

Why Does the City of Fort Myers Need a Nutrient Credit Bank?

The estuarine portion of the Caloosahatchee River, the part that runs through Fort Myers, is not in compliance with the State's adopted water quality standards for the water body. In order to fix the problem, the City of Fort Myers, along with other stakeholders whose waters drain into the Caloosahatchee River, has planned and constructed projects to help reduce the discharge of nutrients to help correct the non-compliance. Any new projects or re-development projects in areas that have drainage waters flowing to the river have to improve the quality of the water leaving those project sites enough to result in a net improvement to the water quality of the Caloosahatchee River Estuary. Net improvement for water quality can be costly and difficult, especially for re-development areas that were built out before Florida adopted its current regulations to implement the Florida Water Resources Act in Chapter 373 and wetlands protections set forth in Chapter 403. The Nutrient Credit Bank project helps improve water quality by providing water quality treatment for projects that may not be able to meet the standards entirely on their own due to geographical space or financial constraints. The availability of nutrient credits helps remove water quality concerns as a barrier to redevelopment.

What are numeric nutrient criteria?

Short Answer: Numeric Nutrient Criteria is a limitation on a nutrient adopted by rule that sets a specific, objective, measurable standard for a nutrient (specifically, phosphorus, nitrogen, and chlorophyll-a) for most waterbodies in the State of Florida.

Background

Historically, Florida used a narrative standard for protecting Florida's waters from nutrient over-enrichment (a discharge of water that caused "an imbalance of flora and fauna" violated the standard). In 2009, the Department initiated rulemaking and, in 2011, adopted the first set of statewide numeric nutrient standards for Florida's waters. Since 2015, most of the remaining waters in Florida have been assigned numeric nutrient standards. Wetlands (except for the Everglades Protection Area) and South Florida's canals do not have assigned numeric nutrient criteria. Water Quality Standards are adopted administrative rules and are set forth in Chapters 62-302 and 62-4 of the Florida Administrative Code.

Florida's coastline is separated into estuary and coastal segments. Numeric nutrient criteria are established for all estuary segments, including criteria for total nitrogen, total phosphorus, and chlorophyll-a. For open ocean coastal waters, numeric criteria are established for chlorophyll-a.

What happens if a water body doesn't meet its water quality standard (the numeric nutrient criteria)?

When a water body doesn't meet its assigned water quality standards, it is "impaired" pursuant to Chapters 62-302 and 62-4, F.A.C. If a water body is impaired, it must be identified on Florida's "303(d) List" which is just a list of water bodies not meeting their adopted standards. The list is named for Section 303(d) of the federal Clean Water Act which requires Florida to keep a running list of its waters that do not meet their adopted water quality standards for designated uses. When the Florida

Department of Environmental Protection identifies a waterbody as impaired, the Department must develop a plan to cleanup that waterbody within 20 years. Impaired waters are generally caused by discharges of pollutants from point sources (pipes, canals and structures) and non-point sources (land runoff, precipitation, atmospheric deposition, drainage, seepage or hydrologic modification).

What is a Total Maximum Daily Load (TMDL)?

A total maximum daily load (TMDL) is the scientific determination of the maximum amount of a specific pollutant that a surface water body can incorporate without degrading the quality of the water so much that it no longer meets the adopted water quality standard for that pollutant. Using watershed monitoring data (water samples) and biological assessments, scientists at the Florida Department of Environmental Protection calculate the TMDL. TMDL's are then adopted by rule. All revisions to the F.A.C., Chapter 62.304, Total Maximum Daily Load, and subsequent Basin Management Action Plans (BMAPs) for each water body are open to public comments before they are finalized under the requirements of the Florida Administrative Procedures Act.

How is the 303(d) List related to TMDLs?

The Clean Water Act and the Watershed Restoration Act of 1999, section 403.067, Florida Statutes, require that TMDLs be established for the impaired water bodies that are listed on the 303(d) List.

Who will be affected by TMDLs and how?

Government agencies, businesses, organizations, and individuals who contribute to the pollution in a water body are asked to participate in the pollutant reduction process. Some examples of practices these entities will be responsible for are: structural changes to existing facilities, reducing discharges from permitted facilities, implementing Best Management Practices, public education, restoration projects and structural changes to existing facilities.

What happens after TMDLs are established?

Once TMDLs have been established for a water body, the development of a Basin Management Action Plan (BMAP) begins.

What is a BMAP?

A Basin Management Action Plan (BMAP) is the "blueprint" for restoring an impaired water body to compliance with the adopted water quality standards. In other words, a BMAP is the plan to reduce the pollutant loading to the point that the water body meets the adopted water quality standards. The BMAP process uses science to determine the required reduction in pollutant loads to the water body and then allocates responsibility for those reductions among the basin stakeholders, the "fair share" of reduction for each government, business, organization, and individual. Determinations of load allocations vary by water body depending on available water quality data, drainage, groundwater contributions, and other sources. The BMAP is the set of strategies that the stakeholders will use to

reduce their pollutant contributions to the basin. BMAP's are developed with input and commitments from local stakeholders and they are adopted by the Florida Department of Environmental Protection by Secretarial Order. BMAP's are enforceable like rules and statutes.

What are the basic steps in the TMDL program?

1. Assess the quality of surface waters--are they meeting water quality standards? (Surface Water Quality Standards - Chapter 62-302)
2. Determine which waters are not meeting water quality standards for a particular pollutant or pollutants. (Impaired Waters Rule (IWR) - Chapter 62-303)
3. Establish and adopt, by rule, a TMDL for the pollutants causing the water body to be impaired – what pollutants are causing the water quality problems. (TMDLs - Chapter 62-304)
4. Develop, with stakeholder input, Basin Management Action Plans (BMAPs) that....
 - a. Implement the strategies and actions required to return the water body to compliance within 20 years of the adoption of the BMAP.
 - b. Measure the effectiveness of the BMAP, both continuously at the local level and through a formal re-evaluation every five years, to assure compliance with the 20 year limit.
 - c. Adapt as needed to change the plan and change the actions if things aren't working as part of the re-evaluation process.
 - d. Reassess the quality of surface waters continuously with ongoing monitoring programs.

Where are the Adopted TMDLs in the State of Florida?

The Florida Department of Environmental Protection maintains an Interactive TMDL map and a map of the Status of of TMDLs in Florida documents (State Rule 62-304, Florida Administrative Code F.A.C.) at <http://fdep.maps.arcgis.com/home/webmap/viewer.html?webmap=1b4f1bf4c9c3481fb2864a415fbeca77> and http://www.dep.state.fl.us/water/tmdl/docs/TMDL_PDF_Map_Draft_June2017.pdf, respectively.

Does the Caloosahatchee River Estuary have TMDL?

The Florida Department of Environmental Protection (DEP) identified the Caloosahatchee Estuary as impaired by nutrients (chlorophyll-a.). In December 2009, DEP adopted the Caloosahatchee Estuary TMDL for total nitrogen (TN), which is linked to high chlorophyll-a concentrations in the Caloosahatchee River and Estuary downstream of the Franklin Lock and Dam. The Caloosahatchee Estuary Basin Management Action Plan (BMAP) was adopted in November 2012 to implement the TN TMDL in the watershed.

The Caloosahatchee River is also part of the Northern Everglades as defined by the Florida Legislature in the Northern Everglades and Estuaries Protection Program, set forth in Section 373.4595, Fla. Stat. Accordingly, the Caloosahatchee Estuary has two plans - a BMAP established by FDEP and the Caloosahatchee River Watershed Protection Plan (CRWPP) established by the SFWMD - that define the water quality goals for the waterbody. Three agencies are involved in developing and updating these programs: the South Florida Water Management District leads the CRWPP, the Florida Department of Environmental Protection leads the BMAP, and these agencies collaborate with the Florida Department of Agriculture and Consumer Services (FDACS). The agencies work together closely to minimize duplication of effort and maintain consistency between these two programs.

How much has the Nitrogen load been reduced in the Caloosahatchee Estuary?

According to the *Draft 5-year Review of the Caloosahatchee Estuary BMAP, November 2017*, the reduction in TN to date is 217,008 lbs/yr of TN, or 56 % of the reductions needed to meet the adopted portion of the TMDL allocated to the Caloosahatchee Estuary Basin.

How does a Nutrient Credit Bank Work?

The purpose of a nutrient credit bank is a net reduction of nutrients being discharged to a water body, in a reasonable and cost effective way, to help that water body return to compliance with its adopted water quality standards. It is an alternative to having each property or project have to meet its fair share of reduction within the four corners of that property or project. The Fort Myers Country Club Nutrient Credit Bank is based on the concept that, while the reduction of nutrients is the overall goal of the Caloosahatchee River Estuary BMAP and the CRWPP, there are some actions to reduce the discharge of nutrients to the water body that can be achieved more successfully and less expensively than other actions. Most land uses and the infrastructure required to support those land uses (whether those land uses are cities, rural development or farms) result in the discharge the nutrients into a water body. However, these uses typically face substantially different costs to control the discharge of those nutrients, due to such variables as the available the methodology required to achieve a reduction in nutrient discharge and land costs.

This nutrient credit bank provides the City of Fort Myers and the Fort Myers Community Redevelopment Agency with an opportunity to promote the protection and restoration of the Caloosahatchee River Estuary's water quality by capturing nutrients that would otherwise be discharged to the estuary while encouraging the new development in parts of the City that would continue to languish because the costs of meeting new nutrient control standards are either economically or geographically too difficult to achieve. *Nutrient credits are not a right to pollute; they are solely an accounting mechanism to establish and verify the exchange of effective pollutant reduction actions.*

Is this legal?

Water Quality Credit Trading in Florida is authorized by the Florida Legislature under Section 403.67(8) and (9)(c), F.S., and the Florida Department of Environmental Protection has adopted rules to implement the program in Chapter 62-306, F.A.C.

Section 403.67(8) and (9), F.S.

(8) WATER QUALITY CREDIT TRADING. —

(a) Water quality credit trading must be consistent with federal law and regulation.

(b) Water quality credit trading must be implemented through permits, including water quality credit trading permits, other authorizations, or other legally binding agreements as established by department rule.

(c) The department shall establish the pollutant load reduction value of water quality credits and is responsible for authorizing their use.

(d) A person who acquires water quality credits (“buyer”) shall timely submit to the department an affidavit, signed by the buyer and the credit generator (“seller”), disclosing the term of acquisition, number of credits, unit credit price paid, and any state funding received for the facilities or activities that generate the credits. The department may not participate in the establishment of credit prices.

(e) Sellers of water quality credits are responsible for achieving the load reductions on which the credits are based and complying with the terms of the department authorization and any trading agreements into which they may have entered.

(f) Buyers of water quality credits are responsible for complying with the terms of the department water discharge permit.

(g) The department shall take appropriate action to address the failure of a credit seller to fulfill its obligations, including, as necessary, deeming the seller’s credits invalid if the seller cannot achieve the load reductions on which the credits were based in a reasonable time. If the department determines duly acquired water quality credits to be invalid, in whole or in part, thereby causing the credit buyer to be unable to timely meet its pollutant reduction obligations under this section, the department shall issue an order establishing the actions required of the buyer to meet its obligations by alternative means and a reasonable schedule for completing the actions. The invalidation of credits does not, in and of itself, constitute a violation of the buyer’s water discharge permit.

(h) The department may authorize water quality credit trading in adopted basin management action plans. Participation in water quality credit trading is entirely voluntary. Entities that participate in water quality credit trades shall timely report to the department the prices for credits, how the prices were

determined, and any state funding received for the facilities or activities that generated the credits. The department may not participate in the establishment of credit prices.

(i) Land set-asides and land use modifications not otherwise required by state law or a permit, including constructed wetlands or other water quality improvement projects, that reduce nutrient loads into nutrient impaired surface waters may be used under this subsection.

(9) RULES.—The department may adopt rules for:

(c) Water quality credit trading among the pollutant sources to a water body or water body segment. The rules must provide for the following:

- 1. The process to be used to determine how credits are generated, quantified, and validated.*
- 2. A publicly accessible water quality credit trading registry that tracks water quality credits, trading activities, and prices paid for credits.*
- 3. Limitations on the availability and use of water quality credits, including a list of eligible pollutants or parameters and minimum water quality requirements and, where appropriate, adjustments to reflect best management practice performance uncertainties and water-segment-specific location factors.*
- 4. The timing and duration of credits and allowance for credit transferability.*
- 5. Mechanisms for determining and ensuring compliance with trading procedures, including recordkeeping, monitoring, reporting, and inspections.*

At the time of publication of the draft rules on water quality credit trading, the department shall submit a copy to the United States Environmental Protection Agency for review.

CHAPTER 62-306

WATER QUALITY CREDIT TRADING

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62-306.100 *Scope and Intent.*

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

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

(3) A BMAP provides for the implementation of Total Maximum Daily Loads (TMDL) adopted by the Department in Chapter 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 waters.

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

(5) 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, Amended 1-11-16.

62-306.200 *Definitions.*

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

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

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

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

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

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

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

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

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

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

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

(12) "Trading Registry" means the water quality credit database created and maintained by the Department to register the generation and trading of water quality credits.

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

(14) "Uncertainty Factor" (UF) means the ratio of the estimated number of pounds or kilograms of nutrient load 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 estimated credits.

(15) "Wastewater facility" means a facility that accepts and treats domestic wastewater or industrial wastewater as those terms are defined in Rule 62-620.200, F.A.C.

(16) "WQBEL" means a Water Quality-Based Effluent Limitation developed pursuant to Chapter 62-650, F.A.C.

(17) "Water Quality Credit Trading" means the exchange of credits pursuant to the requirements of this chapter between nutrient sources.

(18) "WBID" means a unique waterbody identification unit used by the Department to divide a waterbody into discrete segments for purposes of assessment and restoration under Section 403.067, F.S.

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

62-306.300 General Requirements.

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

(2) Credits generated by a point source, other than an MS4, must be confirmed by effluent monitoring, which must be undertaken and provided to the Department throughout the life of the trade.

(3) Credits generated by a nonpoint source or an MS4 must be measured where treatment methods allow influent and effluent water quality to be measured or, where direct measurement cannot reasonably be accomplished, they may be estimated for the type of operation. When estimating credits for nonpoint source pollution control activities, the estimate shall be the long-term average expected

reduction. If credits are estimated, the Department will use uncertainty factors, as applicable, to adjust the credits available for trading.

(4)(a) An individually permitted wastewater facility that proposes to purchase or sell credits must obtain a new or revised Department permit to authorize the use or sale of such credits. The permit shall reflect the amount by which the permitted nutrient 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 must reflect the new permitted load, the baseline load, and the basis for the load reduction associated with the trade.

(b) For trades not involving an entity required to obtain an individual wastewater permit, the Department shall authorize the 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 associated with the credits.

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

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

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

62-306.400 Credit Eligibility.

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

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

(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. Credits may be generated when a permitted surface water discharge

facility closes its operations or ceases discharging to surface waters, but the credits shall only be valid while the permit remains in effect.

(c) Implementation of structural nonpoint source management controls.

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

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

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

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

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

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

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

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

(4) An entity must fully comply with its baseline nutrient load to be eligible for credits resulting from management actions that 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 categorical load allocation, the entity may generate credits if it demonstrates in accordance with this chapter that it will reduce nutrient loads to the waterbody.

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

62-306.500 Pre-Approval of Credit Generation.

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

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

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

62-306.600 Use of Credits and Credit Adjustments.

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

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

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

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

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

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

(7) Use of Location Factors to Adjust Credits.

(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 LF to provide reasonable assurance that the proposed trade does not result in localized adverse impacts to the waterbody 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.

(8) Use of Uncertainty Factors to Adjust Credits.

(a) For proposed trades involving estimated credits, the Department shall use default 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, unless the Department established the nutrient reduction capability of the activity in the applicable BMAP or RAP, excluding any nutrient reduction capabilities identified as provisional in the BMAP or RAP. However, a buyer or seller may propose and document the basis for a lower UF ratio to the Department if justified by site-specific considerations.

(b) Site-specific UF will be based on the Department's 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, the potential for failure of the BMP, and the level of uncertainty that the estimated load reduction will be achieved.

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

62-306.700 Water Quality Credit Availability and Trade Tracking.

(1) The Department shall track all credit generation pre-approvals and all credits traded, and shall post the information on its website.

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

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

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

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

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

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

(f) The unit price of the credits, including the amount of any state funding used to generate the credits; and,

(g) The date of the most recent inspection by DACS or the Department to verify implementation of activities generating estimated credits.

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

62-306.800 Compliance with Trade Provisions.

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

(2) If the credits traded are measured credits, the seller shall report to the Department the quantity of the Total Nitrogen or Total Phosphorus discharged on a monthly basis to demonstrate fulfillment of the nutrient load reduction resulting in credits. If applicable, a permittee 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.

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

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

(b) The pollutants controlled;

(c) The BMPs implemented or, in the case of concentrated animal feeding operations, the activities conducted under a comprehensive nutrient management plan;

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

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

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

(4) Liability:

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

(b) A buyers of water quality credits is responsible for complying with all terms of the trade and the BMAP, RAP or permit. In the event the Department determines the purchased credits are invalid because the seller fails to achieve the load reductions on which the credits are based, but the buyer otherwise meets applicable regulatory requirements, the invalidation of credits shall not be a violation by the buyer. In such cases, the Department shall allow 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 allocation, and the Department will reflect this fact in the BMAP, RAP, permit, or Administrative Order, as appropriate. Failure to meet its allocation within a reasonable time after the invalidation of credits shall subject the buyer to enforcement in accordance with the provisions of Sections 403.061 and 403.121, F.S.

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