

## ETHANOL PRODUCTION INCENTIVE PROGRAM - HISTORY

### APPROPRIATIONS

The ethanol production incentive program began in North Dakota in 1989. Prior to 1989, the state allowed a 4 cent per gallon tax reduction for ethanol-blended gasoline sold by retailers. The schedule below shows the appropriations made by the Legislative Assembly for ethanol production incentives since its inception in 1989.

	Appropriation From Highway Tax Distribution Fund
1989-91	\$3,750,000 <sup>1</sup>
1991-93	3,650,000
1993-95	3,650,000
1995-97	3,000,000
1997-99	1,750,000 <sup>2</sup>
1999-2001	1,800,000 <sup>3</sup>
2001-03	2,500,000
2003-05	4
2005-07	4
2007-09	4
2009-11	4
2011-13	4
2013-15	4
2015-17	4
2017-19	4
Total through June 30, 2005	\$20,100,000

<sup>1</sup>This amount was reduced by \$342,000 due to budget reductions made as a result of the loss of revenues resulting from the defeat of the gas tax measure on the December 5, 1989, special election ballot.

<sup>2</sup>Includes \$250,000 of unspent 1995-97 ethanol production incentive funding resulting from the Archer Daniels Midland Company plant in Walhalla not receiving incentive payments during the second year of the biennium because it was not operating.

<sup>3</sup>Includes a \$300,000 appropriation contingent upon a new plant beginning operations after July 1, 1999.

<sup>4</sup>The 2003 Legislative Assembly approved a continuing appropriation for making ethanol incentive payments beginning in the 2003-05 biennium.

### EXPENDITURES

The following schedule shows the actual ethanol production incentive payments made to the ethanol plants in North Dakota since the inception of the program in 1989:

Fiscal Year	Alchem, Ltd., Plant in Grafton	Archer Daniels Midland Company Plant in Walhalla	Blue Flint Ethanol in Underwood	Hankinson Renewable Energy, LLC in Hankinson	Red Trail Energy, LLC in Richardton	Tharaldson Ethanol Plant Near Casselton	Dakota Spirit AgEnergy Near Spiritwood	Total
1989	\$1,103,026	\$540,555						\$1,643,581
1990	196,663	506,972						703,635
1991	875,000	950,000						1,825,000
1992	865,466	939,577						1,805,043
1993	950,000	875,000						1,825,000
1994	875,000	950,000						1,825,000
1995	875,000	950,000						1,825,000
1996	1,000,000	500,000						1,500,000
1997	1,000,000							1,000,000
1998	870,686							870,686
1999	875,000							875,000
2000	750,000							750,000
2001	750,000							750,000
2002	750,000	500,000						1,250,000
2003	750,000	500,000						1,250,000
2004	600,000	300,000						900,000
2005	600,000	300,000						900,000
2006	900,000							900,000
2007		450,000						450,000
2008			\$901,521		\$877,725			1,779,246
2009			1,483,731	\$961,449	1,440,678	\$13,360		3,899,218

2010			777,601		649,356	509,871		1,936,828
2011			378,107	772,022	337,868	680,942		2,168,939
2012			333,387	709,507	287,844	825,151		2,155,889
2013			391,097	741,705	330,513	782,602		2,245,917
2014			401,360	845,294	357,196	756,713		2,360,563
2015			438,388	848,082	269,725	848,208		2,404,403
2016			411,661	751,918	376,556	745,887	\$108,376	2,394,398
2017			332,378	678,082	312,067	743,134	316,403	2,382,064
2018 <sup>1</sup>			325,199	672,403	256,525	750,136	330,844	2,335,107
Total	\$14,585,841	\$8,262,104	\$6,174,430	\$6,980,462	\$5,496,053	\$6,656,004	\$755,623	\$48,910,517

<sup>1</sup>Ethanol production incentive payments listed for fiscal year 2018 are as of September 2017.

## ETHANOL PRODUCTION INCENTIVE PAYMENT CALCULATION

Pursuant to North Dakota Century Code Section 17-02-03, the Office of Renewable Energy and Energy Efficiency provides quarterly production incentives to eligible facilities based on two components:

- The average North Dakota price per bushel of corn during the quarter as established by the North Dakota Agricultural Statistics Services; and
- The average North Dakota wholesale price per gallon of ethanol during the quarter as compiled by AXXIS Petroleum.

The component relating to the price of corn is calculated by subtracting the \$1.80 per bushel baseline cost from the average North Dakota corn price for the quarter and multiplying the result by the number of gallons produced during the quarter and an incentive factor of 0.1. The component relating to the price of ethanol is calculated by subtracting the average North Dakota wholesale ethanol price for the quarter from the baseline price of \$1.30 per gallon and multiplying the result by the number of gallons produced during the quarter and an incentive factor of 0.2.

For example, if a facility produced 12.5 million gallons of ethanol during a quarter when ethanol prices averaged \$2.00 per gallon and the corn prices averaged \$4.00 per bushel, the incentive for that quarter would be calculated as follows:

Ethanol portion - $(1.30 - 2.00) \times 12,500,000 \times 0.2$	(\$1,750,000)
Corn portion - $(4.00 - 1.80) \times 12,500,000 \times 0.1$	2,750,000
Total incentive payment	\$1,000,000

## REVENUES

For the period 1991 through 2003, the Legislative Assembly provided for additional revenues to the highway tax distribution fund to provide the funding necessary for the ethanol production incentive program.

### 1991

The 1991 Legislative Assembly provided for the additional revenues by extending, by 1 year, the vehicle age categories of the motor vehicle registration fee rate schedules for the 1991-93 and 1993-95 bienniums and by withholding an additional 2 cents from the agricultural fuel tax refund for the 1991-93 and 1993-95 bienniums.

### 1995

The 1995 Legislative Assembly extended these additional revenue provisions through the 1997-99 biennium.

### 1997

The 1997 Legislative Assembly in Senate Bill No. 2019 reduced the agricultural fuel tax refund reduction by 1 cent, from 2 cents to 1 cent, because only the Alchem, Ltd., plant in Grafton was eligible for production incentives during the 1997-99 biennium. (The Archer Daniels Midland Company plant in Walthalla had discontinued operations in September 1995.)

### 1999

The 1999 Legislative Assembly continued the agricultural fuel tax reduction of 1 cent relating to the ethanol production incentive program through December 31, 2001, and removed the sunset clause of June 30, 1999, for extending, by 1 year, the vehicle age categories of the motor vehicle registration fee rate schedules.

**2001**

The 2001 Legislative Assembly in Senate Bill No. 2019 continued, until January 2004, the additional 1 cent reduction of the gas tax refund relating to fuel used for agricultural purposes. This additional 1 cent was used to provide an estimated \$278,000 of funding for the ethanol incentive program for the 2001-03 biennium.

**2003**

The 2003 Legislative Assembly approved Senate Bill No. 2222 restructuring the ethanol incentive program. The bill created an ethanol production incentive fund into which is deposited 40 percent of all registration fees on farm vehicles and the 1 cent reduction of the gas tax refund relating to fuel used for agricultural purposes. The bill continued the 1 cent reduction of the gas tax refund. The State Treasurer may not transfer any farm vehicle registration fee collections that would cause the ethanol production incentive fund's balance to exceed \$5 million. Revenue to the fund for the 2003-05 biennium was anticipated to total \$3,085,000, of which \$2,800,000 was from farm vehicle registration fees and \$285,000 from the 1 cent withheld on agricultural gasoline tax refunds.

**ETHANOL INCENTIVE FUND BALANCE**

The following schedule shows the ethanol incentive fund balance, with revenues and expenditures, since 2006:

<b>Ethanol Incentive Fund</b>				
<b>Fiscal Year</b>	<b>Beginning Balance</b>	<b>Revenues</b>	<b>Expenditures</b>	<b>Ending Balance</b>
2006	\$1,473,693	\$1,790,524	\$1,350,000	\$1,914,217
2007	\$1,914,217	2,241,990	450,000	\$3,706,207
2008	\$3,706,207	1,921,319	1,779,247	\$3,848,279
2009	\$3,848,279	1,987,766	3,899,217	\$1,936,828
2010	\$1,936,828	2,137,626	1,936,828	\$2,137,626
2011	\$2,137,626	2,182,401	2,168,939	\$2,151,088
2012	\$2,151,088	2,247,332	2,155,888	\$2,242,532
2013	\$2,242,532	2,363,949	2,245,918	\$2,360,563
2014	\$2,360,563	2,407,127	2,360,563	\$2,407,127
2015	\$2,407,127	2,391,675	2,404,403	\$2,394,399
2016	\$2,394,399	2,382,063	2,394,398	\$2,382,064
2017	\$2,382,064	2,335,107	2,382,064	\$2,335,107
2018 <sup>1</sup>	\$2,335,107	2,330,000	2,335,107	\$2,330,000
Total		\$28,718,879	\$27,862,572	

<sup>1</sup>The balance in the ethanol production incentive fund is \$0 until a transfer is made from the highway tax distribution fund, which will be applied at the end of the 2017-19 biennium. The Department of Commerce estimates the transfer will be approximately \$2.33 million, resulting in the estimated ending balance shown above.

**OTHER LEGISLATIVE ACTION****1995**

The 1995 Legislative Assembly in House Bill No. 1134 limited the length of time an ethanol plant may receive incentives. The bill provided that a plant operating before July 1, 1995, could not receive incentives from the state for more than 5 years of operation after June 30, 1995. A plant that begins operations after June 30, 1995, could not receive incentive payments from the state for more than 10 years of operation, and after December 31, 2007, the state could not provide production incentives to any ethanol plant. The bill also provided that a plant operating before July 1, 1995, which produced less than 15 million gallons of ethanol in the previous fiscal year (the Alchem, Ltd., plant in Grafton) may receive up to \$1 million in incentives from the state for production in each fiscal year. A plant in operation before July 1, 1995, which produced 15 million gallons or more of ethanol in the previous fiscal year (the Archer Daniels Midland Company plant in Walhalla) and any plant that begins operations after June 30, 1995, would be eligible to receive an equal share of up to \$500,000 of incentives from the state for production in each fiscal year.

**1997**

The 1997 Legislative Assembly provided that only the Alchem, Ltd., plant in Grafton was eligible for the production incentives of up to \$875,000 per year for the 1997-99 biennium.

**1999**

The 1999 Legislative Assembly extended in House Bill No. 1019 the number of years ethanol plants may receive production incentives since June 30, 1995, from 5 to 12 years for plants operating before July 1, 1995, and from 10 to 12 years for plants beginning operation after June 30, 1995. After December 31, 2009, the state may not provide production incentives to any ethanol plant. The 1999 Legislative Assembly provided that an ethanol plant that was in operation before July 1, 1995, and which has a production capacity of less than 15 million gallons of

ethanol (the Alchem, Ltd., plant in Grafton) may receive incentives of up to \$750,000 per year. An ethanol plant that was in operation before July 1, 1995, and which has a production capacity of 15 million gallons or more (the Archer Daniels Midland Company plant in Walhalla) is not eligible to receive production incentives.

### **2001**

The 2001 Legislative Assembly in Senate Bill No. 2019 extended the number of years ethanol plants may receive production incentives since June 30, 1995, from 12 to 14 years for plants operating before July 1, 1995, and from 12 to 14 years for plants beginning operation after June 30, 1995. After December 31, 2009, the state may not provide production incentives to any ethanol plant. The 2001 Legislative Assembly provided that an ethanol plant that was in operation before July 1, 1995, and which has a production capacity of less than 15 million gallons of ethanol (the Alchem, Ltd., plant in Grafton) may receive production incentives of up to \$750,000 per year. An ethanol plant that was in operation before July 1, 1995, and which has a production capacity of 15 million gallons or more (the Archer Daniels Midland Company plant in Walhalla) and an ethanol plant that begins operations after June 30, 1995, are each eligible to receive an equal share up to \$500,000 per year in production incentives. The 2001 Legislative Assembly removed the requirement that the ethanol produced in North Dakota must be sold in North Dakota in order to be eligible for an incentive. The Legislative Assembly added a requirement that, in order to be eligible for incentives during the 2001-03 biennium, the plant must notify the Agricultural Products Utilization Commission in writing by October 1, 2001, of its intent to request ethanol incentive payments during the 2001-03 biennium. If an ethanol plant has not notified the commission of its intent to participate in the program by October 1, 2001, or if at the end of each fiscal year funding provided for the incentive payments is not spent, the funding not needed for the program will be transferred to the agricultural fuel tax fund and may be spent for grants approved by the commission.

### **2003**

The 2003 Legislative Assembly approved Senate Bill No. 2222 restructuring the ethanol incentive program. The bill established a formula for distributing ethanol incentive payments based on the price of gasoline and the price of corn. It created an ethanol production incentive fund into which is deposited 40 percent of all registration fees on farm vehicles and the 1 cent withheld on agricultural gasoline tax refunds. The State Treasurer may not transfer any farm vehicle registration fee collections that would cause the ethanol production incentive fund's balance to exceed \$5 million. The bill provided a continuing appropriation to the Department of Commerce for making the ethanol incentive payments; therefore, no specific amount is appropriated for the 2003-05 biennium. An eligible plant may not receive more than \$1.6 million in production incentives annually and may not receive a cumulative total of more than \$10 million in incentive payments. The bill provided that change of ownership of an ethanol plant does not affect the \$10 million maximum payment amount. The bill removed the previous statutory provisions limiting the number of years an ethanol plant may receive production incentives. For the 2003-05 biennium only, an ethanol plant that was in operation before July 1, 1995, and has a production capacity of less than 15 million gallons of ethanol (the Alchem, Ltd., plant in Grafton) may receive incentive payments of up to \$600,000 per year, and an ethanol plant that was in operation before July 1, 1995, and which produced more than 15 million gallons in the previous year (the Archer Daniels Midland Company plant in Walhalla) may receive incentive payments of up to \$300,000 per year. Any new plant that would begin operations could potentially receive incentives of up to \$1,285,000 during the 2003-05 biennium.

### **2005**

The 2005 Legislative Assembly approved Senate Bill No. 2270. The bill provided that the Alchem, Ltd., plant in Grafton was eligible to receive up to \$900,000 for the 2005-07 biennium and the Archer Daniels Midland Company plant in Walhalla up to \$450,000 for the 2005-07 biennium and that subsequently these plants would not be eligible to receive production incentives unless a plant increases its production by the lesser of 10 million gallons or 50 percent of its production capacity per year.

The 2005 Legislative Assembly approved House Bill No. 2018. The bill created the Office of Renewable Energy and Energy Efficiency within the Department of Commerce. The bill transferred responsibility of administering the ethanol incentive program from the Agricultural Products Utilization Commission to the Office of Renewable Energy and Energy Efficiency.

### **2007**

The 2007 Legislative Assembly approved House Bill No. 2288. The bill provided a maximum allowable balance of \$7.5 million in the ethanol incentive fund, increasing the previous maximum allowable balance of \$5 million. The bill made the \$10 million maximum cumulative payments to eligible facilities apply to all state payments rather than just state ethanol incentive payments. The bill also included a 10-year limit for an eligible facility to receive state payments.

House Bill No. 2288 prohibits the Office of Renewable Energy and Energy Efficiency from making a distribution payment if the payment results in a negative ethanol production incentive fund balance. If the fund is insufficient to pay all valid incentive requests, the available funds will be distributed on a pro rata basis and an obligation cannot be carried forward.

The 2007 Legislative Assembly approved House Bill No. 1462. The bill authorized the Legislative Council to redesignate certain sections of the ethanol production incentive fund under Chapter 4-14.1 as appropriate chapters and sections of Title 17. The Legislative Council created Chapter 17-02 entitled Ethanol Production Incentives ([Appendix A](#)).

**2013**

The 2013 Legislative Assembly approved Senate Bill No. 2018, which amended Section 39-04-39 ([Appendix B](#)) to remove the requirement that 1 cent per gallon of the motor vehicle fuel tax refunds be deposited in the ethanol production incentive fund.

The 2013 Legislative Assembly approved House Bill No. 1113. The bill provided a definition of "eligible facility" as an ethanol production plant constructed in this state after July 31, 2003. The bill removed the ability of ethanol plants built prior to July 31, 2003, (Alchem, Ltd., plant in Grafton and the Archer Daniels Midland Company plant in Walhalla) to receive production incentives, unless the plant increases its production by the lesser of 10 million gallons or 50 percent of its production capacity per year. The bill removed the requirement for a report to the Budget Section on ethanol production incentives.

**PLANT OPERATIONS**

The following schedule shows the operating status and operating history of ethanol plants within North Dakota, since the inception of the ethanol production incentive program in 1989:

<b>Ethanol Plant</b>	<b>Location</b>	<b>Current Operating Status</b>	<b>History of Operating Status</b>
Alchem, Ltd.	Grafton	Closed	<ul style="list-style-type: none"> <li>• Started operating in 1989</li> <li>• Closed in 2007</li> </ul>
Archer Daniels Midland Company	Walhalla	Closed	<ul style="list-style-type: none"> <li>• Started operating in 1989</li> <li>• Closed in September 1995</li> <li>• Opened in July 1998</li> <li>• Closed in May 1999</li> <li>• Opened in September 2000</li> <li>• Closed in April 2012</li> </ul>
Red Trail Energy, LLC	Richardton	Operating	<ul style="list-style-type: none"> <li>• Started operating in 2007</li> </ul>
Blue Flint Ethanol	Underwood	Operating	<ul style="list-style-type: none"> <li>• Started operating in 2007</li> </ul>
Hankinson Renewable Energy, LLC	Hankinson	Operating	<ul style="list-style-type: none"> <li>• Started operating in 2008</li> </ul>
Tharaldson Ethanol	Near Casselton	Operating	<ul style="list-style-type: none"> <li>• Started operating in 2008</li> </ul>
Dakota Spirit AgEnergy	Near Spiritwood	Operating	<ul style="list-style-type: none"> <li>• Started operating in 2015</li> </ul>

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