

**CHAPTER 62-306
WATER QUALITY CREDIT TRADING**

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62-306.100 Scope and Intent.

(1) This chapter establishes the requirements for a pilot program for water quality credit trading among the pollutant sources to the Lower St. Johns River (LSJR) Basin pursuant to Section 403.067, F.S.

(2) The generation, registration, and trading of water quality credits provided for in this chapter are intended to provide flexibility among pollutant sources to meet the requirements of the LSJR Basin Management Action Plan (BMAP), as adopted by Secretarial Order on October 14, 2008. Copies of the LSJR BMAP may be obtained from the Department's internet site at <http://www.dep.state.fl.us/water/watersheds>, or by writing to the Florida Department of Environmental Protection, Bureau of Assessment and Restoration Support, 2600 Blair Stone Road, MS 3560, Tallahassee, FL 32399-2400.

(3) The LSJR BMAP provides for the implementation of Total Maximum Daily Loads (TMDL) for Total Nitrogen and Total Phosphorus adopted by the Department in subsections 62-304.415(1) and (2), Florida Administrative Code (F.A.C.). The following parts of the LSJR BMAP, which are hereby incorporated by reference, will be used to implement the trading program in the LSJR Basin:

- (a) Figure 1, which identifies and delineates the watershed boundaries of the LSJR in which trading may occur;
- (b) Point and nonpoint source baseline allocations (Tables 9-14) or management practices for sources that may generate, use, or trade credits in the plan area; and
- (c) Tables 22 and 23, which provide Location Factors.

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

Rulemaking Authority 403.067(9) FS. Law Implemented 403.067(8)-(10) FS. History—New 9-6-10.

62-306.200 Definitions.

- (1) "Act" means the Florida Watershed Restoration Act, as codified under Section 403.067, F.S.
- (2) "Baseline" means the pollutant-specific point source discharge or nonpoint source load allowable under the TMDL or BMAP.
- (3) "Best management practices (BMPs)" means a practice or combination of practices adopted by rule by the Department of Agriculture and Consumer Services, the Department of Environmental Protection, or the applicable Water Management District as the most effective and practicable means for improving water quality, taking into account economic and technological considerations.
- (4) "Clean Water Act" means the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act, 33 U.S.C. §1251 et seq.
- (5) "Credit" means the pollutant-specific point source load reduction or nonpoint source load reduction that is generated and may be used or traded as water quality credits (WQCs). A credit may only be generated when pollutants loads are reduced below the baseline load allowable under the TMDL or BMAP. Credits shall be in either the units of pounds per year or kilograms per year.
- (6) "Department" means the Florida Department of Environmental Protection.

(7) "Estimated credits" means load reductions from nonpoint sources that are used for credit trading but which cannot be reasonably measured through direct monitoring.

(8) "Location Factors" (LFs) means the WBID-specific numbers, as listed in the LSJR BMAP Tables 22 and 23, that are used to ensure that trades do not result in localized impacts on the river. Location Factors represent the relative impact a given unit of nitrogen or phosphorus discharged at a WBID has on water quality in the worst case WBID compared to the same amount of nitrogen or phosphorus discharged directly to the worst case WBID. LFs are used in trades to provide reasonable assurance that the seller's credits are functionally equivalent in protecting the water quality of the water body or water segment.

(9) "Lower St. Johns River (LSJR)" means the main stem of the St. Johns River that flows between the mouth of the Ocklawaha River and the mouth of the St. Johns River.

(10) "Measured credits" means load reductions from point sources that are used for credit trading that can be directly monitored using effluent samples.

(11) "Nonpoint source" means those sources of pollutants that discharge to surface or ground water in response to rainfall events, and which are not defined as point sources and do not have a point source permit.

(12) "NPDES permit" means a surface water discharge permit issued by the Department under Section 403.0885, F.S., or by the U.S. Environmental Protection Agency pursuant to the National Pollutant Discharge Elimination System (NPDES) under Section 402 of the Clean Water Act.

(13) "Permit" means an authorization to discharge into surface waters issued by the Department pursuant to Chapter 403, F.S.

(14) "Person" means a person as defined by Section 403.031(5), F.S.

(15) "Point source" means a point source as defined by subsection 62-620.200(37), F.A.C.

(16) "TMDL" means the total maximum daily load for nutrients for the LSJR River adopted in subsections 62-304.415(1) and (2), F.A.C.

(17) "Trading Registry" means the water quality credit database created and maintained by the Department for the purpose of registering the generation and trading of water quality credits (WQCs).

(18) "Technology-Based Effluent Limitation" (TBEL) means a minimum waste treatment requirement established by the Department based on treatment technology.

(19) "Uncertainty Factor" (UF) means the ratio of the estimated number of pounds or kilograms of reduction by a nonpoint source to the number of pounds or kilograms of credit that will be authorized. The UF reflects the uncertainty associated with estimates of nonpoint source pollutant reductions.

(20) "Water Quality Credit Trading" means the exchange of credits between point and nonpoint sources in the LSJR Basin to achieve or maintain the TMDL.

(21) "WBID" means the unique waterbody that was used to divide the Lower St. Johns River Basin into water assessment polygons, as shown in LSJR BMAP Figure 1.

(22) "Worst case WBIDs" means the WBIDs in the marine and freshwater portions of the river where adverse impacts due to nutrient loadings were greatest, and which controlled the maximum allowable nutrient loading to the LSJR.

Rulemaking Authority 403.067(9) FS. Law Implemented 403.067(8)-(10) FS. History—New 9-6-10.

62-306.300 General Requirements.

(1) To be eligible to generate and trade credits between point and nonpoint sources, the following must be met:

(a) Credits generated by a point source must be confirmed by effluent monitoring for the pollutant subject to the trade. This monitoring must be undertaken throughout the effective period of the trade.

(b) Credits generated by a nonpoint source can either be measured where treatment methods allow influent and effluent water quality to be measured, or can be estimated for the type of operation. However, if credits are estimated, the applicant must provide reasonable assurance, using peer reviewed literature-based estimates of removal efficiency, that the estimate is scientifically defensible, and any applicable uncertainty factor shall be applied.

(c) At least one of the trading parties must have an individual wastewater or stormwater permit. The activities necessary to generate credits must be authorized under the appropriate point source stormwater or wastewater NPDES

permit. The permit application shall describe how the activities necessary to achieve the load reductions required to generate the credits will be implemented and monitored.

(d) Wastewater or stormwater facilities that purchase or sell credits must revise their existing NPDES permit or acquire a new NPDES permit if necessary, to authorize the use or sale of such credits. The NPDES permit shall reflect the amount by which the permitted load has been adjusted by the purchase or sale of credits.

(e) Credits are only generated when a source's load is reduced below the baseline established for the entity, which is the wasteload allocation for point sources. For a trade involving credits generated by a nonpoint source, the loading from the nonpoint source must be less than that expected following implementation of applicable BMPs and any additional reductions required for the nonpoint source category under the BMAP.

(f) Credits must be used in the same calendar year in which they are generated.

(2) No facility or activity may generate or use water quality credits until such time as all required permits have been obtained. Facilities that meet their TMDL obligations via trading must demonstrate that their discharge, including any trades, will not cause or contribute to violations of water quality standards. Credits generated under this part shall not be used to offset violations of a discharge permit or to comply with any applicable technology-based effluent limits (TBELs).

(3) Water quality credit trades cannot result in an increased nutrient load above the LSJR TMDLs.

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

Rulemaking Authority 403.067(9) FS. Law Implemented 403.067(8)-(10) FS. History—New 9-6-10.

62-306.400 Eligibility for Generation of Credits.

(1) For discharge or load reductions to be generated and registered as credits, a credit generator shall meet each of the following conditions:

(a) The pollutant load reduction shall continue to be generated after the effective date of this chapter.

(b) Reasonable assurance shall be provided that discharge or load reductions will result in credits.

(c) Applicable control devices or best management practices must be fully implemented and properly maintained throughout the period of the trade.

(2) Activities that are eligible to generate credits include:

(a) Installation or modification of water pollution control equipment.

(b) Operational changes or the modification of a process or process equipment that reduce the quantity of water discharged through reuse, recycling, water conservation, or other measures and thereby reduce the load of nutrients discharged.

(c) Implementation of structural nonpoint source management controls.

(d) Installation, operation and maintenance of drainage projects designed to control stormwater as part of a city or county drainage improvements.

(e) Other similar pollution controls or management practices with a demonstrated ability to reduce the load of nutrients discharged.

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

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

(b) A change in land use, including taking agricultural lands out of production and changes in crops grown, unless the change results in post development pollutant loading being equal to or less than loading under natural conditions for the property.

(c) Implementation of BMPs that are required under the LSJR BMAP.

Rulemaking Authority 403.067(9) FS. Law Implemented 403.067(8)-(10) FS. History—New 9-6-10.

62-306.500 Credit Generation and Validation.

(1) Point Sources.

(a) The baseline for point sources, including both wastewater and stormwater dischargers, shall be the source's wasteload allocation under the LSJR BMAP, unless a lower water quality-based effluent limitation has been established for the discharge.

(b) Credits shall only be generated by point sources after the entity provides reasonable assurance that it can meet an effluent loading limit that is lower than its baseline allocation and the source's applicable permit limits are revised to reflect the reduced load.

(2) Nonpoint Sources.

(a) The baseline for nonpoint sources shall be the source's load allocation specified under the LSJR BMAP or, for nonpoint sources that are covered under categorical load allocations, shall be the load expected following implementation of applicable BMPs and the additional reductions required for agricultural sources.

(b) Credits shall only be generated by nonpoint sources if the source reaches an agreement with a permitted point source and the activity generating the credits is incorporated into the point source's permit.

Rulemaking Authority 403.067(9) FS. Law Implemented 403.067(8)-(10) FS. History—New 9-6-10.

62-306.600 Use of Credits and Credit Adjustments.

(1) Wastewater Facilities.

(a) The use of credits must be authorized in the buyer's permit. At the time of permit application, the buyer must submit an affidavit, signed by the buyer and seller, disclosing the term of the trade, the number of credits traded, the date when the credits will be generated, the unit price, and the amount of any state funding used to generate the credits traded. The affidavit used by the Department for Water Quality Credit Trading, Form 62-306, "Water Quality Credit Trading Affidavit" effective 9-6-10, is hereby adopted and incorporated. Copies of the form may be obtained from the Department's internet site at <http://www.dep.state.fl.us/water/tmdl>, the Northeast District Office, or by writing to the Florida Department of Environmental Protection, Bureau of Assessment and Restoration Support, 2600 Blair Stone Road (MS 3560), Tallahassee, FL 32399.

(b) The Fact Sheet or Statement of Basis for the buyer's permit shall note that the permit authorizes a trade and identify the source of the credits purchased.

(c) If the buyer subsequently decides to change the source of credits during the permit cycle, the buyer must submit a new Water Quality Credit Trading Affidavit pursuant to paragraph (1)(a) and apply for a permit revision. The Department will evaluate the permit revision and determine whether the seller has credits available in accordance with Rules 62-306.300, 62-306.400, and 62-306.500, F.A.C.

(2) Municipal Separate Storm Sewer Systems (MS4s) and Nonpoint Sources.

(a) The buyer must submit a Water Quality Credit Trading Affidavit, signed by the buyer and seller, disclosing the term of the trade, the number of credits traded, the date when the credits will be generated, the unit price, and the amount of any state funding used to generate the credits traded. The Department will determine whether there is reasonable assurance that the seller has credits available. The Department shall notify the buyer within thirty days if the buyer has not provided reasonable assurance that the seller has credits available.

(b) If the buyer subsequently decides to change the source of credits, the buyer must submit a new Water Quality Credit Trading Affidavit so that the Department can evaluate whether the buyer has provided reasonable assurance that the seller has credits available. The Department shall notify the NPS within thirty days if the NPS has not provided reasonable assurance that the seller has credits available.

(3) If the seller of credits is a nonpoint source, the buyer must provide information about the nonpoint source activity that will generate the credits, including the baseline loading for the type of operation, a description of the management activities that will generate the reduction, and calculations, signed and sealed by a Professional Engineer, supporting the credit generation.

(a) If the credits to be traded are based on measured credits, the point source permittee must propose monitoring locations and submit monthly discharge monitoring reports to validate the generation of the credits.

(b) If the credits purchased are estimated, the permittee must:

1. Provide information describing the basis for the estimates, including references or models used, calculations showing the amount of credits generated, and any needed adjustment factors to address uncertainty pursuant to subsection (4);

2. Keep detailed records demonstrating they are in compliance with any applicable BMP requirements; and

3. Agree to be subject to inspections at the nonpoint source activity.

(4) Use of Location Factors.

(a) For trades where the seller and buyer discharge to different WBIDs, the amount of credits proposed to be traded shall be adjusted by the applicable Location Factors to provide reasonable assurance that the proposed trade does not result in localized adverse impacts to the water body or water segment.

(b) The number of credits needed for a proposed trade shall be calculated as follows: Number of Credits Needed = (Number of Pounds or Kilograms Needed) x (LF for Buyer's WBID/LF for Seller's WBID).

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

(5) Use of Nonpoint Source Uncertainty Factors Ratios.

(a) For proposed trades involving estimated credits for nonpoint sources, the Department shall use default Uncertainty Factor ("UF") ratios of 2:1 for urban stormwater (if 2 pounds or kilograms of removal are estimated, 1 pound of credit will be created) and 3:1 for agricultural runoff. However, an applicant may propose a lower UF ratio if justified by site-specific considerations.

(b) Any site-specific UF must be based on best professional judgment taking into account the scientific support for the estimate, the level of confidence that the BMP will be properly designed, installed, maintained, and the potential for failure of the BMP.

Rulemaking Authority 403.067(9) FS. Law Implemented 403.067(8)-(10) FS. History—New 9-6-10.

62-306.700 Water Quality Credit Trade Tracking.

(1) The Department shall track all credits generated or trades authorized in permits, and shall post information about trades and available credits on the Department's website at <http://www.dep.state.fl.us/water/watersheds>.

(2) Information tracked related to credit generators and sellers shall include:

(a) The generator or seller's name, street address, location, receiving water (WBID), and the pollutant being traded;

(b) The generator or seller's baseline, permit number for permit authorizing the credit generation, the new permit limit authorizing a reduced discharge level, and the amount of credits generated;

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

(d) Effective date of the permit, the date when credits will start to be generated, and the duration of the credits;

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

(f) The unit price of the credits, including the amount of any public funding used to generate the credits.

(3) Information tracked related to buyers of credits shall include:

(a) The buyer's name, location, permit number, receiving water (WBID), and pollutant being traded;

(b) The description of the source of the credits, including permit number of seller if applicable, the amount of credits purchased;

(c) The new permit limit authorizing an increased discharge level, effective date of the permit, and the date when credits will be available for use; and

(d) The unit price of the credits, including the amount of any public funding used to generate the credits.

Rulemaking Authority 403.067(9) FS. Law Implemented 403.067(8)-(10) FS. History—New 9-6-10.

62-306.800 Compliance with Trade Provisions.

(1) If the credits traded are measured credits, the permittee shall report to the Department the quantity of the Total Nitrogen or Total Phosphorus discharged on a monthly basis to demonstrate compliance with the effluent limitations, and monitoring and reporting requirements specified in their NPDES permit. Permittees may use the precoded Discharge Monitoring Report form provided by the permitting office to the permit holder at the time of permit issuance to report the amount of Total Nitrogen or Total Phosphorus discharged.

(2) If the credits traded are estimated credits, the permittee shall submit a quarterly report to the Department providing the following information:

- (a) The name and location of the site;
- (b) The pollutants controlled;
- (c) The control devices installed or management practices implemented and date completed;
- (d) The linear feet or acres for which controls or management practices have been completed; and
- (e) A calculation of the quantity of each pollutant controlled using the same methods and procedures used to determine the load reductions and credits.

(3) Liability:

(a) Sellers of water quality credits are responsible for achieving the load reductions on which the credits are based and complying with the terms of their permit, if applicable, and any trading agreements into which they may have entered.

(b) Buyers of water quality credits are responsible for complying with all terms of their permit. In the event that credits purchased are determined to be invalid but the buyer otherwise meets its applicable permit limit, the invalidation of credits shall not be a violation of the buyer's permit. In such cases, the Department shall re-open the permit and issue an Administrative Order requiring the buyer, within a reasonable amount of time, to obtain credits from another source, increase treatment, or otherwise reduce the discharged load to meet its baseline load.

Rulemaking Authority 403.067(9) FS. Law Implemented 403.067(8)-(10) FS. History—New 9-6-10.