

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 653. AQUIFER STORAGE AND RECOVERY**

Before the Water Quality Management Advisory Council 9/26/2017
Before the Environmental Quality Board 11/7/2017

RULE IMPACT STATEMENT

DESCRIPTION: The gist of the proposed rulemaking is to create a new Chapter, OAC 252:653 (Aquifer Storage and Recovery), to allow for a regulatory structure for an aquifer storage and recovery (ASR) program. The proposed rules will enable DEQ to issue permits to those who wish to undertake an ASR project. The proposed rules establish a multi-phase permitting process and requirements for the construction and operation of an ASR project and require appropriate testing and modeling to ensure a project is feasible and that the aquifer is not harmed. In addition, the Chapter proposes to establish fees associated with ASR permitting and operations.

CLASSES OF PERSONS AFFECTED: Only persons who choose to own and/or operate an ASR project will be required to comply with the proposed rulemaking. These rules are structured such that persons who make use of the aquifer will be able to continue using the water for its designated use.

CLASSES OF PERSONS WHO WILL BEAR COSTS: Persons who choose to own and/or operate an ASR project will bear the costs associated with the new Chapter. It is expected that costs will be passed on to consumers receiving water as a result of an ASR project.

INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES: As of the date of this Rule Impact Statement, no information has been received regarding cost impacts related to the proposed rules.

CLASSES OF PERSONS BENEFITTED: Municipalities, industry, agricultural entities, and other consumers of water will benefit from additional quantities of water available in areas where an ASR project is conducted, especially during periods of drought.

PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS: Municipalities with long-term water supply issues will benefit economically through the increased water availability. Owners and operators of ASR facilities shall bear the costs of construction and operation of the ASR project.

PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS: Only political subdivisions that choose to undertake an ASR project will be economically impacted. It is expected that a political subdivision will only undertake an ASR project if it is determined to be economically advantageous.

POTENTIAL ADVERSE EFFECTS ON SMALL BUSINESSES: No significant impact on small businesses is anticipated.

LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE: Under the new Chapter, an entity choosing to construct and operate an ASR project will be subject to the following fees as applicable:

- (a) ASR Treatment Plant Construction Permit will be \$3,000. The proposed fee is intended to help cover agency costs for permit review and the research required to ensure that approval of the permit will not negatively impact public health or the aquifer.
- (b) ASR Water Delivery Construction Permit will be \$10,000. The proposed fee is intended to help cover agency costs for reviewing and approving the permit.
- (c) ASR Operations Permit will be \$10,000. The proposed fee is intended to help cover agency costs for reviewing and approving the permit.
- (d) Annual operating fee is \$5,000 per year. The proposed fee is intended to help cover agency costs for reviewing reports and inspections submitted by the owner/operator.

PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE: DEQ will absorb the costs not covered by the fees, and is therefore not seeking additional funds to implement this program.

PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE: No other State agencies will be implementing the rules proposed here; however, the Oklahoma Water Resources Board (OWRB) has already promulgated rules to establish water quality standards relative to ASR and to protect groundwater beneficial uses. OWRB is also required by statute to ensure that ASR projects do not interfere with any domestic or permitted groundwater uses.

SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE: DEQ's costs to implement the Chapter being proposed will be covered through fees and appropriations.

PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES IF IT CAN BE PROJECTED: If an entity decides to own and/or operate an ASR project, DEQ shall receive revenue from the fee. It is not anticipated that the fees will cover the cost of the entire program. DEQ does not have enough information at this time to project a dollar amount.

COOPERATION OF POLITICAL SUBDIVISION REQUIRED TO IMPLEMENT OR ENFORCE RULE: No cooperation in implementing or enforcing the proposed rule changes will be required from any political subdivision.

EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS: The proposed rules require an initial mandatory meeting with DEQ and a statement of interest from the potential applicant prior to any project activity. Through this process, the viability of potential projects will be determined prior to expenditure of capital costs.

Additionally, the Chapter requires a multi-phase approach to permitting that is designed to identify obstacles and inefficiencies early on during the process. Finally, DEQ is absorbing some of the costs of these projects and therefore relieving the applicant of any additional economic hardship.

DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE: ASR is not contemplated by the existing regulatory structure, and DEQ has determined that the proposed rules are the least intrusive, least costly, and most effective method to ensure that public health and the aquifer are not negatively affected. ASR is one of the tools in the portfolio of options DEQ is pursuing to address water quantity concerns across the state, especially during times of drought.

DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT: The proposed rules will not have a detrimental effect on public health, safety, and the environment. Although the proposed rules allow for water to be delivered into aquifers, it requires the delivered water to be treated, if necessary, to the extent that it will not affect the quality of existing groundwater.

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: The proposed rules are not designed specifically to reduce significant risks to the public health, safety, and the environment; however, the rules are designed to reduce the negative impacts that water shortages have on the general public and the state's economy.

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 would limit the ability of municipalities and other potential ASR applicants to mitigate the impacts of drought on the quality and quantity of the State's groundwater that supply drinking water to hundreds of thousands of Oklahomans.

PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES INCLUDING QUANTIFIABLE DATA WHERE POSSIBLE: DEQ does not have access to any data on qualitative or quantitative impacts on business entities.

THIS RULE IMPACT STATEMENT WAS PREPARED ON: July 17, 2017