans and specifications, assistance application, and related documents will be examined for consistency with the environmental determination. If inconsistencies are found, the Board may revoke a categorical exclusion and require the preparation of an EID or an EIS, consistent with the criteria of this subsection, or require the preparation of amendments to an EID or supplements to an EIS, as appropriate. Based upon the staff's review of the amended project, the Board will:

- (i) reaffirm the original determination through the issuance of a public notice or statement of finding;
- (ii) issue a FONSI for a project for which a categorical exclusion has been revoked, or issue a public notice that the preparation of an EIS will be required;
- (iii) issue an amendment to a FONSI, or revoke a FONSI and issue a public notice that the preparation of an EIS will be required, or
- (iv) issue a supplement to a record of decision, or revoke a record of decision and issue a public notice that financial assistance will not be provided.

(B) When the environmental determination is five years old or older, and for which the subject action has not yet been implemented, the Board staff must re-evaluate the proposed action, environmental conditions, and public views to determine whether to conduct a supplemental environmental review of the action and complete an appropriate decision document in accordance with 785:50-9-60 or reaffirm original determination.

(C) An applicant may request advance authority to construct part of the proposed wastewater treatment project prior to completion of the necessary environmental review when the part of the project will:

- (i) immediately remedy a severe public health, water quality or environmental problem;
- (ii) not preclude any reasonable alternatives identified for the complete system;
- (iii) not cause significant or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire project; and
- (iv) not be highly controversial.

(D) Based upon the review of the information required by Section 785:50-9-61, the Board will issue a FONSI so conditioned as to prohibit construction of the remainder of the project until a

complete environmental review has been performed and a subsequent environmental determination has been issued.

(E) The Board may choose to accept determinations made by a federal agency in a previously issued environmental decision in lieu of conducting a formal environmental review when the proposed project will not cause adverse impacts to the environment and is not highly controversial.

(3) Projects exempt from environmental review. The Board is not required to perform an environmental review of the following projects:

(A) Non-treatment works projects that are not defined in the Clean Water Act Section 212; and projects that are not defined as Section 212 projects.

(B) Projects that consist of design and planning fees only.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 19 Ok Reg 2531, eff 6-27-02; Amended at 20 Ok Reg 2622, eff 7-11-03; Amended at 23 Ok Reg 3086, eff 7-27-06; Amended at 26 Ok Reg 1715, eff 6-11-09; Amended at 27 Ok Reg 1321, eff 5-27-10; Amended at 30 Ok Reg 976, eff 6-13-13; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 33 Ok Reg 1954, eff 9-11-16; Amended at 35 Ok Reg 2243, eff 9-14-18; Amended at 36 Ok Reg 1332, eff 8-11-19]

785:50-9-61. Environmental information documents required by the Board

An EID must be submitted by those applicants whose proposed projects do not meet the criteria for a categorical exclusion and for which the Board has made a preliminary determination that an EIS will not be required. The Board will provide guidance on both the format and contents of the EID to potential applicants prior to initiation of planning. The checklist and guidelines are located on OWRB's website at <http://www.owrb.ok.gov/financing/faforms.php>.

(1) Prior to the applicant's adoption of the planning document, the applicant will hold a public hearing on the proposed project and the EID, and provide the Board with a transcript of the hearing. The Board will provide guidance to the applicant regarding the contents of the hearing notice and of the hearing. The hearing will generally be advertised at least thirty (30) days in advance in a local newspaper of general circulation. Concurrent with the advertisement, a notice of the public hearing and availability of the documents will be sent to all local, state, and federal agencies and public and private parties that may have an interest in the proposed project. Included with the transcript will be a list of attenders, and written testimony, and the applicant's responses to the issues raised. The transcript of hearing can be audio recorded but must be provided to the Board in the form of either a cd, a dvd or a digital file in mp3 or mp4 format.

(2) The applicant will make copies of the EID available to all federal, state, and local agencies and others with an interest in the project. The Board will provide guidance to the applicant regarding coordination requirements.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 26 Ok Reg 1715, eff 6-11-09; Amended at 27 Ok Reg 1321, eff 5-27-10; Amended at 30 Ok Reg 976, eff 6-13-13; Amended at 31 Ok Reg 2512, eff 9-12-14; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-9-62. Environmental impact statement review by the Board

(a) The format of an EIS will encourage sound analysis and clear presentation of alternatives, including the no action alternative and the selected alternative, and their environmental, economic and social impacts as found in 40 CFR Section 6.207.

(b) Following the comment period and public hearings on the final EIS and at the time of the decision to approve the facilities plan or to provide or deny financial

assistance to the proposed project, the Board will prepare a concise public record of decision. The record of decision will describe those mitigative measures to be taken which will make the selected alternative environmentally acceptable.

(c) Recognizing that a project may be altered at some time after an environmental determination on the project has been issued, prior to approval, the plans and specifications, assistance application, and related documents will be examined for consistency with the environmental determination. If inconsistencies are found, the Board may revoke a categorical exclusion and require the preparation of an EID or an EIS, consistent with the criteria of this subsection, or require the preparation of amendments to an EID or supplements to an EIS, as appropriate.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 27 Ok Reg 1321, eff 5-27-10; Amended at 28 Ok Reg 1026, eff 7-1-11; Amended at 32 Ok Reg 2370, eff 9-11-15; Amended at 35 Ok Reg 2243, eff 9-14-18]

SUBCHAPTER 10. DRINKING WATER TREATMENT REVOLVING LOAN PROGRAM REGULATIONS

785:50-10-1. General program description and procedures

(a) Drinking Water Treatment Revolving Loan Program description.

(1) Pursuant to 82 O.S., §§1085.71 through 1085.84A, an additional financial assistance program was created to be administered by the Board and Oklahoma Department of Environmental Quality (Department) to implement provisions of the federal Safe Drinking Water Act.

(2) Under Oklahoma's program, the Department is to generally carry out the role of prioritizing drinking water projects and conducting technical analysis and review of eligible entities and drinking water treatment projects. The Board is to generally carry out the role of conducting financial evaluations and analyses of eligible entities, reviewing documents for loan closings, and managing and administering monies in the Water Resources Fund to make monies available for financial assistance.

(3) The Drinking Water Treatment Revolving Loan Program shall be administered as a separate program from the Board's previously existing Financial Assistance Programs. The rules in this Subchapter are intended to recognize the distinction between the programs where necessary.

(b) **General procedures.** The general procedures to be followed in the drinking water project review and financial assistance application process for financial review under the program authorized in 82 O.S., §1085.71 through 1085.84A shall be as follows:

(1) The applicant shall follow the procedures, rules and regulations administered by the Oklahoma Department of Environmental Quality, which shall include placement on the priority list of a publicly owned waterworks established by the Department and the filing of an application with the Board for drinking water project review and financial assistance.

(2) The Board shall make an initial determination of whether an entity meets the legal and managerial criteria to receive funding.

(3) The Board shall prepare an initial financial review of the entity based on documents provided to the Board and proposed loan amount and interest rate for which the entity qualifies. Consultations among Board staff, the Department, and the applicant's representatives may be held where deemed appropriate and beneficial.

(4) The Board staff shall consider the initial financial review and application. It shall then forward its preliminary recommendation for

approval or rejection of the loan application to the applicant, based on applicable criteria set forth in 785:50-10-2.

(A) If the recommendation is for rejection, the Board shall provide a written recommendation including the reasons for rejection. The entity may then be allowed to modify or supplement any documents in order to comply with the Board requirements and resubmit the same to the Board.

(B) If the Board recommends approval, it shall notify the applicant and the Department.

(5) After initial financial review approval by the Board, the Board shall follow its established procedures and rules to conduct an in-depth financial review and evaluation of the drinking water project to determine whether it complies with applicable state and federal laws.

(6) After a secondary application and necessary documents are submitted to the Board, the matter will be reviewed by staff who may request additional information from the applicant or the Department and have further conferences as deemed necessary and beneficial to complete the financial review. The matter will then be placed on the Board's agenda for consideration. The Board may approve the application, reject the application, or request additional information.

(7) If the application and loan receives final approval, the Board, Department and applicant will coordinate the setting of the date, time and place for the closing of the loan.

(8) At the loan closing, the Department shall have authority to grant approval for disbursement of loan proceeds and to present the same.

(9) The Board shall administer the loans until paid by the recipient and a final accounting is completed.

[Source: Added at 12 Ok Reg 2715, eff 7-1-95; Amended at 15 Ok Reg 2881, eff 7-1-98]

785:50-10-2. General approval standards and criteria

(a) In the review and consideration for financial assistance under the Drinking Water Treatment Revolving Loan Program, the Board shall give consideration to the following general and non-exclusive criteria for application approval:

(1) **Compliance with laws.** The application and proposed drinking water project must be found to be in compliance with all applicable and relevant federal, state and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary for project commencement and operation.

(2) **Eligibility.** The applicant and proposed drinking water project must be determined to be eligible for the assistance sought.

(3) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the drinking water project as a whole including proposed revenues from the drinking water project and the adequacy and reliability of estimated revenues necessary for loan repayment when indicated.

(4) **Availability of funds.** The Board shall take into consideration the current and anticipated availability of assistance funds needed to provide the financial assistance requested.

(b) The Board may deny an application for a loan from the Drinking Water Treatment Revolving Loan Program for any of the following reasons:

- (1) The applicant or the entity which stands to receive the benefit of the financial assistance is not an eligible entity.
- (2) The applicant does not have a demonstrated history of sound management.
- (3) The applicant's financial condition is not sound enough to assure the Board that the loan would be satisfactorily repaid (including but not limited to circumstances such as inability to meet debt service, inability to meet any applicable rate covenant or additional indebtedness requirements, a substantial increase in operation and maintenance costs due to the proposed project, substantial revenue collection problems, substantial negative financial trends, a default or record of late payment(s) on previous indebtedness, etc.)
- (4) The economic conditions pertinent for the applicant show negative trends (including but not limited to conditions such as substantial declines in sales tax revenues, population, per capita income, building permits, or water and/or sewer connections; a substantial increase in unemployment; or detrimental changes in the bases of ten largest customers or ten largest taxpayers).
- (5) Any other reason based upon applicable law or the Board's judgment and discretion.

[Source: Added at 12 Ok Reg 2715, eff 7-1-95; Amended at 14 Ok Reg 2788, eff 7-1-97]

785:50-10-3. Terms and conditions

(a) General limitations and conditions.

- (1) Under the federal Safe Drinking Water Act and 82 O.S. Section 1085.74, the Board is authorized to use the Drinking Water Treatment Revolving Loan Account for the following purposes:
 - (A) To make a loan to an eligible entity if:
 - (i) The drinking water project and planning documents have been approved by the Department,
 - (ii) The loan is made at or below market interest rates, including interest-free loans, at terms consistent with the federal Safe Drinking Water Act,
 - (iii) Principal and interest payments will begin not later than one year after completion of any drinking water project, which completion date shall be determined by the Department, and all loans will be fully amortized consistent with the federal Safe Drinking Water Act,
 - (iv) The Drinking Water Treatment Revolving Loan Account will be credited with all payments of principal and interest on all loans,
 - (v) The applicant demonstrates to the satisfaction of the Board the financial, legal and managerial capability to assure sufficient revenues to pay debt service,
 - (vi) The recipient of the loan establishes a dedicated source of revenue for payment of debt service for the loan,
 - (vii) The recipient agrees to maintain financial records in accordance with governmental accounting standards, to conduct an annual audit of the financial records relating to the drinking water project and to submit the audit report to the Board on a scheduled annual basis, and

(viii) The project is identified in the Department's current Intended Use Plan.

(B) To buy or refinance eligible entity obligations at or below market interest rates if the obligation was incurred after July 1, 1993;

(C) To guarantee or purchase insurance for eligible entities if the guarantee or insurance would improve access to market credit or reduced interest rates;

(D) As a source of revenue or security for the payment of principal of and interest on any investment certificate issued by the Board. The proceeds of the sale of such investment certificates shall be deposited in the Drinking Water Treatment Revolving Loan Account in compliance with applicable bond resolutions or indentures authorizing the sale;

(E) To earn interest on accounts established under the Drinking Water Treatment Revolving Loan Account;

(F) To administer the Drinking Water Treatment Revolving Loan Account pursuant to the provisions of 82 O.S. §§1085.71 et seq.; and

(G) For such other purposes or in such other manner, as is determined by the Board to be an appropriate use of the Drinking Water Treatment Revolving Loan Account and which has been specifically approved by the Environmental Protection Agency pursuant to the federal Safe Drinking Water Act.

(2) Financial assistance shall not be made from the Drinking Water Treatment Revolving Loan Account until the conditions in (1) of this subsection are met.

(3) The Board shall not use funds in the Drinking Water Treatment Revolving Loan Account established in the Water Resources Fund to make grants.

(b) **Evidence of indebtedness.** The financial assistance loans contemplated within this subchapter shall be provided by the Board for approved drinking water projects pursuant to such notes, bonds, revenue bonds or other appropriate form of evidence of indebtedness from the applicant as the Board may require.

(c) **Criteria for determining interest rates.**

(1) The interest rates on loans to be made from the Drinking Water Treatment Revolving Loan Account shall be at or below market rates for similar indebtedness by eligible entities and may vary among classes or categories of eligible entities based on a joint agreement entered into by and between the Board and Department.

(2) Such criteria of the joint agreement may incorporate applicable United States Environmental Protection Agency and Rural Development or successor agency guidelines for financial assistance.

(d) **Loan repayments.** Payment on loans shall be made to the Board as provided in the loan documents.

[Source: Added at 12 Ok Reg 2715, eff 7-1-95; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-10-4. Disbursement of funds and conditions for disbursement

After an application for financial assistance under the program authorized by Sections 1085.71 through 1084A of Title 82 of the Oklahoma Statutes has been

approved by the Board, the following conditions and requirements shall be met prior to the releases and disbursement of any financial assistance funds:

- (1) Final approval of disbursement of financial assistance proceeds is granted or waived by the Department.
- (2) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents for loan closing, including but not limited to all mortgages, notes, financing statements and pledges of project security and revenues where appropriate.
- (3) Recipient sends disbursement requests to Department, Department approves disbursement requests and forwards same to Board.

[Source: Added at 12 Ok Reg 2715, eff 7-1-95; Amended at 15 Ok Reg 2881, eff 7-1-98]

SUBCHAPTER 11. MISCELLANEOUS PROVISIONS

785:50-11-1. Inspection of works, books and records

(a) Water and Sewer program and REAP grant program projects.

- (1) From the time of first application for financial assistance for projects through the Water and Sewer program and REAP grant program, throughout all stages of construction, and at any other time while any assistance from the Board to the applicant is outstanding, the Board shall have the right to inspect, review and comment upon any and all projects, and any and all incidental works, areas, facilities and premises otherwise pertaining to the project for which application is made.
- (2) The Board shall further have the same said right of inspection to inspect, review and comment upon any and all books, accounts, records, contracts or other instruments, documents or information possessed by applicant or its contractors, agents, employees or representatives which relate in any respect to the receipt, deposit and/or expenditure of financial assistance funds.
- (3) By making application for financial assistance to the Board, all applicants shall be deemed to consent and agree to the right of reasonable inspection provided in this rule and all applicants shall allow the Board all necessary and reasonable access and opportunity for such purposes.

(b) Clean Water SRF projects.

- (1) From the time of receipt of a preapplication throughout all stages of construction for wastewater projects, and at any other time while any financial assistance from the Wastewater Facility Construction program recipient is outstanding, the Board shall inspect, review and comment upon the projects, incidental works, areas, facilities and premises otherwise pertaining to the project for which application is made.
- (2) The Board shall also have the right of inspection to inspect, review and comment upon any and all books, accounts, records, contracts and other instruments, documents or information possessed by recipient or its contractors, agents, employees or representatives which relate in any respect to the receipt, deposit and/or expenditure of project financial assistance funds.
- (3) After completion of construction, the Board may conduct periodic site visits.

(c) Independent inspection. All recipients of any funding for construction through any of the Board's financial assistance programs shall retain an independent inspector throughout the construction to assure that the work on the project is

performed in a satisfactory manner in accordance with the approved plans and specifications and sound engineering practices and building principles. Unless otherwise determined by the Board, recipients of loans shall provide an inspector on a full-time basis during construction and recipients of emergency grants and REAP grants shall provide an inspector on at least a part-time basis as required by the Board or its staff.

[Source: Amended at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 16 Ok Reg 2691, eff 7-1-99; Amended at 17 Ok Reg 2772, eff 7-1-00]

785:50-11-2. Project modifications

(a) After an application for financial assistance has been approved by the Board and after the Board has reviewed and approved applicant's plans and specifications for the project, no change, modification, amendments, or departure otherwise to or from the approved plans and specifications which would materially or significantly affect total project cost, estimated revenues, or design shall be made, allowed or authorized without the prior written approval therefor by the Board.

(b) For purposes of this Section, no prior Board approval of project change orders shall be required if applicant's project engineer certifies to the Board that such change, modification, amendment or departure otherwise will not materially or significantly affect total project cost, estimated revenues or design.

[Source: Amended at 10 Ok Reg 3333, eff 7-1-93; Amended at 12 Ok Reg 2715, eff 7-1-95]

785:50-11-2.1. Project sign

The general contractor shall erect and maintain for the life of the construction contract a suitable sign that meets all of the minimum project sign specifications required by the Board or its staff, including a specification that the sign state that funding for the project has been provided by the Board.

[Source: Added at 12 Ok Reg 2715, eff 7-1-95]

785:50-11-3. Records public

All records of the Board relating to the financial assistance program contemplated within the rules of this Chapter shall be public records available for public inspection by any interested person at reasonable times and in a reasonable manner.

785:50-11-4. Application fees

(a) Applicant shall not be required to pay to the Board any fee for the submission of an application for an emergency grant or a REAP grant.

(b) Loan applications for loans through the State Loan Program Revenue Bonds program, the CWSRF program, and the DWSRF program, however, are subject to a filing, review and processing fee to the Board at the time of filing the secondary application request for additional information.

[Source: Amended at 16 Ok Reg 2691, eff 7-1-99; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-11-5. Project completion, inspection and audit

(a) Upon completion of any project for which financial assistance has been provided, the applicant shall furnish to the Board written notification of completion.

(b) Upon receipt of such notification, or upon project completion should notification not be furnished as required herein, the Board may conduct a final on-

site inspection of the project and an audit of any and all financial assistance funds furnished to the applicant.

(c) Upon completion of any loan project a final accounting shall be made to the Board and shall include an annual audit of the recipient, prepared by a certified public accountant or licensed public accountant.

[Source: Amended at 10 Ok Reg 3333, eff 7-1-93; Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 35 Ok Reg 2243, eff 9-14-18]

785:50-11-6. Return of funds to the Board

(a) Financial assistance funds made available to an applicant by the Board shall be utilized and expended by the applicant solely and exclusively for the payment of authorized and allowable costs and expenses of the project for which assistance was approved.

(b) In the event funds furnished to an applicant by the Board are not utilized and expended by the applicant for the specific project for which such funds were furnished within a reasonable period of time after disbursement to the applicant, or in the event Board determines, at any time, that funds furnished were utilized and expended for any unauthorized or unallowable purpose, the applicant shall return or otherwise pay to the Board any and all such unused funds or any amounts of funds used and expended for unauthorized or unallowable purposes plus interest at the maximum rate allowable by law on the unused or unauthorized amount.

[Source: Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 18 Ok Reg 2247, eff 7-1-01]

785:50-11-7. Approval and notification regarding certain proposed action of an eligible entity [REVOKED]

[Source: Revoked at 35 Ok Reg 2243, eff 9-14-18]

785:50-11-8. Compliance with financial assistance agreement

(a) The Board may choose not to approve nor fund any financial assistance to any person who is not in substantial and material compliance with the terms of any financial assistance agreement between that person and the Board.

(b) In the event the Board determines, at any time, that a grant recipient is not in substantial and material compliance with the terms of any financial assistance agreement between that person and the Board, the grant recipient shall refund or otherwise repay to the Board the entire grant award.

[Source: Added at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2772, eff 7-1-00; Amended at 18 Ok Reg 2247, eff 7-1-01]

785:50-11-9. Use of CWSRF Administrative Fund

Monies in the Clean Water Loan Administrative Fund in the State Treasury may be used by the Board for administering the CWSRF, or as otherwise authorized by the Clean Water Act or guidance or regulations promulgated thereunder. Such administration activities may include water quality planning and water quality analysis and protection studies specifically approved by the Board and, if necessary, by the Environmental Protection Agency.

[Source: Added at 17 Ok Reg 2772, eff 7-1-00]

785:50-11-10. Insurance requirements for loan recipients

A financial assistance loan recipient shall at all times carry or cause to be carried liability, workers compensation, fire, casualty and extended coverage, and

other insurance covering the recipient's system as shall be required by and acceptable to the Board Staff. Furthermore, the recipient shall at all times for each of its officers, employees, agents, or other representatives who handle funds of the recipient be covered by a fidelity bond or position coverage in a form and amount as shall be required by and acceptable to the Board Staff, and shall furnish to the Board appropriate proof of such fidelity bond or position coverage.

[Source: Added at 18 Ok Reg 2247, eff 7-1-01; Amended at 35 Ok Reg 2243, eff 9-14-18]

SUBCHAPTER 13. OKLAHOMA WATER CONSERVATION GRANT PROGRAM

785:50-13-1. Purpose

The purpose of these rules is to implement the provisions of 82 O.S. Section 1088.1, enacted as part of House Bill 3135 approved in May 2008, that creates a new financial assistance grant program specifically for water conservation.

[Source: Added at 26 Ok Reg 1371, eff 12-8-08 (emergency); Added at 26 Ok Reg 1715, eff 6-11-09]

785:50-13-2. Definitions

In addition to the definitions contained in Section 785:50-1-2 of this chapter 50, the following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Communities" means *entire cities or towns, combined cities or towns, part of cities or towns, or schools, groups or entities located within a community* [82:1088.1].

"Groups or entities" means non-profit corporations who hold charitable non-profit status certifications from the Internal Revenue Service pursuant to the Internal Revenue Code and non-profit rural water districts formed under Title 82, O.S.

"Water conservation grant" means a written contract between the Board and a recipient whereby the recipient agrees to provide described goods or services for a public purpose under terms and conditions specified in the agreement.

[Source: Added at 26 Ok Reg 1371, eff 12-8-08 (emergency); Added at 26 Ok Reg 1715, eff 6-11-09]

785:50-13-3. Eligible entities

- (a) Communities are eligible to become water conservation grant recipients.
- (b) For purposes of qualifying for and obtaining the financial assistance contemplated in this subchapter, communities shall submit appropriate proof of eligibility.

[Source: Added at 26 Ok Reg 1371, eff 12-8-08 (emergency); Added at 26 Ok Reg 1715, eff 6-11-09]

785:50-13-4. Eligible projects

- (a) The Board shall make grants for the establishment of pilot projects which will implement water conservation projects or plans in communities in the state;
- (b) Pilot projects shall be innovative programs that will serve as models for other communities in the state.
- (c) Pilot projects may include, but are not limited to, community conservation demonstration projects, water use accounting programs, retrofit projects, school education projects, Xeriscape demonstration gardens, and information campaigns on capturing and using harvested rainwater and graywater.

[Source: Added at 26 Ok Reg 1371, eff 12-8-08 (emergency); Added at 26 Ok Reg 1715, eff 6-11-09]

785:50-13-5. Pilot project criteria

The Board will consider the following in determining whether to approve a water conservation grant:

- (1) Unless otherwise determined by the Board in a notice of funding availability, the total grant requested may not exceed Seven Thousand Dollars (\$7,000);
- (2) Percentage of water efficiency improvement or water savings that may be realized by implementation of the pilot project;
- (3) Ability of the applicant community to monitor benefits of project proposed;
- (4) Amount of matching funds and/or inkind contributions to be provided;
- (5) Potential to serve as model for other communities in the state; and
- (6) Number of communities, groups or entities collaborating in the proposed project.

[Source: Added at 26 Ok Reg 1371, eff 12-8-08 (emergency); Added at 26 Ok Reg 1715, eff 6-11-09]

785:50-13-6. Process for consideration of proposals

(a) The Board will solicit applications by placing a notice of availability of funds for the water conservation grant program on the Oklahoma Water Resources Board website. The notice will contain a cutoff date for submission of applications.

(b) Applications for water conservation grants shall be submitted on forms provided by the Board.

(c) Staff will prioritize applications using the following formula:

- (1) Estimated percentage of water efficiency improvement or water savings that may be realized by the implementation of the pilot project:
 - (A) one to ten percent = 5 points
 - (B) 11 to 20 percent = 10 points
 - (C) 21 percent or more = 20 points
- (2) Applicant will monitor actual savings/benefits resulting from the proposed project:
 - (A) No - 0 points
 - (B) Yes - 15 points
- (3) Amount of matching funds and/or inkind contributions to be provided:
 - (A) 10 to 20% - 5 points
 - (B) 21 to 30% - 10 points
 - (C) 31 to 40% - 15 points
 - (D) 41% or greater - 20 points
- (4) Adaptability of proposed project to other communities:
 - (A) No - 0 points
 - (B) Yes - 15 points
- (5) Number of communities, groups or entities collaborating on water conservation project:
 - (A) two = 10 points
 - (B) three = 20 points
 - (C) four or more = 30 points

[Source: Added at 26 Ok Reg 1371, eff 12-8-08 (emergency); Added at 26 Ok Reg 1715, eff 6-11-09]

785:50-13-7. Requirements for operation of projects

(a) In addition to other terms and conditions stated therein, the water conservation grant recipient shall monitor and evaluate actual water conservation realized from implementation of the project or provide documentation regarding the potential for improvements to water use efficiency. Such monitoring may include week-to-week or month-to-month comparisons and changes in consumption based on total meter readings from the targeted area.

(b) Approved projects that require construction of infrastructure such as pipes and meters shall be constructed and operated in accordance with all applicable state laws and maintained in good working order by the grant recipient.

[Source: Added at 26 Ok Reg 1715, eff 6-11-09]

785:50-13-8. Funding availability

(a) Contingent upon the availability of funding, the Board may award grants each year in an amount not to exceed Twenty-five Thousand Dollars (\$25,000.00) for each grant, with total amount of grants awarded each year not to exceed Fifty Thousand Dollars (\$50,000.00).

(b) The notice of availability of funding shall specify the funding limitation for each grant and the total funding amount of grants to be awarded based upon the availability of funding.

[Source: Added at 26 Ok Reg 1715, eff 6-11-09]

785:50-13-9. Funding disbursement and limitations

(a) Water conservation grant recipients receiving \$1,000.00 or less:

- (1) Must complete projects within one (1) year;
- (2) Will be funded on a reimbursable basis upon submittal of invoices, receipts or other proof of expenditures as approved by the Board;
- (3) Must submit a final report at the end of the project describing how the terms and conditions of the water conservation grant agreement were accomplished.

(b) Water conservation grant recipients receiving more than \$1,000.00:

- (1) Must complete projects within two years;
- (2) Will be funded on a reimbursable basis upon submittal of invoices, receipts or other proof of expenditures as approved by the Board.
- (3) Will provide status reports at intervals prescribed by the Board and a final report at the end of the project describing how the terms and conditions of the water conservation grant agreement were accomplished.

[Source: Added at 26 Ok Reg 1715, eff 6-11-09]

785:50-13-10. General terms and conditions for grants

(a) Funds must be used for purposes described in the application and in accordance with the water conservation grant agreement;

(b) Projects must be completed in time frame specified in the grant agreement, but not to exceed two years.

(c) Funds are not to be used for travel, salaries, overhead, current or completed projects or other general operating expenses of grant recipient.

[Source: Added at 26 Ok Reg 1715, eff 6-11-09]

SUBCHAPTER 15. WATER AND WASTEWATER AMERICAN RESCUE PLAN ACT GRANT PROGRAM REQUIREMENTS AND PROCEDURES

785:50-15-1. Program description

The Oklahoma Legislature has authorized the American Rescue Plan Act ("ARPA") grant program. This law authorizes the Board to make grants to certain qualified entities for qualified project purposes according to certain requirements. This Subchapter interprets and implements the law authorizing this grant program by the Board for the U.S. Treasury's Coronavirus State and Local Fiscal Recovery Funds Final Rule for water and wastewater investments. The Board's rules applicable to water and wastewater ARPA grants shall be construed so as to consider only the ARPA grant program administered by the Board and shall not be construed so as to consider ARPA grant programs administered by other governmental persons or other grant programs administered by the Board.

[Source: Added at 40 Ok Reg 84, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

785:50-15-2. Definitions

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

"Applicant" means a qualified entity which submits an application for an ARPA grant on its own behalf, or for whom an application is submitted.

"Community" means any city, town, county or the State of Oklahoma, and any rural sewer district, rural water district, public trust, master conservancy district, any other political subdivision, or any combination thereof.

"Project" means any project that meets the federal eligibility requirements of the U.S. Treasury's Coronavirus State and Local Fiscal Recovery Funds Final Rule for water and wastewater investments, a part of the American Rescue Plan Act, Public Law 117-2.

"Qualified entity" means a Community as defined above.

[Source: Added at 40 Ok Reg 84, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

785:50-15-3. Application review and disposition

(a) **General procedures.** The general procedure to be followed in the financial assistance application, review, and consideration process for financial assistance under the ARPA grant program shall be as follows:

(1) Pre-application conference.

(A) While not specifically required, all potential applicants are encouraged to initially contact the Board for purposes of making arrangements for participating in a pre-application conference between Board staff, applicant (or representative), applicant's legal, financial, and engineering advisors and such other persons whose attendance and participation may be deemed appropriate and beneficial.

(B) At the pre-application conference, preliminary matters respecting the applicant, the proposed project and the application for assistance may be generally discussed in an effort to familiarize all concerned parties with the financial assistance program and applicable application requirements and procedures.

(2) Application.

(A) Applicant shall initiate application review and consideration by submission to the Board of applicant's application for financial assistance. An application may be submitted directly by the

qualified entity or, at the qualified entity's discretion an authorized representative of the qualified entity.

(B) In all instances, applications must be in a form which meets the requirements of the Board.

(C) All applicants must have the verification form signed and notarized by the applicant representative and must have a signature of an attorney representing applicant.

(3) **Submittal to Board.** Upon completion of staff review, the submitted application (with staff recommendations, if any) shall be placed upon the Board's agenda for the next regular (or special) Board meeting and shall be thereby submitted to the Board for action as described in (e) below.

(b) **General approval standards and criteria.** In the review and consideration of applications for financial assistance under the ARPA grant program, the Board shall follow the priority point system set forth in 785:50-15-5. The Board shall also give consideration to the following general and non-exclusive criteria for application approval:

(1) **Compliance with laws.** The application and proposed project must be found to be in compliance with all applicable and relevant federal, state, and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(2) **Eligibility.** The applicant must be qualified, and the proposed project must be for a qualified purpose as defined in 785:50-15-2.

(3) **Local need, support, and priority.** The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs. The Board shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants.

(4) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project.

(5) **Project feasibility.** The Board shall consider from the engineering data submitted and otherwise available whether the proposed project appears to be feasible and must determine as a prerequisite to application approval and funding that the project is cost effective.

(6) **Statewide needs and public interest.** The Board shall give consideration to the relationship between the proposed project and the overall water resource development needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.

(7) **ARPA grant amount, availability of funds.** In sizing an ARPA grant, the Board shall take into consideration the current and anticipated availability of ARPA program funds.

(8) **Conservation measures.** The Board shall consider whether the applicant has taken all reasonable measures to limit waste and conserve water.

(c) **Criteria applicability.**

(1) The general criteria set forth in (b) and (d) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board. Such criteria shall not be deemed exclusive. In all instances, each individual application and project must be reviewed and considered on its own individual merits.

(2) The criteria and standards set forth in (b) and (d) of this Section shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of Board's judgment and discretion.

(d) Criteria for denying an application. The Board may deny an application for an ARPA grant for any of the following reasons:

- (1) The applicant or the entity which stands to receive the benefit of the grant assistance is not an eligible entity.
- (2) Failure to complete the application and provide the required documentation.
- (3) Any other reason based upon applicable law or the Board's judgment and discretion.

(e) Board action.

(1) After reviewing and considering the submitted application, the Board may proceed to take one of the following alternative forms of Board action on the application:

(A) The Board may approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be necessary to effectuate the disbursement of funds.

(B) The Board may retain the application under advisement for further consideration or continue hearing on same for later ruling and disposition, and the Board may withhold ruling on the application pending further hearing and/or submission to the Board of such further or additional information as the Board may require for application consideration purposes.

(C) The Board may reject and deny the application, in whole or in part, based upon any criteria described in (d) of this Section which may be applicable.

(D) The Board may approve and grant the application, in whole or in part, such approval being conditioned and contingent upon the existence of adequate and available grant funds or conditioned and contingent upon receipt and approval by Board staff of any outstanding and necessary material, information, documents, verifications or other authorization.

(2) Upon approval of an application, the Board may authorize the execution of all necessary grant documents and instruments by the Chairman of the Board, or other designated Board member, and may accordingly authorize and provide for disbursements of funds and may authorize such further or additional action as may be necessary to complete and implement the approved transaction.

[Source: Added at 40 Ok Reg 84, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

785:50-15-4. Applicable law; deadline for applications; eligible project costs

(a) The Board shall administer applications for ARPA funds in accordance with any provisions of law applicable to such applications and ARPA funds, which may include, but is not limited to:

- (1) Recipients are required to complete procurement procedures according to 2 CFR 200.317-200.327.
- (2) Recipients may be required to complete a Single Audit pursuant to 2 CFR Part 200, Subpart F.
- (3) Recipients are required to have an active registration on Sam.gov pursuant to 2 CFR Part 25.

(b) To be considered for and receive funding from funds available for the ARPA grant program, an application must be completed in accordance with the Board's rules and prescribed application form in all material respects with all material attachments and filed by the applicant and received by the Board. Any application not properly completed and filed shall not be considered.

(c) For purposes of evaluating, approving, and funding an application for an ARPA grant, categories of project costs which are eligible for assistance shall include, but are not limited to:

- (1) Architecture and/or engineer fees related to the project.
- (2) Fees for soil testing.
- (3) Fees for surveying.
- (4) Payments to contractor(s) for construction of the improvements.
- (5) Legal fees and expenses of counsel for the applicant which are related to the project.
- (6) Services of full-time or part-time inspector. Provided, however, administrative expenses shall not be eligible project costs.

(d) The ARPA grant applications are accepted and scored in a closed cycle. Once a cycle is closed no applications will be accepted, unless the applicant can provide sufficient justification for why their application was not received during the open application period.

(e) The Board will not approve nor fund any grant applications for communities with a population greater than 7,000 or rural water districts with more than 2,300 non-pasture taps unless the applicant contributes a percentage of the total cost of the proposed project.

[Source: Added at 40 Ok Reg 84, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

785:50-15-5. Water and Wastewater ARPA grant priority point system

(a) Basis of priority system and formula.

(1) **General description.** The priority system consists of a mathematical equation rating the qualified entities and the proposed project by means of a formula awarding points for each criterion used in the evaluation. The maximum point total under the system is seventy-two (72). The Board may consider grants for approval at each Board meeting, and in order from the highest rating. If the Board determines that the qualified entity with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration.

(2) **Total priority points.** Total priority points will be calculated according to the priority formula set forth in subsection 785:50-15-5(b) below. Seniority date and time of applications submitted shall be utilized to decide ties in point totals among qualified entities.

(b) Priority formula for eligible entities.

(1) **Formula.** The following formula has been devised to rank grant applications: $T = WR + I + APCI + C + BP + PG + S + LP$, Where:

- (A) T = Total of priority points
- (B) WR = Water and sewer rate structure
- (C) I = Indebtedness per connection

- (D) APCI= Adjusted Per Capita Income
- (E) C=Consent Order
- (F) BP = Project benefit to other systems
- (G) PG = Previous OWRB ARPA grant assistance
- (H) S = Sustainability
- (I) LP = Proposals submitted to the Legislative ARPA Committees

(2) **Explanation.** Each of these criteria are explained below:

(A) **Water and Sewer rate structure (WR).**

(i) For systems providing water service only:

- (I) If the cost per 5,000 gallons is \$50.00 or greater, the applicant shall be given 10 points.
- (II) If the cost per 5,000 gallons is \$45.00 to \$49.99, the applicant shall be given 9 points.
- (III) If the cost per 5,000 gallons is \$40.00 to \$44.99, the applicant shall be given 8 points.
- (IV) If the cost per 5,000 gallons is \$35.00 to \$39.99, the applicant shall be given 7 points.
- (V) If the cost per 5,000 gallons is \$30.00 to \$34.99, the applicant shall be given 6 points.
- (VI) If the cost per 5,000 gallons is \$25.00 to \$29.99, the applicant shall be given 5 points.
- (VII) If the cost per 5,000 gallons is \$23.00 to \$24.99, the applicant shall be given 4 points.
- (VIII) If the cost per 5,000 gallons is \$21.00 to \$22.99, the applicant shall be given 3 points.
- (IX) If the cost per 5,000 gallons is \$19.00 to \$20.99, the applicant shall be given 2 points.
- (X) If the cost per 5,000 gallons is \$18.00 to \$18.99, the applicant shall be given 1 point.
- (XI) If the cost per 5,000 gallons is less than \$18.00, the applicant shall be given 0 points.

(ii) For systems providing water and sewer services:

- (I) If the cost per 5,000 gallons is \$56.00 or greater, the applicant shall be given 10 points.
- (II) If the cost per 5,000 gallons is \$53.00 to \$55.99, the applicant shall be given 9 points.
- (III) If the cost per 5,000 gallons is \$49.00 to \$52.99, the applicant shall be given 8 points.
- (IV) If the cost per 5,000 gallons \$45.00 to \$48.99, the applicant shall be given 7 points.
- (V) If the cost per 5,000 gallons is \$41.00 to \$44.99, the applicant shall be given 6 points.
- (VI) If the cost per 5,000 gallons is \$37.00 to \$40.99, the applicant shall be given 5 points.
- (VII) If the cost per 5,000 gallons is \$34.00 to \$36.99, the applicant shall be given 4 points.
- (VIII) If the cost per 5,000 gallons is \$32.00 to \$33.99, the applicant shall be given 3 points.
- (IX) If the cost per 5,000 gallons is \$31.00 to \$31.99, the applicant shall be given 2 points.

(X) If the cost per 5,000 gallons is \$30.00 to \$30.99, the applicant shall be given 1 point.

(XI) If the cost per 5,000 gallons is less than \$30.00, the applicant shall be given 0 points.

(iii) For systems providing sewer service only:

(I) If the cost per connection per month is \$34.00 or greater, the applicant shall be given 10 points.

(II) If the cost of connection per month is \$32.00 to \$33.99, the applicant shall be given 9 points.

(III) If the cost of connection per month is \$30.00 to \$31.99, the applicant shall be given 8 points.

(IV) If the cost of connection per month is \$28.00 to \$29.99, the applicant shall be given 7 points.

(V) If the cost of connection per month is \$26.00 to \$27.99, the applicant shall be given 6 points.

(VI) If the cost of connection per month is \$24.00 to \$25.99, the applicant shall be given 5 points.

(VII) If the cost of connection per month is \$22.00 to \$23.99, the applicant shall be given 4 points.

(VIII) If the cost of connection per month is \$20.00 to \$21.99, the applicant shall be given 3 points.

(IX) If the cost of connection per month is \$18.00 to \$19.99, the applicant shall be given 2 points.

(X) If the cost of connection per month is \$16.00 to \$17.99, the applicant shall be given 1 point.

(XI) If the cost of connection per month is less than \$16.00, the applicant shall be given 0 points.

(iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat-water rate (unmetered) without regard to the amount of water used, and 2 points for a decreasing block rate which lowers the cost per 1000 gallons for connections using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons. Two (2) points will be added for systems using an increasing block rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under this category the maximum number of points is 13 and the minimum is -3 points.

(B) Indebtedness per connection (I). The indebtedness per connection ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of connections served.

(i) If the indebtedness per connection is \$20.00 or greater, the applicant shall be given 10 points.

(ii) If the indebtedness per connection is \$17.50 to \$19.99, the applicant shall be given 9 points

(iii) If the indebtedness per connection is \$16.00 to \$17.49, the applicant shall be given 8 points.

- (iv) If the indebtedness per connection is \$14.50 to \$15.99, the applicant shall be given 7 points.
- (v) If the indebtedness per connection is \$13.00 to \$14.49, the applicant shall be given 6 points.
- (vi) If the indebtedness per connection is \$11.50 to \$12.99, the applicant shall be given 5 points.
- (vii) If the indebtedness per connection is \$10.00 to \$11.49, the applicant shall be given 4 points.
- (viii) If the indebtedness per connection is \$8.50 to \$9.99, the applicant shall be given 3 points.
- (ix) If the indebtedness per connection is \$7.00 to \$8.49, the applicant shall be given 2 points.
- (x) If the indebtedness per connection is \$5.50 to \$6.99, the applicant shall be given 1 point.
- (xi) If the indebtedness per connection is less than \$5.50, the applicant shall be given 0 points.

(C) Adjusted Per Capita Income (APCI). The affordability criteria is calculated based on a Communities per capita income, population trends, and unemployment rate and compared to the United States criteria in each of the categories. All data is taken from the United States Census Bureau.

- (i) if the APCI of an applicant is 81%, then the applicant falls into Tier 4 and shall be given 6 points.
- (ii) if the APCI of an applicant is less than 81% but more than or equal to 71% then the applicant falls into Tier 3 and shall be given 12 points.
- (iii) if the APCI of an applicant is less than 71% but more than or equal to 56% then the applicant falls into Tier 2 and shall be given 18 points.
- (iv) if the APCI of an applicant is less than or equal to 55% then the applicant falls into Tier 1 and shall be given 24 points.

(D) Consent order (C). An applicant who is subject to a consent order issued by a governmental agency with environmental jurisdiction shall be given 5 priority points for a proposed project which will remedy the problem out of which the consent order arose.

(E) Project benefit to other systems (BP). If the applicant's project will benefit other adjacent systems as well as applicant's, or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.

(F) Previous OWRB ARPA grant assistance (PG). For purposes of this subparagraph a political subdivision and all its public trusts and similar subordinate entities together shall be treated as one and the same qualified entity; provided, rural water or sewer districts shall not be construed to be subordinate entities of counties unless the effect would be to make multiple grants to substantially the same entity and/or service area. If a qualified entity has received a previous ARPA grant from the Board in the past, 8 points shall be deducted from the application.

(G) **Sustainability.** Points will be awarded for an applicant's sustainability and long-range planning as follows:

(i) Have and have implemented a Fiscal Sustainability Plan that meets the requirements of the Board Staff shall be awarded 10 points.

(ii) Have but have not implemented a Fiscal Sustainability Plan that meets the requirements of the Board Staff shall be awarded 6 points.

(iii) Applicant is willing to develop and implement a Fiscal Sustainability Plan prior to funding that meets the requirements of the Board Staff shall be awarded 3 points.

(H) **Proposals submitted to the Legislative ARPA Committees (LP).** Five (5) points will be awarded to applicants who submitted their proposals to the Legislative ARPA committee portal.

(3) **Evaluation of application from a master conservancy district.** When evaluating an application from a master conservancy district, Board Staff shall determine the score for the master conservancy district's application by looking through to each and every participating member of the master conservancy district. Board Staff shall assign a raw score to each and every participating member of the master conservancy district, as if such participating member had made application on their own behalf, applying the criteria for each component of the formula to such participating member based on such participating member's underlying facts and circumstances. The resulting raw score for each of the participating members of the master conservancy district shall then be weighted by multiplying such participating member's raw score by a fraction that is equal to that participating member's relative participating share of the master conservancy district's total water allocation as of the date the master conservancy district's application is filed with the Board. The resulting weighted score for all participating members of the master conservancy district shall be summed together to determine the score for the master conservancy district's application. If the proposed project will only benefit a portion of the members of the master conservancy district, then the Board will consider the participating members of the project when evaluating the project priority points.

[Source: Added at 40 Ok Reg 84, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

785:50-15-6. Disbursement of funds

(a) Action following Board approval and prior to disbursement of funding.

(1) **Notification of approval.** Upon approval of an ARPA grant application, the Board shall furnish to the applicant a written notice of grant approval. The notice shall advise the applicant that the grant application has been formally and officially approved by the Board and that the grant funds approved shall be made available to the applicant by the Board for such purposes and upon such other terms and conditions as the Board may require.

(2) **Bid filing.** Within ninety (90) days following the date of the written notice of approval, the applicant shall file with the Board an acceptable bid in compliance with the Competitive Bidding Act for completion of the proposed project. Where determined necessary and appropriate, the Board or its staff may permit additional time to file such a bid; provided,

notwithstanding any approval of additional time, if such a bid is not filed within 6 months following the date of Board approval of the application, then the Board's approval shall expire, and no funds shall be released.

(3) Additional conditions prior to disbursement of grant funds.

(A) Applicant shall maintain, in such manner as is acceptable to the Board or its staff, a federally insured account through which the grant proceeds shall be administered and separately accounted for by the applicant.

(B) Unless otherwise provided and approved by the Board, applicant shall submit to the Board all plans, specifications, and engineering reports, for the project for staff approval, all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project. If not previously provided, applicant shall provide Board with a written and verified statement setting forth:

(i) the amount of funds needed for initial commencement of the project, and

(ii) information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project.

(C) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents, including but not limited to a grant agreement.

(4) Board action on request for increase in approved amount. If prior to disbursement of the grant monies to the applicant, the project bids exceed the engineer's estimates or it otherwise develops that the ARPA grant amount approved by the Board, when combined with any other sources of funding, will be insufficient to complete the approved project, then the applicant may file a written request:

(A) to amend the scope of the approved project in a manner consistent with (a)(5) of this Section; or

(B) that the Board reconsider the application with an increased ARPA grant amount.

(5) Board action on request for change in scope of approved project. If prior to disbursement of the grant monies to the applicant, it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action.

(b) Disbursement of funding to applicant; action following disbursement.

(1) Disbursement contingent on completion of conditions; reduction from approved amount. At the time and upon compliance by the applicant with the applicable requirements in (a) of this Section, the Board may disburse the approved amount of ARPA grant funds to the applicant for the approved project.

(2) Disbursement in whole or part; timing. As the Board may direct, grant funds may be disbursed to the applicant in installments by pay

requests or in lump sum, and may be disbursed prior to, during or upon completion of the project, all as deemed appropriate by the Board under the project circumstances presented.

(3) **Post-disbursement requests for increases in funding amount.** If after disbursement of the grant monies to the applicant it develops that the applicant needs more money for the project than the ARPA grant amount disbursed by the Board, then any request for additional ARPA grant money shall follow the rules in this Subchapter governing new applications.

(4) **Post-disbursement requests for changes in scope of approved project.** If it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change to use undisbursed funds. If the Board staff determines that the change is reasonable and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. If the request is denied the applicant shall either proceed with the project as approved or abandon the project and deobligate the grant monies in accordance with the grant agreement.

(5) **Post-disbursement action regarding unexpended funding.** If following completion of the project, it develops that the applicant needed less money for the project the applicant shall deobligate the unexpended amount to the Board in accordance with the grant agreement.

(6) **Additional requirements.** The Board may impose additional reasonable and necessary conditions or requirements for the disbursement to the applicant or expenditure by the applicant of ARPA grant funds, all as may be deemed appropriate by the Board.

[Source: Added at 40 Ok Reg 84, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

SUBCHAPTER 17. OKLAHOMA DAM REHABILITATION (OKDR) GRANT PROGRAM REQUIREMENTS AND PROCEDURES

785:50-17-1. Program description

The Oklahoma Legislature has authorized the American Rescue Plan Act ("ARPA") grant program. This law authorizes the Board to make grants to certain qualified entities for qualified project purposes according to certain requirements. This Subchapter interprets and implements the law authorizing this grant program by the Board for the U.S. Treasury's Coronavirus State and Local Fiscal Recovery Funds Final Rule for Oklahoma dams in poor or unsatisfactory condition. Projects funded by this grant program shall be limited to up to One Million Dollars (\$1,000,000.00) per community. The Board's rules applicable to OKDR grants shall be construed to consider only the OKDR grant program administered by the Board and shall not be construed to consider OKDR grant programs administered by other governmental persons.

[Source: Added at 40 Ok Reg 84, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

785:50-17-2. Definitions

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

"Applicant" means a qualified entity which applies for an OKDR grant on its own behalf, or for whom an application is submitted shall be deemed not to be an applicant.

"Community" means any city, town, county or the State of Oklahoma, and any rural sewer district, rural water district, public trust, master conservancy district, any other political subdivision, or any combination thereof.

"High hazard-potential dam" means dams where failure will probably cause loss of human life as classified under the provisions of 785:25-3-3(a) (2) (C).

"Improvements" means correction of design flaws, including but not limited to, engineering and/or construction deficiencies considered inconsistent with current state-of-practice dam design and construction.

"Qualified project" means any necessary investment to rehabilitate public non-federal dams subject to the Board's jurisdiction which are of poor or unsatisfactory condition and fail to meet minimum dam safety standards stated in Chapter 25.

"Qualified entity" means a community which own a public non-federal dam subject to the Board's jurisdiction which are of poor or unsatisfactory condition and fail to meet minimum dam safety standards stated in Chapter 25.

"Routine maintenance and repair" means activities performed routinely to prevent deterioration of structures and equipment required to maintain a dam in a safe and functioning condition, failure of which to perform timely results in dam deterioration or impairment. Routine maintenance activities include but are not limited to replacement of parts, systems, or components; and other activities needed to preserve or maintain the dam.

[Source: Added at 40 Ok Reg 84, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

785:50-17-3. Application review and disposition

(a) **General procedures.** The general procedure to be followed in the financial assistance application, review, and consideration process for financial assistance under the OKDR grant program shall be as follows:

(1) **Notification of potential eligibility.** The Board may notify potentially eligible dam owners of the availability of the OKDR grant program.

(2) **Pre-application conference.**

(A) While not specifically required, all potential applicants are encouraged to contact the Board for purposes of arranging participation in a pre- application conference between Board staff, applicant (or representative), applicant's legal, financial, and engineering advisors and such other persons whose attendance and participation may be deemed appropriate and beneficial.

(B) At the pre-application conference, preliminary matters respecting the applicant, the proposed project and the application for assistance may be discussed to familiarize all concerned parties with the financial assistance program and applicable application requirements and procedures.

(3) **Application.**

(A) Applicant shall initiate application review and consideration by submission to the Board of applicant's application for financial assistance. An application may be submitted directly by the qualified entity or, at the qualified entity's discretion an authorized

representative of the qualified entity

(B) In all instances, applications must be written and in a form which meets the requirements of Subchapter 5.

(C) All applicants shall submit a proposed scope of work, operation and maintenance plan, schedule, and budget packet outlining the proposed activities that will be completed using grant funds.

(D) Engineering studies, plans, or design drawings and specification must be approved, signed, and stamped by a qualified design professional registered in Oklahoma.

(E) All applicants must have the verification form signed and notarized by the applicant representative and must have a signature of an attorney representing applicant.

(4) **Submittal to Board.** Upon completion of staff review, the submitted application (with recommendations, if any from the Board Dam Safety Program Manager) shall be placed upon the Board's agenda for the next regular (or special) Board meeting and shall be thereby submitted to the Board for action as described in (e) below.

(b) **General approval standards and criteria.** In the review and consideration of applications for financial assistance under the OKDR grant program, the Board shall follow the priority ranking system set forth in 785:50-17-5. The Board shall also give consideration the following general and non-exclusive criteria for application approval:

(1) **Compliance with laws.** The application and proposed project must be found to be in complying with all applicable and relevant federal, state, and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation. Prior to commencement of construction, recipients shall submit a dam safety construction permit application form along with all construction documents to OWRB as stated in the OAC:785-25 to be approved by the Board.

(2) **Dam rehabilitation.** Qualified projects must result in improvements to the overall condition of the dam and shall not be used for routine maintenance and repair.

(3) **Local need, support, and priority.** The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs. The Board shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants.

(4) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project.

(5) **Project feasibility.** The Board shall consider from the engineering data submitted and otherwise available whether the proposed project is feasible and must determine as a prerequisite to application approval and funding that the project is cost effective.

(6) **Statewide needs and public interest.** The Board shall consider the relationship between the proposed project and the overall water resource development needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.

(7) **OKDR grant amount and availability of funds.** In sizing an OKDR grant, the Board shall take into consideration the current and anticipated availability of OKDR program funds.

(8) **Commitment by applicant.** The applicant shall commit to provide operation and maintenance of the project for the expected life of the dam following completion of rehabilitation.

(c) Criteria applicability.

(1) The general criteria set forth in (b) and (d) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board.

(2) Such criteria shall not be deemed exclusive.

(3) In all instances, each individual application and project must be reviewed and considered on its own individual merits.

(4) The criteria and standards set forth in (b) and (d) of this Section shall accordingly be interpreted and applied to allow sufficient flexibility in the ultimate exercise of Board's judgment and discretion.

(d) Criteria for denying an application. The Board may deny an application for an OKDR grant for any of the following reasons:

(1) The applicant or the entity which stands to receive the benefit of the grant assistance is not a qualified entity.

(2) Any other reason based upon applicable law or the Board's judgment and discretion.

(e) Board action.

(1) After reviewing and considering the submitted application, the Board may proceed to take one of the following alternative forms of Board action on the application:

(A) The Board may approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be necessary to effectuate the disbursement of funds.

(B) The Board may retain the application under advisement for further consideration or continue hearing on same for later ruling and disposition, and the Board may withhold ruling on the application pending further hearing and/or submission to the Board of such further or additional information as the Board may require for application consideration purposes.

(C) The Board may reject and deny the application, in whole or in part, based upon any criteria described in (d) of this Section which may be applicable.

(D) The Board may approve and grant the application, in whole or in part, such approval being conditioned and contingent upon the existence of adequate and available grant funds or conditioned and contingent upon receipt and approval by Board staff of any outstanding and necessary material, information, documents, verifications or other authorization.

(2) Upon approval of an application, the Board may authorize the execution of all necessary grant documents and instruments by the Chairman of the Board, or other designated Board member, and may accordingly authorize and provide for disbursements and may authorize such further or additional action as may be necessary to complete and implement the approved transaction.

[Source: Added at 40 Ok Reg 84, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

785:50-17-4. Applicable law; deadline for applications; eligible project costs

(a) The Board shall administer applications for OKDR funds in accordance with any provisions of law applicable to such applications and OKDR funds. To be considered for and receive funding from funds available for OKDR, an application must be completed in accordance with the Board's rules and prescribed application form in all material respects with all attachments and filed by the applicant and received by the Board. Any application not properly completed and filed shall not be considered.

(b) For purposes of evaluating, approving, and funding an application for an OKDR grant, categories of project costs which are eligible for assistance shall include architecture and/or engineer fees construction costs, and other costs related to construction of a qualified project. Provided, however, that for construction costs to be eligible for award, applicants shall provide documentation that all construction funding is available. Failure to secure construction funding timely shall result in forfeiture of grant assistance for construction costs

(c) Funds made available by the Board to an applicant for approved projects may be utilized and expended by an applicant as approved by the Board.

(d) The OKDR grant applications are accepted and scored in a closed cycle. Once a cycle is closed no applications will be accepted unless the applicant can provide sufficient justification for why their application was not received during the open application period.

[Source: Added at 40 Ok Reg 84, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

785:50-17-5. Period of performance

Period of performance for selected projects commences upon finalization of the funding agreement by the Board and dam owner and shall have a term of twenty-four (24) months following finalization or until the project has been completed, whichever is shorter.

[Source: Added at 40 Ok Reg 84, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

785:50-17-6. Evaluation of performance

Progress of selected projects may be monitored during the period of performance by the Board Dam Safety Program as described in Chapter 25 and may include evaluation of subrecipients ability to meet proposed deadlines and ability to provide required documentation to the Board. Subrecipient's consulting engineer shall function as the primary technical assistance provider throughout the period of performance. Board staff may provide technical assistance at their discretion.

[Source: Added at 40 Ok Reg 84, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

785:50-17-7. OKDR grant priority system

(a) Basis of priority system and formula.

(1) **Prioritization.** The Board or its staff shall prioritize the selection of projects. Prioritization criteria include community size, dam hazard-potential classification, dam condition, and number of persons at risk from dam failure.

(A) **Community size.** Communities with a population of 7,000 people or less shall receive higher priority than communities with a population of over 7,000 as reported in the most recent decennial census published by the United States Bureau of the Census.

(B) Dams hazard-potential classification. Following prioritization for community population, project dams shall be prioritized by hazard-potential classification as defined in 785:25-3-3. High hazard-potential dams are prioritized highest; significant hazard-potential dams shall be prioritized second highest, and low hazard-potential dams shall be prioritized lowest.

(C) Dam condition rating. Following prioritization for hazard-potential classification, project dams shall be prioritized by a combination of condition rating and the number of persons at risk due to dam failure. The inspecting engineer for the project dam shall report condition ratings for verification by the Board Dam Safety staff. Dam condition ratings are reported to USACE for the National Inventory of Dams (NID) by the Board which has final authority on assignment of official condition ratings. Only dams assigned a condition rating of poor or unsatisfactory are eligible for funding through this program.

(D) Number of persons at risk. The number of persons at risk due to dam failure (PAR) shall be calculated by Board staff using dam breach inundation maps required by 785:25-7-6, population data obtained from the Department of Homeland Security, and roadway maps. PAR is calculated by overlaying breach inundation maps with population grid datasets for both day and night scenarios.

(b) Final ranking. Once all eligible projects have been prioritized as set forth above, they are then ranked by the following priority system based on dam condition and PAR.

- (1) Unsatisfactory condition, greater than 1,000 PAR
- (2) Unsatisfactory condition, between 100 and 1,000 PAR
- (3) Poor condition, greater than 1,000 PAR
- (4) Unsatisfactory condition, between 10 and 100 PAR
- (5) Poor condition, between 100 and 1,000 PAR
- (6) Unsatisfactory condition, between 1 and 10 PAR
- (7) Poor condition, between 10 and 100 PAR
- (8) Poor condition, between 1 and 10 PAR
- (9) Unsatisfactory condition, 0 PAR
- (10) Poor condition, 0 PAR

[Source: Added at 40 Ok Reg 84, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

785:50-17-8. Disbursement of funds

(a) Action following Board approval and prior to disbursement of funding.

(1) Notification of approval. Upon approval of an OKDR grant application, the Board shall furnish to the applicant a written notice of grant approval. The notice shall advise the applicant that the grant application has been formally and officially approved by the Board and that the grant funds approved shall be made available to the applicant by the Board for such purposes and upon such other terms and conditions as the Board may require.

(2) Bid filing. Within ninety (90) days following the date of the written notice of approval, the applicant shall file with the Board an acceptable bid for completion of the proposed project. Where determined necessary and appropriate, the Board or its staff may permit additional time to file such a bid; provided, notwithstanding any approval of additional time, if such a

bid is not filed within one (1) year following the date of Board approval of the application, then the Board's approval shall expire and no funds shall be released provided however, if an acceptable bid for completion has not been filed due to circumstances that lay outside the applicant's control, the applicant may request, and the Board may approve or deny, a one-time extension of time not to exceed six (6) months to file an acceptable bid. Provided further, in the event of such expiration the applicant may file a new application which shall be subject to due consideration on its own merits.

(3) Additional conditions prior to disbursement of grant funds.

(A) Applicant shall establish and maintain, in such manner as is acceptable to the Board or its staff, a federally insured account through which the grant proceeds shall be administered and separately accounted for by the applicant. Once the Board or its staff has deemed the proposed activities listed in the invoice are eligible for OKDR Grant funding, are within the approved scope of work, and meet all legal requirements, the Board shall deposit the grant funds into the (appropriate account). The applicant shall then expend funds from the account only as permitted in the grant agreement, Board rules, and state guidelines

(B) Unless otherwise provided and approved by the Board, applicant shall submit to the Board all plans, specifications, and engineering reports, for the project for staff approval, all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project.

(C) If not previously provided, applicant shall provide Board with a written and verified statement setting forth:

- (i) the amount of funds necessary for release and disbursement at closing which funds are needed for initial commencement of the project, and
- (ii) information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project.

(D) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents, including but not limited to a grant agreement.

(4) Board action on request for increase in approved amount. If prior to disbursement of the grant monies to the applicant, the project bids exceed the engineer's estimates or it otherwise develops that the OKDR grant amount approved by the Board, when combined with any other sources of funding, will be insufficient to complete the approved project, then the applicant may file a written request:

(A) to amend the scope of the approved project in a manner consistent with (a)(5) of this Section; or

(B) decline funding and withdraw its application for the current fiscal year and request that the Board reconsider the application with an increased OKDR grant amount during the following fiscal year. The request for an increased OKDR grant amount shall be treated as a new application on its own merits; provided, the original application shall not be counted for purposes of the

previous grant assistance portion of the priority point determination.

(5) Board action on request for change in scope of approved project. If prior to disbursement of the grant monies to the applicant, it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. Provided, however, the Board shall not approve a change in scope of project if the change, if considered as part of the original application, would have resulted in a lower priority point determination on the application.

(b) Disbursement of funding to applicant; action following disbursement.

(1) Disbursement contingent on completion of conditions; reduction from approved amount. At the time and upon compliance by the applicant with the applicable requirements in (a) of this Section, the Board may disburse the approved amount of OKDR grant funds to the applicant for the approved project.

(2) Disbursement in whole or part; timing. As the Board may direct, grant funds may be disbursed to the applicant in installments or in lump sum, and may be disbursed prior to, during or upon completion of the project, all as deemed appropriate by the Board under the project circumstances presented.

(3) Post-disbursement requests for increases in funding amount. If after disbursement of the grant monies to the applicant it develops that the applicant needs more money for the project than the OKDR grant amount disbursed by the Board, then any request for additional OKDR grant money shall follow the rules in this Subchapter governing, and shall be treated as, a new application on its own merits.

(4) Post-disbursement requests for changes in scope of approved project. If it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change to use undisbursed funds. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. If the request is denied the applicant shall either proceed with the project as approved or abandon the project and deobligate the grant monies in accordance with the grant agreement.

(5) Post-disbursement action regarding unexpended funding. If following completion of the project it develops that the applicant needed less money for the project than disbursed by the Board, the applicant shall return or de-obligate the unexpended amount to the Board.

(6) Additional requirements. The Board may impose additional reasonable and necessary conditions or requirements for the disbursement to the applicant or expenditure by the applicant of OKDR grant funds, all as

may be deemed appropriate by the Board.

[Source: Added at 40 Ok Reg 84, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

SUBCHAPTER 19. AMERICAN RESCUE PLAN ACT TRIBAL COOPERATION GRANT PROGRAM REQUIREMENTS AND PROCEDURES

785:50-19-1. Program description

The Oklahoma Legislature has authorized the American Rescue Plan Act ("ARPA") Tribal Collaboration program. This law authorizes the Board to make grants to certain qualified entities for qualified project purposes according to certain requirements. This Subchapter interprets and implements the law authorizing this grant program by the Board for the U.S. Treasury's Coronavirus State and Local Fiscal Recovery Funds Final Rule for water and wastewater investments. The Board's rules applicable to ARPA grants shall be construed so as to consider only the ARPA grant program administered by the Board and shall not be construed so as to consider ARPA grant programs administered by other governmental persons or other grant programs administered by the Board.

[Source: Added at 40 Ok Reg 93, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

785:50-19-2. Definitions

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

"Applicant" means a qualified entity which submits an application for an ARPA grant on its own behalf, or for whom an application is submitted.

"Community" means any city, town, county or the State of Oklahoma, and any rural sewer district, rural water district, public trust, master conservancy district, any other political subdivision, or any combination thereof.

"Project" means any project that meets the federal eligibility requirements of the U.S. Treasury's Coronavirus State and Local Fiscal Recovery Funds Final Rule for water and wastewater investments, a part of the American Rescue Plan Act, Public Law 117-2.

"Qualified entity" means a Community as defined above or a federally recognized Indian tribe or authorized Indian tribal organization.

[Source: Added at 40 Ok Reg 93, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

785:50-19-3. Application review and disposition

(a) **General procedures.** The general procedure to be followed in the financial assistance application, review, and consideration process for financial assistance under the ARPA grant program shall be as follows:

(1) Pre-application conference.

(A) While not specifically required, all potential applicants are encouraged to initially contact the Board for purposes of making arrangements for participating in a pre-application conference between Board staff, applicant (or representative), applicant's legal, financial, and engineering advisors and such other persons whose attendance and participation may be deemed appropriate and beneficial.

(B) At the pre-application conference, preliminary matters respecting the applicant, the proposed project and the application

for assistance may be generally discussed in an effort to familiarize all concerned parties with the financial assistance program and applicable application requirements and procedures.

(2) Application.

(A) Applicant shall initiate application review and consideration by submission to the Board of applicant's application for financial assistance. An application may be submitted directly by the qualified entity or, at the qualified entity's discretion an authorized representative of the qualified entity.

(B) In all instances, applications must be in a form which meets the requirements of the Board.

(C) All applicants must have the verification form signed and notarized by the applicant representative and must have a signature of an attorney representing applicant.

(D) All applicants shall have executed all necessary and incidental instruments, commitments, and documents from all other revenue or funding sources needed to finance and complete the project.

(E) All applicants shall provide documentation stating the financial commitment for the project that is being matched from the identified tribal entity.

(3) Submittal to Board. Upon completion of staff review, the submitted application (with staff recommendations, if any) shall be placed upon the Board's agenda for the next regular (or special) Board meeting and shall be thereby submitted to the Board for action as described in (e) below.

(b) General approval standards and criteria. In the review and consideration of applications for financial assistance under the ARPA grant program, the Board shall give consideration to the following general and non-exclusive criteria for application approval:

(1) **Compliance with laws.** The application and proposed project must be found to be in compliance with all applicable and relevant federal, state, and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(2) **Eligibility.** The applicant must be qualified, and the proposed project must be for a qualified purpose as defined in 785:50-15-2.

(3) **Local need, support, and priority.** The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs.

(4) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project.

(5) **Project feasibility.** The Board shall consider from the engineering data submitted and otherwise available whether the proposed project appears to be feasible and must determine as a prerequisite to application approval and funding that the project is cost effective.

(6) **Statewide needs and public interest.** The Board shall give consideration to the relationship between the proposed project and the overall water resource development needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.

(7) **ARPA grant amount, availability of funds.** In sizing an ARPA grant, the Board shall take into consideration the current and anticipated

availability of ARPA program funds.

(8) **Conservation Measures.** The Board shall consider whether the applicant has taken all reasonable measures to limit waste and conserve water.

(c) Criteria applicability.

(1) The general criteria set forth in (b) and (d) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board. Such criteria shall not be deemed exclusive. In all instances, each individual application and project must be reviewed and considered on its own individual merits.

(2) The criteria and standards set forth in (b) and (d) of this Section shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of Board's judgment and discretion.

(d) Criteria for denying an application. The Board may deny an application for an ARPA grant for any of the following reasons:

(1) The applicant or the entity which stands to receive the benefit of the grant assistance is not an eligible entity.

(2) Failure to complete the application and provide the required documentation.

(e) Board action.

(1) After reviewing and considering the submitted application, the Board may proceed to take one of the following alternative forms of Board action on the application:

(A) The Board may approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be necessary to effectuate the disbursement of funds.

(B) The Board may retain the application under advisement for further consideration or continue hearing on same for later ruling and disposition, and the Board may withhold ruling on the application pending further hearing and/or submission to the Board of such further or additional information as the Board may require for application consideration purposes.

(C) The Board may reject and deny the application, in whole or in part, based upon any criteria described in (d) of this Section which may be applicable.

(D) The Board may approve and grant the application, in whole or in part, such approval being conditioned and contingent upon the existence of adequate and available grant funds or conditioned and contingent upon receipt and approval by Board staff of any outstanding and necessary material, information, documents, verifications or other authorization.

(2) **Post board approval of application.** Upon approval of an application, the Board may authorize the execution of all necessary grant documents and instruments by the Chairman of the Board, or other designated Board member, and may accordingly authorize and provide for disbursements of funds and may authorize such further or additional action as may be necessary to complete and implement the approved transaction.

[Source: Added at 40 Ok Reg 93, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

785:50-19-4. Applicable law; deadline for applications; eligible project costs

(a) The Board shall administer applications for ARPA funds in accordance with any provisions of law applicable to such applications and ARPA funds, which may include, but is not limited to:

- (1) Recipients are required to complete procurement procedures according to 2 CFR 200.317-200.327.
- (2) Recipients may be required to complete a Single Audit pursuant to 2 CFR Part 200, Subpart F.
- (3) Recipients are required to have an active registration on Sam.gov pursuant to 2 CFR Part 25.

(b) To be considered for and receive funding from funds available for the ARPA grant program, an application must be completed in accordance with the Board's rules and prescribed application form in all material respects with all material attachments and filed by the applicant and received by the Board. Any application not properly completed and filed shall not be considered.

(c) For purposes of evaluating, approving, and funding an application for an ARPA grant, categories of project costs which are eligible for assistance shall include, but are not limited to:

- (1) Architecture and/or engineer fees related to the project.
- (2) Fees for soil testing.
- (3) Fees for surveying.
- (4) Payments to contractor(s) for construction of the improvements.
- (5) Legal fees and expenses of counsel for the applicant which are related to the project.
- (6) Services of full-time or part-time inspector. Provided, however, administrative expenses shall not be eligible project costs.

(d) The ARPA grant applications are accepted and scored in a closed cycle. Once a cycle is closed no applications will be accepted, unless the applicant can provide sufficient justification for why their application was not received during the open application period.

[Source: Added at 40 Ok Reg 93, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

785:50-19-5. Project selection

(a) Projects for this grant program shall be selected by the Cabinet Secretary for Energy and Environment in cooperation with representatives from tribal entities, as identified in the authorizing legislation.

(b) The Office of the Secretary for Energy and Environment shall provide the project list to Board staff no later than November 1, 2022. If additional funding becomes available after the submission of the original list, the Office of the Secretary for Energy and Environment shall submit a list of additional projects within thirty (30) days of the funding becoming available.

[Source: Added at 40 Ok Reg 93, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

785:50-19-6. Disbursement of funds

(a) **Action following Board approval and prior to disbursement of funding.**

- (1) **Notification of approval.** Upon approval of an ARPA grant application, the Board shall furnish to the applicant a written notice of grant approval. The notice shall advise the applicant that the grant application has been formally and officially approved by the Board and that the grant funds approved shall be made available to the applicant by the Board for such purposes and upon such other terms and conditions as the Board may require.

(2) **Bid filing.** Within ninety (90) days following the date of the written notice of approval, the applicant shall file with the Board an acceptable bid in compliance with the Competitive Bidding Act for completion of the proposed project. Where determined necessary and appropriate, the Board or its staff may permit additional time to file such a bid; provided, notwithstanding any approval of additional time, if such a bid is not filed within 6 months following the date of Board approval of the application, then the Board's approval shall expire, and no funds shall be released.

(3) **Additional conditions prior to disbursement of grant funds.**

(A) Applicant shall maintain, in such manner as is acceptable to the Board or its staff, a federally insured account through which the grant proceeds shall be administered and separately accounted for by the applicant.

(B) Unless otherwise provided and approved by the Board, applicant shall submit to the Board all plans, specifications, and engineering reports, for the project for staff approval, all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project. If not previously provided, applicant shall provide Board with a written and verified statement setting forth:

(i) the amount of funds needed for initial commencement of the project, and

(ii) information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project.

(C) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents, including but not limited to a grant agreement.

(4) **Board action on request for increase in approved amount.** If prior to disbursement of the grant monies to the applicant, the project bids exceed the engineer's estimates or it otherwise develops that the ARPA grant amount approved by the Board, when combined with any other sources of funding, will be insufficient to complete the approved project, then the applicant may file a written request:

(A) to amend the scope of the approved project in a manner consistent with (a)(5) of this Section; or

(B) that the Board reconsider the application with an increased ARPA grant amount.

(5) **Board action on request for change in scope of approved project.** If prior to disbursement of the grant monies to the applicant, it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action.

(b) **Disbursement of funding to applicant; action following disbursement.**

(1) **Disbursement contingent on completion of conditions; reduction from approved amount.** At the time and upon compliance by the applicant

with the applicable requirements in (a) of this Section, the Board may disburse the approved amount of ARPA grant funds to the applicant for the approved project.

(2) **Disbursement in whole or part; timing.** As the Board may direct, grant funds may be disbursed to the applicant in installments by pay requests or in lump sum, and may be disbursed prior to, during or upon completion of the project, all as deemed appropriate by the Board under the project circumstances presented.

(3) **Disbursement of funds for project costs.** ARPA funds shall be expended for the designated project only after the other identified sources of funds for the project have been expended. This shall in no way limit the Board from expending ARPA funds according to the Public Law 117-2 and in order to meet the required deadlines.

(4) **Post-disbursement requests for increases in funding amount.** If after disbursement of the grant monies to the applicant it develops that the applicant needs more money for the project than the ARPA grant amount disbursed by the Board, then any request for additional ARPA grant money shall follow the rules in this Subchapter governing new applications.

(5) **Post-disbursement requests for changes in scope of approved project.** If it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change to use undisbursed funds. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. If the request is denied the applicant shall either proceed with the project as approved or abandon the project and deobligate the grant monies in accordance with the grant agreement.

(6) **Post-disbursement action regarding unexpended funding.** If following completion of the project, it develops that the applicant needed less money for the project the applicant shall deobligate the unexpended amount to the Board in accordance with the grant agreement.

(7) **Additional requirements.** The Board may impose additional reasonable and necessary conditions or requirements for the disbursement to the applicant or expenditure by the applicant of ARPA grant funds, all as may be deemed appropriate by the Board.

[Source: Added at 40 Ok Reg 93, eff 9-14-22 (emergency); Added at 40 Ok Reg 1455, eff 8-11-23]

CHAPTER 55. DEVELOPMENT ON STATE OWNED OR OPERATED PROPERTY WITHIN FLOODPLAINS AND FLOODPLAIN ADMINISTRATOR ACCREDITATION

[Authority: 82 O.S., §§ 1085.2 and 1601 et seq.]

[Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

785:55-1-1. Authority and purpose

(a) **Authority.** These rules have been promulgated and adopted pursuant to and as authorized by 82 O.S. 1981, §§1601 et seq., as amended.

(b) **Purpose of rules.** The purpose of these rules and regulations is to set forth the minimum criteria for development of state owned or state operated property within floodplains and to comply with the requirements necessary to establish eligibility and maintain participation in the National Flood Insurance Program, as set forth in the Federal Emergency Management Agency regulations at 44 C.F.R., Part 60.

These criteria and requirements are to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally under taken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood losses;
- (7) Insure that potential buyers are notified that property is in a flood area; and
- (8) Allow for the procurement of flood insurance.

(c) **Coordination role of Board.** The Board acts as state coordinator of the National Flood Insurance Program (NFIP) for the Federal Emergency Management Agency (FEMA), and in that role provides guidance and information to local communities' floodplain boards about the NFIP and FEMA regulations promulgated thereunder. The Board also disseminates copies of floodplain maps which show the 100-year floodplain, upon payment of fees as set forth in Chapter 5 of this Title.

[Source: Amended at 10 Ok Reg 3369, eff 6-25-93; Amended at 14 Ok Reg 2808, eff 7-1-97]

785:55-1-2. Definitions

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

"Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year, also known as the regulatory flood.

"Base flood elevation" means the elevation above mean sea level for the base flood.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Base flood discharge" means the peak volume of water passing through a cross-section of a watercourse expressed in cubic feet per second.

"Board" means the Oklahoma Water Resources Board or any employee or agent or staff member thereof.

"Certificate" means a letter or statement signed and sealed by a Registered Professional Engineer stating that certain condition or requirements have been met.

"CFR" means Code of Federal Regulations.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

"Development permit" means specific written authorization from the Board to allow development within a floodplain in accordance with the applicable regulations governing development within floodplains.

"Dwelling unit" means a place of residence which may be a single residence or a multiple-residence building[82:1603(3)] and includes mobile homes.

"Elevation (MSL)" means elevation in feet in relation to mean sea level.

"Existing structures" means structures constructed prior to May 13, 1980.

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Farm building" means a walled and roofed structure which is not intended for human habitation or commercial use but which may be used for agricultural purposes including but not limited to the storage of crops, farm machinery, or livestock.

"Farm pond" means a reservoir impounding less than 50 acre-feet of water with a dam less than 25 feet in height and a drainage area less than one square mile used for stock water and domestic use.

"FEMA" means Federal Emergency Management Agency.

"Flood" means general and temporary conditions of partial or complete inundation of normally dry land areas from the overflow of lakes, streams, rivers or any other inland waters[82:1603(4)] or watercourses.

"Flooding" means "flood".

"Floodplain" means the land adjacent to a body of water which has been or may be covered by flooding, including but not limited to, the one-hundred year flood.[82:1603(5)]

"Floodway" means the channel of a stream, watercourse or body of water and those portions of floodplains which are reasonably required to carry and discharge the floodwater or floodflow of any river or stream.[82:1603(8)]

"Flood boundary floodway map" means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the regulatory floodway have been identified.

"Flood carrying capacity" means the ability of a stream or water course to pass the base flood.

"Flood hazard boundary map (FHBM)" means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the flood area having special hazards have been designated as flood zones.

"Flood insurance rate map (FIRM)" means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood insurance study" means an official report provided by FEMA to communities regarding flood profiles, water surface elevations of the base flood, as

well as the Flood Boundary-Floodway Map.

"Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

"Flood proofing" means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

"Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic structure" means any structure that is:

- (A) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (B) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (C) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
- (D) Individually listed on local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (i) By an approved state program as determined by the Secretary of the Interior or;
 - (ii) Directly by the Secretary of the Interior in states without approved programs.

"Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of 44 CFR Section 60.3, FEMA regulations.

"Manufactured home" means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for

rent or sale.

"Mean sea level" means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

"Natural drainage" means the drainage basin without man-made alterations.

"New construction" means for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

"New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

"Non-residential structure" means a building not used for one or more families.

"One hundred year flood" means the base flood.

"Permit", for purposes of Chapter 55 means specific written authorization by the Board and consists of the following:

- (A) Building permits which are issued for the construction or substantial improvement of a structure.
- (B) Construction permits which are issued for any man-made alteration, construction or development which may have an adverse effect on the regulatory floodplain.

"Program" *means the overall National Flood Insurance Program authorized by the National Flood Insurance Act of 1968 (42 U.S. C. 4001–4128) as amended*[82:1603(10)], and the Oklahoma Floodplain Management Act (82 O.S. 1981, §§1601 through 1619).

"Recreational vehicle" means a vehicle which is:

- (A) Built on a single chassis;
- (B) 400 square feet or less when measured at the largest horizontal projections;
- (C) Designed to be self-propelled or permanently towable by a light duty truck; and
- (D) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Regulatory flood" means the one-hundred-year flood, i.e., the flood having a one percent (1%) chance of occurrence in any given one year period, also known as the base flood.

"Regulatory flood fringe" means the area of the regulatory floodplain which may be developed by equal encroachment to the extent that the regulatory floodway is preserved and natural conditions allowed.

"Regulatory floodplain" means the area susceptible to being covered by the regulatory flood.

"Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a

designated height.

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"Start of construction" means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date, unless the Board extends such time period for good cause shown. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations of the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"State floodplain board" means the Oklahoma Water Resources Board whose members also serve as members of the State Floodplain Board

"State owned property" means real property owned or leased in whole or in part or operated by any agency of the State of Oklahoma, and includes but is not limited to lands held in trust by the Commissioners of Land Office. It shall be presumed that development or substantial improvement on rights of way, licenses, easements, or other interests less than fee simple shall be considered to be development or substantial improvement on state owned property.

"Structure" means any walled and roofed edifice or building including but not limited to manufactured homes and gas or liquid storage tanks.

"Substantial improvement" means reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

(A) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or

(B) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

"Variance" means a grant of relief to a person from the requirement of these rules. A variance, therefore, permits construction or development in a manner otherwise prohibited by these rules.

"Watercourse" means the channel or area that conveys a flow of water.

"Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas.

785:55-1-3. Administrative provisions

(a) **General prohibition assumption and methods of development** A general prohibition assumption and methods of development are as follows:

- (1) In making determinations hereunder, the Board shall, to the extent possible, prohibit damaging or potentially damaging increases in flood elevation or velocity caused by alterations in or encroachments upon the regulatory floodplain of state owned or operated property.
- (2) All calculations of damaging or potentially damaging increases in flood elevation or velocity shall assume a reasonably equal degree of encroachment of existing and potential uses in the floodplain and shall take into account the cumulative impact of such encroachment.
- (3) The Board shall consider acceptable methods of developing floodplain areas, including but not limited to the following to prevent significantly increased flood elevations and velocities and to minimize damages to floodplain uses:

(A) Location of structures, landfills or other development outside of the regulatory floodplain, thus preserving the floodplain for uses which have no significant effect on the storage and conveyance of floodwaters.

(B) Location of limited development in the floodplain in accordance with Subchapters 3 and 5 of this Chapter so that development will be in itself safe from flood damage and will preserve the base flood elevation.

(b) **Rules as minimum criteria.** The provisions of these rules shall be construed to be minimum requirements to decrease and eliminate human-induced changes to the floodplain which may increase flooding. Natural and human-induced conditions may still cause floods to occur within and outside the floodplain in any event. The degree of flood protection required herein is based on engineering and scientific methods reflecting the current state of the art.

(c) **Administration.** The Board, acting in its official capacity and/or by and through its Executive Director and Board staff, shall administer and enforce these rules.

(d) **Liabilities not imposed on Board.** The rules of this Chapter shall not be deemed nor construed to create any liability on the part of the Board or any officer or employee thereof for any flood damages which might be alleged or claimed to have occurred or sustained as a result of reliance on these rules or any administrative decision lawfully made thereunder.

(e) **Prior use.** Any state owned or operated buildings or uses within a regulatory floodplain that existed prior to May 13, 1980, which do not meet the minimum standards set forth herein may continue. However, unless brought into compliance with the minimum standards set forth herein, such prior uses may not be substantially improved, altered or enlarged.

(f) **Use of maps prepared by FEMA.** The Board will utilize FHBMs, FBFMs, and FIRMs where appropriate in the administration of these rules.

(g) **Field surveys.** All required field surveys shall be conducted under the supervision of a Registered Professional Engineer or Registered Land Surveyor and shall be so certified.

(h) **Open records.** The Board shall maintain and hold open for public inspection all records submitted in accordance with this Chapter of these rules.

[Source: Amended at 14 Ok Reg 2808, eff 7-1-97]

785:55-1-4. Permits

(a) **Development permits required.** A development permit shall be required for all proposed development or substantial improvement located on state owned or operated property within the regulatory floodplain identified by the Board.

(1) Permits will be required for any proposed development or substantial improvement including the placement of manufactured homes within the regulatory floodplain.

(2) Development permits will be issued after the Board determines that the proposed development in the regulatory floodplain is not a danger to persons or property. The Board shall give notice of proposed development permit applications to counties and municipalities participating in the National Flood Insurance Program at least thirty (30) days before granting the permit to undertake such development.

(b) **Permit forms.** Permit application forms provided by the Board shall be used in applying for a permit. The application shall be submitted in duplicate and shall provide sufficient information to determine the effect of the proposed development on the conveyance of flood waters. If the Board deems necessary and so notifies the applicant in writing, one or more sets of plans and specifications may be required. The Board may enter into Memorandums of Agreement with applicants in accordance with this Chapter.

(c) **Board action.** The requirements imposed by these rules shall govern the Board in making development permit approval decisions. The Board shall exercise such discretion in its application of these rules as may be necessary to produce reasonable decisions based upon examination by and recommendation of the Board's staff.

(d) **Permit conditions.** When necessary to accomplish the purposes of these rules, special conditions may be included in the permit. Such conditions may include but are not limited to as-built certifications, maintenance guarantees, floodproofing requirements, fill, dike or levee requirements, control of the design and location of structures and other specifications related to the accomplishment of the purposes of this Chapter of these rules. When as-built certification is included as a special condition, the required key elevations or critical dimensions will be specifically identified. One or more sets of plans and specifications prepared by a Registered Professional Engineer may also be required under a special condition.

(e) **Bridges and roads.** All applications for development permits for bridges and roads shall include a certification signed and sealed by a Registered Professional Engineer that all applicable requirements of these rules have been met.

(f) **Riverine development.** In riverine situations, the Board shall notify adjacent communities at least thirty (30) days prior to granting a permit which would result in the alteration or relocation of a watercourse and submit copies of such notifications to the Federal Emergency Management Agency.

(g) **Permit expiration.** Construction as authorized by a development permit shall begin within one (1) year from the date of issuance of the permit, unless extended by the Board. For consideration of an extension, the permittee shall submit a written request for extension, setting forth the reasons for the request. Such request must be filed before the initial one-year period shall run, unless approved by the Board. Request to further extend shall be filed prior to the running of the extension.

SUBCHAPTER 3. DEVELOPMENT ON STATE OWNED OR OPERATED PROPERTY WITHIN THE FLOODPLAINS

785:55-3-1. Development without base flood elevations determined or regulatory floodways delineated

(a) **Applicability of section.** If a proposed development site is in a regulatory floodplain where no base flood elevations have been determined and no regulatory floodways have been delineated, the criteria and requirements of this section shall apply. Also, in such cases, all proposed development and substantial improvements shall:

- (1) Be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) Be constructed with material resistant to flood damage;
- (3) Be constructed by methods and practices that minimize flood damages; and
- (4) Be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating with the components during conditions of flooding.

(b) **Other permits.** The applicant for a proposed development permit shall assure that all necessary permits have been obtained for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C.1334, as amended.

(c) **Subdivision development in regulatory floodplains.** Subdivision proposals and other proposed new development, including manufactured home parks, shall meet the requirements of these rules. If a subdivision proposal or other proposed new development is in a regulatory floodplain, any such proposals shall be reviewed to assure that:

- (1) All such proposals are consistent with the need to minimize flood damage within the regulatory floodplain;
- (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards.

(d) **Water systems in regulatory floodplains.** New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

(e) **Sanitary sewers within regulatory floodplains.** Sanitary sewers within regulatory floodplains shall be subject to the following:

- (1) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters; and
- (2) Onsite waste disposal systems shall be located to avoid impairment to the system or contamination from the systems during flooding.

(f) **Development prior to delineation of regulatory floodway.** Until a regulatory floodway is delineated, no new construction, substantial improvements, or other development (including fill) shall be permitted within a regulatory floodplain,

unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(g) **Base flood elevation data.** All new subdivision proposals and other proposed developments (including proposals for manufactured home parks) greater than 50 lots or 5 acres, whichever is the lesser, shall include within such proposals base flood elevation data.

[Source: Amended at 10 Ok Reg 3369, eff 6-25-93]

785:55-3-2. Development in the regulatory floodplain with base flood elevations determined

(a) **Applicability of section.** In addition to the criteria and requirements set forth in 785:55-3-1 and 785:55-3-4 herein, all developments within the regulatory floodplain where base flood elevations have been determined shall comply with the criteria and requirements of this section.

(b) **Use of base flood elevations.** The Board shall obtain, review and utilize any base flood elevation and floodway data available from a federal, state, or other source, including data developed pursuant to 785:55-3-1(g), as criteria for requiring that new construction, substantial improvements, or other development in the regulatory floodplain meets the requirements of these Rules as applicable.

(c) **Floor and floodproof elevations.** The applicant shall obtain and provide the Board with the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures. If the structure has been floodproofed in accordance with (i)(2) and (j) of this section, the applicant shall obtain and provide the Board with the elevation (in relation to mean sea level) to which the structure was floodproofed.

(d) **Flood carrying capacity of altered watercourse.** The Board shall assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

(e) **Manufactured home installation in general.** All manufactured homes which are to be placed within a regulatory floodplain shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(f) **Manufactured home with permanent foundations.** Manufactured homes that are placed or substantially improved on sites within a regulatory floodplain shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at least one (1) foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement where the manufactured home is located as follows:

- (1) Outside of a manufactured home park or subdivision.
- (2) In a new manufactured home park or subdivision.
- (3) In an expansion to an existing manufactured home park or subdivision;
or
- (4) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood.

(g) **Manufactured homes without permanent foundations.** Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within regulatory floodplains that are not subject to the provisions of (f) of this section shall be elevated so that either:

- (1) The lowest floor of the manufactured home is at or above the base flood elevation; or
- (2) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength, that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(h) **Other residential structures.** All new construction and substantial improvements of residential structures within the regulatory floodplain shall have the lowest floor (including basement) elevated at least one (1) foot above the base flood elevation.

(i) **Non-residential structures.** All new construction and substantial improvements of non-residential structures within regulatory floodplains shall:

- (1) Have the lowest floor (including basement) elevated at or above the base flood elevation; or
- (2) Together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with wall substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(j) **Non-residential floodproofing.** Where a non-residential structure is intended to be made watertight below the base flood elevation, the following shall apply:

- (1) A Registered Professional Engineer or Architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of (i)(2) of this section; and
- (2) A record of such certificates which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Board.
- (3) Floodproofing for non-residential structures will be required only when the other aforementioned techniques for flood protection are impossible or impractical. Floodproofing measures shall be designed consistent with the base flood elevation for the particular area, flood velocities, durations, rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. The Board may require that the applicant submit a plan or document certified by a Registered Professional Engineer or Licensed Architect that the floodproofing measures are consistent with the base flood elevation and associated flood factors for the particular area. Floodproofing measures which may be required include but are not limited to the following:
 - (A) Construction with materials and utility equipment resistant to flood damage.
 - (B) Anchorage to resist flotation and lateral movement.
 - (C) Installation of watertight doors, bulkheads and shutters or similar methods of construction.
 - (D) Reinforcement of walls to resist water pressures.

- (E) Use of paints, caulks, or other substances to reduce seepage of water through walls.
- (F) Addition of mass or weight to structures to resist flotation.
- (G) Installation of pumps to lower water levels in structures.
- (H) Construction of water supply and waste treatment systems so as to prevent the entrance of floodwaters.
- (I) Pumping facilities or comparable practices for subsurface drainage systems for buildings, to relieve external foundation wall and basement flood pressures.
- (J) Construction to resist rupture or collapse caused by water pressure or floating debris.
- (K) Installation of valves or controls on sanitary and storm drains which will permit the drains to be closed to prevent backup of sewage and storm waters into the buildings or structures. Gravity draining of basements may be eliminated by mechanical devices.
- (L) Location of all electrical equipment, circuits, and installed electrical appliances to assure they are above the base flood elevation.

(k) **Enclosed areas below lowest floor.** For all new construction and substantial improvements:

- (1) Fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.
- (2) Designs for meeting this requirement must either be certified by a Registered Professional Engineer or Architect or meet or exceed the following minimum criteria:
 - (A) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (B) The bottom of all openings shall be no higher than one foot above grade.
 - (C) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(l) **Recreational vehicles.** Recreational vehicles placed on sites within regulatory floodplains shall:

- (1) Be on the site for fewer than 180 consecutive days.
- (2) Be fully licensed and ready for highway use. A recreational vehicle will be considered ready for highway use if it is on its wheels or jacking system, if attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
- (3) Meet the permit requirements of 785:55-1-4 and the elevation and anchoring requirements for "manufactured homes" in (f) of this section.

[Source: Amended at 10 Ok Reg 3369, eff 6-25-93; Amended at 14 Ok Reg 2808, eff 7-1-97]

785:55-3-3. Development in delineated regulatory floodways

(a) **Development where regulatory floodway delineated.** In areas in which a regulatory floodway has been delineated, the following shall apply to development in such delineated regulatory floodways in addition to those in 785:55-3-1, 785:55-

3-2 and 785:55-3-4.

(b) **Regulatory floodway designation.** The Board shall designate regulatory floodways based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation of that flood more than one foot at any point.

(c) **Development or encroachments within regulatory floodway.** Encroachments, including fill, new construction, substantial improvements, and other development within the designated regulatory floodway are prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(d) **Increase in base flood elevations.** Encroachments within the designated regulatory floodway that would result in an increase in the base flood elevation are prohibited unless the applicant first makes application to FEMA and receives a conditional letter of map revision or floodway revision.

(e) **Modifications or additions.** For modification or additions, the following shall apply:

(1) Non-substantial improvements to existing structures which are located in a regulatory floodway or are vulnerable to flood damage may be allowed provided:

(A) The new construction does not increase flood damage potential of the structure and does not obstruct flood flows.

(B) Floodproofing of existing structures is allowed and encouraged, but must comply with these rules.

(2) The Board shall prohibit the repair or replacement of insured substantially damaged structures which are located in a regulatory floodway delineated by the Board. Destroyed structures may not be rebuilt without a permit issued by the Board in such a regulatory floodway. Where such insured perils are prohibited by regulation, the loss becomes a constructive total loss.

[Source: Amended at 10 Ok Reg 3369, eff 6-25-93; Amended at 14 Ok Reg 2808, eff 7-1-97]

785:55-3-4. General requirements for development in any regulatory floodplain

(a) **Applicability of section.** The provisions of this section shall apply to development within any regulatory floodplain, regardless of whether base flood elevations have been determined or regulatory floodways have been delineated.

(b) **Temporary fills.** Temporary fills, such as cofferdams or fills used during construction, may be used upon assumption of full responsibility by the sponsoring agency.

(c) **Roadways, bridges and public utilities within the regulatory floodplain.** For roadways, bridges and public utilities within the regulatory floodplain, the following shall apply:

(1) When failure or interruption of service of roadways, bridges, or public utilities would endanger public health or safety, such roadways, bridges, or public utilities shall be protected to the base flood elevation or to the elevation of the flood of record, whichever is greater. In other instances where only economic losses are threatened, protection shall be provided to the extent practical. A degree of protection less than the base flood elevation may be justified even in cases where overtopping could occur.

- (2) The following provisions shall apply to all applicable construction:
- (A) Buried crossings such as pipelines shall be maintained at least three (3) feet below the channel bottom.
 - (B) Modification, addition and replacement of existing roadways, bridges and public utilities shall be allowed providing adequate provision is made for the backwater effects of new flow obstructions in accordance with 785:55-3-1, 785:55-3-2, and 785:55-3-3.

(d) **Storage of materials.** Materials that are buoyant, flammable, explosive, or could be injurious to human, animal or plant life shall be stored above the base flood elevation, floodproofed or protected by structural measures consistent with the standards set forth herein. Storage of materials likely to cause water pollution, in the event of flooding, is prohibited unless adequate safeguards are provided.

(e) **Emergency repairs and replacements.** Emergency repairs and replacements which will not threaten public health or safety may be built or constructed without a permit. If the construction would normally require a permit, application for such permit must be made as soon as practical. Construction must be removed if it does not conform to the rules in this Chapter.

(f) **Government projects.** Government projects for flood damage control or other water management purposes otherwise authorized by law shall be allowed under the following conditions:

- (1) The project does not increase flood damage potential.
- (2) Any increase in flooding above, below or through the project area is mitigated by project design.
- (3) Plans, specifications and provisions for securing required land rights have been approved and a development permit issued by the Board; and
- (4) A sponsoring agency is authorized and has accepted full responsibility for operations, maintenance and repair of the project.

(g) **Dikes, levees, floodwalls and similar structures.** For dikes, levees, floodwalls and similar structures, the following shall apply:

- (1) Protection afforded by existing dikes, levees, floodwalls and similar structures will be evaluated during delineation of the regulatory floodplain. If the existing levee provides protection to the base flood elevation, to include at least 3 feet of freeboard, the boundary of the regulatory floodplain will be located channelward of the levee. Regulatory floodplains will then be delineated along interior streams, based on their regulatory flood discharge. If the existing levee does not provide protection to the base flood elevation, the regulatory floodplain will be delineated as if the levee does not exist.
- (2) Construction of new levees may be allowed as a government project as provided in (f) of this section. Protection must be provided equivalent to that provided by filling to the base flood elevation.

(h) **Reservoir or channel improvements.** The regulatory floodplain shall not be changed on the basis of proposed reservoir or channel improvements. The regulatory floodplain may be changed after the reservoir or channel improvements are constructed and operative. All requests to change the regulatory floodplain boundaries must be submitted through the Board to FEMA for approval.

(i) **Error in delineation of the regulatory floodplain.** The delineation of the regulatory floodplain shall not be changed unless it has been shown that the original delineation is in error or there are changed conditions which modify the original computations. Any person contesting the correctness of the delineation

shall be given reasonable opportunity to submit his own technical evidence. Such evidence along with a request to change shall be forwarded to FEMA through the Board for consideration.

(j) **Methods for providing flood protection.** The following are nonexclusive acceptable methods for providing flood protection:

(1) Permanent fill may be allowed as a means of providing safe construction sites, provided:

(A) The fill, except in exceptional circumstances, is contiguous with the boundary of the regulatory floodplain and shaped, in plan, so as not to create adverse velocities or current patterns.

(B) The surface of the fill is above the regulatory flood elevation.

(C) The channelward face of the fill shall be protected against erosion. If protected by vegetative cover, slopes shall be no steeper than three (3) horizontal to one (1) vertical. Steeper slopes shall be protected by riprap. A vertical bulkhead may be used if adequately founded and protected against scour.

(D) Fill shall be of suitable material and so compacted to provide adequate support under saturated conditions.

(E) Adequate provision is made for conducting drainage across or through the fill.

(2) Elevating on adequately anchored pilings or columns is allowed provided:

(A) The lowest portion of the structural members of the lowest floor (excluding the pilings and columns) is elevated one-foot above the base flood elevation and securely anchored to such piles or columns.

(B) The elevating members are designed to withstand saturated conditions, hydrostatic pressure, and to minimize scouring.

(C) The size, shape, spacing and alignment of elevating members are selected to minimize turbulence and deflection of current patterns, and to facilitate easy passage of debris.

(D) Major access and utility services are elevated at least one (1) foot above the base flood elevation.

(k) **Channel relocation and modification.** Channel relocation and modification may be allowed provided the upstream and downstream flood potential is not altered.

(l) **New storm cellars.** For new storm cellars, the following shall apply:

(1) New storm cellars may be built below the flood elevation provided that such new storm cellars are:

(A) Limited to nonhabitable uses,

(B) Designed so that all electrical, heating and other mechanical equipment is above the regulatory flood protection level.

(C) Designed so that hydrostatic pressure and uplift forces are unable to dislodge structure from the ground and the integrity of the storm cellar is preserved during the flooding.

(2) Compliance with requirements of (1) (A) through (C) of this subsection must be certified by a Registered Professional Engineer or Licensed Architect.

SUBCHAPTER 5. VARIANCES AND EXEMPTIONS ON STATE OWNED OR OPERATED PROPERTY WITHIN THE FLOODPLAINS

785:55-5-1. Variances

(a) **State law applicable.** The Board shall hear and render judgment on request for variances from the requirements of these regulations in accordance with Title 82 O.S. 1981, Section 1615.

(b) **Board discretion, hearing, term of variance.** The Board shall exercise wide discretion in weighing the equities involved and the advantages and disadvantages to the applicant and to the public at large when determined whether the variance shall be granted. The Board shall conduct a hearing which complies with all requirements of the Floodplain Management Act, Title 82 O.S. 1981, Section 1610(B), for public notice. In no case shall variances be effective for a period longer than twenty (20) years.

(c) **Variances for historic structures.** Variances may be granted for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places of the State Inventory of Historic Places.

(d) **Conditions on variances.** Upon consideration of the factors noted above and the intent of these rules, the Board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this Chapter of the rules.

(e) **Requirements for granting variances.** The following prerequisites for granting variances shall apply:

(1) Variances shall not be granted within any delineated regulatory floodway if any increase in flood levels during the base flood discharge would result. Notification of the denial of the requested variance shall be given to the applicant and shall be maintained with a record of all variance actions as required in 785:55-1-4(f).

(2) Variances for uses which do not satisfy the requirements of the Oklahoma Floodplain Management Act shall only be granted upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief and meets the following criteria:

(A) Showing a good and sufficient cause.

(B) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws, ordinances or regulations.

(3) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation, and will result in increased flood insurance premium rates up to amounts as high as \$25.00 for each \$100.00 of coverage. Applicants shall also be notified that construction below the base flood level increases risks to life and property.

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(f) **Variances for functionally dependent use.** Variances may be granted for new construction and substantial improvements and for other development necessary for

the conduct of a functionally dependent use provided that:

- (1) The criteria outlined in this subsection and subsection (h) are met, and
- (2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(g) **Justification for variance in relation to lot size.** Variances may be granted for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the requirements of this Section are met. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(h) **Variance prohibited if flood hazard.** No variance shall be granted where the effect of the variance will be to allow the continuance or to establish a condition which unreasonably creates flooding hazards.

(i) **Variances do not relieve liability.** Variances granted shall not be construed as to relieve any person who receives it from any liability imposed by the laws of this state.

[Source: Amended at 10 Ok Reg 3369, eff 6-25-93]

785:55-5-2. Exemptions

(a) **Agricultural uses.** These floodplain management rules in this Chapter shall not apply to usual agricultural purposes, the planting of crops, or the construction of farm ponds, provided that such activities do not pose a threat to public health, safety, and welfare.

(b) **Recreational or open-space use of land.** Any use of land in the regulatory floodplain for recreational or open-space purposes, not otherwise specifically addressed by this Chapter of the rules is exempt provided that such use does not alter the flood carrying capacity or the regulatory floodplain. Such uses may include but are not limited to non-enclosed boat docks, fishing docks and boat houses; floating stores and floating marinas which are walled and roofed; non-enclosed picnic shelters; anchored picnic tables; boat ramps; and unimproved parking lots.

[Source: Amended at 10 Ok Reg 3369, eff 6-25-93; Amended at 14 Ok Reg 2808, eff 7-1-97; Amended at 15 Ok Reg 2449, eff 6-11-98]

SUBCHAPTER 7. FLOODPLAIN ADMINISTRATOR ACCREDITATION PROGRAM

785:55-7-1. Authority and purpose

(a) **Authority.** These rules are promulgated and adopted pursuant to and as authorized by 82 O.S. Supp. 2004, §1085.2 and 82 O.S. Supp. 2004, §§1603, 1604, 1620 and 1620.1, as amended.

(b) **Purpose.** The purpose of this program is to provide a procedure for accrediting floodplain administrators and to assure that persons responsible for important economic decisions affecting health, safety and welfare of the State receive annual training to assist them in managing development in floodplains.

[Source: Added at 22 Ok Reg 1618, eff 7-1-05]

785:55-7-2. Subchapter definitions

In addition to the definitions in Section 785:55-1-2 of this Chapter, the following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Community" means a town, city, or county, which has created a floodplain board that has adopted floodplain regulations.

"Executive Director" means Executive Director of the Oklahoma Water Resources Board (Board).

"Floodplain administrator" *means a person accredited by the Board and designated by a floodplain board, to administer and implement laws and regulations relating to the management of floodplains [82:1603(6)].*

"Floodplain regulations" *means the codes, ordinances and other written requirements relating to the use of land and construction within the channel and floodplain areas including, but not limited to, zoning ordinances, platting regulations, building codes, housing codes, setback requirements and open area regulations [82:1603(8)]* adopted by a community floodplain board in order to qualify for participation in the National Flood Insurance Program.

"Flood-prone areas" means areas that are subject to, or are exposed to, flooding and flood damage.

[Source: Added at 22 Ok Reg 1618, eff 7-1-05]

785:55-7-3. Designation of floodplain administrator

The floodplain board or proper community official or community governing body, as the case may be, for each community that participates in the National Flood Insurance Program shall designate a person to serve as the floodplain administrator for the community. The floodplain administrator may be part-time, full-time or contracted.

[Source: Added at 22 Ok Reg 1618, eff 7-1-05; Amended at 25 Ok Reg 1479, eff 5-27-08]

785:55-7-4. Accreditation required

All floodplain administrators must be accredited to act in the capacity of a floodplain administrator.

[Source: Added at 22 Ok Reg 1618, eff 7-1-05]

785:55-7-5. Temporary accreditation period; first full accreditation period [REVOKED]

[Source: Added at 22 Ok Reg 1618, eff 7-1-05; Revoked at 25 Ok Reg 1479, eff 5-27-08]

785:55-7-6. Vacancies and replacement of floodplain administrators; notice to Board

The community's floodplain board or appropriate community official or community governing body shall contact the Board within thirty (30) days after a floodplain administrator position becomes vacant. The floodplain board or appropriate community official shall use its best efforts to designate a successor floodplain administrator within sixty (60) days after a vacancy occurs. The successor must become accredited as described in Sections 785:55-7-7 and 785:55-7-8 within one hundred twenty (120) days after being designated as floodplain administrator.

[Source: Added at 22 Ok Reg 1618, eff 7-1-05; Amended at 25 Ok Reg 1479, eff 5-27-08]

785:55-7-7. Accreditation application

- (a) All persons who are designated as a floodplain administrator by a community floodplain board, proper community official or community governing body, as the case may be must file an application for accreditation with the Board on a form provided by the Board.
- (b) The application and supporting documentation will be reviewed by the Board's staff, Board staff will inform the applicant in writing regarding any deficiencies in the application.
- (c) Completed applications will be presented to the Board with a recommendation from Board staff on whether to accredit the floodplain administrator.
- (d) Proof of being a Certified Floodplain Manager (CFM®) under the Oklahoma Floodplain Managers Association (OFMA) or other association will fulfill the accreditation obligation.

[Source: Added at 22 Ok Reg 1618, eff 7-1-05; Amended at 25 Ok Reg 1479, eff 5-27-08]

785:55-7-8. Initial accreditation requirements and standards

- (a) To obtain initial accreditation, the Board may consider the knowledge, experiences, skills, and training of an applicant in floodplain management and in minimization and prevention of flood hazards.
- (b) Knowledge, experiences, skills, and training of an applicant in floodplain management and in minimization and prevention of flood hazards can be shown through documentation demonstrating one of the following:
 - (1) completion of a continuing education training approved by the Board;
 - (2) evidence of at least two (2) years of sufficient experience in floodplain management;
 - (3) proof of current standing as a CFM® in the certification program of OFMA or other association; or
 - (4) successful passage of an examination given by the Board.

[Source: Added at 22 Ok Reg 1618, eff 7-1-05]

785:55-7-9. Expiration of accreditation and renewal of accreditation

- (a) All accreditations expire on June 30 of each year.
- (b) Accreditation must be renewed each year. On or before July 1 of each year, each accredited floodplain administrator shall submit the following:
 - (1) renewal application on a form provided by the Board;
 - (2) documentation, such as an attendance certificate, showing completion of required continuing education unless otherwise determined by the Executive Director
- (c) An application for renewal submitted after June 30 will be considered an application for new accreditation.

[Source: Added at 22 Ok Reg 1618, eff 7-1-05; Amended at 25 Ok Reg 1479, eff 5-27-08]

785:55-7-10. Continuing education requirement

- (a) Between July 1 and June 30 of each year, floodplain administrators shall attend at least six (6) hours of approved continuing education relating to floodplain management.
- (b) Continuing education training provided by the Federal Emergency Management Agency, the Board, OFMA and the Association of State Floodplain Managers is presumptively approved. The Board must specifically approve continuing education training provided by others.

(c) Floodplain administrators may request pre-approval of continuing education training provided by others. Information concerning the continuing education training provided by others must be submitted to the Board for review and approval.

(d) Floodplain administrators may earn six (6) hours of approved continuing education by successfully completing the Board's Floodplain Management 101 Study Course.

[Source: Added at 22 Ok Reg 1618, eff 7-1-05]