

Request for Consultation with the Joint Legislative Commission on Governmental Operations Regarding a Proposed Fee Increase by the Environmental Management Commission

Purpose: The purpose of this report is to provide information regarding the proposed increase of the compensatory mitigation fees associated with proposed amendments to Environmental Management Commission's Rule 15A NCAC 2B .0240, the Nutrient Offset Payments Rules, in accordance with G.S. 12-3.1, Fees and Charges by Agencies.

Background: In 1996, the General Assembly set a goal of reducing nitrogen levels in the Neuse River by 30%. The General Assembly acted in response to clear evidence of environmental damage caused by excess nutrients, including massive fish kills on the Neuse River. In response to the legislature's direction, the Environmental Management Commission developed a nutrient management strategy for the Neuse River that put strict limits on new and expanded wastewater discharges and established stormwater standards intended to reduce nitrogen runoff. Later acts of the General Assembly allowed the payment of compensatory mitigation fees in place of meeting the nitrogen limits and riparian buffer requirements included in the Neuse River nutrient management strategy. The General Assembly later authorized and approved a similar nutrient management strategy for the Tar-Pamlico River Basin that addresses both nitrogen and phosphorus.

The current compensatory mitigation fees are found in 15A NCAC 2B .0240. The rule now allows developers and wastewater dischargers to pay a specified fee to the Environmental Enhancement Program (EEP), in lieu of meeting strict nitrogen loading limits specified in the Neuse Nutrient Sensitive Waters Rules (15A NCAC 2B .0234 and .0235). The proposed amendments to 15A NCAC 2B .0240 would expand the compensatory mitigation fees program to the Tar-Pamlico River Basin, giving developers there the option of making a compensatory mitigation payment in lieu of meeting the strict nitrogen and phosphorous loading limits specified in the Tar-Pamlico NSW Rule (15A NCAC .0258). In both the Neuse and Tar-Pamlico River Basins, the compensatory mitigation option will remain completely voluntary; the permittee decides whether to make the mitigation payment in lieu of constructing more stringent nutrient controls on site.

Additionally, the proposed amendments will raise compensatory mitigation fees to reflect the increased cost of removing one pound per year of nitrogen through the use of nitrogen reduction measures. The current fee was originally established in 1998 and is now outdated. The proposed amendments will also establish a cost per tenth of pound of phosphorous per year for the Tar-Pamlico Basin.

Proposed Fee Increases and Justification: Session Law 1999-448 directed the Environmental Management Commission to establish a standard schedule of compensatory mitigation fees based on "the cost to provide equivalent or greater protection of water quality" through acquisition, restoration or enhancement of riparian buffers or through construction of alternative measures to reduce nutrient loading. Under the proposed amendments, the **nitrogen fee will be increased from \$11/pound-year to**

\$57/pound-year, as the rule amendments incorporate the latest, actual mitigation costs encountered in the field. Based on field costs, **the phosphorous fee will be initially set at \$45/0.1 lb-year**. Furthermore, detailed equations will be established to calculate the total costs that a new development or wastewater discharger would be required to pay into the offset program in lieu of meeting the nutrient loading limits. These equations accomplished two other goals of the proposed amendments: 1) to incorporate the land costs associated with the mitigation requirements into the offset fees (these land costs are not captured in the existing rule), and 2) to provide a mechanism that would allow the nitrogen and phosphorous fees to be automatically updated on an annual basis. **This updating mechanism is absent from the current rule and this omission is the reason why the original fee, established in 1998, has become so outdated that the offset program is currently unable to provide all the necessary mitigation for the credits that are purchased in this program.**

The Division of Water Quality estimates that the proposed increases could cost the regulated community a maximum amount of approximately \$8,000,000 per year. Due to the voluntary nature of the offset program, however, many affected parties may choose to implement the required nutrient controls on-site and avoid having to pay the increased compensatory mitigation fees. The increased use of on-site nutrient controls by the regulated community could substantially reduce the economic impact.

As noted above, the compensatory mitigation payments go into the Riparian Buffer Restoration Fund for use in acquiring, restoring and enhancing riparian buffers for purposes of nutrient reduction and for construction of alternative measures to reduce nutrient loading.

Statutory Authority: G.S. 143-214.20; 143-214.21