

# PUBLIC NOTICE

# 09-02

## AQUATIC RESOURCE ALTERATION PERMITS/ §401 CERTIFICATIONS

TN DEPT OF ENVIRONMENT & CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
MINING SECTION  
3711 MIDDLEBROOK PIKE  
KNOXVILLE, TN 37921-6538  
Fax # 865-594-5253

ISSUE DATE            February 26, 2009

EXPIRATION DATE        March 27, 2009

**TO WHOM IT MAY CONCERN:** Enclosed is a current public notice of permit application, notice of individual permit decisions, and/or announcement of public hearings or meetings. Public comment and participation are encouraged on all of these issues.

The application described herein have been submitted for Aquatic Resource Alteration Permits under *The Tennessee Water Quality Control Act of 1977*, T.C.A. §69-3-108. In addition, federal permits may be required from the U. S. Army Corps of Engineers or from the Tennessee Valley Authority under §404 of the *Clean Water Act* and §26a of the *Tennessee Valley Authority Act*, respectively. Section 401 of the *Clean Water Act* requires that an applicant obtain a water quality certification from the state when a federal permit is required. This notice may cover applications subject to §401 or navigation permitting (Rule 1200-04-08).

The purpose of this notice is to inform interested parties of this permit application and to ask for comments and information necessary to determine possible impacts to water quality. Persons wishing to comment on a proposal are invited to submit written comments to the department. Written comments must be received within **thirty days of the date that this notice is posted**. Comments will become part of the public record and will be considered in the final decision. The applicant's name and permit number should be referenced.

The permit application, supporting documentation including detailed plans and maps, and related comments are available for review and /or copying at the department's mining section.

Interested persons may also request in writing that the department hold a public hearing on an application. The request must be filed within the comment period, indicate the interest of the person requesting it, and the reasons that the hearing is warranted, and the water quality issues being raised. When there is sufficient public interest in water quality issues, the department will hold a hearing in accordance with Rule 1200-4-1-.04(4)(f).

In deciding whether to issue or deny a permit, the department will consider all comments of record and the requirements of applicable federal and state laws. In making this decision, a determination will be made regarding the potential lost value of the resource compared to the value of any proposed mitigation. The department shall consider practicable alternatives to the alteration. The department shall also consider loss of waters or habitat, diminishment in biological diversity, cumulative or secondary impacts to the water resource, and adverse impact to unique, high quality, or impaired waters.

The Tennessee Department of Environment and Conservation is committed to principles of equal opportunity, equal access and affirmative action. Contact the EEO/AA Coordinator at 1-888-867-7455 or the ADA Coordinator at 1-866-253-5827 for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

## PUBLIC NOTICE

PERMIT APPLICATION: NR08MS.034

**APPLICANT:** Mr. Nat Cloer, Managing Member  
Davis Creek Energy, LLC  
207 E. North 1<sup>st</sup> Street, Suite T  
Seneca, SC 29678

**LOCATION:** The proposed alterations are located near Westbourne, Tennessee in Campbell County. The alterations are at N36.49389 latitude, W84.02694 longitude.

**WATERSHED DESCRIPTION:** The proposed stream and wetland alterations will occur in the Clear Fork of the Cumberland River watershed (HUC 05130101). The proposed activities are to occur in drainages to Hogcamp Branch and Davis Creek. There are existing pre-SMCRA coal mining related land and water disturbances within the proposed permit area. Davis Creek is classified as Exceptional Tennessee Waters as habitat for the Blackside Dace, *Phoxinus cumberlandensis*, which is federally and state listed as threatened. The affected waters are located in the Cumberland Mountain Thrust Block ecoregion.

**PROJECT DESCRIPTION:** Davis Creek Energy, LLC, has applied for an Individual Aquatic Resource Alteration Permit for the alteration of an unnamed tributary to Davis Creek and isolated on-bench wetlands due to pre-law mining related activities. The proposed mitigation is to achieve no net loss of resource value resulting in “*de minimis*” impacts to Exceptional Tennessee Waters. The applicant has provided an alternative analysis with social and economic considerations for the entire project NPDES and ARAP.

The applicant proposes the alteration of approximately 285 linear feet of an unnamed tributary to Davis Creek. This affected stream reach has been previously altered by pre-SMCRA mining related activities. The applicant proposes the restoration of 742 linear feet of stream on-site mitigation to achieve no net loss of resource value for the proposed stream alterations.

Additionally, the applicant proposes to convert treatment ponds during reclamation to approximately 10.1 acres of wetlands to mitigate for approximately 0.5 acre of isolated on-bench wetlands and achieve no net loss of resource value.

**USGS TOPOGRAPHIC QUADRANGLE:** LaFollette, TN (136 NE)

**Permit Coordinator:** Dave Turner  
TN DEPT OF ENVIRONMENT & CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
MINING SECTION  
3711 MIDDLEBROOK PIKE  
KNOXVILLE, TN 37921-6538

No decision has been made whether to issue or deny this permit. The purpose of this notice is to inform interested parties of this permit application and to ask for comments and information necessary to determine possible impacts to water quality. Persons wishing to comment on the proposal are invited to submit written comments to the department. Written comments must be received within **thirty days of the date that this notice is posted**. Comments will become part of the public record and will be considered in the final decision. The applicant's name and permit number should be referenced.

Interested persons may also request in writing to the attention of the **permit coordinator** that the department hold a public hearing on this application. The request must be filed within the comment period, indicate the interest of the person requesting it, the reasons that the hearing is warranted, and the water quality issues being raised. When there is sufficient public interest in water quality issues, the department will hold a public hearing.

The permit application, supporting documentation including detailed plans and maps, and related comments are available for review and/or copying by appointment during business hours at the following address:

ATTN: Tina E. Jones (865-594-6035)  
TN DEPT OF ENVIRONMENT & CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
MINING SECTION  
3711 MIDDLEBROOK PIKE  
KNOXVILLE, TN 37921-6538

In deciding whether to issue or deny a permit, the department will consider all comments of record and the requirements of applicable federal and state laws.