

Template

POINT TO NONPOINT WATER QUALITY TRADING CONTRACT

Instructions and Clarifications for Completing a Point to Nonpoint WQT Contract

Per Wisconsin DNR Water Quality Trading (WQT) Guidance, the permit holder wishing to receive credits must submit certification that a WQT Contract is in place. This template contains all of the necessary elements of a WQT Contract and was developed in consultation with Wisconsin DNR. Completing a WQT Contract is [Step 3 of 7 in the WQT Steps for Buyers](#). It should be completed after a [Credit Certification Report \(Step 1\)](#) and [Notice of Intent \(Step 2\)](#) to trade. After completing this WQT Contract, the next step for Buyers is to complete a [WQT Plan \(Step 4\)](#) and then a [WQT Checklist \(Step 5\)](#), which serves as the cover letter for the [WQT Application Packet](#) (which contains: WQT Checklist, Credit Certification Report, WQT Contract Certification, WQT Plan) that is delivered by the Buyer to WDNR.

- Section 1. Complete buyer/credit user/permittee information.
- Section 2. Complete seller/credit generator information.
- Section 3. Fill in blanks with the number of interim and long-term P and TSS credits. Use the Credit Certification Report to complete this section. The Credit Certification Report and Spreadsheet are available at: <http://glc.org/projects/water-quality/foxptrade/>
- Section 4. Indicate the purchase price for each credit (interim and long term) for each pollutant
- Section 5. This section outlines payment terms. This section also provides remedies for late payment and payment default.
- Section 6. This section describes how credit generating practices will be verified by a third party and the roles of that Verifier. It refers to the WDNR Management Practice Registration Form, the Fox P Trade Credit Generating Practice Installation Report, and the Fox P Trade Credit Verification Report. These do not need to be filled out prior to completing and signing the WQT Contract, but the Buyer will have to identify a qualified third-party Verifier. The Seller must agree to allow the Verifier access the property that is generating credits. Check the Fox P Trade web site for a list of certified Verifiers or contact the Great Lakes Commission at www.glc.org or 734-971-9135.
- Section 7. This section addresses specific terms and conditions regarding credit generating practices. It addresses risks of and liabilities associated with non-performance of credit generating practices, whether the fault of the Seller, or another party or source (e.g., extreme weather).
- Section 8. This section addresses terms and conditions pertinent to the contract in general, including beginning and end date, terms for amending and renewing the contract, and termination.
- Section 9. This section addresses the status and obligations of the Seller and the credit generating property. It provides assurances that the Seller has the right to sign and implement the

terms of the contract and affirms the Seller's commitment to install and maintain credit generating practices as outlined in other provisions of the contract.

- Section 10. This section addresses breach, remedies and dispute resolution. It specifies that legal action is under the jurisdiction of the relevant Wisconsin court. It further clarifies that dispute resolution will first be sought through mediation and then, if the dispute cannot be resolved, through arbitration. It also clarifies that failure to uphold one provision of the contract does not negate the entire contract.
- Section 11. This section confirms that the Buyer and the Seller have the authority to sign the Contract or that an authorized agent can represent either Party, with written authorization.
- Section 12. This section contains several miscellaneous provisions that do not fit neatly under other sections, including permission to share the purchase price of the pollution credit.
- Section 13. This section must be signed by the Buyer or Buyer's Agent, the Seller or Seller's Agent, and notarized by a Notary Public. This section also certifies that the trading contract exists. Such certification is required to be submitted to WDNR along with a WQT Plan and WQT Checklist in order for trading to be considered by WDNR for WPDES permit compliance.

Documentation Required to Implement a Trading Contract*

1. Notice of Intent
2. WQT Application Packet:
 - 2.1. WQT Checklist
 - 2.2. Credit Certification Report
 - 2.3. WQT Contract Certification
 - 2.4. WQT Plan
3. Management Practice Registration form and Credit Generating Practice Installation Report
4. Credit Verification Report
5. Credit Suspension or Cancellation Notice

Forms are available online at: <http://glc.org/projects/water-quality/foxptrade/>

Point to Nonpoint Water Quality Trading Contract

1. Buyer/Permittee/Credit User Information	
Buyer/Permittee/ Credit User Name:	Individual Point of Contact:
Trade Agreement Number (<i>assigned by WDNR</i>):	WPDES Permit Number:
Permittee Address:	County: HUC12 code: Watershed name:
2. Seller/Credit Generator	
Credit Generator/Seller Name:	Individual Point of Contact:
Credit Generator/Seller Address:	County: HUC12 code: Watershed name: Tax parcel(s) where credit generating practices will be installed:

Recitals

- A. Water quality trading (WQT) is an alternative compliance option for Wisconsin Permit Discharge Elimination System (WPDES) permit holders and is authorized by s. 283.84, Wis. Stats.
- B. The Wisconsin Department of Natural Resources (WDNR) has issued Water Quality Trading Guidance (Guidance). The most recent version was disseminated August 2013. This Guidance has been accepted by the U.S. EPA.
- C. This contract certifies that water quality trading is being used to meet the terms and requirements of water quality trading as set forth by s. 283.84, Wis. Stats.
- D. Funds exchanged as part of this Water Quality Trading contract shall be used for the installation and maintenance of credit generating practices that will reduce the loading of pollutants identified in Section 3 into the Lower Fox River and/or its tributaries.
- E. Before WDNR can modify or reissue a WPDES permit that allows trading, the permittee must submit a trading plan (WQT Plan) and checklist (WQT Checklist). The WQT Plan must contain sufficient detail to allow WDNR to conclude that proposed trading will comply with s. 283.84, Wis. Stats., that credits are generated in an acceptable manner and correctly calculated, and that the permittee will comply with their Wisconsin Pollution Discharge Elimination System (WPDES) permit water quality based effluent limits (WQBELs). The WQT Checklist provides an outline for the WQT Plan's content to guide the permittee and streamlines WDNR's review. This WQT Contract comports with the WQT Plan and WQT Checklist # _____. The WQT Plan, WQT Checklist and Section 13 of this WQT Contract (which certifies that a WQT Contract is in place) will be submitted by the permittee to WDNR.

- F. Buyer is a WPDES permit holder who will purchase total phosphorus (TP) and/or total suspended solids (TSS) credits to either wholly or partially fulfill their permit requirements. The Buyer is a voluntary participant in the Lower Fox River Water Quality Trading Program.
- G. Conservation practices (CPs) and best management practices (BMPs) are activities performed to reduce pollutant loadings into nearby receiving waters, herein referred to as "credit generating practices."
- H. All water quality credits must be used for compliance within the year that the credit is generated.
- I. Interim credits can be used for compliance for up to 5 years.
- J. Long term credits can be used for compliance for the lifespan of the credit generating practice.¹
- K. The approximate credit generating practices installation dates and the date at which all credits become effective for WPDES permit compliance are found in the Credit Certification Report which is provided as an addendum to this Contract. The date at which all credits become effective is also identified in Section 3 of this contract.
- M. Under the terms of this Contract, credit stacking is permissible.² Once credits are stacked, they are considered bundled and cannot be unbundled.³

This Contract establishes a binding agreement between _____ ("Buyer") and _____ ("Seller") (collectively referred to herein as "Parties").

In consideration of the preceding recitals, and the consideration, obligations, covenants, and agreements set forth herein, the legal sufficiency of which the Parties hereby acknowledge, Buyer and Seller agree as follows:

3. Sale of Pollutant Loading Credit

- 3.1 As found in the Credit Certification Report, all credits to be generated under this agreement will become effective on the following date: _____
- 3.2 Subject to the conditions set forth in this Contract, the Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller a total quantity of _____ Total Phosphorus (TP) Credits and _____ Total Suspended Solids (TSS) Credits. Of the TP credits, _____ are interim credits and _____ are long term credits. Of the TSS credits, _____ are interim credits and _____ are long term credits. See Credit Certification Report for details.

4. Purchase Price

The Buyer agrees to pay \$_____ for a total of _____ long-term P credits and \$_____ for a total of _____ long-term TSS credits. The Buyer further agrees to pay \$_____ for a total of _____ interim P credits and \$_____ for a total of _____ interim TSS credits.

	Number of Credits Provided	Avg. Purchase Price Per Credit
Interim TP Credits		
Long Term TP Credits		
Interim TSS Credits		
Long Term TSS Credits		

¹ The life of credit generating practices, sometimes called best management practices (BMPs) or conservation practices (CPs) is based on practice lifespans determined by NRCS. NRCS Wisconsin State Conservationist can offer more information on conservation lifespan determinations.

² Credit stacking allows a single credit generating practice to produce more than one type of credit (e.g., TSS and TP).

³ Bundled credits cannot be split up, meaning if a credit generating practice generates TP and TSS these credits cannot be split up and sold individually.

5. Payment Terms

- 5.1 Buyer shall deposit amount specified in Section 4, directly into an account designed by Seller or Seller's representative.
- 5.2 Buyer shall make an initial payment of no less than _____ percent of the purchase price within _____ working days of signing of this Contract by both parties. The remaining balance shall be divided into equal amounts to be paid on the _____ day of the _____ month of the calendar year, or in periodic installments as follows _____.
- 5.3 Should this Contract fail to become effective within _____ days of the initial payment being deposited into Seller's account, then Seller shall return the entire amount of the initial payment to Buyer within _____ days of the date the deposit was made.
- 5.4 Should Buyer fail to make any annual payments within _____ days of the date such payment is due, then interest shall accrue at the rate of _____% per annum.
- 5.5 Failure of Buyer to pay Seller within _____ days from the date payment is due shall be considered a material breach of this Contract, entitling Seller to terminate this Contract and seek equitable relief along with any other appropriate relief.

6. Verification of Credit Generating Practices

- 6.1 Verification of the credit generating practices will be performed by a third party Verifier that is selected by the Buyer that has applicable knowledge and is licensed or certified to practice in Wisconsin or is otherwise accepted by WDNR to verify proper installation, operation, and maintenance of credit generating practices and associated load reductions used to determine credit generation.
- 6.2 Buyer is responsible for selecting a Verifier to perform on-site inspection of credit generating practices on credit generation sites and to review appropriate records and documents. Verification may also include interviews with the land owner, manager or operator.
- 6.3 Verification shall be conducted at least annually at an appropriate time of year based on the type of credit generating practice(s) that is/are installed. The parties agree to verification of the credit generating practice(s) during the following month(s): _____.
- 6.4 Buyer is responsible for ensuring that verification of credit generating practices occurs and that the Verifier complete and submit a Credit Generating Practice Installation Report and a Management Practice Registration form to the permittee (Buyer) within _____ days of the first time installation of credit generating practices. The permittee (Buyer) is responsible for submitting the Management Practice Registration Form and Credit Generating Practice Installation Report to WDNR.
- 6.5 Buyer is responsible for ensuring that the Verifier complete and submit a Credit Verification Report to the permittee (Buyer) within _____ days of annual site visits. The permittee (Buyer) is responsible for submitting the Credit Verification Report to WDNR. If a broker is used, Verifiers shall also complete a Credit Verification Report and submit such to the broker within _____ days of the site visit. Credit Verification Reports shall include information related to: document and record reviews; interviews; site inspections (and associated photos).

7. Credit Terms and Conditions

- 7.1 If Seller wishes to modify the type, timing, or location of credit generating practices outlined in the Credit Certification Report and/or the Water Quality Trading Plan *prior to* credit generating practice installation, Seller must provide the Buyer with the information necessary to complete and submit an updated Credit Certification Report and/or Water Quality Trading Plan, as appropriate, to WDNR.
- 7.2 If Seller wishes to modify the type, timing, or location of credit generating practices outlined in the Water Quality Trading Plan, Credit Certification Report, and Management Practice Registration form *after* credit generating practice installation, Seller must provide the Buyer with the information necessary to complete and submit an updated Water Quality Trading Plan, Credit Certification Report, Management Practice Registration form, and Credit Generation Practice Installation Report to WDNR showing that the modifications will result in the quantity of TP and/or TSS credits agreed to in the Water Quality Trading Contract.
- 7.3 Deliberate removal or substantial alteration of a credit generating practice by Seller, Seller's agents, employees, or affiliates (other entities that conduct land, crop or livestock management activities on the property or premises where credit generating practices are installed) without written approval of Buyer or Buyer's agent and notification to the WDNR, shall constitute a material breach of this Contract by Seller, entitling Buyer to terminate this Contract and seek equitable relief along with any other appropriate relief.
- 7.4 Damage to a credit generating practice due to an action or event beyond the Seller's (or Seller's agents, employees or affiliates) control is not in and of itself considered a violation of this Contract. If such an event occurs, the Seller, Seller's agent or Verifier shall report the damage(s) to the permittee (Buyer) within _____ days of discovering the damage. The permittee is responsible for notification of non-compliance to WDNR. The Seller shall repair damaged credit generating practice(s), to the maximum extent practicable within _____ days of discovering the damage.
- 7.5 Credits from credit generating practices damaged due to an action or event beyond the Seller's (or Seller's agents, employees or affiliates) control will remain valid and effective for _____ days or until the credit generating practice has been repaired, suspended or cancelled, whichever comes sooner.
- 7.6 If damages due to an action or event beyond the Seller's (or Seller's agents, employees or affiliates) control cannot reasonably be repaired within _____ days, Seller shall notify Buyer or Buyer's agent and Seller agrees to assist the Verifier, as necessary, to prepare and submit a Credit Suspension or Cancellation Notice; such notice shall be provided to the Buyer or Buyer's agent.
- 7.7 Damaged credit generating practices that are not repaired within _____ days of discovery shall constitute a material breach of this Contract by Seller, entitling Buyer to terminate this Contract and seek equitable relief along with any other appropriate relief.
- 7.8 Credit generating practices can be relocated if it is determined that the credit generating practice is located on or will otherwise damage a significant archeological or historical site.
- 7.9 Buyer shall not be responsible or liable for any personal injury or property damage caused by Verifier, Seller, or Seller's credit generating practices.

8. Contract Timing, Termination and Renewal

- 8.1 This Contract enters into force upon signature by both Parties or their designated representative(s), pending approval of an associated WQT Plan by WDNR.
- 8.2 This Contract shall expire on the following date _____.
- 8.3 This Contract may be modified only by a written document signed by Seller (or Seller's Agent) and Buyer (or Buyer's Agent).
- 8.4 This Contract may be amended by mutual agreement of both Parties (Buyer and Seller or their agents), so long as the Contract has not yet expired.
- 8.5 This Contract may be terminated in writing, by mutual agreement of the Parties, at any time prior to the contract termination date agreed upon herein.
- 8.6 This Contract may be renewed upon mutual agreement by the parties provided neither party is in default under this Contract as of the termination date. Buyer or Buyer's agent must inform Seller or Seller's agent, in writing, of intent to renew _____ days before termination of the current contract.
- 8.7 This Contract and the terms contained herein shall be binding and enforceable against the Parties, their successors, and assigns for as long as the Contract remains in effect.
- 8.8 A deed addendum shall be filed by the Seller (or Seller's agent) specifying that any credit generating practices must be maintained for as long as the Contract remains in effect.
- 8.9 If the credit generating practices are or will be installed on land that is leased or rented (i.e., land that the seller does not own), both the seller and the land owner must agree to the terms of this section.

9. Seller Warranties: Seller hereby represents and warrants to Buyer, and such warranties shall be applicable and in full force and effect throughout the entire Contract Term, that:

- 9.1 Seller has the authority to enter into this Contract and to carry out the transaction contemplated herein.
- 9.2 No known actions, proceedings or investigations are pending or threatened against Seller that would interfere with Seller's ability to enter into this Contract or carry out the transaction.
- 9.3 No damage nor condemnation with respect to the Seller's property or any part thereof has occurred that would interfere with Seller's ability to enter into this Contract or carry out this transaction and no such known condemnation is pending or threatened.
- 9.4 No uncured violations of any law, ordinance, order, or regulation of any governmental authority having jurisdiction of Seller's property exist that would impede the installation of credit generating practices outlined in this Contract.
- 9.5 Seller has not entered into any contract or agreement that would impede the installation of credit generating practices outlined in this Contract.
- 9.6 Seller agrees to install and maintain credit generating practices in exchange for payment as outlined in this Contract and as detailed in the supporting Credit Certification Report.
- 9.7 Seller agrees assist the Verifier, as necessary, in preparing a Credit Generating Practice Installation Report to document the type and timing of credit Generating practices installed. Such report shall be provided to Buyer or Buyer's Agent.

10. Default, Remedies and Dispute Resolution

- 10.1 In the event that Seller and Buyer are unable to reconcile a dispute arising out of or related to this Contract, the parties agree to first submit the claim to mediation. Parties shall mutually agree on a mediator. The mediation process will be held in _____, Wisconsin.
- 10.2 All disputes arising out of or relating to the Contract not otherwise settled through mediation will then move to arbitration.
- 10.3 Seller and Buyer are responsible for their own attorney fees related to mediation or arbitration and will equally share the common costs and fees associated with the alternative dispute resolution process such as filing fees and arbitrator's costs.
- 10.4 For any dispute arising out of or relating to this Contract, including but not limited to enforcement of any term or condition of the Contract, the prevailing Party in any action brought for the purpose of enforcing such provisions shall be entitled to recover attorney fees, reasonable expenses, and associated costs of such action from the non-prevailing party.
- 10.5 Failure of either Party to enforce any term or condition of this Contract shall not constitute a waiver of that term or condition or of any other term or condition of this Contract.
- 10.6 The Parties agree that a cause of action for breach of any provision of this Contract shall not accrue until the non-breaching Party actually discovers the breach.

11. Representations. Buyer and Seller each makes the following representations, as applicable:

- 11.1 Buyer and/or Seller can authorize an Agent to represent Buyer or Seller on their behalf. Such Agents must have notarized authorization to act on behalf of the Buyer or Seller.
- 11.2 Buyer (or Buyer's Agent) and Seller (and Seller's Agent) each warrant that the person signing this Contract is individually authorized and competent to enter into contracts and to bind each respective Party to the terms hereof.
- 11.3 The Parties have read the Contract and agree to be bound by its terms.
- 11.4 If any party knowingly makes a false or incorrect representation, then such false or incorrect representation shall constitute a material breach of this Contract and the non-breaching party may terminate the contract or seek equitable relief along with any other appropriate relief.

12. Miscellaneous

- 12.1 *Governing Law.* This Contract shall be governed under, and construed pursuant to, the laws of the State of Wisconsin and, as applicable, under the laws of the United States. Each of the parties acknowledge that they have been given the opportunity to obtain counsel, or that they have been represented by counsel of their own choice and that they have read this Contract and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Contract and of its legal effect.
- 12.2 This Contract shall be terminated if the WDNR issues a letter disapproving the WQT Plan associated with this Contract.
- 12.3 *Severability.* If any of the provisions contained in the Contract are held illegal, invalid or unenforceable, such provision(s) shall be deemed severable, and the remaining provisions of this Contract shall continue in full force and effect.
- 12.4 This Contract constitutes the entire agreement between the Parties and supersedes all prior written or oral communications.

- 12.5 Except where specifically provided otherwise in this Contract whenever any notice, demand or request is required or provided for under this Contract, such notice, demand or request shall be made in writing by either email, postage prepaid, certified or registered mail).
- 12.6 This Contract may be executed in two or more counterparts, each of which is deemed original, but all constitute one and the same instrument. The Parties agree that a facsimile copy of a signature, including a PDF of such signature, will be deemed original and binding.
- 12.7 By executing this Contract, each Party grants the other permission to share the price of pollution credits sold and purchased pursuant to this Contract.

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In lieu of the entire Contract, a copy of the following section of this Contract can be supplied independently to the Wisconsin DNR to certify that a WQT Contract exists and has been agreed to by the signatories.

13. Signatures, Notarization, and Certification	
Buyer Name (Printed):	Seller Name (Printed):
Buyer Agent Name (if applicable):	Seller Agent Name (if applicable):
HUC12 code	HUC 12 code:
Watershed name:	Watershed name:
WPDES permit:	Tax Parcel(s):
Buyer/Buyer Agent Signature:	Seller/Seller Agent Signature:
	Landowner Signature (if applicable):
Date:	Date:
Persons listed above personally came before me this _____ day of _____ 20____. I hereby certify that the above named persons _____ and _____ are known to be the person(s) who executed the foregoing Water Quality Trading Contract and acknowledge the same.	
Notary Public _____ County, Wisconsin	Signature of Notary Public:
Seal of Notary Public	My commission expires: _____.