



FLORIDA STORMWATER ASSOCIATION

Leadership in Stormwater Management and Utilities

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Florida Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, FL 32399-3000
Submitted via email: WQEA_2023@FloridaDEP.gov

RE: Water Quality Enhancement Area Credit Transactions

The Florida Stormwater Association (FSA) appreciates the opportunity to submit the following comments on the draft rulemaking related to Water Quality Enhancement Area Credit Transactions.

As an association representing over 330-member local governments, private consulting firms and other stormwater organizations (4,700 individuals) in Florida, FSA's membership has a unique understanding of the implications of this rulemaking. FSA understands that the Department and the Water Management Districts are fulfilling legislative directive as a result of HB965 (2022) and resultant Section 373.4131 F.S.; however, we believe the intent of the collective effort is confusing and unnecessary. Water quality credit trading is currently practiced under 62-306, F.A.C. and regional stormwater facilities are implemented through the environmental resource permitting program (62-330, F.A.C.). These existing rules and practices fulfill any need that could potentially be met through the proposed rulemaking. Understanding the legislative directive, we recommend that the Department consider improvements to 62-306, F.A.C. to both meet the scope and intent of 373.4131 F.S. However, based on the current draft rule, please consider the enclosed comments on the draft rule language.

As always, we stand ready to assist the Department in any way possible.

Sincerely,
FLORIDA STORMWATER ASSOCIATION, INC.

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The Florida Stormwater Association's comments include:

- **Applicability of Rule** – FSA understands the overall purpose of this rule is to address the requirements of House Bill (HB) 965 passed during the 2022 Legislative Session, however, we believe the applicability of the rule to environmental resource permit (ERP) compliance versus restoration plan pollution allocation achievement needs to be clarified. While section 62-332-100 provides the scope and intent of this rule, later language in 62-332.300(13) states required reductions in pollutant loading required under any state regulatory program are not eligible to generate enhancement credits. Later in 62-332.600(2), the rule states that credits can be used to satisfy an ERP net improvement or performance standard, or a BMAP or RAP allocation. There is a standing rule (62-306, F.A.C.) in place that addresses water quality credit trading that has contradictory provisions and requirements to the draft rule including an overlap between meeting permitting versus allocation requirements. The draft rule should be updated to avoid these contradictions and to clarify its regulatory purpose.
- **Consistency with WQCT Rule Terminology** – FSA recommends that FDEP utilize existing terminology, definitions, and language found in existing rules. To ensure consistency we would specifically request definitions to match those found in the standing water quality credit trading rule (WQCT) (62-306, F.A.C.).
- **Liability Concerns** – The draft rule language has compliance and enforcement language (62-332.800), yet FSA has concerns that the current draft does not fully cover the issues with liability of a trade that fails or ends before meeting the applicable regulatory deadline. The need to hold the credit generator liable for the duration of any transaction should be expanded to protect the entity attempting to meet a regulatory requirement. In addition, we would suggest expanding and strengthening this section to protect against cost gouging and other irreputable marketplace transactions.
- **Service Area** – FSA has concern over the lack of clarity in what defines a water quality enhancement area (62-332.200(10)). The rule notes the area can be defined by modeling from the owner of the credit, yet more parameters may be warranted to provide clarity and consistency when this rule is in place. One suggestion would be a standard watershed unit, such as a HUC12 area, which is also used in the adopted (yet not effective) statewide stormwater rule. FSA also has concerns over the potential for service areas to overlap, which could lead to potential impacts to waters if not properly addressed during multiple regulatory actions. FSA recommends removing the potential for overlap in service areas to address any potential water quality degradation issues.
- **Location Valuation Factor** – The draft rule contains language on the location valuation factors which are necessary for any trading effort, yet the level of detail is limited. FSA would recommend strengthening this section and ensure that the provisions match what is currently included in the standing water quality credit trading rule. If these sections are not consistent, this could lead to significant confusion, impacting the waters where trading efforts are taking place.

- **Credit Duration** – FSA would recommend further clarification to how long a credit can be applied for any trade associated with a restoration plan allocation goal and remove the terms “roll over” and “aggregated” from section 62-332.300(10), which seem to limit the duration of a credit to one year only. An allocation for an entity in a restoration plan is typically a long-term commitment, and the draft rule language seems to contradict this matter for restoration plan achievement.
- **Revised Restoration Plans/TMDL Impacts** – The current draft rule language notes the short-term nature of the credits, yet if these are to be used for a restoration plan allocation, how will the state capture changes? For example, how will the state capture change in water quality modeling of the relevant watershed that may include a WQEA service area? FSA recommends adding clarifying language to address how changes in data and modeling will be addressed with an existing trading effort. As new data is developed and utilized, the levels for restoration can change, along with conditions of the impacted waters, that could impact any trading effort.
- **Fluctuating Waters** – FSA would recommend further clarification on fluctuating waters statement in 62-332.300(2). We realize that waters can fluctuate in any aquatic system, yet the general nature of this portion of the rule is too open and could lead to confusion. Is the intent of this to only keep trading in open waters versus any system with a downstream impoundment? We would recommend either clarifying or just removing this from the rule.
- **Natural Systems** – FSA would recommend a clearer definition of natural systems that captures the fact it is a man-made system versus truly natural. One suggestion would be to name these areas “Designed Natural Systems.”
- **Existing Program Coordination** – As this rulemaking process moves forward, FSA would recommend this effort not impact any existing programs or efforts that are similar in nature. Regarding the relation of 62-332, F.A.C. to existing rules, the current draft reads (3) is supplemental to and does not supersede. However, we recommend adding additional clarity to ensure current activities allowed under 62-306, F.A.C. and 62-330, F.A.C. are not prohibited or limited by the proposed rule. To provide clarity to (3) we recommend the following rewrite: *“This chapter is supplemental to rules promulgated under Part IV of Chapter 373, F.S., Chapter 62-306, F.A.C., and Chapter 62-330, F.A.C., and does not supersede any requirements therein nor prohibit or limit any activities allowed therefrom.”*