

OKLAHOMA WATER RESOURCES BOARD
RULE IMPACT STATEMENT
for Rule Amendments in OAC 785: Chapter 35
Proposed for Adoption During 2025

A. A BRIEF DESCRIPTION OF THE PURPOSE OF THE PROPOSED RULES.

The staff of the Oklahoma Water Resources Board ("OWRB") is proposing or is considering promulgation of amended or new rules in Oklahoma Administrative Code ("OAC") 785:35 as follows.

OAC 785:35-13-1 is proposed to be amended to specify the well construction categories requiring pre-authorization through a notice of intent-to-drill application. Specifically, test holes that will be cased will require pre-authorization.

B. A DESCRIPTION OF THE CLASSES OF PERSONS WHO MOST LIKELY WILL BE AFFECTED BY THE PROPOSED RULES, INCLUDING CLASSES THAT WILL BEAR THE COSTS OF THE PROPOSED RULES, AND ANY INFORMATION ON COST IMPACTS RECEIVED BY THE AGENCY FROM ANY PRIVATE OR PUBLIC ENTITIES.

The proposed rule change will close a loop hole in the current rules, which allow a well driller to drill a test well, case it, and leave the site. This allows the landowner to install a pump and pump water out of the d=ground without applying for a water right. Correcting this language will create a seamless transition from obtaining a water right first, then drilling well(s). OWRB-licensed well drillers will most likely be affected by the proposed amendment to provide for a notice of intent to drill for cased groundwater test holes. The same classes affected will bear the cost of the rules.

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

Drillers and owners of cased test holes that will be completed into production wells will benefit from the protections provided by the pre-authorization process, such as preemptively notifying surround landowners of the intent to use groundwater instead of going through litigation after the fact. All citizens of the State will benefit through improved compliance with groundwater well construction standards and improved water rights administration (e.g., well spacing meets criteria), which will help prevent waste and contamination of groundwater resources (e.g., preventing wells from being drilled in areas of known contamination). As a result of improved compliance, the public will also benefit by having access to more accurate and dependable groundwater data. All citizens of the State will benefit by reducing potential threats to water quality, interference issues with current water right holders.

D. A DESCRIPTION OF THE PROBABLE ECONOMIC IMPACT OF THE PROPOSED RULES UPON AFFECTED CLASSES OF PERSONS OR POLITICAL SUBDIVISIONS, INCLUDING A LISTING OF ALL FEE CHANGES AND, WHENEVER POSSIBLE, A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE.

The probable direct and indirect economic impact of the proposed rule amendment is anticipated to be minimal. It will consist of an application fee as well as the time and effort required to gather the necessary information and submit the notice of intent-to-drill authorization form. However, the proposed rule will only affect test holes that will be cased, a limited practice that primarily occurs when wells will be drilled into unconsolidated formations.

E. THE PROBABLE COSTS AND BENEFITS TO THE AGENCY AND TO ANY OTHER AGENCY OF THE IMPLEMENTATION AND ENFORCEMENT OF THE PROPOSED RULES, THE SOURCE OF REVENUE TO BE USED FOR IMPLEMENTATION AND ENFORCEMENT OF THE PROPOSED RULES, AND ANY ANTICIPATED EFFECT ON STATE REVENUES, INCLUDING A PROJECTED NET LOSS OR GAIN IN STATE REVENUES IF IT CAN BE PROJECTED BY THE AGENCY.

Probable costs to the OWRB may include actions to enforce the proposed amendments as well as staff time spent reviewing and approving intent-to-drill authorizations.

Probable benefits to the OWRB include improved compliance of groundwater well construction standards and improved administration of groundwater rights. Probable benefits also include reduced enforcement and remediation of non-compliant well construction (i.e., staff time, legal expenses). In addition, the rules will cut down on staff time responding to complaints of illegal groundwater use without a water right.

The probable source of revenue to implement the proposed amendments will likely be paid for by the application fee, which was included in FY2023 rule changes.

F. A DETERMINATION OF WHETHER IMPLEMENTATION OF THE PROPOSED RULES WILL HAVE AN ECONOMIC IMPACT ON ANY POLITICAL SUBDIVISIONS OR REQUIRE THEIR COOPERATION IN IMPLEMENTING OR ENFORCING THE RULES.

In general, political subdivisions are not charged with the implementation or enforcement of the proposed rules; therefore, no general economic impact is anticipated for these entities.

G. A DETERMINATION OF WHETHER IMPLEMENTATION OF THE PROPOSED RULES MAY HAVE AN ADVERSE ECONOMIC EFFECT ON SMALL BUSINESS AS PROVIDED BY THE OKLAHOMA SMALL BUSINESS REGULATORY FLEXIBILITY ACT.

The proposed amendments are expected to have only a minor impact on OWRB-licensed groundwater well drillers. However, failure to have a properly implemented groundwater use permit or improperly located and constructed groundwater well could have a significant adverse impact on small businesses that count on adequate groundwater availability.

H. AN EXPLANATION OF THE MEASURES THE AGENCY HAS TAKEN TO MINIMIZE COMPLIANCE COSTS AND A DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY METHODS OR LESS INTRUSIVE METHODS FOR ACHIEVING THE PURPOSE OF THE PROPOSED RULES.

There are no measures to be taken to minimize compliance costs, and there are no less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rules.

Currently the agency is implementing an honor system of compliance through multipurpose completion report submittal for groundwater wells. Although stated in Chapter 35 that multipurpose completion reports are required, OWRB has minimal staff time to devote to enforcement. As a default, compliance costs are already at a minimum.

I. A DETERMINATION OF THE EFFECT OF THE PROPOSED RULES ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT AND, IF THE PROPOSED RULES ARE DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT,

AN EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULES WILL REDUCE THE RISK.

Drillers and owners of cased test holes that will be completed into production wells will benefit from the protections provided by the pre-authorization process. The pre-authorization process is intended to provide for a proactive approach, rather than reactive approach, to resolving groundwater well construction and groundwater beneficial use issues and concerns. Notification prior to drilling a well will address well spacing criteria (outlined in Chapter 30), improper well construction (outlined in Chapter 35), and identifying known sources of pollution (outlined in Chapter 45, Appendix H). Failure to proactively manage compliance with licensing, proper well construction, and groundwater rights administration could pose significant risk to public health and safety, the environment, and even the economy.

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

As indicated in item I above, if the proposed amendments are not implemented, all test holes will be excluded from pre-authorization and associated protections. However, in practice, some test holes are cased and eventually completed as groundwater wells. This practice enables drillers to bypass pre-authorization and associated protections by categorizing their work as a test hole. The revised rule will only exempt test holes that will not be cased, closing the potential loophole associated with test holes. Failure to implement the proposed amendments will result in wells completed for commercial use that may not be compliant and OWRB may not be able to prevent groundwater resources from being contaminated, exhausted, or severely impaired for future use.

K. THE DATE THE RULE IMPACT STATEMENT WAS PREPARED AND IF MODIFIED, THE DATE MODIFIED:

This rule impact statement was reviewed and approved on November 14, 2024, by Christopher R. Neel, Chief, Water Rights Administration Division, Oklahoma Water Resources Board.