

**TITLE 252. OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 606. OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM
(OPDES) STANDARDS**

RULE IMPACT STATEMENT

Before the Water Quality Management Advisory Council on January 12, 2016
Before the Environmental Quality Board on February 19, 2016

1. **DESCRIPTION:** The DEQ is proposing to update the date of the incorporation by reference of federal rules in OAC 252:606 from July 1, 2014 to July 1, 2015. The most significant federal rules to be incorporated are the cooling water intake rule, and the sufficiently sensitive method rule (SSMR). The cooling water intake rule is intended to protect aquatic life (for example, fish and shellfish) from becoming entrapped in the filtration screen of an intake structure or from being taken up into the cooling water system. The SSMR is intended to allow for detection of pollutants at levels that will be a more accurate indication of compliance with water quality standards.
2. **CLASSES OF PERSONS AFFECTED:** The classes of persons affected by the cooling water intake rule will be industrial facilities 1) that are designed to withdraw more than 2 million gallons of water per day and 2) that use 25% or more of the water withdrawn exclusively for cooling purposes. Currently, the only facilities in Oklahoma that meet these criteria are several power plants.

The classes of persons affected by the SSMR will be accredited laboratories and any entity or individual who obtains an OPDES discharge permit from DEQ in the future.

3. **CLASSES OF PERSONS WHO WILL BEAR COSTS:** The class of persons bearing the costs of the cooling water intake rule will primarily be power plants in Oklahoma. However, this rule will not affect every power plant but only those facilities 1) that are designed to withdraw more than 2 million gallons of water per day and 2) that use 25% or more of the water withdrawn exclusively for cooling purposes.

The class of persons bearing the costs of the SSMR will be OPDES permittees and the labs servicing the permit holders. DEQ anticipates that these costs will be passed on to the customers of the accredited labs or of the permittees.

4. **INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** DEQ has reached out to stake holders in Oklahoma regarding the cooling water intake rule. DEQ has received no formal comments or hard numbers regarding the cost impacts pertaining to this rule.

DEQ has also reached out to stake holders in Oklahoma regarding the SSMR. Through its outreach, DEQ received written and verbal comments from both privately and publicly run laboratories regarding their reported costs of compliance. Some labs indicated that they currently have the capability to meet the proposed Minimum Quantifiable Levels (MQLs)

found in Appendix B of OAC 252:690. However, other labs indicated that complying with the rule would cause an increase in their costs. The costs were conveyed to DEQ in several ways. Some labs put the costs in terms of price increases per test that will be passed onto its customers. Depending on the test, these labs guessed the price increases ranged anywhere from \$50 to \$1,000 per test. Other labs reported cost increases in terms of purchasing new equipment, developing new procedures, and spending more man hours on each test. Although these cost increases were not presented as exact dollar figures, the labs did report various costs for new equipment ranging from \$30,000 to \$250,000.

Some of the labs who commented are associated with entities that hold an OPDES permit, such as a city's lab or a company's lab. However, DEQ received no comments from the OPDES permit holders who solely use a third-party lab.

5. **CLASSES OF PERSONS BENEFITTED:** The cooling water intake rule will benefit those who use Oklahoma's water bodies for recreational uses and those who have an interest in the ecosystem health of Oklahoma's water bodies. This rule encourages the growth and sustainment of the aquatic life in Oklahoma's water bodies. This rule helps prevent the deaths of fish, shellfish, and other aquatic organisms that become impinged (being entrapped against the filtration screen of an intake structure) or entrained (passing through the filtration screen of the intake structure and entering the cooling water system).

The SSMR Rule will benefit all Oklahomans because it will further protect Oklahoma's water bodies from pollution. This rule will better ensure that OPDES dischargers are meeting Oklahoma's water quality standards and doing their part to maintain the beneficial uses of Oklahoma's water bodies. This rule also ensures that laboratories servicing those dischargers are using sufficiently sensitive methods for testing the wastewater discharge samples.

6. **PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** DEQ is aware that those affected by the cooling water intake rule will incur a cost to perform studies on their facilities and to perform necessary upgrades to their respective facility's cooling water intake structures and cooling water systems. DEQ expects that these costs will be passed on to the consumers. According to EPA's information, the average increase per household for Oklahoma's region will be \$1.30 per year. In addition, DEQ anticipates that some of the affected entities in Oklahoma have already attained compliance with the existing technologies implemented at their facilities.

DEQ understands that those affected by the SSMR will likely incur costs to comply, but DEQ has chosen the path of implementation that will result in the least cost increase and greatest flexibility to both laboratories and OPDES permit holders. In another related rulemaking (OAC 252:690), DEQ is providing to the regulated community updated MQLs that DEQ has determined to be sufficiently sensitive in light of the SSMR. The proposed updates to the MQLs in OAC 252:690 will save both DEQ and the regulated community time and costs by providing greater clarity and certainty in complying with EPA's SSMR update while also providing flexibility in choosing the most economical method that will meet the MQL.

7. **PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** Political subdivisions subject to the cooling water intake rule include municipal and state electric utilities that operate cooling water intakes. Political subdivisions subject to the SSMR include publicly-owned (e.g., owned by municipalities, counties, state trusts, rural water districts, public works authorities, etc.) water and wastewater treatment facilities that discharge treated wastewater to Oklahoma's water bodies. DEQ does not anticipate that the proposed rules will have an economic impact unique to political subdivisions. Any political subdivision that falls under these regulations will be expected to comply with these regulations just as a private entity would need to comply.
8. **POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** For the SSMR, DEQ anticipates that small laboratories and OPDES permit holders will incur increased costs that may be disproportionate to revenue. The options they have for managing these increased costs include passing the costs on to customers or outsourcing some chemical analyses rather than investing in additional capital equipment expenditures as a way of mitigating adverse effects. However, because SSMR is a federally mandated provision, the DEQ has no discretion to consider less costly alternatives except the updates to the MQLs, as described above, and proposed in OAC 252:690.
9. **LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** The proposed rule does not include any changes to the current fee structure.
10. **PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:** DEQ will incur costs to implement the cooling water intake rule due to increased staff time and resources that will need to be devoted to implementation development, training, permit application review, permit drafting, compliance tracking, technical assistance, outreach, and potential enforcement. DEQ estimates it will incur roughly \$37,000 in one-time costs for development of rule implementation and training; \$3,400 for travel, outreach, training, and general supplies; and \$34,000 (or 0.4 FTE) for annual program implementation and enforcement.

DEQ will incur costs to implement the SSMR due to increased staff time and resources that will be devoted to implementation development, training, permit application review, permitting drafting, compliance tracking, technical assistance, outreach, and potential enforcement. DEQ estimates it will incur roughly \$39,000 in one-time costs for development of rule implementation and training; \$3,700 for travel, outreach, training, and general supplies; and \$47,000 (or 0.6 FTE) for annual program implementation and enforcement.

11. **PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** The proposed rules will not cause any other agencies to incur implementation or enforcement costs. However, any state agency (e.g., Oklahoma State Department of Corrections) that obtains an OPDES permit from DEQ will likely experience the same types of increases experienced by any other regulated entity.

12. **SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:** The proposed rule will be implemented and enforced using existing sources of revenue. Current funding sources include federal grant funds, user fees, and general revenue appropriations.
13. **PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED:** None anticipated; the proposed rule does not alter the workload for DEQ (or other agencies) in a way that affects a net loss or gain in revenue.
14. **COOPERATION OF POLITICAL SUBDIVISION REQUIRED TO IMPLEMENT OR ENFORCE RULE:** This rule will be implemented and enforced by DEQ alone.
15. **EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** For the cooling water intake rule, DEQ has performed outreach to private entities affected by this update. Because this rule is a federally mandated provision, the DEQ has no discretion to minimize compliance costs except in determining which intake technologies in use or proposed for use comply with the rule requirements. DEQ will make these determinations for each facility on a site-specific basis as part of permit renewal. The rule provides several options for compliance, so DEQ anticipates that facilities will pick the compliance option that minimizes their compliance costs. In addition, DEQ anticipates that some of the affected entities in Oklahoma have already attained compliance with the existing technologies implemented at their facilities and thus will be subject only to study and monitoring costs.

For the SSMR, DEQ has taken several measures to minimize compliance costs. DEQ has been in dialogue with EPA concerning this rule update for more than 10 years. Once EPA passed the national rule in 2014, DEQ analyzed the different methods of implementation and chose the method that provides the greatest flexibility and least increase in costs to both DEQ and the affected classes of people. DEQ's implementation method provides the affected classes a clear standard to achieve compliance by updating the MQLs in OAC 252:690 for various pollutants. When updating the MQLs, the Water Quality Division (WQD) and the State Environmental Lab Services (SELS) at DEQ analyzed the MQLs proposed by EPA, Oklahoma's existing MQLs, Oklahoma's water quality numeric criteria, and the proposed/updated MQLs from other states. The proposed MQLs are set at levels that the SELS has been able to achieve on a consistent basis, indicating that private labs should be able to routinely achieve these levels with relatively low cost expenditures. After identifying the proposed MQLs, DEQ performed outreach to the stakeholders in Oklahoma seeking their feedback. After receiving feedback from stakeholders, DEQ altered several of the proposed MQLs to alleviate problems raised in the comments received.

16. **DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** DEQ did make a special effort to determine whether there are less costly or intrusive methods of achieving the purpose of the proposed rule. In that process, DEQ determined that the proposed rule updates are the least costly

and least intrusive methods for achieving the purpose of the proposed rule. Additionally, if this incorporation by reference is approved, these requirements will be administered in Oklahoma by DEQ instead of EPA.

17. **DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** Promulgating these rules will further protect the public health, safety, and environment of Oklahoma.
18. **IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** For the cooling water intake rule, there is existing risk to Oklahoma's fish, shellfish, and other aquatic organisms that may become impinged on (being entrapped against the filtration screen of an intake structure) or entrained in (passing through the filtration screen of the intake structure and entering the cooling water system) cooling water intake structures at power plants. This has the potential to impair or reduce aquatic communities in the vicinity of the cooling water intake structures. The proposed rule greatly reduces this risk and the associated impact.

For the SSMR, there is existing risk to public health, safety and the environment when pollutants are present in Oklahoma's water bodies at levels which may be above water quality numeric criteria but below the levels that can be reliably measured by certain analytical methods allowed by the current rules. By requiring the use of sufficiently sensitive analytical methods, the proposed rule ensures that permit holders and laboratories are capable of detecting pollutants at levels which more accurately determine compliance with water quality numeric criteria. DEQ can then establish more appropriate wastewater discharge permit limits that ensure water quality standards are maintained and that public health and the environment are protected.

19. **DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:** Failure to pass the proposed rules could create confusion for the regulated community as to compliance between DEQ regulations, the water quality standards passed by the OWRB, and the federal regulations. Non-compliance on the part of the regulated community could have a detrimental effect on public health and safety or the environment.

If the proposed cooling water intake rule is not implemented, there will continue to be a detrimental effect on aquatic communities in the vicinity of the cooling water intake structures.

If the proposed SSMR is not implemented, there will continue to be potential detrimental effects on public health, safety and the environment where analytical methods are not sufficiently sensitive to determine whether wastewater discharges meet and maintain Oklahoma's water quality standards.

20. **PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE):** DEQ has not received any quantifiable or qualitative data of the impacts of the rules or the cooling water intake rule.

DEQ has reached out to stake holders in Oklahoma regarding the SSMR and related updates to the MQLs in the proposed OAC 252:690 rulemaking. Through its outreach, DEQ received written and verbal comments from both privately and publicly run laboratories regarding anticipated increases in costs of compliance. Some labs indicated that they currently have the capabilities of meeting the proposed MQLs. However, other labs indicated that complying with the rule updates would cause an increase in their costs.

THIS RULE IMPACT STATEMENT WAS PREPARED ON: December 16, 2015