

CHAPTER 62-332

WATER QUALITY ENHANCEMENT AREAS

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62-332.100 Scope and Intent.

(1) The Department finds that, in certain instances, the improvement of water quality and adverse water quality impacts of activities regulated under Part IV of Chapter 373, Florida Statutes (F.S.), may be addressed by the construction, operation, maintenance, and long-term management of water quality enhancement areas that provide offsite compensatory treatment. This chapter establishes the requirements of an environmental resource permit (“ERP”) for water quality enhancement areas that would be permitted under Chapter 62-330, F.A.C., and the generation, valuation, award, release, and use of water quality enhancement credits providing offsite compensatory treatment under Section 373.4134, F.S. This chapter establishes applicable requirements for a water quality enhancement area permit under Chapter 62-330, F.A.C., Environmental Resource Permitting.

(2) The water quality enhancement credit transactions authorized in this chapter are intended to provide flexibility to ERP applicants for the purpose of achieving net improvement under Section 373.414(1)(b)3., F.S., or satisfying ERP performance standards under Section 373.4131, F.S.

(3) The responsibilities for implementing this chapter are described in Operating and Delegation Agreements between the Department of Environmental Protection (“Department”) and the water management districts (“Districts”). The Agreements are incorporated by reference in subsection 62-113.100(3), F.A.C.

(4) 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.

(5) This chapter is supplemental to the 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

Commented [SJRWMD1]: Subsection 373.413(9), F.S., and rules 62-332.300(9), 62-332.500(6), and 62-332.600 contemplate WMDs accepting or denying the use of enhancement credits, but do not state that a WMD can consider the WQEA rules to be their own rule (and thereby have substantive jurisdiction to implement and interpret them). Under section 120.57(1)(l), F.S., WMDs can only overrule an ALJ’s conclusions of law over laws or rules over which they have substantive jurisdiction:

“The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction.”

In contrast, for SWERP, paragraph 373.4131(2)(a), F.S., provides in pertinent part as follows:

Upon adoption of the rules, the water management districts shall implement the rules without the need for further rulemaking pursuant to s. 120.54. The rules adopted by the department pursuant to this section shall also be considered the rules of the water management districts. The districts and local governments shall have substantive jurisdiction to implement and interpret rules adopted by the department under this part, consistent with any guidance from the department, in any license or final order pursuant to s. 120.60 or s. 120.57(1)(l).

Recommend DEP expressly delegate to WMDs (and delegated local governments) the ability to accept or deny use of enhancement credits, so that rules 62-332.300(9), 62-332.500(6), and 62-332.600 are considered rules of the WMDs (and delegated local governments). DEP could amend rule 62-113.200(12), F.A.C., to accomplish this.

Commented [SJRWMD2]: The current OAs do not mention 62-332. Are we planning to revise the Operating Agreements by October 1, 2026?

If not, it might be best to say that the responsibilities for regulating ERPs under 62-330 are covered by the OA adopted in 62-113.100(3), and the agency that is responsible for the ERP application under the OA will determine whether the use and amount of water quality enhancement credits is sufficient.

activities allowed therefrom. Rule 62-330.010, F.A.C., incorporating the Applicant's Handbook Volume I and Volume II for each Water Management District, is incorporated by reference herein.

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

62-332.200 Definitions.

(1) "Credit Purchaser" means an entity that seeks to purchase water quality enhancement credits for the purpose of achieving net improvement under Section 373.414(1)(b)3., F.S., or satisfying ERP performance standards, or a governmental entity that seeks to purchase water quality enhancement credits to meet an assigned BMAP allocation or RAP.

(2) "Department" means the Florida Department of Environmental Protection.

(3) "District" means a water management district as established in Chapter 373, F.S.

(4) "Endowment Holder" means a charitable nonprofit corporation that is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, under the Florida Not For Profit Corporation Act, Chapter 617, Florida Statutes, and under the Florida Uniform Prudent Management of Institutional Funds Act, Chapter 617, Florida Statutes, and that has accepted funds from the Water Quality Enhancement Area Owner to be held in trust for the benefit of the Water Quality Enhancement Area property and its perpetual management, maintenance, and monitoring. The Endowment Holder must demonstrate to the Department that the organization has the necessary fiduciary experience and qualifications to manage the endowment funds for perpetual management activities. The Endowment Holder must have a diversified investment portfolio governed by an investment policy statement for such purposes in excess of \$125 million.

(5) "Enhancement credit" or "credit" means the standard unit of measure that represents a quantity of pollutant removed from a permitted water quality enhancement area and which is greater than any reductions otherwise required under Chapter 62-330, F.A.C.

(6) "Investment Manager" means an entity or individual that is a Registered Investment Adviser (RIA) with the U.S. Securities and Exchange Commission (SEC) or state securities regulatory agency and whose operations are regulated and examined by a federal agency or an agency of the State of Florida. The Water Quality Enhancement Area Owner shall provide documentation evidencing proof of such regulation and examination to the Department.

(7) "Locational Valuation Factor" ("LVF") means a numeric adjustment applied to enhancement credits to account for differences in pollutant transport and variability between the Water Quality Enhancement Area and the Credit Purchaser's discharge location. The LVF reflects the relative impact of pollutant attenuation between one location compared to another regardless of which entity is hydrologically upstream of the other and is calculated for each pollutant using approved numerical models or analytical tools. The LVF incorporates: (a) a Transport Factor, which accounts for attenuation of pollutants between hydrologically connected points, and (b) a Variability Factor, which accounts for concentration variability within the target waterbody.

(8) "Natural system" for the purpose of this Chapter means a designed, constructed, or altered ecological system supporting aquatic and wetland-dependent natural resources, including fish, and aquatic and wetland-dependent

Commented [SJRWMD3]: "Agency" is not defined in Chapter 62-332, but that term is used in rules 62-332.300(9), 62-332.500(6), 62-332.600(1)+(3), and 62-332.700(5)(h). Recommend adding definition from Section 2.0(a)3. of ERP AH Vol I:
"Agency" means the Department of Environmental Protection, the water management districts, and local governments delegated authority to implement the environmental resource permit program under Part IV of Chapter 373, F.S., in accordance with Section 373.441, F.S.

Commented [SJRWMD4]: How? Is there anything else DEP will look at besides what is stated in the next sentence? If yes, please specify to assist reviewers.

What does a "diversified investment portfolio governed by an investment policy statement" typically look like?

75 wildlife habitats.

76 (9) "Release" means a permit modification by the Department wherein enhancement credits are awarded to the
77 Water Quality Enhancement Area ledger and are made available for withdrawal.

78 (10) "Target Waterbody" means the Hydrologic Unit Code ("HUC") 12 subwatershed that contains the Credit
79 Purchaser's project.

80 (11) "Water quality enhancement area" or ("WQEA") means a natural system constructed, operated, managed,
81 and maintained for the purpose of providing offsite regional treatment for which enhancement credits may be
82 generated pursuant to a water quality enhancement area permit.

83 (12) "Water quality enhancement area permit" or "WQEA permit" means an ERP issued under Part IV of
84 Chapter 373, F.S., and this chapter for a water quality enhancement area which authorizes the construction,
85 operation, management, and maintenance of a water quality enhancement area and the generation and sale of
86 enhancement credits from the permitted WQEA in accordance with this chapter.

87 (13) "Withdrawal" means a permit modification approved by the Department wherein released enhancement
88 credits are deducted from the WQEA ledger.

89 (14) "WQEA Construction Phase" or "Construction Phase" means the period necessary to implement the
90 permitted work including, but not limited to, implementing site security measures; construction and installation of
91 water quality treatment systems; installation of hydrologic control devices, technologies, and best management
92 practices; and conducting initial earth moving and land management activities. This phase begins with
93 implementation of any permit required activities and ends with the Department's acceptance of the As-Built
94 Certification, if required.

95 (15) "WQEA Operation and Maintenance Phase" or "Operation and Maintenance Phase" means the phase
96 following the WQEA Construction Phase when permitted activities are conducted to achieve water quality
97 improvement conditions and enhancement credit generation described in the WQEA Permit performance and
98 success criteria monitoring and verification plan in accordance with Rule 62-332.800, F.A.C. This phase ends with a
99 Department determination that the defined success criteria and targets set forth in the WQEA Permit have been met
100 and all enhancement credits have been released.

101 (16) "WQEA Owner" or "Owner" means an entity that has a real property interest as described in section
102 4.2.3(d) of Applicant's Handbook Volume I, to construct, operate, maintain, and be responsible for the perpetual
103 management of a water quality enhancement area.

104 (17) "WQEA Perpetual Management Phase" or "Perpetual Phase" means the phase following full
105 implementation of the construction phase and operation and maintenance phase – where the WQEA has achieved
106 success and all enhancement credits have been released as prescribed in the WQEA permit. Perpetual water quality
107 improvements and land management activities shall be implemented and maintained in accordance with the WQEA
108 permit and this rule.

109

110 Rulemaking Authority 373.4134 FS. Law Implemented 373.4134 FS. History--New _____.

111

Commented [SJRWMD5]: Observation:
Did not see anything later in rule stating that the boundary of the WQEA "must, at a minimum, consist of" a HUC 8 sub-basin, as required by newly amended subsection 373.4134(5), F.S.

112 **62-332.300 General Requirements.**

113 (1) A WQEA Owner shall generate and maintain enhancement credits in perpetuity by constructing and
114 operating water quality improvement projects utilizing natural systems including, but not limited to, constructed
115 wetlands or **minor impoundments** that reduce pollutants to a receiving waterbody or water segment.

116 (2) The construction, operation, management, and maintenance of a WQEA shall be permitted by the
117 Department through the ERP process pursuant to Chapter 62-330, F.A.C., and this chapter.

118 (3) Enhancement credits must be generated and sold by a WQEA Owner in accordance with this chapter and
119 the conditions of the WQEA permit.

120 (4) A governmental entity may be a WQEA Owner and use the credits generated by the WQEA permit for its
121 own water quality needs, such as, but not limited to, providing offsite water quality compensation for that
122 government's own development projects. **However, a governmental entity may not sponsor, fund, or otherwise**
123 **construct, operate, manage, or maintain a WQEA for the purpose of selling enhancement credits to third parties.**

124 (5) No portion of a WQEA shall be authorized to meet the mitigation, water quality treatment, or compensatory
125 requirements of any other permit or regulatory program, except for BMAPs and RAPs and as otherwise authorized
126 in this chapter.

127 (6) Reductions in pollutant loading required under any state regulatory program are not eligible to generate
128 enhancement credits.

129 (7) WQEAs may not be established on lands purchased for conservation pursuant to the Florida Forever Act or
130 the Florida Preservation 2000 Act.

131 (8) WQEAs shall not be constructed wholly over surface waters of the State, as defined in Rule 62-340.600,
132 F.A.C., or be constructed in such a manner that the system severs a portion of a surface water.

133 (9) As provided by s. **373.4134(7)(j)**, F.S., **the agency** may deny the use of enhancement credits when the
134 agency is not reasonably assured that the use of the credits will not cause or contribute to a violation of water quality
135 standards, even if the project being implemented by the applicant is within the WQEA service area. The agency will
136 approve the use of enhancement credits if the agency receives a request for the use of enhancement credits and the
137 applicant reasonably assures the agency through modeling, or other evaluations, or a combination thereof, that such
138 use will not cause or contribute to a violation of water quality standards.

139 (10) The issuance of a WQEA permit does not eliminate the Owner's obligation to comply with all
140 requirements of Chapter 62-330, F.A.C., pertaining to adverse impacts to water quantity, water quality, and adjacent
141 lands or wetlands.

142 (11) The issuance of a WQEA permit does not preclude the responsibility of the Owner to obtain other
143 applicable federal, state, and local permits for construction activities associated with the WQEA.

144
145 *Rulemaking Authority 373.4134, 403.805 FS. Law Implemented 373.4134, 403.067 FS. History--New*
146

Commented [SJRWMD6]: The term "minor impoundments" is still undefined.

Qs:

-What does it include?

-What does it exclude? (maybe not available for a dam under section 8.4.5?)

-Is there a maximum size or dimension? (maybe not capable of impounding 40 ac/ft of water?)

-Can it be above-grade?

-Can it be a mosquito impoundment?

Recommend providing more guidance in 62-332 to help reviewers and regulated public understand this term (and its limits).

Commented [SJRWMD7]: Q: Can a govt'l entity be a co-permittee (as landowner) and use WQEA credits for its own projects as long as it doesn't sell credit or do the other prohibited things?

Commented [SJRWMD8]: Technically, paragraph 373.4134(7)(j) just says 373.4134 does not limit DEP's authority to deny use of enhancement credits. It is silent about a WMD's or delegated local government's authority to deny.

Recommend DEP expressly delegate to WMDs and delegated local governments the ability to accept or deny use of enhancement credits under rule 62-113.200(12), F.A.C.

Commented [SJRWMD9]: This term is not defined in Chapter 62-332.

Recommend adding definition from Section 2.0(a)3. of ERP AH Vol I:

"Agency" means the Department of Environmental Protection, the water management districts, and local governments delegated authority to implement the environmental resource permit program under Part IV of Chapter 373, F.S., in accordance with Section 373.441, F.S.

Note also rule 62-330.021:

62-330.021 Definitions.

Terms used in this chapter are defined in section 2.0 of Volume I and section 2.1 of Volume II.

62-332.350 WQEA Permit and WQEA Conceptual Approval Permit Applications.

(1) Any person or entity proposing to establish a WQEA must apply for a WQEA Permit. An application for a WQEA Permit shall also constitute an application for an ERP under Chapter 62-330, F.A.C. WQEA Permit applications shall be processed according to Chapter 62-330, F.A.C. The Department will process and take action on all permit applications under Part IV of Chapter 373, F.S., necessary for the implementation of any WQEA for which it has responsibility for pursuant to the Operating Agreements between the Department and the Districts incorporated by reference in subsection 62-113.100(3), F.A.C.

(2) A person or entity may apply for a WQEA Conceptual Approval permit to obtain estimates of the legal and financial requirements necessary for the WQEA, information necessary for evaluation of the WQEA Permit application, and potential enhancement credits to be awarded pursuant to the WQEA Permit. The WQEA Conceptual Approval permit does not authorize the use or withdrawal of enhancement credits or any construction within the proposed WQEA. The level of detail provided in the WQEA Conceptual Approval permit will depend on the level of detail submitted with the application.

(3) A WQEA Permit shall automatically expire five years from the date of issuance if the Owner has not recorded a conservation easement over the real property within the WQEA in accordance with the WQEA Permit or if construction has not been completed pursuant thereto. Except as provided above, a WQEA Permit shall be perpetual unless revoked or modified.

(4) To provide the Department with reasonable assurances that the proposed WQEA will meet the criteria in Section 373.4134, F.S., and in this chapter, and that any proposed system will meet conditions of issuance and applicable criteria of Chapter 62-330, F.A.C., each WQEA Permit application submitted to the Department shall include the information required under Chapter 62-330, F.A.C., as applicable, and the information specified below as appropriate for the proposed project:

(a) Description of the location of the proposed WQEA which shall include:

1. Map at regional scale showing the project area in relation to the regional watershed and proposed WQEA service area;

2. Vicinity map showing the project area in relation to adjacent lands and offsite areas of ecologic or hydrologic significance which could affect the perpetual viability or ecological and hydrological value of the WQEA;

3. Aerial photograph identifying boundaries of the project area;

4. Map or survey showing legal access to the WQEA for site inspection; and

5. Legal description of the proposed WQEA.

(b) Description and assessment of current site conditions which shall include:

1. Soils map of the project area;

2. Topographic map of the project area and adjacent hydrologic contributing and receiving areas;

3. Hydrologic features map of the project area and adjacent hydrologic contributing and receiving areas;

4. Geotechnical report of the project area within or adjacent to sensitive karst areas;

5. Vegetation description and map of the project area;

6. Existing ecological and hydrological conditions of the regional watershed that includes the project area;

Commented [SJRWMD10]: Notably, the prior draft included "or modified" and matched language in existing mitigation bank rule 62-342.750(2) regarding duration. Q: Why was this phrase deleted if they have a similar concept?

Recommend adding "or modified" back in, consistent with 62-332.920(1)-(3), which allow for a permit mod to surrender a WQEA permit or to abandon a WQEA system.

Commented [SJRWMD11]: Subsection 373.4134(5) refers to a HUC 8 sub-basin. Would DEP want an aerial depicting the proposed WQEA in relation to the HUC 8 boundaries?

Commented [SJRWMD12]: This term, which appears in 373.4134(5), is not defined in Chapter 62-332.

Recommend adding either:

(1) definition from Section 2.0(a)98. of ERP AH Vol I:

"Regional watershed" means a watershed as delineated in Rule 62-342.200, F.A.C.

OR

(2) clarify what DEP wants this term to mean for purposes of 62-332 -- possibly define as a HUC 8 sub-basin?

184 7. Adjacent lands, including existing land uses and conditions, projected land uses according to comprehensive
185 plans adopted pursuant to Chapter 163, F.S., by local governments having jurisdiction, and any special designations
186 or classifications associated with adjacent lands or waters; and

187 8. Disclosure by the Owner of any material fact that would affect the contemplated use of the property.

188 (c) Description of the ecological and hydrological benefits of the proposed WQEA to the regional watershed in
189 which it is located.

190 (d) Identify and document the numerical model or analytical tool, inputs, and results, used to establish the
191 efficacy of the WQEA as described in Rules 62-332.400, F.A.C., and 62-332.500, F.A.C.

192 (e) Assessment of anticipated pollutant load reductions or other nutrients to be removed annually from the
193 WQEA.

194 (f) A plan describing the actions proposed to establish and construct the WQEA which shall include, as
195 applicable:

196 1. Construction drawings detailing proposed topographic alterations, and all structural components associated
197 with proposed activities;

198 2. Proposed construction activities, including a detailed schedule for implementation;

199 3. The proposed vegetation planting scheme and detailed schedule for implementation; and

200 4. Measures to be implemented during and after construction to avoid adverse impacts related to proposed
201 activities.

202 (g) Proposed performance and success criteria monitoring and verification plan in accordance with Rule 62-
203 332.800, F.A.C.

204 (h) Detailed perpetual management plan comprising all aspects of continued water quality improvements and
205 land management activities such as, but not limited to, maintenance and replacement of hydrologic control devices,
206 structures, vegetation establishment, exotic and nuisance species control, fire management, and control of access to
207 ensure long-term pollutant reduction.

208 (i) Evidence of sufficient legal or equitable interest in the property which is to become the WQEA meeting the
209 requirements of Rule 62-330.060, F.A.C.

210 (j) Draft documentation of financial responsibility meeting the requirements of Rule 62-332.550, F.A.C.

211 (k) Draft documentation of the conservation easement which shall, at a minimum, meet the requirements and
212 restrictions of Section 704.06, F.S., and Rule 62-332.530, F.A.C.

213 (l) Any additional information that the Department requests in order to evaluate whether the proposed WQEA
214 meets the criteria of Chapter 62-330, F.A.C., and this chapter.

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

218 **62-332.400 Establishment of Enhancement Credits.**

219 (1) The Department will award enhancement credits to the WQEA, or phases thereof, based upon the
220 information submitted in the WQEA permit application and the following:

221 (a) The assessment of anticipated pollutant load reductions or other nutrients to be removed annually from the
222 WQEA.

223 (b) The initial valuation of enhancement credits generated by a WQEA shall be based on standard numerical
224 models or analytical tools that establish the ability of the WQEA to remove pollutants or their constituents and shall
225 consider the uncertainty between the numerical models or other analytical tools used to estimate the expected
226 removal of pollutants and the actual pollutant removal from the proposed WQEA.

227 (c) The proposed credit release schedule based on conservative estimates including, but not limited to, expected
228 hydrologic variations. The release schedule shall consider the uncertainty between the numerical models or other
229 analytical tools used to estimate the expected removal of pollutants, and the actual pollutant removal from the
230 proposed WQEA.

231 (d) Credits must be based on a standard unit of measure of the specific pollutants removed annually, which must
232 be greater than any reductions needed to satisfy the requirements in Chapter 62-330, F.A.C., and, if applicable,
233 those required by a BMAP or adopted RAP.

234 (2) The initial valuation of enhancement credits will be stated in the WQEA permit. The number of credits and
235 schedule for release shall be based upon the performance criteria for the WQEA and the success criteria for each
236 activity. The final release of all enhancement credits awarded will only occur after the WQEA meets all of the
237 success criteria specified in the permit for the WQEA Operation and Maintenance Phase. No credits shall be
238 released until the requirements of subsections 62-332.900(1) and (2), F.A.C., and paragraphs 62-332.550(4)(c) and 62-
239 332.550(12)(c), F.A.C., are met.

239 (3) If the WQEA is located within a BMAP or adopted RAP, the Owner must use the most recent numerical
240 models or analytical tools used for that BMAP or adopted RAP in the WQEA permit application, except as provided
241 in subsection (4) below.

242 (4) If the WQEA is not located within a BMAP or adopted RAP, the Department determines that the
243 numerical model or analytical tool used for the applicable BMAP or adopted RAP is not appropriate for determining
244 the pollutant loading reductions for the proposed WQEA, or the Owner proposes to use another model or tool, the Owner
must either:

245 (a) use another standard numerical model or analytical tool that has already been approved by the Department, or

246 (b) propose and demonstrate that a numerical model or analytical tool will accurately
247 estimate pollutant loading reductions for the

proposed WQEA.

248 (5) A WQEA Permit application must identify and document the numerical model or analytical tool, inputs,
249 and results used to establish the efficacy of the WQEA, including all information to support the permit application
250 required by Rule 62-330.054, F.A.C., and any other information required by this chapter relevant to substantiate the
251 level of pollutant load reduction generated. At a minimum, the application must contain:

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

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

Commented [SJRWMD13]: There are two other precedent conditions in 62-332 before a credit release can occur that are not currently mentioned in either 62-332.400(2) or 62-332.900(1)-(2):

1. 62-332.550(4)(c) - F.A. for O+M (see lines 433 - 435); and
2. 62-332.550(12)(c) - F.A. for PM (see lines 561 - 562).

Commented [SJRWMD14]: After looking at 62-332.900(1)-(2), it is unclear when credits will initially be released.

Q: Would the earliest credit release be after DEP receives annual report certifying system is operating correctly, + annual report of pollutant load reduction?

If so, at least two things may be missing from 62-332.400(2):
-DEP first accepting as-built certification
-DEP first accepting both annual reports

Without DEP's acceptance, there would not appear to be anything to prevent an Owner from submitting defective information and getting a credit release.

Commented [SJRWMD15]: Potential incorporation issue.

Recommend giving option to use an alternative model or tool if the applicant (Owner) demonstrates that the model or tool will accurately estimate pollutant load reductions.

Commented [SJRWMD16]: Despite language of 373.4134(4)(b)1.-4., F.S., there may be a potential incorporation issue regarding use of required models.

Recommend giving option to use an alternative model or tool if the applicant (Owner) demonstrates that the model or tool will accurately estimate pollutant load reductions.

Commented [SJRWMD17]: Suggested edits to help address potential incorporation issue and provide criteria for using alternative models and tools.

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

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

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

265

266 *Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History--New*

267

268 **62-332.500 Service Area and Enhancement Credit Locational Valuation Factor Adjustments.**

269 (1) The WQEA service area includes the geographic area of hydrologically connected waters within which the
270 WQEA could reasonably be expected to offset pollutant contributions that cause or contribute to the failure of the
271 waterbody or water segment to meet applicable water quality criteria. Service areas may overlap, and more than one
272 service area may be approved within a regional watershed.

273 (2) The geographical boundaries of the water quality enhancement service area will be determined by modeling
274 provided by the WQEA Owner outlining the area within which the WQEA could reasonably be expected to reduce
275 impacts given the attenuation of the applicable pollutant downstream of the WQEA.

276 (3) Numerical models or other analytical tools must be capable of evaluating the fate and transport of the
277 pollutant(s) of concern within hydrologically connected watersheds and shall be reviewed and approved by the
278 Department at the time of application.

279 (4) The Credit Purchaser's project must be located within the water quality enhancement service area and be
280 hydrologically connected to the WQEA from which credits are purchased.

281 (5) The Owner shall provide reasonable assurance that the WQEA's credited pollutant load reduction will be
282 achieved annually.

283 (6) The Agency will adjust the number of credits required for the Credit Purchaser's project using the
284 applicable location valuation factor (LVF).

285 (a) The LVF will be based on numerical models or other analytical tools provided by the WQEA permit
286 application that account for uptake of the pollutants over a distance, and shall account for the attenuation between
287 the closest hydrologically connected points between the WQEA and the Credit Purchaser's project that is within the
288 WQEA's service area.

289 (b) The LVF is calculated and applied independently for each pollutant subject to a credit purchase.

290 (c) The LVF shall be calculated as the Transport Factor (TF) multiplied by the Variability Factor (VF) for the
291 target waterbody, as shown below:

292
$$LVF = TF * VF$$

293 1. The TF shall be calculated as $TF = 1/(1-Atten_s)$, where $Atten_s$ is the attenuation between the WQEA's point
294 of discharge and the Credit Purchaser's point of discharge.

Commented [SJRWMD18]: Q for Dave:

Is it possible that TF can be infinite if $Atten_s$ is 1 (because the denominator would be zero). That would mean the LVF could also be infinite.

Is that a potential problem?

a. The modeled attenuation factor represents the proportion of pollutant reduction during downstream transport in water between the discharge points of the WQEA and credit purchaser regardless of which discharge is hydrologically upstream of the other. For purposes of this Rule Chapter, the attenuation factor shall be expressed as a continuous linear range that is greater than or equal to 0.00 and less than 1.00, where 0.00 indicates no attenuation, 0.50 indicates 50% reduction, and 1.00 indicates complete removal.

b. The TF shall be set to a value of no lower than 2 if the WQEA's point of discharge is downstream of the Credit Purchaser's project.

2. The VF shall be calculated as the 95th percentile concentration divided by the geometric mean concentration within the Target Waterbody for the pollutant to be offset through a credit purchase, as shown below.

$VF = 95^{\text{th}} \text{ percentile concentration} / \text{geometric mean concentration}$

a. The period of record used to calculate the VF will be reviewed and approved by the Department; however, at a minimum it must consist of at least five years of measured or modelled data reflecting current conditions within the Target Waterbody.

b. The 95th percentile shall be set to the maximum result if there are fewer than 20 values in the available period of record.

c. For nutrients, the values used to calculate the geometric mean and 95th percentile shall be annual geometric means (AGMs) concentrations following the data sufficiency requirements specified in subsection 62-302.531(6), F.A.C.

3. The LVF shall be set to 1.0 if the calculated LVF is less than 1.0 [Q: Why?]

a. The number of credits required by a Credit Purchaser must be calculated as follows: Number of Credits Required = (Number of standard units of measure for pollutant removed annually required for treatment) x LVF.

b. The LVF formula shall not be used to reduce the number of credits required for treatment below the quantity of pollutant removed annually.

c. The numerical models used to determine the LVF described in (a) shall be updated at least every 10 years by the WQEA Owner as a minor modification until all credits have been withdrawn from the ledger and the WQEA is operating under perpetual management.

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

62-332.530 Perpetual Protection of Water Quality Enhancement Areas

(1) Before enhancement credits may be released to a WQEA or any phase of a WQEA, the WQEA Owner shall cause a conservation easement to be conveyed to the Department. 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.

(2) All conservation easements shall be granted in perpetuity without encumbrances, unless such encumbrances do not adversely affect the hydrology and water quality improvement effectiveness of the WQEA. All conservation easements shall be of a form and content sufficient to ensure protection of the WQEA according to the permit, and

shall, at a minimum, meet the requirements and restrictions of Section 704.06, F.S., except as provided in subsection 62-332.530(7), F.A.C. Forms for recording a conservation easement are incorporated by reference in Rule 62-330.301, F.A.C., which is incorporated by reference herein. The conservation easement shall also provide that the WQEA Owner shall have access to the property and the authority to perform all acts necessary to ensure compliance with the WQEA Permit (unless the WQEA Owner is the fee owner of the property), and that the Department shall have access and the authority to perform these acts if the WQEA Owner fails to do so.

(3) As part of providing reasonable assurance that the WQEA site will be protected in perpetuity, the grantor of the conservation easement shall provide the following unless the Department determines during the permit review process such items are not necessary to ensure protection of the WQEA according to the permit:

(a) A boundary survey of the real property interest being conveyed. The survey must be certified, by a land surveyor and mapper, registered in the State of Florida, to meet the requirements of the Department and the minimum technical standards set forth by the Florida Board of Professional Surveyors and Mappers in Rules 5J-17.050 through 5J-17.052, F.A.C., under Section 472.027, F.S.

(b) A certified appraisal or other equivalent documentation demonstrating the market value of the interest to be conveyed to determine the appropriate amount of title insurance.

(c) A marketable title commitment issued to the Department as beneficiary in an amount at least equal to the fair market value, as established in paragraph 62-332.530(3)(b), F.A.C., of the interest being conveyed. An owner's title insurance policy (ALTA Form B) naming the Department as beneficiary shall be issued to the Department within the time frames specified by the permit. The coverage, form and exceptions of the title insurance policy shall ensure that the WQEA will be protected according to the WQEA Permit.

(d) A current Phase I environmental site assessment identifying any environmental problems which may affect the liability of the Department and any additional site assessments as are necessary to ensure that the Department is not subject to liability under federal or state laws relating to the treatment or disposal of hazardous substances or ownership of land upon which hazardous substances are located, or to ensure that there are no hazardous substances present on the property which would adversely affect construction, operation, and perpetual management of the WQEA.

(4) The Department shall require additional documentation or actions from the grantor of the conservation easement if necessary to ensure that the WQEA will be protected in accordance with the WQEA Permit.

(5) The WQEA Owner shall pay the documentary revenue stamp tax and all other taxes or costs associated with the conveyance, including the cost of recording the conservation easement and any other recordable instruments required by the Department, unless prohibited or exempt by law, as a condition of the receipt of the conveyance.

(6) All real estate taxes and assessments which are or which may become a lien against the property shall be satisfied of record by the WQEA Owner before recording the conservation easement. If necessary, the WQEA Owner shall, in accordance with Section 196.295, F.S., place funds in escrow with the county tax collector. The WQEA Owner shall also provide the Department with annual documentation demonstrating that such taxes and assessments have been paid.

(7) As a condition of receipt of the conveyance, the WQEA Owner shall remove all abandoned personal

Commented [SJRWMD19]: Thank you for adding (3) and (4)!

property, solid waste, or hazardous substances from the property that the Department determines: will reduce the proposed hydrology and water quality improvement efficiency of the property; will adversely affect the construction, operation, or management of the WQEA; or will adversely affect the construction, alteration, operation, maintenance, abandonment or removal of any surface water management system to be constructed in the WQEA.

(8) The WQEA Owner shall record the conservation easement required in the WQEA Permit. The WQEA Owner shall submit to the Department the original recorded conservation easement as soon as such document is returned from the public records office.

Rulemaking Authority 373.4134, 403.805 FS. Law Implemented 373.4134 FS. History—New

62-332.550 Financial Responsibility.

(1) To provide reasonable assurances that the proposed WQEA will meet the requirements of Section 373.4134, F.S., this Rule, and the associated permit conditions, Owners shall provide proof of financial responsibility for: (a) the WQEA Operation and Maintenance Phase and (b) the WQEA Perpetual Management Phase, as required in this Rule. The amount of financial responsibility provided in the mechanisms required in this Rule shall be based on the cost estimates determined under subsection 62-332.550(13), F.A.C.

(2) Submitting Financial Responsibility Documentation. The Owner shall provide draft documentation of the cost estimate and required financial responsibility mechanisms described in subsections 62-332.550(5) through (11), F.A.C., with the permit application, and shall submit to the Department the executed or finalized documentation within the time frames specified in the permit. The provisions of this subsection shall also apply to any modifications to the WQEA Permit.

(3) General Terms for Financial Responsibility Mechanisms. In addition to the specific provisions regarding financial responsibility mechanisms for the operation and maintenance phase in subsection 62-332.550(4), F.A.C., and perpetual management phase in subsection 62-332.550(12), F.A.C., the Owner shall comply with the following terms:

(a) The financial responsibility mechanisms shall be payable at the direction of the Department to its designee or to a standby trust or standby escrow. The financial responsibility mechanism shall be retained by the Department if it is of a type which is retained by the beneficiary according to industry best practices.

(b) Demonstration of financial responsibility shall be continuous until complete satisfaction of the applicable permit conditions and approved release of financial responsibility by the Department.

(c) Collectively, the financial responsibility mechanisms must guarantee that the Owner will perform all of its obligations under the permit. Within 90 days after receipt by both the Owner and the Department of a notice of cancellation or termination of a financial responsibility mechanism, the Owner shall establish a financial responsibility mechanism that meets the criteria of this Rule, subject to the Department's written approval. Failure to establish a replacement financial responsibility mechanism within the 90-day period will itself be grounds for the Department to draw on the existing financial responsibility mechanism prior to its cancellation or termination.

Commented [SJRWMD20]: There is no express mention here of financial assurance for WQEA construction, but construction costs are still mentioned in 62-332.550(13)(a)-(b) and 62-332.550(14)(a)-(b).

Q1: Does this mean the financial assurance for O+M needs to include construction costs? That appears to be the case based on 62-332.550(4) and its references to 62-332.550(13)-(14) (which both mention construction costs). If so, may want to make this more clear.

Q2: Conversely, if no financial assurance is required for WQEA construction costs, would that mean no credits can be released until after the as-built certification is accepted? If so, it would be helpful to state that in rule somewhere.

Commented [SJRWMD21]: These are the subsections where the seven forms of FA are currently located.

Commented [SJRWMD22]: Fixed typo

406 (d) An Owner may satisfy the requirements of this subsection by establishing more than one acceptable
407 financial responsibility mechanism per WQEA. Whenever more than one mechanism is used, the Owner shall
408 identify the specific financial responsibility mechanism for each individual activity on the cost estimate as required
409 under subsection 62-332.550(13), F.A.C.

410 (e) An Owner shall not use a financial responsibility mechanism for more than one WQEA.

411 (f) An Owner must notify the Department by certified mail within 10 days after the commencement of a
412 voluntary or involuntary proceeding:

413 1. To dissolve the Owner;

414 2. To place the Owner in receivership;

415 3. For entry of an order for relief against the Owner under Title 11 of the United States Code; or

416 4. A general assignment of its assets for the benefit of creditors under Chapter 727, F.S.

417 (g) An Owner will be without the required financial assurance in the event of the suspension or revocation of
418 the authority of any trustee to act as trustee, or in the event of a bankruptcy or receivership of the issuing institution
419 of a financial responsibility mechanism, or the revocation of the authority of such institution to issue such
420 instruments. The Owner must notify the Department within 10 days and establish other financial assurance within 60
421 days after such an event.

422 (h) The financial responsibility mechanism shall include the cost to repair, re-construct, or re-establish the
423 WQEA in accordance with its Permit in the event the WQEA is partially or completely destroyed due to a
424 catastrophic event outside of the Owner's control. If the Owner fails to restore the WQEA in accordance with the
425 Permit within a reasonable period of time to its functioning condition prior to the catastrophic event, the Owner shall
426 be in material noncompliance with the WQEA Permit.

427 (4) Financial Responsibility for the WQEA Operation and Maintenance Phase.

428 (a) Financial responsibility for the operation and maintenance activities of the WQEA, or each phase thereof,
429 may be established by surety bonds, irrevocable letters of credit, escrow accounts, or trust funds, as described below.

430 (b) The amount of financial responsibility established shall equal the cost of operation and maintenance of the
431 WQEA, or each phase thereof, in accordance with subsection 62-332.550(13), F.A.C., and as adjusted in accordance
432 with subsection 62-332.550(14), F.A.C., during the course of the project.

433 (c) The financial responsibility mechanism shall be effective, executed, and funded based on the full cost
434 estimate amount in accordance with paragraph 62-332.550(4)(b), F.A.C., prior to the release of any enhancement
435 credits.

436 (5) Surety Bond.

437 (a) An Owner may satisfy the requirements of subsection 62-332.550(1), F.A.C., for operation and maintenance
438 activities by obtaining a surety bond that conforms to the requirements of this subsection. The company issuing the
439 bond must be authorized to do business in Florida. The company must also be among those listed as acceptable
440 sureties in the latest Circular 570 of the U.S. Department of the Treasury, or a Florida-domiciled surety or insurance
441 company with at least an A- rating from the A.M. Best and authorized to write individual bonds up to 10 percent of
442 the policyholder's surplus. The Owner shall provide documentation evidencing that the bond company meets these

Commented [SJRWMD23]: Minor suggested edit.

Commented [SJRWMD24]: What about construction costs?

Construction costs are still mentioned in 62-332.550(13)(a)-(b) and 62-332.550(14)(a)-(b).

requirements.

(b) The surety bond shall be worded in substantial conformance with Form 62-332.550(5), "WQEA Surety Bond to Demonstrate Operational Financial Assurance" (effective date), which is incorporated by reference herein and available at (insert link). This form and all the forms incorporated in Rule 62-332.550, F.A.C., also are available from the Department of Environmental Protection's Internet site, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/forms-environmental-resource>; or by contacting the Division of Water Resource Management, Department of Environmental Protection, 2600 Blair Stone Road, MS #2500, Tallahassee, Florida 32399-2400, (850) 245-8336. Deviations from the form shall be identified to, submitted to, and approved by the Department.

(c) Under the terms of the bond, the surety shall become liable on the bond obligation when the Owner fails to perform under the terms of the WQEA Permit. In all cases, the surety's liability shall be limited to the sum stated in the bond.

(d) An Owner who uses a surety bond to satisfy the requirements of subsection 62-332.550(4), F.A.C., must establish a standby escrow or standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby escrow or standby trust fund for distribution by the agent or trustee in accordance with the Department's instructions. The standby escrow agreement and standby trust fund agreement must meet the requirements specified in subsections 62-332.550(8) and 62-332.550(9), F.A.C., respectively.

(e) The bonding company shall provide notice of cancellation of a bond by certified mail to the Owner and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the Owner and the Department, as evidenced by the return receipt.

(f) A bond may be cancelled by the Owner if the Department has given prior written consent. The Department shall provide such consent when either the Owner substitutes alternative financial assurance allowed under this Rule and such alternate financial assurance is approved by the Department and is effective, or the Department approves release of financial assurance in accordance with paragraph 62-332.550(3)(b), F.A.C.

(6) Irrevocable Letter of Credit.

(a) An Owner may satisfy the requirements of subsection 62-332.550(1), F.A.C., for operation and maintenance activities by obtaining an irrevocable letter of credit that conforms to the requirements of this subsection. The irrevocable letter of credit shall be provided by a federally insured depository that is "well capitalized" or "adequately capitalized" as defined in Section 38 of the Federal Deposit Insurance Act [12 USC 1831o(b)]. The Owner shall submit documentation evidencing that the federally insured depository is appropriately capitalized.

(b) The irrevocable letter of credit shall be worded in substantial conformance with Form 62-332.550(6), "WQEA Irrevocable Letter of Credit to Demonstrate Operational Financial Assurance" (effective date), incorporated by reference herein and available at (insert link) and as described in paragraph (5)(b) above. Deviations from the form shall be identified to, submitted to, and approved by the Department.

(c) An Owner who uses an irrevocable letter of credit to satisfy the requirements of subsection 62-332.550(4), F.A.C., must also establish, with the Department as sole beneficiary, either a standby escrow agreement or standby

480 trust fund agreement when the irrevocable letter of credit is acquired. Under the terms of the irrevocable letter of
481 credit, all amounts paid pursuant to a sight draft by the Department will be deposited by the issuing institution
482 directly into the standby escrow or standby trust fund to be distributed by the agent or trustee in accordance with
483 instructions from the Department. This standby escrow agreement or standby trust fund agreement must meet the
484 requirements specified in subsections 62-332.550(8) and 62-332.550(9), F.A.C., respectively.

485 (d) Letters of credit must be irrevocable and issued for a period of at least one year, and the expiration date must
486 be automatically extended for a period of at least one year unless, at least 120 days prior to the expiration date, the
487 issuing institution notifies both the Owner and the Department by certified mail of a decision not to extend the
488 expiration date. The terms of the irrevocable letter of credit must provide that the 120 days begins on the date when
489 both the Owner and the Department have received the notice, as evidenced by the return receipts.

490 (7) Escrow.

491 (a) An Owner may satisfy the requirements of subsection 62-332.550(1), F.A.C., for operation and maintenance
492 activities or perpetual management activities by a deposit of cash into an interest-bearing escrow account with the
493 Florida Department of Financial Services.

494 (b) The escrow agreement must be worded in substantial conformance with Form 62-332.550(7), "Escrow
495 (Standby Escrow) Agreement" (effective date), incorporated by reference herein and available at (insert link) and as
496 described in paragraph (5)(b) above. Deviations from the form must be identified to, submitted to, and approved by
497 the Department.

498 (c) The escrow agreement must be irrevocable until the Department determines that it is no longer required.

499 (8) Standby Escrow.

500 (a) An Owner using a surety bond or irrevocable letter of credit shall contemporaneously establish either a
501 standby escrow with the Florida Department of Financial Services meeting the requirements of this subsection or a
502 standby trust fund under subsection 62-332.550(9), F.A.C.

503 (b) The standby escrow agreement shall be worded in substantial conformance with Form 62-332.550(7),
504 F.A.C., incorporated by reference in paragraph 62-332.550(7)(b), F.A.C., except that the agreement will identify that
505 it is establishing a standby escrow account. Deviations from the form must be identified to, submitted to, and
506 approved by the Department.

507 (c) The standby escrow agreement must be irrevocable until the Department determines that it is no longer
508 required.

509 (9) Standby Trust Fund.

510 (a) An Owner using a surety bond or irrevocable letter of credit shall contemporaneously establish either a
511 standby trust fund meeting the requirements of this subsection or a standby escrow under subsection 62-332.550(8),
512 F.A.C. The trustee of the standby trust shall be an entity that has the authority to act as a trustee and whose trust
513 operations are regulated and examined by a federal agency or an agency of the State of Florida. The Owner shall
514 provide documentation evidencing such regulation and examination to the Department.

515 (b) The standby trust agreement shall be worded in substantial conformance with Form 62-332.550(9), "WQEA
516 Standby Trust Fund Agreement to Demonstrate Operational Financial Assurance" (effective date), incorporated by

Commented [SJRWMD25]: This paragraph is missing from subsection (9) below for a standby trust. If the same logic applies, then something similar to this para should be added as (9)(c).

reference herein and available at (insert link) and as described in paragraph (5)(b) above. Deviations from the form shall be identified to, submitted to, and approved by the Department. This form and Form 62-332.550(10) incorporated in subsection 62-332.550(10), F.A.C., reference the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq. (July 18, 2025), which is incorporated by reference herein and available at (insert link) and as described in paragraph (5)(b) above. A copy of the Act may also be obtained by contacting the Division of Water Resource Management, Department of Environmental Protection, 2600 Blair Stone Road, MS #2500, Tallahassee, Florida 32399-2400, (850)245-8336.

(10) Trust Fund.

(a) An Owner may satisfy the requirements of subsection 62-332.550(1), F.A.C., for operation and maintenance or perpetual management activities by establishing a trust fund that conforms to the requirements of this subsection. The trustee of the trust fund shall be an entity that has the authority to act as a trustee and whose trust operations meet the definition of the Investment Manager as defined in subsection 62-332.200(6), F.A.C.

(b) The trust fund agreement must be worded in substantial conformance with Form 62-332.550(10), "WQEA Trust Fund Agreement to Demonstrate Operational or Perpetual Management Financial Assurance" (effective date), incorporated by reference herein and available at (insert link) and as described in paragraph (5)(b) above. Deviations from the form shall be identified to, submitted to, and approved by the Department.

(11) Endowment

(a) An Owner may satisfy the requirements of subsection 62-332.550(1), F.A.C., for perpetual management activities by establishing an endowment account that conforms to the requirements of this subsection. The Endowment Holder, or the Investment Manager retained by the Endowment Holder to manage the endowment, shall be an entity that meets the definitions of subsections 62-332.200(4) or 62-332.200(6), F.A.C., respectively.

(b) The endowment agreement must be worded in substantial conformance with Form 62-332.550(11), "WQEA Endowment Agreement to Demonstrate Perpetual Management Financial Assurance" (effective date), incorporated by reference herein and available at (insert link) and as described in paragraph (5)(b) above. Deviations from the form shall be identified to, submitted to, and approved by the Department.

(12) Financial Responsibility for Perpetual Management Phase.

(a) An Owner shall establish financial assurance for the perpetual management of the WQEA, or phase thereof, using the financial responsibility mechanisms described in subsections 62-332.550(7), 62-332.550(10), or 62-332.550(11), F.A.C. When an escrow agreement, trust fund, or endowment is used, the requirements of subsections 62-332.550(7), 62-332.550(10), and 62-332.550(11), F.A.C., respectively, must be met.

(b) The amount of financial responsibility provided shall be calculated and adjusted in accordance with subsection 62-332.550(14), F.A.C. The fund shall be established in an amount equal to 110 percent of the annual cost of perpetual management, established under subsection 62-332.550(13), F.A.C., divided by a discount percentage rate calculated as (long-term expected annual return) less (expected annual inflation) less (administrative costs).

Fund Establishment Amount = 110% Annual Cost of Perpetual Management / Discount Percentage Rate

Commented [SJRWMD26]: Recommend adding following para (9)(c), similar to (8)(c) above:
(c) The standby trust fund agreement must be irrevocable until the Department determines that it is no longer required.

Commented [SJRWMD27]: Q: Does this formula calculate a sufficient amount of interest on principal to cover annual PM costs?

554 Discount Percentage Rate = (Long-Term Expected Annual Return) – (Expected Annual Inflation) –
555 (Administrative costs)

Commented [SJRWMD28]: Possible incorporation problem. Happy to discuss.

556
557 A Discount Percentage Rate calculation tool is included in the “References and Design Aids” for the
558 Applicant’s Handbook Volume I, available at: [https://floridadep.gov/water/water/content/water-resource-](https://floridadep.gov/water/water/content/water-resource-management-rules#erp)
559 management-rules#erp.

Commented [SJRWMD29]: Since that calculation tool is not yet available, can we see an example calculation to understand what it would look like?

560
561 (c) The financial responsibility mechanism must be in effect and executed prior to the first release of credits to
562 the WQEA, or applicable phase thereof. The funding amount is determined in paragraph 62-332.550(12)(b), F.A.C.
563 The financial responsibility mechanism for perpetual management may be funded over time as credits are
564 withdrawn for a period not to exceed five years, or as specified by the WQEA Permit, from the first credit
565 withdrawal. When funding over time, the initial investment amount shall be sufficient to satisfy fifty percent of the
566 amount determined in paragraph 62-332.550(13)(d), F.A.C.

567 (d) Prior to the transfer to Perpetual Management Phase, the funded ratio shall be 135% of the amount
568 determined in paragraph 62-332.550(13)(b) F.A.C. If the funded ratio is below 135%, a reconciliation payment shall
569 be made to the fund in a final payment.

570 (e) Five years after transfer to the Perpetual Management Phase, and every five years thereafter, the Owner may
571 request an assessment of the financial responsibility mechanism for perpetual management portfolio market value to
572 determine if the value has exceeded a funded ratio of 160%. If the value exceeds this amount, funds will be returned
573 to the Owner to restore the funded ratio to 135%.

574 (13) Cost estimates.

575 (a) For the purposes of determining the amount of financial responsibility that is required in this subsection, the
576 Owner shall submit a detailed written estimate, in current dollars, of the total cost of construction, operation and
577 maintenance, and perpetual management phases of the WQEA. When the Department determines it is appropriate,
578 the written cost estimate shall be certified by a licensed professional whose license authority in the State of Florida
579 includes the ability to provide such estimates.

Commented [SJRWMD30]: Note questions above about FA for construction costs.

580 (b) The cost estimate for construction phase shall include all costs associated with completing construction of
581 the WQEA, or phase thereof including, as applicable, earthmoving; planting; exotic/nuisance vegetation removal;
582 prescribed fire; land surveying; installation of water quality treatment systems, hydrologic control devices,
583 technologies, and BMPs; site security; administrative fees; consultant fees; taxes; monitoring activities and reports;
584 and any other costs associated with the construction phase.

Commented [SJRWMD31]: Note questions above about FA for construction costs.

585 (c) The cost estimate for operation and maintenance phase of the WQEA shall be based on costs associated with
586 implementing the Department approved performance and success criteria monitoring and verification plan as set
587 forth in the WQEA permit. Operation and maintenance activities may include replacement of any structures or
588 hydrologic control devices as necessary, exotic/nuisance vegetation control, plantings, sediment removal, prescribed
589 fire, site security, administrative fees, consultant fees, monitoring activities and reports, taxes, and any other costs
590 associated with the operation and maintenance phase.

591 (d) The cost estimate for the perpetual management phase of the WQEA shall be based on the costs of the
592 operation and maintenance phase, replacement of any structures or hydrologic control devices as necessary,
593 exotic/nuisance vegetation control, prescribed fire, site security, consultant fees, administrative fees if applicable,
594 monitoring activities and reports, taxes, and any other costs associated with continued implementation of the
595 perpetual management phase. The cost estimate shall also include estimated annual advisory fees and other costs
596 related to managing the financial responsibility mechanism, if such fees and costs are not otherwise included in the
597 Discount Percentage Rate calculation.

598 (e) The Owner shall submit written cost estimates with verifiable documentation for the estimates to the
599 Department along with the financial responsibility mechanism. If more than one financial responsibility mechanism
600 is proposed for the operation and maintenance or for perpetual management, the cost estimate shall specify the
601 appropriate mechanism for each itemized cost.

602 (f) The costs shall be estimated based on a third party performing the work at the fair market value of services.
603 The source of any cost estimates shall be indicated and dated.

604 (14) Cost adjustments.

605 (a) Every two years, or as specified in the permit, the Owner shall undertake an estimate of the costs of the
606 remaining construction, operation and maintenance, and perpetual management activities. In accordance with
607 subsection 62-332.550(13), F.A.C., the Owner shall submit the estimate to the Department in writing, accompanied
608 by supporting documentation. Construction, operation and maintenance, and perpetual management costs shall be
609 listed separately. The Department shall review the cost adjustment statement and supporting documentation to
610 determine if sufficient documentation has been provided to reflect all costs. If the cost adjustment statement and
611 supporting documentation accurately reflect a good faith estimate of all costs, the Department shall approve the cost
612 adjustment statement.

613 (b) At each cost adjustment, the Owner shall revise the construction, operation and maintenance, and perpetual
614 management cost estimates for inflation and changes in the costs to complete or undertake the current phase of the
615 WQEA or appropriate phase thereof in accordance with subsection 62-332.550(13), F.A.C.

616 (c) Revised cost estimates shall be used as the basis for modifying the financial responsibility mechanisms for
617 the WQEA Operation and Maintenance Phase. If the value of any financial responsibility mechanism is less than the
618 total amount of the current operation and maintenance cost estimates, the Owner shall, upon Department approval of
619 the cost adjustment statement, increase the value of the financial mechanism to reflect the new estimate within 60
620 days. If the value of the operation and maintenance funding mechanism is greater than the total amount of the
621 current cost estimate, the Owner may reduce the value of the funding mechanism to reflect the new estimate upon
622 receiving written Department approval of the cost adjustment statement.

623 (d) Revised cost estimates and the performance of financial investments shall be used as the basis for
624 modifying the financial responsibility mechanisms for the WQEA Perpetual Management Phase. The Department
625 may assess the sufficiency of the Perpetual Management Phase funding and may require the financial mechanism to
626 be revised through a permit modification. If the value of any financial responsibility mechanism is less than the total
627 dollar amount necessary to implement the perpetual management requirements of paragraph 62-332.550(12)(c),

Commented [SJRWMD32]: Note questions above about FA for construction costs.

Commented [SJRWMD33]: Note questions above about FA for construction costs.

628 F.A.C., the Owner shall, upon Department approval of the cost adjustment statement, increase the value of the
629 financial mechanism within 60 days. The sufficiency of the Perpetual Management Phase funding may be revised by
630 the Department with any modification, or credit release, and before transfer to the WQEA Perpetual Management
631 Phase.

632 (e) The Department shall require adjustment of the amount of financial responsibility provided for operation
633 and maintenance and perpetual management at times other than the cost adjustment period when the estimated costs
634 associated with compliance with the permit conditions exceed the current amount of financial responsibility.

635 (f) The Owner may provide revised cost estimates more frequently than every two years. If at any time the
636 actual costs exceed estimated costs by more than 15 percent, the Owner shall provide a revised cost estimate and
637 adjust the corresponding amount of financial responsibility under this Rule.

638 (15) Financial Responsibility for Governmental Entities.

639 (a) A governmental entity as defined in s. 373.4134(2)(c), F.S., shall demonstrate reasonable assurances that it
640 can meet the operational and maintenance requirements in the WQEA Permit by any of the mechanisms in
641 subsection 62-332.550(4), F.A.C., above, or by other financial mechanisms which are sufficient to meet the
642 requirements of this subsection.

643 (b) Governmental entities shall meet the requirements of subsection 62-332.550(12), F.A.C., to fund the WQEA
644 Perpetual Management Phase. Governmental entities shall comply with the cost adjustment provisions in subsection
645 62-332.550(14), F.A.C.

646

647 *Rulemaking Authority 373.4134, 403.805 FS. Law Implemented 373.4134 FS. History—New*

648

649 **62-332.600 Enhancement Credit Transactions and Credit Use.**

650 (1) ~~The Agency~~ that is reviewing the Credit Purchaser's ERP application will verify the number of enhancement
651 credits necessary to meet the permitting criteria under Chapter 62-330, F.A.C., and will confirm that the appropriate
652 enhancement credits are available for use at the selected WQEA. The required number of enhancement credits shall
653 be calculated based on appropriate location valuation factors (LVFs) as described in Rule 62-332.500, F.A.C.

654 (2) Enhancement credits that have been released may only be used for the purpose of: (a) achieving net
655 improvement under Section 373.414(1)(b)3., F.S., or (b) satisfying performance standards under Section
656 373.4131(3)(a), F.S., or (c) meeting the allocations of an adopted BMAP or adopted RAP under Section 403.067,
657 E.S.

658 (3) To use enhancement credits, the Credit Purchaser must submit to the Agency permitting the impact a
659 letter from the WQEA Owner demonstrating that enhancement credits have been reserved, sold, or
660 transferred to the Credit Purchaser. If the Agency permitting the Credit Purchaser's ERP determines that use of the
661 enhancement credits proposed by the Credit Purchaser is appropriate to offset the adverse impacts, the Agency
662 permitting the impact shall require the sufficient number and type of enhancement credits be withdrawn prior to the
663 issuance of the Credit Purchaser's permit or as a condition of the Credit Purchaser's permit.

664 (4) An enhancement credit included in a previously authorized credit transaction is not available for another

Commented [SJRWMD34]: This term is not defined in Chapter 62-332.

Recommend adding definition from Section 2.0(a)3. of ERP AH Vol I:
"Agency" means the Department of Environmental Protection, the water management districts, and local governments delegated authority to implement the environmental resource permit program under Part IV of Chapter 373, F.S., in accordance with Section 373.441, F.S.

Commented [SJRWMD35]: We still recommend deleting the word "Reservation" here because we could accept a reservation letter, sale letter, or transfer letter – not just a "reservation" letter.

665 transaction.

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

668 (6) Purchase of enhancement credits is voluntary.

669
670 Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History--New
671 .

672 **62-332.700 Enhancement Credit Tracking.**

673 (1) The Department shall maintain a ledger of the enhancement credits available at each WQEA.

674 (2) The ledger shall include all WQEA credit transactions involving enhancement credits under this Chapter or
675 trades under Chapter 62-306, F.A.C.

676 (3) WQEA credit transactions shall be processed as a no-fee minor modification of the WQEA Permit.

677 (4) Within 60 days of receiving the full payment for the credits and a request from the Credit Purchaser, or as
678 required by the WQEA permit, the Owner shall submit a minor modification application requesting the enhancement
679 credits be withdrawn from the official ledger.

680 (5) The ledger shall include the following information:

681 (a) The amount and type of credits generated in the WQEA.

682 (b) A brief description of actions or activities that generated the release of credits.

683 (c) The date credits become available for purchase.

684 (d) The date of the most recent inspection of the WQEA.

685 (e) The Credit Purchaser's name.

686 (f) Credit Purchaser's permit number and date of issuance.

687 (g) Credit Purchaser's BMAP or RAP allocation issuance and expiration date for trades.

688 (h) The Credit Purchaser's permitting Agency.

689 (i) The amount and type of credits sold in each purchase.

690 (j) The balance of the amount and type of credits available after purchase or credit generation in the WQEA.

691 (k) The date the WQEA ledger is updated.

692
693 Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History--New
694 .

695 **62-332.800 Enhancement Credit Monitoring and Continuing Credit Verification.**

696 (1) Annually, the Owner must demonstrate the achievement of pollutant reductions of no less than the number
697 of credits sold.

698 (2) The WQEA Owner must implement a performance and success criteria monitoring and verification plan
699 approved by the Department, including protocols and monitoring frequency, to be implemented once the WQEA is
700 permitted and operational.

701 (a) Enhancement credits shall be directly measured by the Owner in accordance with the Department-approved

702 monitoring and verification plan in accordance with the WQEA permit.

703 (b) The plan must be sufficient to demonstrate that the WQEA meets defined performance criteria for pollutant
704 reductions on which enhancement credits are based and the success criteria for each activity.

705 (c) The Owner must implement the approved monitoring and verification plan in perpetuity.

706 (3) The monitoring and verification protocols must be able to measure the difference in water quality and flows
707 before water enters the WQEA and is discharged from the WQEA in order to accurately demonstrate the WQEA's
708 pollutant reductions and ensure that all released enhancement credits have been achieved. At a minimum,
709 monitoring must include flow and concentration data into and out of the WQEA.

710
711 Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History--New
712

713 **62-332.900 Compliance and Enforcement.**

714 (1) The Owner must certify and submit annually to the Department that the control devices and systems,
715 technologies, best management practices, or other activities on which the enhancement credits are based continue to
716 be fully implemented and properly operated and maintained, and that pollutant load reductions continue to be
717 achieved.

718 (2) The Owner must report annually to the Department the pollutant loads of their targeted pollutant at the
719 discharge point(s) of the WQEA, in the standard units of measure for the WQEA at a frequency required by the
720 permit to demonstrate pollutant load reduction resulting in credits.

721 (3) The Owner must maintain records demonstrating that the control devices and systems, technologies, best
722 management practices, or other management actions upon which credits are based continue to be fully implemented
723 and properly operated and maintained in perpetuity. The Owner must notify the Department in writing within 30
724 calendar days of any changes to the size, nature, function, or treatment capabilities of the WQEA. Any such changes
725 may result in a WQEA permit modification to ensure credit transactions maintain at least their approved level of
726 pollutant load reduction. The Owner must allow the Department, or Department's agent, to inspect the records and
727 the control devices and systems, technologies, best management practices, or other management actions during
728 regular business hours.

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

737 (5) The Owner shall annually submit a report of the Enhancement Credits sold or used to the Department.
738

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

740
741 **62-332.920 Surrender or Transfer of Water Quality Enhancement Area Permits.**

742 (1) If no credits have been released or sold, an Owner may apply to surrender a WQEA Permit, or permitted
743 phase thereof, by submitting a written request to the Department. The written request must identify which phase of
744 the WQEA permit will be surrendered, indicate the extent of actions and activities performed in that phase, and
745 describe the conservation property interest encumbering that phase. The Department shall authorize release from a
746 WQEA permit when no credits have been withdrawn. The Department shall authorize the relinquishment of a
747 permitted phase, where no credits associated with that phase have been withdrawn, and the release would not
748 compromise the hydrology and water quality improvement efficiency of the remaining portions of the WQEA. A
749 surrender of a WQEA permit or release of a phase of a WQEA shall be made by permit modification.

750 (2) If a property interest has been conveyed as provided in Rule 62-332.530, F.A.C., for a WQEA Permit which
751 is surrendered as provided above, the Department shall release the conservation easement.

752 (3) If a surface water management system has been constructed or altered within the WQEA, the Owner shall
753 obtain any permits required under Part IV of Chapter 373, F.S., and Chapter 62-330, F.A.C., to operate or abandon
754 the surface water management system.

755 (4) To transfer a WQEA Permit, the Owner shall meet the requirements of Chapter 62-330.340, F.A.C., and the
756 entity to whom the permit will be transferred must provide reasonable assurances that it can meet the requirements
757 of the permit.

758
759 Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS. History-- New