CHAPTER 62-332

WATER QUALITY ENHANCEMENT AREA CREDIT TRANSACTIONS

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62-332.100 Scope and Intent.

(1) This chapter establishes the requirements for the permitting of water quality enhancement areas, and the generation, valuation, award, release, and use of water quality enhancement credits providing offsite compensatory treatment under Section 373.4134, Florida Statutes (F.S.). This chapter establishes additional requirements for a water quality enhancement permit under Chapter 62-330, F.A.C., Environmental Resource Permitting.

(2) The enhancement credit transactions authorized in this chapter are intended to provide flexibility to governmental entities to satisfy the environmental resource permit (ERP) net improvement or performance standard under Section 373.4131(3)(a), F.S. and for governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan under s.403.067, F.S. ~~The requirements for credit trading to meet the allocations of an adopted Basin Management Action Plan (BMAP) or adopted Reasonable Assurance Plan (RAP) are set forth in Chapter 62-306, F.A.C.~~

(3) This chapter is supplemental to and does not supersede any other requirements in rules promulgated under Part IV of Chapter 373, F.S., and Chapter 62-330, F.A.C.

(4) Nothing in this rule is intended to limit any actions by federal, state, or local agencies, ~~affected persons, or citizens~~ pursuant to other rules or regulations.

Rulemaking Authority 373.4134, 403.805 FS. Law Implemented 373.4134, 403.067 FS. History–New.

62-332.200 Definitions.

Commented [A1]: The restriction in this paragraph is inconsistent with .600 that allows use for a BMAP or RAP.

62-332.600 Enhancement Credit Transactions and Credit Use.

(2) Enhancement credits may be used only to satisfy the environmental resource permit net improvement or performance standard under Section 373.4131(3)(a), F.S, or BMAP, or adopted reasonable assurance plan allocations within the water quality enhancement service area.

Commented [A2]: This is the language from 373.4134(1)(e) and is not applicable to WQEAs.

Commented [A3]: Are you intending citizen suits under this section? "Citizens" is not a word used in AHI or 62-330. I suggest care here.

(1) “Best management practice for stormwater treatment” or “BMP” means a practice or combination off practices, based on research, field-testing, and expert review, to be the most effective and practicable, including economic and technological considerations, of improving water quality by reducing excess nutrient and other pollutant loads in water.

(2) “Department” means the Florida Department of Environmental Protection.

(3) “Enhancement credit” or “credit” means the standard unit of measure that represents an average annual quantity pollutant ~~removed annually~~ reduction and which is greater than any reductions otherwise required under Chapter 62-330 ~~any state regulatory program~~. Enhancement credits are generated by water quality enhancement areas pursuant to this chapter. ~~The initial enhancement credit valuations may be estimated using a numerical model or other analytical tool approved by the Department, taking into account the projected pollutant reductions under any uncertainties between the numerical models or other analytical tools used to estimate the expected ability of the water quality enhancement area to remove pollutants. When used as part of a transaction pursuant to this chapter, enhancement credits shall be adjusted using appropriate valuation factors.~~

(4) “Governmental entity” means any political subdivision of the state, including any state agency, department, county, municipality, special district, school district, utility authority, or other authority or instrumentality, agency, unit, or department thereof.

(5) “Natural system” means a man-made or altered ecological system supporting aquatic and wetland-dependent natural resources, including fish, aquatic and wetland-dependent wildlife habitats.

(6) “Owner” means the entity that constructs, operates, maintains, and is responsible for the long-term management of a water quality enhancement area, having the real property interest described in 4.2.3(d) of Applicant’s Handbook Volume I.

(7) “Purchaser” means the governmental entity proposing to utilize purchased enhancement credits to meet net improvement or performance standards associated with the entity’s ERP or the entity proposing to utilize the purchased enhancement credits to meet an assigned basin management action plan allocation or reasonable assurance plan under s.403.067, F.S.

(8) “Water quality enhancement area” or WQEA means a natural system constructed, operated, managed, and maintained for the purpose of providing offsite regional treatment for which enhancement credits may be ~~generated~~ provided pursuant to a water quality enhancement area permit.

(9) "Water quality enhancement area permit" means an environmental resource permit issued underpart IV of Chapter 373, F.S., and this rule chapter for a water quality enhancement area, which authorizes the construction, operation, management, and maintenance of a water quality enhancement area and the ~~generation~~ purchase and sale of enhancement credits from the permitted WQEA in accordance with this chapter.

(10) “Water quality enhancement service area” means the limited geographic area ~~of hydrologically connected downstream waters~~ within which the water quality enhancement area could reasonably be expected to address adverse water quality ~~reduce~~ impacts, ~~which are causing the waterbody or water segment not to meet applicable state water quality criteria~~ as determined by the Department.

Rulemaking Authority 373.4134 FS. Law Implemented 373.4134 FS. History–New.

Commented [A4]: This is too broad. It should only applied to ERP rules and BMAP criteria.

Commented [A5]: The rest of this definition exceeds what is in the statutory definition. The remainder of the language in this paragraph really does not belong in a definition, it should be in a substantive section. It is also addressed in 62-332.400.

Commented [A6]: The owner and the person who operates and maintains the system will not necessarily be the same entity. I suggest we stick with terminology in the ERP rules.

Commented [A7]: The owner and the person who operates and maintains the system will not necessarily be the same entity. It is suggested to stick with terminology established in the ERP rules.

Commented [A8]: The statute uses the word “provided” rather than “generated.

Commented [A9]: The statute uses the term “purchase”, not “generated”.

Commented [A10]: The limitation to connected downstream waters is beyond the limitations set forth in the statue. Language is suggested later in the chapter to address implementation methodology whether upstream or downstream.

Commented [A11]: Suggest striking language as it suggests that WQEA Service area is limited to only areas where a water quality criteria is not being met. With all ERP applicants needing to make improvements under the adopted rule, limiting to only areas not meeting wq criteria inhibits a WQEA from providing proactive improvements in the system. As stated, the language appears to see WQEAs as only a reactive tool.

62-332.300 General Requirements.

(1) An applicant for a water quality enhancement permit may use water quality improvement projects only if approved by the Department utilizing natural systems, including, but not limited to, constructed wetlands or waterbodies that reduce pollutants to a receiving waterbody or water segment, to generate enhancement credits.

~~(2) Waterbodies should include a variety of emergent habitats and should not be designed to prevent fluctuating water levels.~~

Commented [A12]: Do you mean wqea?

~~(a) At least 25 percent of the highwater surface area of each waterbody shall consist of a zone of fluctuation. In the event the waterbody cannot be designed to accommodate the required zone of78 fluctuation, this requirement shall be met by constructing additional wetlands adjacent to and hydrologically connected with the waterbody.~~

~~(b) Waterbodies shall have a shallow water zone inside and adjacent to the zone of fluctuation.~~

Commented [A13]: Do you mean wqea?

Commented [A14]: This paragraph, (2), is prescriptive design of systems, which limits innovative approaches to improving the performance of projects and water quality.

(3) Enhancement credits may only be sold to, and purchased by, a governmental entity in accordance with this chapter and as authorized in an environmental resource permit or in an assigned basin management action plan allocation or reasonable assurance plan under s.403.067, F.S.

Commented [A15]: This language is from the statute.

~~(4) The Purchaser's project must meet department rules for design and construction of all onsite stormwater management and provide a level of treatment necessary to meet the predevelopment condition pollutant loading on its site. Any additional treatment required by the purchaser's ERP under Chapter 62 – 330, F.A.C., may then be achieved through WQEA credits.~~

Commented [A16]: There will always be on-site treatment as a result of addressing water quantity requirements to not exceed allowable discharges, already required in ERP adopted rule. Do you really want to restrict the ability to perform water quality treatment offsite, in a well-managed area, dedicated only to treatment, and supported by financial assurances? This limitation exceeds the statute.

~~(5)~~(4) The construction, operation, management, and maintenance of a WQEA will be approved through the environmental resource permit process pursuant to Chapter 62-330, F.A.C.

~~(6)~~(5) Enhancement credits may be generated and sold by an owner of a WQEA only in accordance with this chapter and the conditions of the owner's permit. The Department will determine the value and number of enhancement credits necessary for all credit transactions.

~~(7)~~(6) Governmental entities may purchase enhancement credits to meet net improvement or performance standard permit requirements only after the governmental entity has provided reasonable assurance of meeting department rules for design and construction of all onsite stormwater management. ~~Enhancement credits may not solely be used to meet design and construction requirements for onsite stormwater management.~~

Commented [A17]: This limitation is not authorized in the statute. Further, ERP rule and statute require ERP applicants to demonstrate discharges do not exceed allowable, which as mentioned in earlier comment, has inherent water quality treatment as a result of on-site residence time.

~~(8)~~(7) The WQEA that generates enhancement credits and the purchaser's project using those credits must be located within the same water quality enhancement service area.

~~(9)~~(8) An enhancement credit transaction must ensure that the WQEA's credited average annual pollutant load reduction will be achieved ~~annually~~, and that no localized water quality violations will occur at the location of the purchaser's permitted discharge as a result of the trade. The credited pollutant load reduction must result in at least an equivalent water quality improvement at the purchaser's point of discharge.

Commented [A18]: This is not a requirement authorized in the statute. ERP rules are not based on a demonstration of "annual" achievement.

~~(10)~~(9) Enhancement credits are not available for use by a purchaser until the Department has authorized their use in the purchaser's environmental resource permit. Enhancement credits are expressed as an average annual reduction in pollutant loading by the WQEA ~~and cannot be rolled over or aggregated from year to year.~~ An enhancement credit retains its environmental value only if the activities resulting in its creation continue to provide at least the same level of pollutant load reduction authorized by the Department. An enhancement credit included in an ongoing credit transaction is not available for another transaction. The Department will account for enhancement credits and transactions in a ledger.

Commented [A19]: The ERP requirements are perpetual. It is not annual. Once a credit is purchased from a WQEA, the responsibility transfers from the purchaser to the wqea permittee. The protection comes from financial assurances.

~~(11)~~(10) WQEAs may not be located within areas established for 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.

~~(12)~~(11) A governmental entity may use WQEAs for its own water quality needs. However, a governmental entity may not sponsor, fund, or otherwise construct, operate, manage, or maintain a WQEA for the purpose of selling enhancement credits to third parties.

~~(13)~~(12) Reductions in pollutant loading required under any state regulatory program or required by a BMAP, adopted reasonable assurance plan, or accepted pollutant reduction plan, including agricultural and non-agricultural best management practices, are not eligible to generate enhancement credits.

~~(14)~~(13) The issuance of a WQEA permit does not eliminate the owner's obligation to comply with all requirements of Chapter 62-330, F.A.C., pertaining to adverse impacts to water quality and adjacent lands or wetlands.

~~(15)~~(14) The issuance of a WQEA permit does not preclude the responsibility of the owner to obtain other applicable federal, state, and local permits for construction activities associated with the WQEA.

Rulemaking Authority 373.4134, 403.805 FS. Law Implemented 373.4134, 403.067 FS. History–New .

62-332.400 Enhancement Credit Generation and Valuation

(1) The department will assign a number of enhancement credits to the proposed WQEA, or phases thereof, based upon the information submitted by the applicant, and an assessment of the proposed WQEA under the criteria of Section 373.4134, F.S., and the following criteria:

(a) The initial valuation of enhancement credits generated by a WQEA shall be based on standard numerical models or analytical tools that establish the ability of the WQEA to remove pollutants or their constituents.

(b) The initial valuation of enhancement credits shall be based on ~~conservative~~ estimates of average annual performance that include, ~~including,~~ but not limited to, expected hydrologic ~~or performance~~ variations, over the demonstrated period of record. The initial valuation of credits shall consider the uncertainty between the numerical models or other analytical tools used to estimate the expected removal of pollutants, and the actual pollutant removal from the WQEA.

Commented [A20]: Isn't this already addressed in 4(b)?

Commented [A21]: If "performance variation" is suggesting the WQEA would perform differently year over year, suggest replacing with "hydrologic variation over the demonstrated period of record". The WQEA performance should be consistent with the variation in hydrologic/climatic conditions, just as we would expect the discharges from a purchaser's project to vary with changes in hydrologic/climatic conditions. The performance of the wqea demonstrated through the required model effort described later in the Chapter should reflect wet and dry years to ensure the wqea's average annual performance accounts for those years. And that should be shown within the permit how the WQEA is anticipated to perform in wet and dry years. There will be years a WQEA exceeds the average annual performance, and years it does not, however the credit generated from the WQEA does not fluctuate up or down so long as the performance of the wqea is consistent with what would have been expected in a wet or dry year.

Further, this is already accounted for in 62-332.400(4)(b)

(c) Credits must be based on standard unit of measure of the specific pollutants removed.

(d) Credits are based on pollutants removed after the applicant satisfies the requirements in Chapter 62-330. ~~Credits are based on pollutants removed after the applicant performs all required pollution control activities, beyond which enhancement credits may be generated.~~

(e) The initial valuation of enhancement credits will be stated in the WQEA permit.

(f) The number of enhancement credits necessary for a given credit transaction may be adjusted based on appropriate location adjustment factors as described in Rule 62-332.500, F.A.C.

(2) If the WQEA is located within a BMAP or adopted reasonable assurance plan, the applicant must use the most recent numerical models or analytical tools used for that BMAP or adopted reasonable assurance plan in the WQEA permit application, except as provided in subsection (3).

(3) If the WQEA is not located within a BMAP or adopted reasonable assurance plan, or the Department determines that the numerical model or analytical tool used for the applicable BMAP or adopted reasonable assurance plan is not appropriate for use in determining the pollutant loading for the proposed WQEA, the applicant must use another standard numerical model or analytical tool that has been approved by the Department for the proposed WQEA.

(4) A WQEA permit application must identify and document the numerical model or analytical tool, inputs, and results, used to establish the efficacy of the WQEA, including all information to support the permit application required by Rule 62-330.054, F.A.C., and any other information required by this Rule relevant to support credit value. At a minimum, the application must contain:

(a) Rainfall data over the longest period of record available, either from the National Centers for Environmental Information or collected from the closest site to the proposed WQEA, preferably within the same drainage basin.

(b) Anticipated water quality and quantity inflows over a wide range of climatic conditions that captures interannual variation to the proposed WQEA, based on published local data collected over a period of record that most closely matches the rainfall data collected under paragraph (a) above.

(c) Site-specific conditions affecting the anticipated performance of the proposed WQEA, including the proposed BMP for stormwater treatment and the anticipated associated reduction rates, as demonstrated by the performance of other areas where the same BMP treatment type has been established and operating over a minimum of two consecutive wet and dry seasons.

(d) Data provided under this subsection must be from monitoring stations the Department deems sufficient to determine flows and local water quality conditions.

(e) Any other supporting information deemed necessary by the Department.

Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History–New

Commented [A22]: Pollution control activities is not defined and is not used in AH I. There are no "pollution control activities" because the purpose of the site is only to provide wq treatment for third parties. There are no wq impacts created at the site that need to be offset.

62-332.500 Service Area and Enhancement Credit Locational Valuation Factor Adjustments

(1) The WQEA that generates enhancement credits and the purchaser's project using those credits must be located within the same water quality enhancement service area.

(2) The extent of the water quality enhancement service area will be determined by modeling provided by the owner outlining the area within which the WQEA could reasonably be expected to reduce the impacts causing the waterbody or water segment not to meet applicable state water quality criteria, including the impacts associated with credit transactions.

(a) Numerical models or other analytical tools shall be reviewed and approved by the department at the time of application.

(b) Water Quality Enhancement Service Areas may overlap, and more than one water quality enhancement service area may be approved within a regional watershed.

(3) The purchaser's project must be hydrologically connected ~~and downstream of~~ with the WQEA from which the enhancement credits are purchased. If the requirements in rule 62-332.300, F.A.C., are met, the following projects or activities shall be eligible to use a WQEA, notwithstanding the fact that they are not completely located within the Water Quality Enhancement Service Area, provided a demonstration is provided to the Department that the purchaser's project will not contribute to a localized exceedance of water quality standards within the watershed or downstream waterbody of concern:

Commented [A23]: We suggest that this instead be addressed in the location adjustment factors, and require additional credits if the purchaser's project is upstream.

As precedent for this, consider Lake O restoration where regional projects are both upstream and downstream of the activities, and both result in BMAP reductions.

(a) Projects with impacts partially located within the Water Quality Enhancement Service Area;

(b) Linear projects, such as roadways, transmission lines, distribution lines, pipelines, or railways;

(c) Projects with total impacts of less than one-half acre in size; or

~~(d) Projects that are hydrologically upstream of a WQEA that is servicing an OFW designated as an aquatic preserve.~~

Commented [A24]: This becomes null if there is no upstream/downstream limitation

(4) Exempt Projects shall follow the provisions provided here in:

(a) The purchaser has a right to buy credits from WQEAs in each service area the purchaser's project is located at the ratio consistent with the discharges from the purchaser's project to each service area.

(b) Where there is not a WQEA in each service area, the purchaser may purchase credits from the WQEA where DEP determines the benefit to the downstream receiving water body is more beneficial based on the severity of that waterbodies level of impairment.

Commented [A25]: Recommend adding clarity on how projects exempt from service area boundary conditions purchase credits consistent with their location and ration of impacts by area.

(5) The ~~Department~~ Purchaser of a WQEA credit shall be provided by the WQEA provider the locational valuation factor (LVF) which shall be applied to the purchaser's water quality improvement they are seeking to fulfill off-site through a WQEA. The LVF is used ~~will~~ to adjust the amount of credits needed for the transaction ~~by the applicable locational valuation factor (LVF)~~ to provide reasonable assurance that the WQEA's credited average annual pollutant load reduction will be equivalent to the purchaser's need for water quality improvement at

Commented [A26]: Suggest having WQEA credit provider develop the location valuation factor for their site during WQEA permitting and seek Department approval for that LVF in the permit. Also suggest having WQEA provider perform the necessary calculations to determine an LVF for the purchaser consistent with the methodology used in the WQEA permit. Credits needed will follow the suggested sequence.

the purchaser's point of discharge ~~achieved annually~~ and that no localized water quality violations will occur at the location of the purchaser's permitted discharge as a result of the transaction. ~~This credited pollutant load reduction must result in at least an equivalent water quality improvement at the purchaser's point of discharge.~~

(a) ~~The location factor~~ A LVF will be based on numerical models or other analytical tools ~~done~~ completed by the WQEA permittee:

(b) A LVF for the WQEA "LVFwqea" will be developed by the WQEA permit applicant for approval by the Department at the time of the WQEA's permit and shall account for the pollutant reduction from the WQEA to the farthest downstream point of the WQEA's service area.

© A LVF for the purchaser seeking credits from a WQEA accounts for the pollutant reduction from the purchaser's point of discharge to the farthest downstream point of the WQEA's service area. at the time of the WQEA's permit that account for uptake of the pollutants over a distance.

(~~b~~)(d) The number of credits needed for a proposed transaction must be calculated as follows: Number of Credits Needed = (Number of standard units of measure for average annual pollutant removed ~~annually required for treatment~~) x (LVFwqea – LVFpurchaser), except when:

(i) When the LVFpurchaser is greater than LVFwqea, LVF shall not be applied to determine the number of credits needed, or

(ii) When the Purchaser's discharge is directly into the mainstem of a stream or river, or a tributary that terminates at the mainstem of a stream or river, the Number of Credits Needed shall = (Number of standard units of measure for average annual pollutant removed x [(LVF of WQEA or purchaser, whichever is farthest from the downstream point of the WQEAs service area)) / (LVF of WQEA or purchaser, whichever is closest to the downstream point of the WQEA service area)].

~~©~~(e) This formula may not be used to reduce the number of credits needed below the quantity of average annual pollutant removed ~~annually required for treatment.~~

(~~d~~)(f) The Department will verify and approve ~~apply~~ LVFs applied by the applicant at the time of permitting a governmental entity project seeking enhancement credits from a WQEA owner to establish the final value of those credits and the number of credits needed for the credit transaction for use in achieving net improvement. Final credit values will be reflected in the governmental entity's environmental resource permit(s), and the enhancement credit tracking ledger.

Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History–New .

62-332.600 Enhancement Credit Transactions and Credit Use.

(1) Purchase by a governmental entity of enhancement credits is voluntary.

Commented [A27]: Whether upstream or downstream of each other, WQEA and purchaser, the WQEA should provide an equivalent to the purchaser's need for water quality improvement at the purchaser's point of discharge.

Commented [A28]: ERP requires perpetual achievement, not annual.

Commented [A29]: Using the farthest downstream point in the WQEA Service area provides for a consistent and relative point for the impacts to be factored between WQEA and purchaser's discharge point. It follows similar methodology used in recent BMAP updates to determine evaluate the benefit of a BMAP project relative to an entity's discharge point. IT has also ben used to determine a BMAP entity's allocation in the watershed relative to the size and distance of other contributors to the watershed from the impacted waterbody.

Commented [A30]: Credit calculations suggested with LVF provide for a purchaser anywhere in the service area of a WQEA to purchase from that WQEA, upstream or down. This is similar to how UMAM provides an assessment of acres impacted, which are converted to a functional loss factor. That is then applied in the wetland mitigation bank rule to the functional gain provided by a wetland mitigation bank to determine the total credit purchase required from that bank, where the impact applicant is within that bank's service area.

Commented [A31]: This doesn't apply if the intent of the LVF is to create an equivalent, and is cleared up with the adjusted LVF language as suggested. There would be no situations where a credits would be less that the average annual pollutant removed. Therefore suggest striking this line.

(2) Enhancement credits may be used only to satisfy the environmental resource permit net improvement or performance standard under Section 373.4131(3)(a), F.S, or BMAP, or adopted reasonable assurance plan allocations within the water quality enhancement service area.

(3) Credits shall be withdrawn from the WQEA as a minor modification of the WQEA permit.

(4) The Department will verify whether the WQEA owner has credits available in accordance with this chapter.

(5) The Department will deny an enhancement credit transaction unless the WQEA owner and purchaser have provided reasonable assurance that the transaction will not cause or contribute to a violation of state water quality standards, even if the project is within the water quality enhancement service area.

(6) The Department may authorize use of enhancement credits by a purchaser only after the Department verifies the number of enhancement credits, that the use of credits is appropriate for the proposed project.

(7) The Department will verify the final value of the enhancement credits for the purchaser's use as described in Rule 62-332.500, F.A.C.

(a) The purchaser's project, discharge point(s), and discharge characterization (including, but not limited to, pollutant concentration and flow) must be provided to the Department before the credit transaction will be approved.

(b) Credit transactions must be reflected in the environmental resource permit(s) of the purchaser.

(c) Modification of the purchaser's project, discharge point(s), or discharge characterization may result in the Department's revaluation of the credit transaction and modification of the purchaser's permit(s).

(8) The WQEA owner must submit to the Department, as part of its permit application or any modification or renewal application, information on the terms of credit transactions as described in Rule 62-332.800, F.A.C.

(9) An enhancement credit transaction will become effective only after the transaction is authorized by permit in accordance with this chapter.

(10) If the purchaser proposes to change the source of credits, it must immediately notify the Department of its intention in writing, including a letter of commitment from the new credit source for the number of enhancement credits necessary, and that the new credit source has those credits available in accordance with a WQEA permit. ~~The purchaser must also include documentation that it no longer has any outstanding contractual or other binding obligations to the original credit seller.~~ The new credit transaction is not final until the Department authorizes it in accordance with this chapter and Chapter 62-330, F.A.C.

(11) A governmental entity may use WQEA for its own water quality needs. However, a governmental entity may not sponsor, fund, or otherwise construct, operate, manage, or maintain a WQEA for the purpose of selling enhancement credits to third parties.

Commented [A32]: This should be struck. Why should the department care if the purchaser buys more credits than is required in their permit or has a financial obligation to another WQEA provider, if the purchaser is meeting the requirements of buying the credit and the credit is being held and maintained in perpetuity by the WQEA provider as recorded on the ledger with the Department? If the purchaser must satisfy the contractual obligations of their transaction with the WQEA provider, that is their issue to resolve. This exceeds the authority in the statute.

(12) Enhancement credits may not be used by point source dischargers to satisfy regulatory requirements other than those necessary to obtain an environmental resource permit for construction and operation of a surface water management system.

(13) Some Enhancement Credits may be released for use prior to meeting all of the performance criteria specified in the WQEA Permit. The initial withdrawal of a credit, or any portion thereof, begins the timeframe to reach final success as assessed using Rule 62-332.700, F.A.C. The complete release of all enhancement credits awarded will only occur after the WQEA meets all of the success criteria specified in the permit. The number of credits and schedule for release shall be determined based upon the performance criteria for the WQEA, the success criteria for each activity, and consideration of the factors listed in Section 373.4136(5), F.S. However, no credits shall be released until the requirements of Rules 62-342.650 and 62.342.700, F.A.C., are met.

Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History–New .

62-332.700 Enhancement Credit Monitoring and Continuing Credit Verification.

(1) Enhancement credits shall be directly measured by the WQEA owner in accordance with a Department-approved monitoring plan. An applicant for a WQEA permit must propose a performance and success criteria monitoring and verification plan in its application, including protocols to be implemented once the WQEA is permitted and operational. The plan must be sufficient to demonstrate that the WQEA meets defined performance or success criteria for the pollutant reductions on which enhancement credits are based.

~~(2) The monitoring and verification protocols must be able to measure the difference in water quality and flows before water enters the WQEA and is discharged from the WQEA in order to accurately demonstrate the WQEA's pollutant reductions and ensure that all credited pollutant reductions have been achieved. At a minimum, monitoring must include flow and concentration data into and out of the WQEA measured every two weeks.~~

Commented [A33]: The prescriptive method for monitoring and verification is not appropriate for ALL project types. Different solutions require different monitoring protocols, which the applicant and department should agree to during permit review after the applicant proposes a monitoring and performance verification plan, which is required under 62-332.700(1). Frequency should also be consistent and appropriate with the permit approved methods. Measuring every two weeks is impractical for some projects and may actually not capture the performance at all.

(3) The WQEA owner must implement the approved monitoring and verification plan in perpetuity.

Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History–New .

62-332.800 Enhancement Credit Tracking.

(1) The Department will track all credit transactions in a ledger.

(2) The withdrawal of WQEA credits from a WQEA shall be accomplished as a minor modification of the WQEA permit. A processing fee shall not be required by the department or water management district for this minor modification.

(3) Information tracked related to credit transactions must include at a minimum:

(a) The names and street addresses of all parties, locations of permitted activities and discharges, receiving water, receiving water body identification units, and pollutants involved.

(b) The amount and type of credits generated.

(c) A description of the actions that generated credits.

(d) The date credits become available for purchase.

(e) The amount of credits sold.

(f) Permit number of purchaser(s).

(g) Number of credits still available.

(h) The date of the most recent inspection by the Department or a water management district to verify proper implementation of the activities generating credits.

Rulemaking Authority 373.4134,, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History–New

62-332.900 Compliance and Enforcement.

(1) Annually, the WQEA owner must demonstrate the achievement of the average annual pollutant reductions as established in the permit. ~~at least equal to the value of the credits sold through effective operation and maintenance in perpetuity.~~

(a) The owner must designate a responsible long-term maintenance entity supported by an endowment or other long-term financial assurance mechanism sufficient for perpetual operation and maintenance as described in Rule 62-342.700, F.A.C., mitigation bank financial responsibility, and any subsequent amendments, wherein the term "banker" or "mitigation bank" will refer to the "owner" or "Water Quality Enhancement Area" respectively. The WQEA owner must provide documentation of the financial assurance instrument to the Department.

(b) The WQEA owner must also demonstrate to the Department sufficient legal or equitable interest in property to ensure access and perpetual protection and management of the land within or associated with the WQEA including, as necessary, permanent preservation of the WQEA pursuant to the requirements of Section 704.06, F.S.

(2) The WQEA owner must certify and document quarterly to the Department that the control devices and systems, technologies, best management practices, or other activities on which the enhancement credits are based continue to be fully implemented and properly operated and maintained, and that pollutant load reductions continue to be achieved at the authorized level.

(3) The owner must report annually to the Department the pollutant loads of the average annual pollutant load reduction as required in the permit ~~targeted pollutant in the standard units of measure, as indicated within Rule 62-302.530, F.A.C., flowing into and out of the WQEA on a monthly basis to demonstrate fulfillment of the pollutant load reduction resulting in credits.~~

(4) The WQEA owner must maintain records demonstrating that the control devices and systems, technologies, best management practices, land use changes, or other management actions upon which credits are based continue to be fully implemented and properly operated and maintained in perpetuity. The owner must immediately notify the Department in writing of any changes to the

Commented [A34]: This is inconsistent with how the wqea performance is established in the model where average annual performance is established and is considerate of variable hydrologic conditions. See comments on annual vs. average annual mentioned earlier in the document.

Commented [A35]: Suggest moving standard units of measure consistent with 62-302.530 to the "Enhancement Credit" definition

Commented [A36]: The Average Annual pollutant load reduction and targeted pollutant for which credits will be sold, along with the unit of measure, which should be consistent with the standard units of measure used for the impairment in the waterbody that will be benefitted, will be established in the WQEA permit, and which should be consistent with 62.302.530.

Commented [A37]: Again, this is prescribing the type of project. It does not consider things like land conversion and living shorelines where benefits are also able to be provided and are consistent with other state initiatives for improving water quality.

size, nature, function, or treatment capabilities of the WQEA. Any such changes 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 original approved value. The WQEA owner must allow the Department, water management district, or Department's agent, to inspect the records and the control devices and systems, technologies, best management practices, land use changes, or other management actions during regular business hours.

Commented [A38]: Isn't agency access a standard in the ERP?

(5) The WQEA owner is responsible for achieving the pollutant load reductions on which the credits are based, and complying with the terms of its permit, including any associated financial assurance instruments, in perpetuity. In the event the Department determines ~~the purchased credits are invalid because~~ the WQEA owner has failed to comply with its monitoring and verification plan, has failed to demonstrate that the enhancement area is meeting defined performance or success criteria for the reduction of pollutants on which credits are based, or otherwise has failed to meet the conditions of its permit, including financial assurances, the Department may suspend ~~revoke~~ the authorization to sell enhancement credits until such time as the WQEA owner returns to compliance and credits have been reevaluated.

Commented [A39]: This is the language from 62-342, for the situtation when a bank is not in compliance: "If at any time the banker is not in material compliance with the terms of the Mitigation Bank Permit, no Mitigation Credits may be withdrawn. Mitigation Credits shall again be available for withdrawal if the banker comes back into compliance."

~~(6) The purchaser of enhancement credits is responsible for complying with all terms of the enhancement credit transaction and the environmental resource permit associated with its project. If the purchaser otherwise is meeting applicable regulatory requirements, the revocation of authorization of sale of enhancement credits in accordance with subsection (5) does not itself constitute a permit violation.~~

Commented [A40]: The purchaser is not responsible when it buys a credit, there is a liability transfer to the wqea, just like when a mitigation bank credit is sold. The WQEA owner remains liable and provides financial assurances as a protective measure. This is more protective than wetland bank rules, because there is no credit release for providing the conservation easement or the financial assurance.

Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History–New

62-332.920 Surrender, Transfer, or Modification of Water Quality Enhancement Area Permits.

(1) If no credits have been used or sold, an owner may apply to surrender a WQEA permit, or permitted phase thereof, by submitting a written request to the Department. The written request must identify which phase will be surrendered, indicate the extent of work performed in that phase, and describe the conservation property interest encumbering that phase. The Department shall authorize release from a permit when no credits have been used, and relinquishment of the phase would not compromise the ecological value of the remaining portions of the permitted area. A surrender and release of a geographic phase shall be made by modification of the permit.

(2) If a property interest has been conveyed as provided in Rule 62-342.650, F.A.C., as provided above, the Department shall convey the property interest back to the grantor of that interest upon surrender.

(3) If a surface water management system has been constructed or altered within the permitted area, the owner shall obtain any permits required under Part IV of Chapter 373, F.S., and Chapter 62-330, F.A.C., to operate or abandon the surface water management system. Abandonment performed in accordance with this section is subject to the provisions of Section 373.426, F.S.

Commented [A41]: Wouldn't they just modify the permit to provide only for the operation and maintenance of the system?

(4) To transfer a permit, the owner shall meet the requirements of Chapter 62-330, F.A.C., and the entity to whom the permit will be transferred must provide reasonable assurances that it can meet the requirements of the permit. If the transfer to the Department is proposed, the current owner

shall provide an updated cost estimate and adjust the final responsibility mechanism, as appropriate, prior to transfer of the permit.