



April 22, 2024

Florida Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Dear Florida Department of Environmental Protection:

We are writing to you today to provide comments on behalf of Resource Environmental Solutions ("RES") regarding the Department of Environmental Protection's ("DEP") March 27th, 2024, draft ("Rule") of Chapter 62-332, Florida Administrative Code ("F.A.C.") pertaining to Water Quality Enhancement Areas ("WQEA"). We appreciate DEP meeting with us over the course of the last two years following the passage of CS/CS/CS/HB965 Environmental Management, which authorized the creation of WQEA's in Florida.

RES appreciates the complexities involved in drafting rules that effectively expand how, when, and where applicants can satisfy their regulatory requirements surrounding water quality. As such, we are disappointed Chapter 62-332, F.A.C. has become unnecessarily cumbersome, limiting and in many places inconsistent with Section 373.4134, F.S., the WQEA legislation, ("enabling legislation"). The current language is effectively limiting its functionality and creating confusion among the regulated community on how and when a WQEA will be permitted and used. While RES is submitting formal, redlined comments (see attached), we would like to address key overarching themes that are problematic.

There is wide agreement that on-site stormwater treatment is of limited effectiveness over the long run. Notably, if the WQEA rule is overly complicated or cannot be clearly interpreted, it will be difficult to attract applicants to file applications for this valuable alternative to on-site treatment. Additionally, environmental resource permit (ERP) applicants need potential access to WQEA as an alternative to taking large quantities of land out of production to meet the new ERP nutrient load reduction requirements. If an effective WQEA rule is not developed, then permittees will be left to meet their stormwater requirements through onsite or currently available offsite methods that do not provide the performance guarantees or the financial assurances that a WQEA provides both regulators and public.

Section 373.4134, F.S. was based on the mitigation banking statutes and rules, which have successfully regulated mitigation banks for years. We therefore recommend that DEP utilize the Mitigation Banking Rule in Chapter 62.342, F.A.C. as the base for the WQEA rules. The mitigation banking rule has a logical flow, and both the agencies and regulated community are experienced in applying and complying with this Chapter. The additional provisions necessary for WQEA could easily and logically be added to or modify the existing Chapter 62.342, F.A.C language.

1. Confusion with the Requirements of Chapter 62-306, F.A.C., Pertaining to Trading

The Rule relates WQEAs to the existing Water Quality Credit Trading Program under Chapter 62-306, F.A.C. WQEAs are not trading mechanisms. Instead, WQEAs are private sector developed projects that conduct transactions with other parties seeking to satisfy some of their ERP and/or TMDL/BMAP requirements.

Confusion is created in Chapter 62-332, F.A.C because the term "trading" is used ten times. For example, in section 62-332.100(3), F.A.C., DEP refers to "The requirements for the trading ...".

"Trading" is not authorized in the WQEA enabling statute, only the sale of credits to off-set water quality impacts is authorized. WQEAs sell credits through financial transactions in a market, where there is a buyer and a seller. There is no trade.

The purpose and intent of Chapter 62-306, F.A.C. is entirely different than Chapter 62-332, F.A.C. Chapter 62-306 F.A.C. is focused on "trading between pollutant sources" and is "intended to provide flexibility among pollutant sources". The intent provisions of that Chapter state:



62-306.100 Scope and intent:

- (1) This chapter establishes the requirements for water quality credit trading **between pollutant sources** to reduce or eliminate nutrient or nutrient-related impairments pursuant to Section 403.067, F.S.”
- (2) The generation, registration, and trading of water quality credits provided for in this chapter are **Intended to provide flexibility among pollutant sources** to meet the nutrient reduction requirements of an adopted Basin Management Action Plan (BMAP) or Reasonable Assurance Plan (RAP). (emphasis added)

By contrast, WQEAS are not a point or non-point pollutant source as defined in section 62-306.200(9) and (11), F.A.C. Further, Water Quality Credit Trading is defined in Chapter 62-306, F.A.C. to mean “the exchange of credits pursuant to the requirements of this chapter between **nutrient sources**”. There is value to Chapter 62-306, F.A.C. for source entities to be able to trade between each other and the rule is developed for pure trading. WQEAs are developed for open market transactions and are not intended to be trades.

Provisions of the WQEA Rule create confusion with the trading program set forth in Chapter 62-306, F.A.C. While both the WQEA and the 62-306 trading program pertain to BMAPs, Chapter 62-306, F.A.C. cannot be utilized to satisfy water quality requirements under the ERP rules. One reason is because ERPs are perpetual and reasonable assurances must be provided, prior to permit issuance, that the project will operate in perpetuity pursuant to the conditions of the permit. This means the WQEA credit must exist in perpetuity. By contrast, trades under Chapter 62-306, F.A.C. are for limited durations¹ and the trades have a limited “life”.

Additionally, the current trading program is not viewed as a workable option by the regulated community. This is evidenced by the lack of trades pursuant to that trading program.

It is important that the words “trading” or “trade” be removed from the draft rule.

Enhancement Credits Must Be Perpetual

Under section 62-330.320(3), F.A.C., the ERP operation and maintenance permit is perpetual. Therefore, to earn enhancement credits, the WQEA must provide reasonable assurances, prior to receiving a permit, that it will offset water quality impacts in perpetuity. Under the ERP program, reasonable assurances and financial assurances must be provided **prior** to permit issuance.² There are no provisions in the enabling statute for removing nutrients on an annual basis.

Section 62-330.660(7), F.A.C. provides for renewal applications. There are no renewal applications under ERP rules.

The following sections are inconsistent with Chapters 62-330, F.A.C. and 373.4131, F.S.:

- Section 62-332.300(8), F.A.C. -because it states that “Enhancement credits are perpetual only if...”;
- Section 62-332.200(3), F.A.C. -the term annually is added to the statutory definition of enhancement credit, despite the fact it does not appear in the statutory definition;
- Section 62-332.500(4), F.A.C.- provides for achievement “annually”, rather than up front reasonable assurances that the water quality enhancement will be provided in perpetuity; and
- Section 62-332.500(4)(c), F.A.C- provides for annual removal.

Just like the purchase of mitigation bank credits, once a credit is purchased, the purchaser no longer has any liability for the portion of its water quality impacts offset by the credit. However, Section 62-332.900(5), F.A.C., provides that the purchaser’s permit may be reopened and revised. This “reopener” is utilized in the 62-306 trading program and is one of the reasons potential traders do not participate in the program.

¹ Sections 62-306.300 and .800 refer to the “life of the trade”.

² See *Metropolitan Dade County v. Coscan and DER*, 609 So.2d 644 (Fla. 3rd DCA 1992).



Unlike “trading credits”, enhancement credits are inherently perpetual upon their sale. For this reason, reasonable assurances must be provided by WQEA applicants when seeking a permit to develop a WQEA, similar to the process provided for wetland mitigation bank applicants in Chapter 62-342 F.A.C. Further, permits for WQEAs, like wetland mitigation bank permits, require adaptive management and monitoring procedures consistent with the operations and management of the WQEA to ensure ongoing and consistent performance by the WQEA. These high levels of assurances and practices are what provide the “backstop” for the agencies and public that allow the credits to be perpetual.

2. Consistent Terminology Will Avoid Confusion

In order to avoid confusion in rule interpretation, consistent terminology should be used throughout the rule.

a. Enhancement Credit

For example, the rule provides for the use of the term “enhancement credit” or merely just “credit”. Even though the definition section provides for the use of both words, there may still be confusion with other chapters if the broader term “credit” is used. The term “enhancement credit”, which is defined in 373.4134 F.S., should be used throughout the rule to avoid confusion.

The term “credit” is also used in the mitigation banking statute and rules found in Chapter 62-342, F.A.C. The consistent use of the statutory term “enhancement credit” will ensure applicants and regulators have clarity in which “credit” and market is being referred to through permitting and compliance of each of these systems.

b. Other Definitions which are Inconsistent with the Statute

When a term is defined in statute, the same terminology must be used in the rule. For example, the terms “natural system”, “purchaser”, “water quality enhancement area”, “water quality enhancement area permit” and “water quality enhancement service area” are redefined in the rule in a manner which is not consistent with the statutory definition.

3. The Rule Does Not Acknowledge the Role of the Water Management Districts (WMD)

The enabling statute clearly provides that DEP will issue the permit for construction and operation of the WQEA. However, depending on the split of authority set forth in the DEP/WMD operating agreements, the WMD may issue the permit to the applicant who purchases credits.

The rule states that DEP will issue both the permit to the entity constructing and operating the WQEA and the permit to the entity buying the enhancement credit to offset water quality impacts. One example is:

62-332.300(4), F.A.C. “the Department will determine the number of enhancement credit necessary for all credit transactions;

The agencies could amend the operating agreement to assign all responsibility to DEP. If it is DEP’s desire to take on all WQEA credit issues, in addition to amending the operating agreement, the base ERP rules need to be reviewed to determine if changes are also necessary to Chapter 62-330, F.A.C., to address the modified agency permitting roles.

4. Other Inconsistencies with the Enabling Statute

a. Location Restrictions

In addition to the above inconsistencies, the following sections are also inconsistent with the enabling statute:

For example, section 62-332.300, F.A.C. provides for inconsistent restrictions on where a WQEA may be developed which is not authorized in section 373.4134, F.S. Also, sections 62-332.500(2) and (4), F.A.C. create “downstream” restrictions. This restriction is not consistent with the methodology of evaluation in section 373.4134(4) and (5), which allows for the WQEA to provide or sell credits to any permittee regardless of their location in the watershed, similar to regional projects operated and developed by the state. RES previously provided comments and proposed language that guided applicants and regulators on how to evaluate a WQEA anywhere within the watershed (see attached)

However, the current draft exceeds statutory authority when it states:



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.

The statute only authorizes the limitation of locations as stated, "Water quality enhancement areas may not be located on lands purchased for conservation pursuant to the Florida Forever Act or the Florida Preservation 2000 Act.

b. Preservation Restrictions

Section 373.4134(4)(a)6., F.S., requires the WQEA applicant to provide for permanent preservation of the water quality enhancement area that meets the requirements of section 704.06 F.S. This statute provides for more forms of restriction than just a conservation easement.

Section 62-332.300(10), F.A.C., however, limits preservation to only conservation easements. Conservation easements may not be appropriate for all WQEAs. The limitation to only "conservation easements" is a restriction that is not contained in Section 373.4134(4)(a)6., F.S. or in section 704.06, F.S.

5. Unnecessary Provisions

The enabling statute is clear that WQEA must comply with all applicable ERP rules found in Chapter 62-330, F.A.C. This includes the Applicants Handbooks, which are incorporated therein by reference. The proposed language for Chapter 62-332, F.A.C., also makes it clear that the chapter is supplemental to 62-330, F.A.C. Therefore, it is not necessary to repeat portions of Chapter 62-330, F.A.C. in this proposed chapter.

However, if you do choose to do so, you must exercise care to use the same language as in Chapter 62-330, F.A.C. and the Applicants Handbooks, in order to avoid confusion and inconsistent application.

In other sections of the rule, the same concept is repeated multiple times using different language. Repetition is not necessary and may instead cause confusion when different words are used. Again, care must be taken to avoid inconsistencies.

In conclusion, we suggest that DEP avoid "recreating the wheel" and instead rely on a framework with a history of success. Chapter 62-342, F.S., the mitigation banking rule, provides an excellent framework for the WQEA rule. This framework provides for permanent credits in a regulatory context, that is protective of the environment. It includes necessary protections such as financial assurances and preservation requirements. The mitigation banking rule has a history of successful implementation by both the agencies and mitigation bankers.

We appreciate DEP considering our comments and redline language. We look forward to working with you on a rule that will not only be a valuable tool in the agency regulatory toolbox but will also offer a superior alternative to protect and improve water quality.

Sincerely,

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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~~ 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:

(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.~~

(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.

(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 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 .

CHAPTER 62-332

WATER QUALITY ENHANCEMENT AREAS ~~CREDIT~~ TRANSACTIONS

62-332.100 Scope and Intent

62-332.200 Definitions

62-332.300 General Requirements

62-332.400 Enhancement Credit Generation and Valuation

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

62-332.600 Enhancement Credit Transactions and Enhancement Credit Use

62-332.700 Enhancement Credit Tracking

62-332.800 Enhancement Credit Monitoring and Continuing Enhancement Credit Verification

62-332.900 Compliance and Enforcement

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

62-332.100 Scope and Intent.

(1) This chapter establishes the requirements for the permitting of water quality enhancement areas (WQEA),

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~~ supplemental to the requirements in Chapter 62-330, F.A.C., Environmental Resource Permitting.

(2) The enhancement credit transactions authorized in this chapter are intended to provide flexibility to applicants seeking governmental entities to satisfy the environmental resource permit (ERP) net improvement performance standard under s. 373.414(1)(b)3.; and performance standards under Section 373.4131(3)(a), F.S.; and performance standards set forth in Chapter 62-330, F.A.C.

Enhancement credits are also an available tool to governmental entities seeking to meet an assigned basin management action plan allocation or reasonable assurance plan under s. 403.067.

~~(3) The requirements for the trading and use of water quality enhancement credits 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.~~

~~(4) This chapter is supplemental to rules promulgated under Part IV of Chapter 373, F.S., Chapter 62-306, F.A.C., and Chapter 62-330, F.A.C., and does not supersede any requirements therein nor prohibit or limit any activities allowed therefrom.~~

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

History–New.
62-332.200 Definitions.

(1) “Applicant” means a governmental entity that seeks to purchase water quality enhancement credits to meet an assigned basin management action plan allocation or reasonable assurance plan or a governmental entity or a private sector entity that seeks to purchase water quality enhancement credits for the purpose of achieving net improvement under s. 373.414(1)(b)3. or satisfying environmental resource permit performance standards.

(2+) “Best management practice (BMP) for stormwater treatment” means a practice or combination of 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 a quantity of pollutant permanently removed annually and which is greater than any reductions otherwise required under Chapter 62-330, F.A.C.

(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” for the purpose of a water quality enhancement area, means an ~~designed,~~ constructed, 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, or 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 applicant governmental entity proposing to utilize purchased enhancement credits to meet net improvement or performance standards associated with the entity’s ERP; 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 under part 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 ~~for and the generation-~~ purchase and sale of enhancement credits from the permitted WQEA in accordance with this chapter.

(10) “Water quality enhancement service area” for the purposes of **enhancement** credit transactions within this chapter means the limited geographic area of hydrologically connected ~~downstream~~ waters within which the water quality enhancement area could reasonably be expected to offset pollutant contributions, ~~via an enhancement credit transaction~~, which are causing the waterbody or water segment not to meet applicable state water quality criteria as determined by the Department. For purposes of ~~trading~~ and use of **enhancement** credits for BMAP or RAP allocations, the service area shall refer to rule 62-306 F.A.C.

Rulemaking Authority 373.4134 FS. Law Implemented 373.4134 FS. History—New_____.

62-332.300 General Requirements.

(1) An applicant for a water quality enhancement permit shall generate and maintain enhancement credits by constructing and operating water quality improvement projects utilizing natural systems, including, but not limited to, constructed wetlands, **natural systems** or waterbodies that reduce pollutants to a receiving waterbody or water segment.

(2) The construction, operation, management, and maintenance of a WQEA will be approved by the Department through the environmental resource permit process pursuant to Chapter 62-330, F.A.C. **and Chapter 120, F.S.**

(3) 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 number of enhancement credits necessary for all credit transactions.

(4) The issuance of a WQEA permit does not eliminate the owner’s obligation to comply with **the conditions for issuance set forth in Rules 62.301 and 62-302, F.A.C.** ~~all requirements of Chapter 62-330, F.A.C., pertaining to adverse impacts to water quantity, water quality and adjacent lands or wetlands.~~

(5) 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.~~

(6) Reductions in pollutant loading required under 62-330, F.A.C., or required by a BMAP, adopted RAP, or accepted pollutant reduction plan, are not eligible to **for sale as** ~~generate~~ enhancement credits.

(7) Enhancement credits are expressed as the permitted average annual mass pollutant load reduction consistently expected by the WQEA that is greater than any reductions otherwise required for the WQEA described in 62-332.300(6), F.A.C.

(8) ~~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.~~

(9) WQEAs may not be located ~~within areas designated for conservation, mitigation, restoration, or reclamation by state law or permit, or within areas~~ **on lands** purchased for conservation pursuant to the Florida Forever Act or the Florida Preservation 2000 Act.

(10) Before WQEA **enhancement** credits may be sold from a WQEA or any phase of a WQEA, the Owner shall **provide for permanent preservation of the water quality enhancement area that meets the requirements of s. 704.06, F.S.** ~~cause a conservation easement to be conveyed to both the Department and the District.~~ The grantor of a conservation easement may convey a conservation easement to

additional grantees, but such conveyance shall be subordinate to the conservation easement granted to the Department and the District.

(a) All conservation easements **preservation** shall be granted in perpetuity without encumbrances, unless such

encumbrances do not adversely affect the ecological viability of the WQEA. All conservation easements shall be of a form and content sufficient to ensure preservation of the WQEA according to the permit, and shall, at a minimum meet requirements and restrictions of section 704.06, F.S.

(b) The conservation easement **An access easement, giving the Agency the rights to inspect for permit compliance, or perform the activities required to bring a non-compliant WQEA into compliance with the WQEA Permit,** shall be granted to the Agency to perform all acts necessary to ensure compliance with the WQEA Permit. 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.

(11) 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.

(12) An ERP Purchaser's project must provide reasonable assurance of meeting department **environmental resource permit** 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. **Purchasers seeking to meet net improvement performance standards under s. 373.4134(b)3. shall provide reasonable assurance of meeting department rules for design and construction of all onsite stormwater management required under 373.4134.**

(13) 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.

(14) Enhancement credits are not available for use by a purchaser until the Department **or water management district** has authorized their use in the purchaser's environmental resource permit. An enhancement credit included in a previously authorized **enhancement** credit transaction is not available for another transaction.

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 award 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 **proposed to be** 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 including, but not limited to expected hydrologic variations. The initial valuation of **enhancement** 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, **unless measured data is used.**

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

(d) Enhancement credits are based on quantity of pollutant removed annually, which is greater than any reductions that satisfy the requirements in Chapter 62-330, F.A.C. and required by a BMAP or adopted RAP.

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

(f) The number of enhancement credits necessary for a given enhancement 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 RAP, the applicant must use the most recent numerical models or analytical tools used for that BMAP or adopted RAP in the WQEA permit application, except as provided in subsection (3), or measured data.

(3) If the WQEA is not located within a BMAP or adopted RAP, or the Department determines that the numerical model or analytical tool used for the applicable BMAP or adopted RAP is not appropriate for use in determining the pollutant loading reductions 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 substantiate the level of pollutant load reduction generated. 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 reasonable assurance to satisfy the conditions for issuance may be requested by the Department.

~~supporting information deemed necessary by the Department.~~

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

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

~~(1) The purchaser's project using **enhancement** credits from a WQEA must be located within the water quality enhancement service area for the WQEA that generates the enhancement credits.~~

~~(2) The extent of the water quality enhancement service area will be determined by modeling, provided by the owner, outlining **demonstrating** the area within which the WQEA could reasonably be expected to reduce **offset** impacts given the attenuation of the applicable pollutant downstream of the WQEA.~~

~~(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 **to** 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 cause or contribute to a localized exceedance of water quality standards within the watershed or downstream waterbody of concern:~~

~~(a) Linear projects with impacts partially located within the Water Quality Enhancement Service Area; such as; such as roadways, transmission lines, distribution lines, pipelines, or railways; only those segments of the project located within the service area may use WQEA **enhancement** credits;~~

~~(b) Projects that are hydrologically connected upstream of a WQEA that is servicing **off setting impacts to** an OFW designated as an aquatic preserve, but only for those additional **enhancement** credits needed in reaching the greater OFW treatment requirements.~~

~~(4) The Department will adjust the amount of the purchaser's **enhancement** credits needed for the transaction by the applicable locational valuation factor (LVF) so that the **enhancement** credits will provide equivalent water quality improvement at the purchaser's point of discharge. The WQEA will provide reasonable assurance that the WQEA's credited pollutant load reduction **is perpetual**, will be achieved annually. The purchaser will provide reasonable assurance they will not cause or contribute to a violation of state water quality standards at the location of the purchaser's permitted discharge as a result of the transaction.~~

~~(a) The location valuation factor will be based on numerical models or other analytical tools **applied to the proposed project** done by the WQEA that account for uptake of the pollutants over a distance and shall account for the pollutant reduction from the WQEA to the farthest downstream point of the WQEA's service area.~~

~~(b) The number of **enhancement** credits needed for a proposed transaction must be calculated as follows: Number of **enhancement** credits Needed = (Number of standard units of measure for pollutant **perpetually** removed annually required for treatment) x LVF.~~

~~(c) This formula may not be used to reduce the number of **enhancement** credits needed below the quantity of pollutant **perpetually** removed annually required for treatment.~~

~~(d) Authorized number of **enhancement** credits, will be reflected in the purchaser's environmental resource permit(s) if applicable, and the enhancement credit tracking ledger.~~

62-332.600 Enhancement Credit Transactions and Enhancement Credit Use.

- (1) Purchase by an **applicant** ~~governmental entity~~ of enhancement credits is voluntary.
- (2) Enhancement credits may be used only to satisfy the environmental resource permit net improvement performance standard under s. 373.414(1)(b)3., performance standards under Section 373.4131(3)(a), F.S., or for nonpoint source contribution reductions assigned in an adopted BMAP or adopted RAP.
- (3) **Enhancement** credits shall be withdrawn from the WQEA **ledger** as a minor modification of the WQEA permit.
- (4) **When a purchaser's ERP will be issued by a water management district, the Department will verify whether the owner has enhancement credits available for use in accordance with this chapter.**
- (5) **Enhancement** credit transactions shall be between the owner and the purchaser. **The department may not request pricing information or contractual terms between the owner and purchaser.**
- (6) Upon authorization for the use of enhancement credits, the Department **or water management district** will verify the final number of **enhancement** credits needed ~~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 **or water management district** before the **enhancement** credit transaction will be approved.
 - (b) Modification of the purchaser's project, discharge point(s), or discharge characterization may result in the Department's revaluation of the **enhancement** credit transaction and modification of the purchaser's permit(s).
- (7) The owner must submit to the Department, as part of its permit application, or any modification ~~or~~ **renewal** application, information on the terms of **enhancement** credit transactions as described in Rule 62-332.800, F.A.C.
- (8) If the purchaser proposes to change the source of **enhancement** credits **during the application review process**, it must immediately notify the Department **or water management district** of its intention in writing, including a letter of commitment from the new **enhancement** credit source for the number of enhancement credits necessary, and that the new **enhancement** credit source has those **enhancement** credits available in accordance with a WQEA permit. The new **enhancement** credit transaction is not final until the Department **or water management district** authorizes it in accordance with this chapter and Chapter 62-330, F.A.C.
- (9) A governmental entity may be an owner of an WQEA and use those generated **enhancement** credits for its own water quality needs, such as but not limited to, providing off site water quality compensation for that government's own development projects. 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.
- (10) 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.

(11) 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 an **enhancement** credit, or any portion thereof, begins the timeframe to reach final success as assessed using Rule 62-332.800, 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 **enhancement** 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 **enhancement** credits shall be released until the requirements of Rules 62-332.900 (1) and (2) 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 Tracking.

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

(2) The withdrawal of ~~WQEA~~ **enhancement** 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) If credits are used by a purchaser for net improvement or **satisfaction of** their ERP performance standard, those credits must be reflected in their permit.

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

(a) The names and street addresses of all parties;

(b) Locations of permitted activities and discharges;

(c) Receiving waterbody;

(d) Pollutants involved;

(e) The amount and type of credits purchased; **and**

(f) Permit number of purchaser(s) if applicable.

(5) ~~For tracking in The department ledger and the WQEA ledger this information tracked related to~~ credit transactions must include:

(a) All items listed in (4) above;

(b) Number of credits still available in the WQEA;

(c) The amount and type of credits generated in the WQEA;

(d) A description of the actions that generated credits in the WQEA;

(e) The date credits become available for purchase; **and**

(f) The date of the most recent inspection for the WQEA.

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

History—New.

62-332.800 Enhancement Credit Monitoring and Continuing **Enhancement Credit Verification.**

(1) Annually, the owner must demonstrate the ~~achievement of~~ pollutant reductions at least equal to

~~the number of the enhancement credits sold.~~ consistent with the permit requirements.

(2) Nutrient reductions associated with enhancement credits shall be directly measured by the owner approved monitoring plan.

(a) An applicant for a WQEA permit must propose a performance and success criteria monitoring and verification plan in its application, including protocols and monitoring frequency, to be implemented once the WQEA is permitted and operational.

(b) 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.

~~(3) 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.~~

(4) The 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.

62-332.900 Compliance and Enforcement.

(1) 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 owner must provide documentation of the financial assurance instrument to the Department. Financial assurances for WQEAs where a governmental entity generates and sells credits to itself may demonstrate long-term financial assurance through recurring budget authorizations and commitments.

(2) The 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.

(3) The owner must certify and submit annually 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.

(4) The owner must report annually to the Department the pollutant loads of their targeted pollutant, in the standard units of measure for the WQEA at a frequency required by the permit to demonstrate pollutant load reduction resulting in credits.

~~(5) The owner must maintain records demonstrating that the control devices and systems, technologies, best management practices, 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 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 approved level of pollutant load reduction. The 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, or other management actions during regular business hours.

(6) The 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 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 the authorization to sell enhancement credits until such time as the owner returns to compliance and credits have been reevaluated.

(7) 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) for the WQEA, does not constitute a permit violation for the purchaser.

(8) The WQEA may request the surrender or transfer of their WQEA permit as described in Rule 62-342.800, F.A.C., and any subsequent amendments, wherein the term "banker" or "mitigation bank" will refer to the "owner" or "Water Quality Enhancement Area" respectively.

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

History—New .