

CHAPTER 62-332

WATER QUALITY ENHANCEMENT AREA CREDIT TRANSACTIONS

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12 **62-332.100 Scope and Intent.**

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

18 (2) The enhancement credit transactions authorized in this chapter are intended to provide flexibility
19 to governmental entities to satisfy the environmental resource permit (ERP) net improvement performance
20 standard under s. 373.414(1)(b)3. and performance standards under Section 373.4131(3)(a), F.S.

21 (3) The requirements for the trading and use of water quality enhancement credits to meet the
22 allocations of an adopted Basin Management Action Plan (BMAP) or adopted Reasonable Assurance Plan
23 (RAP) are set forth in Chapter 62-306, F.A.C.

24 (4) This chapter is supplemental to rules promulgated under Part IV of Chapter 373, F.S., Chapter 62-
25 306, F.A.C., and Chapter 62-330, F.A.C., and does not supersede any requirements therein nor prohibit or
26 limit any activities allowed therefrom.

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

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

62-332.200 Definitions.

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

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

(3) “Enhancement credit” or “credit” means the standard unit of measure that represents a quantity of pollutant removed annually and which is greater than any reductions otherwise required under Chapter 62-330, F.A.C.

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

(5) “Natural system” for the purpose of a water quality enhancement area, means a designed, constructed, or altered ecological system supporting aquatic and wetland-dependent natural resources, including fish, aquatic and wetland-dependent wildlife habitats.

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

(7) “Purchaser” means the governmental entity proposing to utilize purchased enhancement credits to meet net improvement or performance standards associated with the entity’s ERP.

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

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

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

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

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69 **62-332.300 General Requirements.**

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

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

76 (3) Enhancement credits may be generated and sold by an owner of a WQEA only in accordance with
77 this chapter and the conditions of the owner’s permit. The Department will determine the number of
78 enhancement credits necessary for all credit transactions.

79 (4) The issuance of a WQEA permit does not eliminate the owner’s obligation to comply with all
80 requirements of Chapter 62-330, F.A.C., pertaining to adverse impacts to water quantity, water quality
81 and adjacent lands or wetlands.

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

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

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

89 (8) Enhancement credits are perpetual only if the activities resulting in their creation continue to
90 provide at least the same level of pollutant load reduction authorized by the Department.

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

94 (10) Before WQEA Credits may be sold from a WQEA or any phase of a WQEA, the Owner shall
95 cause a conservation easement to be conveyed to both the Department and the District. The grantor of a
96 conservation easement may convey a conservation easement to additional grantees, but such conveyance
97 shall be subordinate to the conservation easement granted to the Department and the District.

98 (a) All conservation easements shall be granted in perpetuity without encumbrances, unless such
99 encumbrances do not adversely affect the ecological viability of the WQEA. All conservation easements
100 shall be of a form and content sufficient to ensure preservation of the WQEA according to the permit, and
101 shall, at a minimum, meet requirements and restrictions of section 704.06, F.S.

102 (b) The conservation easement shall also provide that the Owner shall have access to the property and
103 the authority to perform all acts necessary to ensure compliance with the WQEA Permit, and that the
104 Agency shall have access and the authority to perform these acts if the Owner fails to do so.

105 (11) Enhancement credits may only be sold to, and purchased by, a governmental entity in accordance
106 with this chapter and as authorized in an environmental resource permit.

107 (12) An ERP Purchaser's project must provide reasonable assurance of meeting department rules for
108 design and construction of all onsite stormwater management and provide a level of treatment necessary
109 to meet the predevelopment condition pollutant loading on its site. Any additional treatment required by
110 the purchaser's ERP under Chapter 62-330, F.A.C., may then be achieved through WQEA credits.

111 (13) An enhancement credit transaction must ensure that no localized water quality violations will
112 occur at the location of the purchaser's permitted discharge as a result of the trade.

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

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117 Rulemaking Authority 373.4134, 403.805 FS. Law Implemented 373.4134, 403.067 FS. History—
118 New_____.

119
120 **62-332.400 Enhancement Credit Generation and Valuation**

121 (1) The department will award a number of enhancement credits to the proposed WQEA, or phases

122 thereof, based upon the information submitted by the applicant, and an assessment of the proposed WQEA
123 under the criteria of Section 373.4134, F.S., and the following criteria:

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

127 (b) The initial valuation of enhancement credits shall be based on conservative estimates including,
128 but not limited to expected hydrologic variations. The initial valuation of credits shall consider the
129 uncertainty between the numerical models or other analytical tools used to estimate the expected removal
130 of pollutants, and the actual pollutant removal from the WQEA.

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

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

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

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

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

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

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

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

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

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

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

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

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

165 History—New_____.

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167 **62-332.500 Service Area and Enhancement Credit Locational Valuation Factor Adjustments**

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

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

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

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

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

183 (a) Linear projects with impacts partially located within the Water Quality Enhancement Service Area;

184 such as; such as roadways, transmission lines, distribution lines, pipelines, or railways; only those
185 segments of the project located within the service area may use WQEA Credits;

186 (b) Projects that are hydrologically connected upstream of a WQEA that is servicing an OFW
187 designated as an aquatic preserve, but only for those additional credits needed in reaching the greater OFW
188 treatment requirements.

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

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

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

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

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

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

207 History—New_____.

209 **62-332.600 Enhancement Credit Transactions and Credit Use.**

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

211 (2) Enhancement credits may be used only to satisfy the environmental resource permit net
212 improvement performance standard under s. 373.414(1)(b)3., performance standards under Section
213 373.4131(3)(a), F.S., or for nonpoint source contribution reductions assigned in an adopted BMAP or
214 adopted RAP.

- 215 (3) Credits shall be withdrawn from the WQEA as a minor modification of the WQEA permit.
- 216 (4) The Department will verify whether the owner has credits available in accordance with this
217 chapter.
- 218 (5) Credit transactions shall be between the owner and the purchaser.
- 219 (6) Upon authorization for the use of enhancement credits the Department will verify the final number
220 of credits needed of the enhancement credits for the purchaser's use as described in Rule 62-332.500,
221 F.A.C.
- 222 (a) The purchaser's project, discharge point(s), and discharge characterization (including, but not
223 limited to, pollutant concentration and flow) must be provided to the Department before the credit
224 transaction will be approved.
- 225 (b) Modification of the purchaser's project, discharge point(s), or discharge characterization may
226 result in the Department's revaluation of the credit transaction and modification of the purchaser's
227 permit(s).
- 228 (7) The owner must submit to the Department, as part of its permit application or any modification or
229 renewal application, information on the terms of credit transactions as described in Rule 62-332.800,
230 F.A.C.
- 231 (8) If the purchaser proposes to change the source of credits, it must immediately notify the
232 Department of its intention in writing, including a letter of commitment from the new credit source for the
233 number of enhancement credits necessary, and that the new credit source has those credits available in
234 accordance with a WQEA permit. The new credit transaction is not final until the Department authorizes
235 it in accordance with this chapter and Chapter 62-330, F.A.C.
- 236 (9) A governmental entity may be an owner of an WQEA and use those generated credits for its own
237 water quality needs, such as but not limited to, providing off site water quality compensation for that
238 government's own development projects. However, a governmental entity may not sponsor, fund, or
239 otherwise construct, operate, manage, or maintain a WQEA for the purpose of selling enhancement credits
240 to third parties.
- 241 (10) Enhancement credits may not be used by point source dischargers to satisfy regulatory
242 requirements other than those necessary to obtain an environmental resource permit for construction and
243 operation of a surface water management system.
- 244 (11) Some Enhancement Credits may be released for use prior to meeting all of the performance
245 criteria specified in the WQEA permit. The initial withdrawal of a credit, or any portion thereof, begins

246 the timeframe to reach final success as assessed using Rule 62-332.800, F.A.C. The complete release of
247 all enhancement credits awarded will only occur after the WQEA meets all of the success criteria specified
248 in the permit. The number of credits and schedule for release shall be determined based upon the
249 performance criteria for the WQEA, the success criteria for each activity, and consideration of the factors
250 listed in Section 373.4136(5), F.S. However, no credits shall be released until the requirements of Rules
251 62-332.900 (1) and (2) F.A.C., are met.

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

254 History–New _____.

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256 **62-332.700 Enhancement Credit Tracking.**

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

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

261 (3) If credits are used by a purchaser for net improvement or their ERP performance standard, those
262 credits must be reflected in their permit.

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

264 (a) The names and street addresses of all parties.

265 (b) Locations of permitted activities and discharges.

266 (c) Receiving waterbody.

267 (d) Pollutants involved.

268 (e) The amount and type of credits purchased.

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

270 (5) For tracking in the department ledger and the WQEA ledger this information tracked related to
271 credit transactions must include.

272 (a) All items listed in (4) above.

273 (b) Number of credits still available in the WQEA.

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

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

276 (e) The date credits become available for purchase.

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

278
279 Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS.

280 History–New_____.

281
282 **62-332.800 Enhancement Credit Monitoring and Continuing Credit Verification.**

283 (1) Annually, the owner must demonstrate the achievement of pollutant reductions at least equal to
284 the number of the credits sold.

285 (2) Enhancement credits shall be directly measured by the owner in accordance with a Department-
286 approved monitoring plan.

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

290 (b) The plan must be sufficient to demonstrate that the WQEA meets defined performance or success
291 criteria for the pollutant reductions on which enhancement credits are based.

292 (3) The monitoring and verification protocols must be able to measure the difference in water quality
293 and flows before water enters the WQEA and is discharged from the WQEA in order to accurately
294 demonstrate the WQEA’s pollutant reductions and ensure that all credited pollutant reductions have been
295 achieved. At a minimum, monitoring must include flow and concentration data into and out of the WQEA.

296 (4) The owner must implement the approved monitoring and verification plan in perpetuity.

297
298 Rulemaking Authority 373.4134, 403.067(9), 403.805 FS. Law Implemented 373.4134, 403.067 FS.

299 History–New_____.

300
301 **62-332.900 Compliance and Enforcement.**

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

308 (2) The owner must also demonstrate to the Department sufficient legal or equitable interest in

309 property to ensure access and perpetual protection and management of the land within or associated with
310 the WQEA including, as necessary, permanent preservation of the WQEA pursuant to the requirements
311 of Section 704.06, F.S.

312 (3) The owner must certify and submit annually to the Department that the control devices and
313 systems, technologies, best management practices, or other activities on which the enhancement credits
314 are based continue to be fully implemented and properly operated and maintained, and that pollutant load
315 reductions continue to be achieved at the authorized level.

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

319 (5) The owner must maintain records demonstrating that the control devices and systems,
320 technologies, best management practices, or other management actions upon which credits are based
321 continue to be fully implemented and properly operated and maintained in perpetuity. The owner must
322 immediately notify the Department in writing of any changes to the size, nature, function, or treatment
323 capabilities of the WQEA. Any such changes may result in reopening and revising the WQEA permit and
324 the permits of any governmental entity credit purchasers to ensure credit transactions maintain at least
325 their approved level of pollutant load reduction. The owner must allow the Department, water management
326 district, or Department's agent, to inspect the records and the control devices and systems, technologies,
327 best management practices, or other management actions during regular business hours.

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

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

340 violation for the purchaser.

341 (8) The WQEA may request the surrender or transfer of their WQEA permit as described in Rule 62-
342 342.800, F.A.C., and any subsequent amendments, wherein the term “banker” or “mitigation bank” will
343 refer to the “owner” or “Water Quality Enhancement Area” respectively.

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

346 History—New .

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