

Florida Department of Environmental Protection
Office of Water Policy and Ecosystems Restoration
Submitted via email to:
WQEA_2023@FloridaDEP.gov



Re: Water Quality Enhancement Area Rulemaking

Thank you for the opportunity to submit comments regarding updates to the Water Quality Credit Trading / Water Quality Enhancement Areas ("WQEAs") Rule in F.A.C. 62-306, pursuant to section 403.067, Florida Statutes. While innovative technologies and policies are necessary to protect and restore our water resources, they must be developed with caution as to avoid unintended consequences.

The draft rule currently states at F.A.C. 62-332.300(9) that "WQEAs may not be located within areas designated for conservation, mitigation, restoration, or reclamation by state law or permit, or within areas purchased for conservation pursuant to the Florida Forever Act or the Florida Preservation 2000 Act." This language seems to suggest that WQEAs may be located in an area designated for conservation by a local land conservation program. Dozens of local governments across the state have land conservation programs that may or may not correspond with Florida Forever projects or state permits. We suggest amending this section to expand the prohibition against WQEAs in conservation areas to include local conservation areas as well as state conservation areas.

Furthermore, F.A.C. 62-332.300(13), states that "An enhancement credit transaction must ensure that no localized water quality violations will occur at the location of the purchaser's permitted discharge as a result of the trade." While we appreciate the intent of this provision, we feel that more specificity is needed to ensure that this provision is actual rather than merely aspirational. The current proposed program uses modeling to prove that this goal is being met. Models are useful tools, but cannot be 100% accurate for something as complex as water quality. We understand that testing each site is not practical, but we suggest adding language for site-specific compliance testing in situations where there is reason to believe that a water quality violation has occurred at the location of the purchaser's permitted discharge.

We also have concerns with the draft language at F.A.C. 62-332.300(10)(b), which reads "the conservation easement shall also provide that the Owner shall have access to the property and the authority to perform all acts necessary to ensure compliance with the WQEA Permit, and that the Agency shall have access and the authority to perform these acts if the Owner fails to do so." This suggests that the state will be responsible for carrying the burden of operating or maintaining a WQEA if the Owner fails to. There is already an issue with "orphaned" ERPs, wherein the entity that was the permit holder no longer exists. Often those stormwater systems have fallen into disrepair and are polluting nearby waterways, but no one is responsible for fixing them. We suggest incorporating language that outlines enforcement protocols and steps towards compliance to be followed in situations where an Owner becomes noncompliant. F.A.C 62-332.900 'Compliance and Enforcement' begins to address this issue, but does not explicitly lay out a course of action to address abandoned or noncompliant WQEAs. F.A.C. 62-332.900(8) states that "the WQEA may request the surrender or transfer of their WQEA permit as described in Rule 62-342.800, F.A.C." but this section only applies to banks in which no credits have been used or sold and therefore does not address WQEAs that have already begun to sell credits.

Similarly, F.A.C. 62-332.300(8), states that “Enhancement credits are perpetual only if the activities resulting in their creation continue to provide at least the same level of pollutant load reduction authorized by the Department” but there is no indication about the course of action if the activities resulting their creation cease. Would the purchaser’s credits be revoked? Would the purchasers be responsible for buying new credits? F.A.C. 62-332.900(5) states that changes to the size, nature, function, or treatment capabilities of the WQEA “may result in reopening and revising the WQEA permit and the permits of any governmental entity credit purchasers to ensure credit transactions maintain at least their approved level of pollutant load reduction.” We suggest changing “may” to “will” in this section and incorporating additional language to clarify the course of action that would result from this situation.

We appreciate the opportunity to provide comments on this draft rule and look forward to continuing this conversation.



A handwritten signature in blue ink, which appears to read "Jen Lomberg".

Respectfully,
Jen Lomberg, Esq.
Matanzas Riverkeeper
Board Chair of Waterkeepers Florida

Waterkeepers Florida is a regional entity composed of all 15 Waterkeeper organizations working in the State of Florida to protect and restore our water resources across over 45,000 square miles of watershed, which is home to over 15 million Floridians. Part scientist, teacher, and legal advocate, Waterkeepers combine firsthand knowledge of their waterways with an unwavering commitment to the rights of their communities and to the rule of law. Whether on the water, in a classroom, or in a courtroom, Waterkeepers speak for the waters they defend – with the backing of their local community and the collective strength of Waterkeeper Alliance.



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