



**Tennessee Department of Environment and Conservation
Division of Water Pollution Control
Mining Section
3711 Middlebrook Pike
Knoxville, Tennessee 37921-6538
Phone (865) 594-6035 Fax (865) 594-6105**

June 18, 2009

NOTICE OF DETERMINATION

ARAP applications/401 Certifications and NPDES permit applications for discharges of treated wastewater and stormwater into unnamed tributaries of White Oak Creek, Tackett Creek, Wolf Creek, Davis Creek, and Hogcamp Branch in Campbell County from the following applicants.

**DRC Coal, LLC
7692 South Highway 25 W
Williamsburg, KY 40769**

**Davis Creek Energy, LLC
207 E. North 1st Street, Suite T
Seneca, SC 29678**

**White Oak Surface Mine
ARAP Permit NR08MS.024
NPDES Permit TN0069167 (Draft)
Campbell County**

**Mine Area 1
ARAP Permit NR08MS.031
NPDES Permit TN0069248 (Draft)
Campbell County**

Dear Concerned Citizen:

Thank you for participating in the public comment process for these applications for ARAPs/401 Certifications and NPDES permits. Twelve (12) people attended the hearing. This group included landowners, consultants, members of United Mountain Defense (UMD) and Save Our Cumberland Mountains (SOCM) organizations, and other concerned citizens. The hearing was held in the Indoor Pavilion at Cove Lake State Park on March 31, 2009.

The applicants for these permits are DRC Coal, LLC, White Oak Surface Mine and Davis Creek Energy, LLC, Mine Area 1. White Oak Surface Mine consists of 837 acres. Mine Area 1 includes 458.9 acres. The location of these mining operations is the White Oak area near the community of Duff.

The ARAP applications cover stream alteration activities in streams that have been impacted by pre-law (SMCRA) mining operations. The companies propose mitigation for these activities to achieve no net loss of resource values in the project areas. The ARAP for DRC Coal, LLC, proposes stream restoration and enhancement activities in unnamed tributaries of Tackett Creek. The ARAP for Davis Creek Energy, LLC, proposes stream alterations to Wolf Branch, unnamed tributaries to Wolf Branch and Hogcamp Branch. The company proposes reconstruction of stream reaches that were eliminated by pre-law mining activity.

DRC Coal, LLC, proposes new discharges of treated wastewater and stormwater into unnamed tributaries of White Oak Creek and into unnamed tributaries of Tackett Creek. White Oak Creek is listed as

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impaired on the state's *EPA Approved Final Version Year 2008 303(d) List*. A listed cause of impairment is siltation. Treatment ponds were approved by the U. S. Office of Surface Mining (OSM) to treat discharges for sediment. White Oak Creek and Tackett Creek are not listed as Exceptional Tennessee Waters (ETWs).

Davis Creek Energy, LLC, proposes new discharges of treated wastewater and stormwater into Hogcamp Branch, unnamed tributaries of Hogcamp Branch and Wolf Branch, and an unnamed tributary of Davis Creek. These streams are not listed as impaired. Davis Creek is listed as Exceptional Tennessee Waters (ETWs) because of the presence of a federally listed threatened fish species, the Blackside Dace. Based on available information, the Division determined that the proposed discharge to Davis Creek will not result in degradation. (See Notice of Determination of No Degradation issued on February 20, 2009.)

Both applicants, DRC Coal, LLC, and Davis Creek Energy, LLC, completed the required alternative analysis and economic-social considerations in support of the proposed discharge activity. The proposed mining operation and activities are located in the Clear Fork of the Cumberland River watershed. The Division has approved a Total Maximum Daily Load (TMDL) for siltation in this watershed. The proposed new discharges from these mining facilities will be within the margin of safety for the approved TMDL for the watershed.

The applicants posted signs at the facility entrances notifying the public of the proposed stream alteration and discharge activities. The public notice for the ARAP applications/401 Certifications was published in the *LaFollette Press*, a weekly publication in the area of the proposed activities.

Introductory remarks by the hearing officer included a brief summary of the proposed projects and a summary of the hearing procedure and decision process. Seven (7) people testified at the hearing. The comment period was extended until April 13, 2009.

Subjects included in the comments and the Division's responses follow:

1) Environmental Impact Statements

An Environmental Impact Statement (EIS) should be completed to assess the full impacts of coal mining in the state of Tennessee.

A request by Governor Phil Bredesen for an updated EIS for coal mining in Tennessee was denied by the federal Office of Surface Mining (OSM) in 2006.

An Environmental Impact Statement (EIS) should be conducted for the proposed projects. A comprehensive study and assessment is needed to properly evaluate the impacts of the projects on the watershed, hydrologic cycle, aquatic and wildlife resources, timber and plant species, geology, recreation, and impact on the area ecosystem.

Permit issuance by NPDES approved states are specifically excluded as actions requiring EIS consideration. *40CFR 122.29 (c) (ii)*. Tennessee is an approved state for NPDES permit issuance. The ARAP/401 Certification is a state issued permit that is not subject to federal or National Environmental Policy Act (NEPA) requirements.

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We are not required to prepare an EIS for the requested NPDES permits. However, impacts on receiving streams and associated watershed areas for new discharges and modifications to existing discharges are assessed in accordance with the requirements of Tennessee's Anti-Degradation Statement and Policy. See TDEC *Rule 1200-4-3-.03*. The assessment includes a review of data sources to determine if federal or state listed threatened or endangered species of aquatic life are present in the area of proposed operations.

The public participation and comment process for these applications also involved review by the state Division of Natural Resources, and by other state and federal resource agencies, including the United States Fish and Wildlife Service (USFWS) and Tennessee Wildlife Resources Agency (TWRA).

2) Public Participation Process

The hearing should be conducted at a more convenient and accessible location to allow the affected landowners and citizens of the White Oak area the opportunity to participate in the decision making process for these permit applications. Citizens and landowners were not properly notified of the proposed projects and activities involving these mining operations.

Public notice for the hearing followed the requirements of *Rules 1200-4-5-.06 (9)* and *1200-4-5-.06(13)*, including time, place, nature or purpose of the hearing, time to comment, and opportunity to comment on each application. Please note that written comments were accepted for an extended period following the public hearing.

The Division issued public notices on the applications for the NPDES permit and ARAPs. The public hearing notice was published in the *LaFollette Press*. The applicants notified the public of the proposed activities by posting a sign at the facility entrance and publishing notice of the ARAP applications in the *LaFollette Press*.

Commenter asked what is the permit appeal process for citizens? How can citizens slow the process and change the decisions?

The right of citizens to appeal permit actions is found in the *Tennessee Water Quality Control Act of 1977, TCA 69-3-105 (i)*. Citizens' participation in the permit decision process is discussed above.

Tackett Creek should be included on the state's 303(d) list because of impacts from extensive mining activity.

The basis for 303(d) listing of any stream involves whether the state's water quality standards are not being achieved. The Division previously conducted a stream assessment of Tackett Creek in accordance with the state of Tennessee Anti-Degradation Policy. The survey of all available information indicated that Tackett Creek and unnamed tributaries to Tackett Creek are meeting their classified uses and the conditions described in TDEC *Rule 1200-4-3-.06 (3)* for "available conditions." The proposed discharges to Tackett Creek will be within the margin of safety as specified in the TMDL approved for the Clear Fork watershed.

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How do citizens participate in the 303(d) classification process? How can citizens request or seek reclassification of streams? What are the criteria and standards for classification? What are the rules and regulations for the classification system? How can citizens find the list of classified streams and the methods and processes used for classification?

The compilation of streams for 303(d) listing is a continuous process that is officially updated every two years. Citizens have the opportunity to formally participate in this process during the two year cycle. A public notice and draft 303(d) list are published in January of even numbered years. Citizens are able to provide verbal comments at a series of public meetings. A public meeting, for example, was held in Knoxville on March 4, 2008, on the draft 303(d) list. Additionally, the notice states that department staff are available to meet with groups and individuals to discuss specific listings. After the comment period, a response is prepared and a final 303(d) list is prepared for EPA approval. The final 303(d) list for this two year cycle was approved in June, 2008. The process will be repeated in 2010.

The Division uses all data that is readily available for the assessment of Tennessee streams and lakes in the development of a draft 303(d) list. This includes data from TDEC, citizens, and other state and federal agencies. These agencies include TVA, U. S. Army Corps of Engineers, the U. S. Geological Survey, and the U. S. Fish and Wildlife Service. The Division uses EPA's assessment categories in development of the 303(d) list. All submitted data is considered in the assessment process.

The state's 303(d) list is available electronically at <http://www.tn.gov/environment/wpc/publications>. Assistance may also be obtained by contacting TDEC, Knoxville Environmental Field Office (EFO), 3711 Middlebrook Pike, Knoxville, Tennessee 37921, telephone (865) 594-6035

3) Water Quality, Drainage Control, and Monitoring

Beaver activity has caused drainage problems on White Oak Creek and landowners are concerned that the proposed mining operations would increase water flow and create flooding and drainage problems downstream. How will the additional water be controlled and how will downstream drainage problems be contained and the stream uses protected? Are any chemicals used in the sediment ponds?

Two new sediment control basins are proposed by DRC Coal Company, LLC, White Oak Surface Mine. Discharges from the treatment ponds must meet established guidelines for the wastewater parameters established in 40 CFR 434.25 for coal mining facilities. These guidelines establish effluent limitations for Total Iron, Manganese, Total Suspended Solids, and pH. The limitation for Settleable Solids is based on the Best Professional Judgment (BPJ) of the Division. Discharges of treated wastewater and stormwater meeting these permit limits are protective of the stream uses.

Core sampling and analysis of an inventory of heavy metals associated with the proposed coal mining activity should be conducted.

The SMCRA permit requires geologic descriptions of the mining area, including identification of acid or toxic forming strata, overburden analysis, and analysis of samples collected from test borings, drill cores, and rock outcrops in the permit area.

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The impacts of Iron and Manganese should be analyzed. All heavy metals should be monitored in the discharges from these mine sites.

The promulgated effluent limits for coal mining operations include Iron and Manganese as parameters to be measured. 40 CFR 434. Applications for new or expanded coal mining facilities are required to complete and submit Part V. C. Metals, Cyanide, and Total Phenols of EPA Form 2C. This analysis is to be conducted no later than two years after the commencement of discharge. The completion of this information provides data for a determination of whether additional pollutants or a change in effluent limitations and/or permit conditions is necessary to protect the classified uses of the receiving streams. See Special Conditions of NPDES permit, Part 1A and permit rationales.

The Tennessee legislature is considering a bill to regulate selenium. This wastewater parameter should be monitored and tested at the proposed mining operations.

Selenium is one of the metals listed in Part V. C. of EPA Form 2C that is required to be monitored and tested. See above.

How is water tested at the mine sites? What are the specifications? What is the process for certification? How do citizens know if the samples are correct and protect water?

Monitoring requirements are established in the NPDES permit. Monitoring frequency must be representative of the wastewater discharged from the facility. Test procedures for the analysis of pollutants shall conform to regulations published pursuant to Section 304(h) of the Federal Clean Water Act of 1977. All pollutant parameters shall be determined according to methods prescribed in 40 CFR, Part 136, and pursuant to Section 304 (h) of the Federal Clean Water Act of 1977.

Discharge Monitoring Reports must be signed and certified by a principal corporate officer of at least the level of vice-president, a general partner or proprietor, or his duly authorized representative. Knowingly making any false statement on any report required by the NPDES permit may result in the imposition of criminal penalties as provided by the Federal Clean Water Act of 1977 and The Tennessee Water Quality Control Act of 1977.

Monitoring reports are available for public inspection at the Division of Water Pollution Control, Mining Section, Knoxville Environmental Field Office, Knoxville, Tennessee. Our files are available for public inspection during normal visiting hours. You may e-mail Tina.E.Jones@tn.gov or call (865) 594-5616 to schedule an appointment for the review(s).

We support TDEC in its effort to protect water quality. However, we have concerns and reservations regarding remining and the consequences of this activity on water quality. More study and evaluation are needed and we ask TDEC to deny these permits.

Discharges of treated wastewater and stormwater must comply with properly limited NPDES permits for these facilities. The ARAP applications cover activities in streams previously impacted by pre-SMCRA mining activity. The companies propose mitigation that achieves no net loss of resource value. This is to be achieved by restoration and enhancement of these altered stream reaches and conversion of specific treatment ponds to wetlands acreage during reclamation.

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The Division has reviewed the plans and specifications for these permits and considered the oral and written comments regarding the applications. Our review included consultation with other state and federal agencies with jurisdiction over water quality related issues. The applicants conducted the required alternatives analysis and economic-social considerations for new or modified discharges and proposed appropriate mitigation for streams and stream reaches previously altered by pre-law mining. Discharges will be within the margin of safety specified by the TMDL for the Clear Fork watershed area. Based on the review, the Division has determined that the ARAPs/401 Certifications and NPDES permits are protective of water quality and can be issued.



Paul
Paul E. Davis, Director
Division of Water Quality Control

4/18/2009
Date