15A NCAC 02B .0274 NUTRIENT OFFSET PAYMENT RATES FOR THE NC ECOSYSTEM ENHANCEMENT PROGRAM

(a) The purpose of this Rule is to establish actual cost rates for the payment of nutrient offset fees to the NC Ecosystem Enhancement Program, subsequently referred to as the Program, where rules adopted by the Commission allow this option toward fulfillment of nutrient load reduction requirements and where the Program implements projects to achieve nutrient reductions. Wherever the term "cost" or "costs" is used in this Rule, it means the Program's costs associated with nutrient offset projects in a given rate area, as described below. For this purpose, the Program shall operate according to the requirements in this Rule.

(b) The Program shall calculate and publish general offset payment rates applicable to each river basin where Commission rules allow such nutrient offsets and special rates for specific watersheds as identified in Paragraph (d) of this Rule. All rates shall be based on the actual and complete per-pound nutrient reduction costs incurred by implementing projects in those watersheds.

(c) Payment rates shall be developed for nitrogen, phosphorus, or other nutrients as dictated by Commission rule requirements for each river basin.

(d) Special Watershed Rates. The Program shall apply special watershed rates to:

(1) The Neuse 03020201cataloging unit below the Falls watershed, the Jordan Lake watershed, and the Falls Lake watershed; and

(2) Any eight digit cataloging unit or smaller watershed subject to nutrient management rules where costs are 40 percent greater than costs in the larger watershed or river basin in which that cataloging unit is located.

The initial rate for a special watershed with fewer than two nutrient reduction projects that have reached the design stage shall be the highest rate in effect under the Program for the applicable nutrient. The initial rate shall be revised for a special watershed the quarter following a quarter in which at least two nutrient reduction projects in that watershed have reached design stage.

(e) Once an area has been established as an area with Special Watershed Rates, it shall remain a Special Watershed Rate area.

(f) Rate Adjustment Frequency. Initial rates shall be effective as of the effective date of this Rule. They shall be adjusted quarterly whenever the rate increases ten percent above the existing rate. The rates shall also be adjusted annually. Annual calculations and adjusted rates shall be published by June 1 on the Program's Web site, www.nceep.net, and shall become effective July 1. Any quarterly rate adjustments shall become effective on the first day of October, January, or April as applicable, and shall be published on the same Web site two weeks prior to that date.

(g) Payment rates for each nutrient shall be determined for a rate area using the following equation and presented in per pound values:

$$ActualCostRate = \frac{ActualCosts_{PresentDay}}{TotalPoundsOffset_{PresentDay}} + AdjustmentFactor$$

Where:

(1) Actual $Costs_{PresentDay}$ means the sum of all costs adjusted for inflation as described in this Sub-Item. Costs are project costs and administrative costs. Projects in the calculation are completed projects, terminated projects and projects in process. At the time the rate is set, to ensure that collected payments are sufficient to implement new projects, all completed land acquisition contracts and expenditures shall be adjusted to present day values using the current North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other completed contracts and expenditures shall be adjusted to present day values using the annual composite USACE Civil Works Construction Cost Index. Future land acquisition contract costs for projects in process are calculated using the Program's per credit contract costs of the same type adjusted to the inflated future value when the contracts will be encumbered using the North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other future contracts shall be calculated using the Program's per credit contract costs of the same type adjusted to the inflated future value when the contracts will be encumbered using the current composite USACE Civil Works Construction Cost Index. For projects in process where the contract type has not been determined, the cost of the project shall be calculated using the Program's average per pound cost adjusted to the future inflated value when the project will be initiated. Future year annual inflation rates shall be drawn from either the North Carolina Department of Agriculture and

Consumer Services' Agricultural Statistics Farm Real Estate Values or the USACE Civil Works Construction Cost Index. If not available from either source, they shall be calculated using the average annual percentage change over the last three year period;

(2) As used in this Rule:

(A) Project Costs are the total costs associated with development of nutrient reduction projects including identification, land acquisition, project design, project construction, monitoring, maintenance and long-term stewardship;

(B) Administrative Costs are costs associated with administration of the Program including staffing, supplies and rent; and

(C) The cost for projects in process is the sum of expenditures of project contracts to date, contracted cost to complete existing contracts, and the projected cost of future contracts needed to complete those projects required to fulfill Program nutrient reduction obligations in the rate area;

(3) Total Pounds $\text{Offset}_{\text{PresentDay}}$ means the total number of pounds of a nutrient reduced by projects in the rate area at the time of calculation. If the Total Pounds $\text{Offset}_{\text{PresentDay}}$ for an existing or completed project is reduced, the Actual $\text{Costs}_{\text{PresentDay}}$ for that existing or completed project shall be proportionally adjusted; and

(4)
$$AdjustmentFactor = \frac{(ActualCosts - ActualReceipts)}{NumberofPoundsPaidDuringAdjustmentPeriod}$$

Where:

(A) The Adjustment Factor is a per-pound value used to bring actual costs and actual receipts into balance, ensuring that future payments are sufficient to cover the cost of implementing the Program in the rate area. The Adjustment Factor shall be applied in only those calculation periods where actual costs are calculated to be greater than actual receipts;

(B) Actual Costs are the same as Actual CostsPresentDay as defined in Subparagraph (1) of this Paragraph, except that existing contracts and completed land acquisitions are not adjusted for inflation;

(C) Actual Receipts are the sum of all offset payments made to the Program to date in the rate area at the time of calculation; and

(D) Number of Pounds Paid during Adjustment Period is the average number of pounds of a nutrient paid to the Program over the last three years in the rate area, multiplied by the adjustment period. If no payments have been made to the Program in a rate area, the number of pounds paid shall be set to 1,000 pounds until greater than 1,000 pounds have been purchased in that rate area.

(5) Adjustment Period is one to four years determined as follows for a rate area:

(A) One year if Actual Costs exceed Actual Receipts by less than five percent;

(B) Two years if Actual Costs exceed Actual Receipts by five percent or more but less than 15 percent;

(C) Three years if Actual Costs exceed Actual Receipts by 15 percent or more but less than 25 percent; and

(D) Four years if Actual Costs exceed Actual Receipts by 25 percent or more.

(h) When individual projects produce more than one type of nutrient reduction, the project costs shall be prorated for each nutrient being offset by the project.

(i) In cases where an applicant is required to reduce more than one nutrient type and chooses to use the Program to offset nutrients, the applicant shall make a payment for each nutrient.

History Note: *Authority G.S. 143-214.1; 143-214.20; 143-214.21; S.L. 1995, c. 572; S.L. 2006, c. 215; S.L. 2007, c. 438; S.L. 2009, c. 337; S.L. 2009, c. 484; S.L. 2009, c. 486;*
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