

CHAPTER 62-306
WATER QUALITY CREDIT TRADING

| | | |
|---|------------|--|
| 1 | 62-306.100 | Scope and Intent |
| 2 | 62-306.200 | Definitions |
| 3 | 62-306.300 | General Requirements |
| 4 | 62-306.400 | Credit Eligibility |
| 5 | 62-306.500 | Pre-Approval of Credit Generation |
| 6 | 62-306.600 | Use of Credits and Credit Adjustments |
| 7 | 62-306.700 | Water Quality Credit Availability and Trade Tracking |
| 8 | 62-306.800 | Compliance with Trade Provisions |

9 **62-306.100 Scope and Intent.**

10 (1) This chapter establishes the requirements for water quality credit trading between pollutant sources to reduce or eliminate
11 nutrient or nutrient-related impairments pursuant to Section 403.067, F.S.

12 (2) The generation, registration, and trading of water quality credits provided for in this chapter are intended to provide flexibility
13 ~~among pollutant sources to meet in meeting~~ the nutrient reduction requirements of an adopted Basin Management Action Plan (BMAP)
14 or Reasonable Assurance Plan (RAP). Copies of BMAP and RAP documents may be obtained by writing to the Florida Department
15 of Environmental Protection, 2600 Blair Stone Road, MS #3510, Tallahassee, FL 32399-2400.

16 (3) A BMAP provides for the implementation of Total Maximum Daily Loads (TMDL) adopted by the Department in Chapter
17 62-304, Florida Administrative Code (F.A.C.). A RAP, pursuant to Rule 62-303.600, F.A.C., provides for the restoration of impaired
18 waters.

19 (4) This chapter does not address aggregation of wasteload allocations by an entity with multiple wastewater facilities, which may
20 be implemented via an aggregate permit that limits the total allocated nutrient TMDL load for the entity.

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

23 (6) Trades under this chapter shall not cause or contribute to any violation of water quality standards.

24 (7) Trades under this chapter shall not lessen permitting requirements otherwise applicable to the buyer or seller.

25 *Rulemaking Authority 403.067(9) FS. Law Implemented 403.067(8)-(10) FS. History—New 9-6-10, Amended 1-11-16.*

26 **62-306.200 Definitions.**

27 (1) “Baseline” means the annual net nutrient load from a pollutant source after performing all required pollution control activities,
28 below which water quality credits may be generated. The baseline will be set forth in the permit, BMAP or RAP. The baseline for a
29 point source is the entity’s annual wasteload allocation under the BMAP or RAP, or a water quality-based effluent limitation
30 established in a permit, whichever is more stringent. The baseline for a non-agricultural nonpoint source is the entity’s individual
31 annual load allocation or the applicable categorical load allocation under the BMAP or RAP. The baseline for an agricultural nonpoint
32 source is the entity’s annual load allocation or applicable categorical load allocation, if specified in the BMAP or RAP, or the nutrient
33 load expected following the entity’s implementation of applicable Florida Department of Agriculture and Consumer Services (DACS)
34 adopted BMPs pursuant to Section 403.067, F.S., whichever is more stringent. For a concentrated animal feeding operation, the
35 baseline is defined by the entity’s comprehensive nutrient management plan, or its allocation under the BMAP or RAP, whichever is
36 more stringent.

37 (2) “Best management practices (BMPs)” means a practice or combination of practices adopted by rule by DACS, the Department,
38 or the applicable ~~Water Management District~~ water management district as an effective and practicable means for reducing nutrient
39 inputs and improving water quality, taking into account economic and technological considerations.

40 (3) “Credit” means the amount of an entity’s nutrient load reduction below the baseline that will be available for trading purposes
41 pursuant to the requirements of this chapter. Credits shall be in either the units of pounds per year or kilograms per year.

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

43 (5) “Estimated credit” means a credit for nutrient load reductions where treatment methods do not reasonably allow influent and
44 effluent water quality to be measured. All credits that are not measured credits are estimated credits.

45 (6) ~~“Location~~ Locational Valuation Factors” (L~~F~~s) ~~means L~~VFs) are adjustments to credits made by the Department to ensure
46 that trades do not result in localized water quality impacts. ~~Location Factors~~ represent the relative impact a given unit of nitrogen or
47 phosphorus discharged at one location has on the water quality in the ~~impaired target~~ waterbody compared to the same amount of
48 nitrogen or phosphorus discharged at another location. ~~L~~VFs are used in trades to provide reasonable assurance that the seller’s
49 credits are functionally equivalent in protecting the water quality of the waterbody or water segment.

50 (7) “Measured credit” means a credit for nutrient load reductions that can be directly monitored using water quality, including
51 effluent, samples.

52 (8) “Municipal separate storm sewer system” or “MS4” has the same meaning as in Rule 62-624.200, F.A.C.

53 (9) “Nonpoint source” means a source of pollutants discharged to surface or ground water, generally in response to rainfall events,
54 that is not a point source.

55 (10) “Permit” means an authorization issued by the Department pursuant to Chapter 403, F.S., to discharge into surface or ground
56 waters.

57 (11) “Point source” means a pollutant discharge requiring a National Pollutant Discharge Elimination System permit pursuant to
58 Chapter 62-620, F.A.C.

59 (12) “Target Waterbody” means the receiving waterbody or waterbody segment to which the load allocation applies for purposes
60 of meeting the restoration targets in the applicable BMAP or RAP.

61 (13)~~(42)~~ “Trading Registry” means the water quality credit database created and maintained by the Department to register the
62 generation and trading of water quality credits.

63 (14)~~(43)~~ “Technology-Based Effluent Limitation” (TBEL) means a minimum waste treatment requirement adopted by the
64 Department based on treatment technology.

65 (15)~~(44)~~ “Uncertainty Factor” (UF) means the ratio of the estimated number of pounds or kilograms of nutrient load reduction by
66 a nonpoint source to the number of pounds or kilograms of credit that will be authorized. The UF reflects the uncertainty associated
67 with estimated credits.

68 (16)~~(45)~~ “Wastewater facility” means a facility that accepts and treats domestic wastewater or industrial wastewater as those terms
69 are defined in Rule 62-620.200, F.A.C.

70 (17)~~(46)~~ “WQBEL” means a Water Quality-Based Effluent Limitation developed pursuant to Chapter 62-650, F.A.C.

71 (18)~~(47)~~ “Water Quality Credit Trading” means the exchange of credits pursuant to the requirements of this chapter between
72 nutrient sources.

73 (19)~~(48)~~ “WBID” means a unique waterbody identification unit used by the Department to divide a waterbody into discrete
74 segments for purposes of assessment and restoration under Section 403.067, F.S.

75 (20) Water quality enhancement area” or WQEA means a natural system constructed, operated, managed, and maintained for the
76 purpose of providing offsite regional treatment for which enhancement credits may be generated pursuant to a water quality
77 enhancement area permit issued in accordance with Chapter 62-332, F.A.C.

78 *Rulemaking Authority 403.067(9) FS. Law Implemented 403.067(8)-(10) FS. History--New 9-6-10, Amended 1-11-16.*

79 **62-306.300 General Requirements.**

80 (1) Credits may be traded only within the boundaries of a BMAP or RAP, ~~or within the boundaries of BMAPs or RAPs addressing~~
81 ~~hydrologically connected waters, that includes detailed allocations to point sources and detailed or categorical allocations to nonpoint~~
82 ~~sources individual entities.~~

83 (2) Credits generated by a wastewater point source, other than an MS4, must be confirmed by monthly effluent monitoring
84 incorporated into the applicable permit verifying the achievement of pollutant reductions at least equal to the number of credits sold,
85 which must be undertaken and provided to the Department throughout the life of the trade.

86 (3) Credits generated by a nonpoint source or an MS4 must be measured where treatment methods allow influent and effluent
87 water quality to be measured or, where direct measurement cannot reasonably be accomplished, they may be estimated for the type of
88 operation. When estimating credits for nonpoint source pollution control activities, the estimate shall be the long-term average
89 expected reduction. If credits are estimated, the Department will use uncertainty factors, as applicable, to adjust the credits available
90 for trading.

91 (4)~~(a)~~ An individually permitted wastewater facility that proposes to purchase or sell credits must obtain a new or revised
92 Department permit to authorize the use or sale of such credits. The permit shall reflect the amount by which the permitted nutrient

93 load has been adjusted by the purchase or sale of credits or, if no load was identified in the previous permit, the new or revised permit
94 must reflect the new permitted load, the baseline load, and the basis for the load reduction associated with the trade.

95 (a)(b) For trades not involving an entity required to obtain an individual wastewater permit, the Department shall authorize the
96 use and sale of credits in a BMAP or RAP, which will reflect the baseline nutrient load and the basis for the nutrient load reduction
97 associated with the credits.

98 (5) Credits are not available for trading until the Department has authorized the credits in a permit, BMAP or RAP. ~~However;~~
99 however, activities completed before the adoption of the applicable BMAP or RAP are eligible to generate credits if the nutrient
100 reductions resulting from the activities are not part of the baseline that is subsequently adopted in the BMAP or RAP. Credits are
101 expressed as annual loading of nitrogen or phosphorus and cannot be rolled over or aggregated from year to year. A credit retains its
102 environmental value only as long as the activity resulting in its creation continues to provide at least the same level of nutrient load
103 reduction below the baseline load authorized by the Department in the BMAP, RAP or permit, and the Department's authorization for
104 the credit remains in effect. A credit included in an ongoing Department-authorized trade is not available for another trade. The
105 Department will maintain the accounting of credits in its Trading Registry.

106 (6) A water quality credit trade shall not result in a net increase in the total nutrient load to a nutrient impaired waterbody or
107 localized violations of water quality standards, nor shall it be used to offset violations of a discharge permit or to comply with any
108 applicable TBELs.

109 (7) For trades pursuant to Chapter 62-306, F.A.C. the requirements of this Chapter shall control to the extent that any provision
110 herein conflicts with the provisions of Chapter 62-332, F.A.C., or permits issued thereunder.

111 *Rulemaking Authority 403.067(9) FS. Law Implemented 403.067(8)-(10) FS. History--New 9-6-10, Amended 1-11-16.*

112 **62-306.400 Credit Eligibility.**

113 (1) Activities that are potentially eligible to generate credits include, but are not limited to:

114 (a) Installation or modification of water pollution control equipment or activities that are not required to meet TBELs, WQBELs,
115 or other pollution control ~~obligations~~ requirements, and reduce nutrient loads below the baseline.

116 (b) Operational changes or the modification of a process or process equipment that reduce the quantity of water discharged through
117 reuse, recycling, water conservation, or other measures and thereby reduce the load of nutrients discharged. Credits may be generated
118 when a permitted surface water discharge facility closes its operations or ceases discharging to surface waters, but the credits shall
119 only be valid while the permit remains in effect.

120 (c) Implementation of structural nonpoint source management controls.

121 (d) Installation, operation and maintenance of new drainage projects designed to treat stormwater.

122 (e) Implementation by agricultural operations of soil or water treatment technologies or water-quality enhancing production
123 practices or systems that are confirmed in writing by DACS to reduce nutrient loads below the baseline.

124 (f) Other pollution controls, technologies or management practices with a demonstrated ability to reduce nutrient loads below the
125 baseline established in a BMAP or RAP.

126 (g) A documented change in land use that goes beyond normal crop rotations or other standard agronomic practices that results in
127 a reduction of nutrient loads below the baseline land use in the TMDL, BMAP or RAP.

128 (2) Activities that are not eligible to generate credits include:

129 (a) A reduction in nutrient loading that is required under a regulatory program, including a BMAP or RAP. However, reductions
130 beyond those required under a regulatory program shall be eligible to generate credits.

131 (b) Implementation of BMPs that are required under a permit or the adopted BMAP or RAP.

132 (3) For estimated credits, the Department will calculate the number of credits generated using the same method used to calculate
133 nutrient loading during TMDL, BMAP or RAP development. ~~For an agricultural nonpoint source, the entity must undergo an onsite~~
134 ~~assessment to identify the specific BMPs that are applicable to the agricultural operation from the suite of adopted BMPs for the type~~
135 ~~of agricultural operation, assisted by DACS; submit to DACS a BMP checklist and a signed Notice of Intent to implement the~~
136 ~~applicable BMPs; and fully implement the BMPs as required under Section 403.067, F.S.~~ For any nonpoint source, the entity must
137 exceed their baseline nutrient reduction requirements before the Department will authorize credits for reductions beyond those
138 expected from the applicable BMPs.

139 (4) An entity must fully comply with its baseline nutrient load to be eligible for credits resulting from management actions that
140 reduce the nutrient load below the baseline. For an entity that is not a source of nutrients and is not covered by an individual or

141 categorical load allocation, the entity may generate credits if it demonstrates in accordance with this chapter that it will reduce nutrient
142 loads to the waterbody.

143 (5) A credit generated by a WQEA may only be sold once under this Chapter or Chapter 62-332, F.A.C.

144 *Rulemaking Authority 403.067(9) FS. Law Implemented 403.067(8)-(10) FS. History--New 9-6-10, Amended 1-11-16.*

145 **62-306.500 Pre-Approval of Credit Generation.**

146 (1) To obtain Department pre-approval of the number of credits expected to be generated from a project before executing an
147 agreement on a water quality credit trade, the credit generator must submit information to the Department describing in detail the
148 activities that will generate the credits and the expected nutrient load reduction below the generator's baseline. The credit generator
149 must submit the information to the Department on a signed Form 62-306(1), "Pre-Approval of Water Quality Credits Generated Form"
150 effective December 2015 (<https://www.flrules.org/Gateway/reference.asp?No=Ref-06313>), which is adopted and incorporated by reference herein. Copies
151 of the form may be obtained by writing to the Florida Department of Environmental Protection, 2600 Blair Stone Road (MS #3510),
152 Tallahassee, Florida 32399.

154 (2) The Department will notify the credit generator within ~~thirty~~30 days of receipt of the signed form if the credit generator has
155 not provided the information needed to determine how many credits are expected to be generated. After the credit generator provides
156 all of the required information, the Department will timely notify the credit generator of the maximum number of credits that could
157 potentially be authorized for the project. The Department will determine the number of credits expected to be generated from the
158 activities in accordance with this chapter. The number of credits generated and approved may be modified by the Department if the
159 project specifications are altered between the date of pre-approval issuance and the actual generation of credits. The number of credits
160 needed for a given trade will be dependent on the specific circumstances of the trade, including the location of the buyer of the credits.

161 *Rulemaking Authority 403.067(9) FS. Law Implemented 403.067(8)-(10) FS. History--New 9-6-10, Amended 1-11-16.*

162 **62-306.600 Use of Credits and Credit Adjustments.**

163 (1) A credit buyer must submit to the Department information on the term of the trade, the number of credits traded, documentation
164 to calculate the credits generated for the trade, the date when the credits will be generated, the timeframe the credits will be applied
165 under the trade, the unit price for each purchased credit, and the amount of any state funding used to generate the credits traded. The
166 credit buyer must submit the trade information to the Department on Form 62-306(2), "Water Quality Credit Trading Affidavit"
167 effective December 2015 (<https://www.flrules.org/Gateway/reference.asp?No=Ref-06315>), which is adopted and incorporated by reference herein. Copies
168 of the form, which must be signed by the credit seller and credit buyer, may be obtained by writing to the Florida Department of
169 Environmental Protection, 2600 Blair Stone Road (MS #3510), Tallahassee, FL 32399.

171 (2) The Department will determine whether the seller has credits available in accordance with this ~~chapter~~Chapter.

172 (3) The Department will notify the buyer within ~~thirty~~30 days of receipt of the signed Form 62-306(2) if the buyer has not provided
173 the information required to determine the number of credits available for the trade. After the buyer provides all of the required
174 information, the Department will determine in accordance with this ~~chapter~~Chapter whether the seller has a sufficient number of credits
175 available for the trade.

176 (4) A water quality credit trade will become effective once ~~the trade is authorized in the BMAP, RAP, or individual wastewater~~
177 permit approved by the department.

178 (5) If the buyer subsequently proposes to change the source of credits, the buyer must submit a new Water Quality Credit Trading
179 Affidavit and obtain the Department's written authorization that the proposed seller has sufficient credits available.

180 (6) Credit sellers shall maintain records demonstrating that the control devices and systems, technologies, BMPs, land use changes,
181 or other management actions upon which credits are based continue to be fully implemented and properly operated and maintained
182 throughout the period of the trade. The records shall be retained for five years after conclusion of the period covered by the trade. Each
183 seller shall allow the Department, or an agent of the Department, to inspect the records and the control devices and systems,
184 technologies, BMPs, land use changes, or other management actions during regular business hours.

185 (7) Use of ~~Location Factors~~ LVFs to Adjust Credits.

186 (a) ~~For trades where the seller and buyer discharge to different WBIDs, the~~ The amount of credits proposed to be traded shall be
187 adjusted by the applicable ~~L~~LVF to provide reasonable assurance that the proposed trade ~~does not result in localized adverse impacts~~

188 ~~to~~ is functionally equivalent so that the relative impact of a given unit of nitrogen or phosphorus removed at the seller's location has
189 on the water quality in the target waterbody or water segment compared to the same amount of nitrogen or phosphorus removed at
190 the buyer location.

191 (b) If the proposed trade occurs within an adopted BMAP or RAP that includes specific trading factor provisions, including
192 Locational Factors (LF) and a credit valuation methodology, the methodology in the BMAP or RAP shall be used to adjust credits.
193 Otherwise, the calculation methodology in paragraph 62-306.600(7)(c), F.A.C., shall be used.

194 (c)(d) The LVF is calculated and applied independently for each pollutant subject to a trade and is calculated as:

195
$$LVF = TF * VF.$$

196 Where TF is the Transport Factor and VF is the Variability Factor for the target waterbody.

197 1. The TF shall be calculated as $TF = (1 - Atten_p) / (1 - Atten_s)$.

198 Where $Atten_p$ is the attenuation between the purchaser's point of discharge and target waterbody, and $Atten_s$ is the attenuation
199 between the seller's point of discharge and target waterbody.

200 a. A modeled attenuation factor is the rate at which pollutants are reduced through biotic and abiotic factors during downstream
201 transport in water. Attenuation factors range from 0 - 1, with zero representing no reduction, and 1 representing complete removal.

202 2. The LVF shall be calculated as the 95th percentile concentration divided by the arithmetic mean concentration within the target
203 waterbody for the pollutant to be traded.

204 a. The period of record used to calculate the VF will be reviewed and approved by the Department; however, at a minimum it
205 must consist of at least 5 years of measured or modelled data reflecting current conditions within the target waterbody.

206 b. The 95th percentile shall be set to the maximum result if there are fewer than 10 values in the available period of record.

207 c. For nutrients, the values used to calculate the arithmetic mean and 95th percentile shall be annual geometric means (AGMs)
208 concentrations.

209 (d) The number of credits needed for a proposed trade shall ~~transaction must~~ be calculated as follows: Number of Credits Needed
210 = (Number of Pounds or Kilograms Needed ~~standard units of measure for pollutant removed annually required for treatment~~) x (LF
211 for Buyer's WBID/LF for Seller's WBID).

212 (e)(e) LVF. This formula may not be used to reduce the number of credits needed below the number of pounds or kilograms
213 needed.

214 (8) Use of Uncertainty Factors to Adjust Credits.

215 (a) For proposed trades involving estimated credits, the Department shall use default UF ratios of 2:1 for urban stormwater (if 2
216 pounds or kilograms of removal are estimated, 1 pound of credit will be created) and 3:1 for agricultural runoff, unless the Department
217 established the nutrient reduction capability of the activity in the applicable BMAP or RAP, excluding any nutrient reduction
218 capabilities identified as provisional in the BMAP or RAP. However, a buyer or seller may propose and document the basis for a lower
219 UF ratio to the Department if justified by site-specific considerations.

220 (b) Site-specific UF will be based on the Department's best professional judgment, taking into account the scientific support for
221 the estimate, the level of confidence that the BMP will be properly designed, installed, maintained, the potential for failure of the
222 BMP, and the level of uncertainty that the estimated load reduction will be achieved.

223 (9) For the purposes of this chapter, credits generated by a WQEA shall only be used to meet required nonpoint source contribution
224 reductions assigned in a BMAP or RAP.

225 *Rulemaking Authority 403.067(9) FS. Law Implemented 403.067(8)-(10) FS. History--New 9-6-10, Amended 1-11-16.*

226 **62-306.700 Water Quality Credit Availability and Trade Tracking.**

227 (1) The Department shall track all credit generation pre-approvals and all credits traded, and shall post the information on its
228 website. To ensure that generated credits are not sold more than once, any trades initiated from a WQEA must be documented in the
229 transaction ledger maintained within the permit pursuant to Chapter 62-332, F.A.C.

230 (2) Information tracked related to credits and trades will include, at a minimum:

231 (a) The names and street addresses of all parties, locations of discharges, receiving water (WBID), and the nutrient involved;

232 (b) The generator's baseline and the amount of credits generated;

233 (c) A description of the actions that generated credits and whether the credits are measured or estimated;

234 (d) The date when credits will initially be generated and applied under the trade, and the effective period of the credits;

235 (e) The amount of credits traded and any adjustments for location or uncertainty;

- 236 (f) The unit price of the credits, including the amount of any state funding used to generate the credits; and,
237 (g) The date of the most recent inspection by DACS or the Department to verify implementation of activities generating estimated
238 credits.

239 *Rulemaking Authority 403.067(9) FS. Law Implemented 403.067(8)-(10) FS. History--New 9-6-10, Amended 1-11-16.*

240 **62-306.800 Compliance with Trade Provisions.**

241 (1) The seller shall certify and document to the Department annually during the life of the trade that the control devices and
242 systems, technologies, BMPs, land use changes, or other actions on which the credits are based, continue to be fully implemented and
243 properly operated and maintained throughout the life of the trade, and for measured credits, that nutrient load reductions below the
244 baseline continue to be achieved at the authorized level.

245 (2) If the credits traded are measured credits, the seller shall report to the Department the quantity of the Total Nitrogen or Total
246 Phosphorus discharged on a monthly basis to demonstrate fulfillment of the nutrient load reduction resulting in credits. If applicable,
247 a permittee may use the precoded Discharge Monitoring Report form provided by the permitting office to the permit holder at the time
248 of permit issuance to report the amount of Total Nitrogen or Total Phosphorus discharged.

249 (3) If the credits traded are estimated credits, the seller shall report to the Department quarterly providing the following
250 information:

251 (a) The name and location of the activity generating the credits;

252 (b) The pollutants controlled;

253 (c) The BMPs implemented or, in the case of concentrated animal feeding operations, the ~~activities conducted~~
254 under implementation of a comprehensive nutrient management plan and other permit requirements;

255 (d) The control devices installed and date completed, and information on their proper operation and maintenance;

256 (e) The linear feet or acres for which BMPs or other management measures or controls have been completed; and,

257 (f) A calculation of the quantity of each pollutant controlled using the same methods and procedures used to determine the load
258 reductions and credits.

259 (4) Liability: Consistent with the requirements of Subsection 403.067(8), F.S.:

260 (a) A seller of water quality credits is responsible for achieving the load reductions on which the credits are based and complying
261 with the terms of its permit, or the BMAP or RAP, and any trading agreements into which it has entered.

262 (b) A buyers of water quality credits is responsible for complying with all terms of the trade and the BMAP, RAP or permit. In
263 the event the Department determines the purchased credits are invalid because the seller fails to achieve the load reductions on which
264 the credits are based, ~~but the buyer or fails to comply with Rule 62-306.800(1)-(2), F.A.C., but the purchaser~~ otherwise meets
265 applicable regulatory requirements, the invalidation of credits shall not be a violation by the buyer. In such cases, the Department shall
266 allow the buyer, within a reasonable amount of time, to obtain credits from another source, increase treatment, or otherwise reduce the
267 discharged load to meet its allocation, and the Department will reflect this fact in the BMAP, RAP, permit, or Administrative Order,
268 as appropriate. Failure to meet its allocation within a reasonable time after the invalidation of credits shall subject the buyer to
269 enforcement in accordance with the provisions of Sections 403.061 and 403.121, F.S.

270 *Rulemaking Authority 403.067(9) FS. Law Implemented 403.067(8)-(10) FS. History--New 9-6-10, Amended 1-11-16.*