STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES – MINING SECTION
3711 MIDDLEBROOK PIKE
KNOXVILLE, TN 37921-6538
PHONE (865) 594-6035 STATEWIDE 1-888-891-8332 FAX (865) 594-6105

March 6, 2020

NOTICE OF DETERMINATION

Applications for a new National Pollutant Discharge Elimination System (NPDES) permit and a new Aquatic Resource Alteration Permit (ARAP) for the Davis Creek Area 6 surface coal mine in Cotula, Tennessee.

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

Area 6
Westbourne Lane
Cotula, TN 37729
NPDES Permit TN0070408
SMCRA Permit 3333
ARAP Permit NR19MS.001
Campbell County

A public hearing was held on January 14, 2020, at Cove Lake State Park in Caryville, Tennessee to consider public comments on the applications for the proposed new NPDES and ARAP permits. The hearing began at 7:30 p.m. EST and lasted until all individuals present wishing to provide oral comments for the record were heard.

The public hearing was preceded by an informal technical session by Mining Section staff with the public from 6:00-7:00 p.m. EST for discussion and review of the permit applications and plans.

The Area 6 surface mine proposes to discharge treated mine wastewater and storm water from 22 outfalls into unnamed tributaries which flow to Granny Branch, Hogcamp Branch and Davis Creek located in Campbell County, Tennessee.

According to the Division's most current information, Hogcamp Branch and Davis Creek do not fully support their designated uses and are listed as impaired in the EPA Approved Final Version Year 2018 303(d) List and the proposed 2020 303(d) List. Hogcamp Branch is listed as impaired for siltation/sedimentation. Davis Creek is listed as impaired for Escherichia coli. Granny Branch, due to this tributary's small size (0.52 square miles), has not been assessed for biological integrity and is presumed to have the same use attainment as Hogcamp Branch to which it is a tributary. The receiving streams are part of the approved Total Maximum Daily Load (TMDL) for the Clear Fork of the Cumberland River, March 12, 2009. All discharges from the proposed facility must comply with the Waste Load Allocation (WLA) prescribed in the TMDL. The annual waste load allocation for the 204.6 acre site is 21,662.8 pounds per year or approximately 105.9 pounds per acre per year. This is significantly less than the TMDL target load for the watershed which is 276.1 pounds of TSS per acre per year. Compliance with

the TMDL Waste Load Allocation will result in a reduction of sediment loading below existing conditions in the watershed from the site during mining. Therefore, discharges from the facility shall not be considered measureable degradation. Escherichia coli is not a pollutant that is an expected component of the Area 6 proposed discharge. The receiving streams have available parameters for all other pollutants of concern.

Additionally, the receiving streams are not identified or designated as Exceptional Tennessee Waters (ETW) or Outstanding National Resource Waters (ONRW). According to 0400-40-03.06(2)(a) and (3)(a), the Division has determined that this activity will not result in measurable degradation for parameters that are unavailable (TSS-total suspended solids) and will only result in de minimis degradation for parameters that are available in the receiving streams.

Davis Creek Energy's proposed activities include the alteration and rehabilitation of 1316 linear feet of state jurisdictional streams that have been previously altered by historical mining. Additionally, 0.745 acres of wetlands will be dredged or filled and mitigated by the conversion of the treatment basins to wetlands, post-mining, to achieve no net loss of resource value.

Introductory remarks by the hearing officer provided a brief summary of the proposed permitting actions, the purpose of the hearing, a brief description of the hearing procedure and the decision process.

Approximately twenty-six (26) individuals attended the public hearing. Those present included concerned citizens and representatives of other federal and state agencies. Ten (10) individuals offered testimony during the hearing. Copies of written comments were also submitted. Public comments continued to be accepted until the end of the comment period, January 24, 2020.

All comments, concerns, emails, etc. received by the Division during the comment period are part of the hearing record and were considered by the Division in making the permit decision.

Comments and Responses

Please note that a number of comments (both written and oral) are not included in this document because they: 1) were not directly related to the proposed project, 2) state a belief, opinion, or request that did not specifically ask for a response, 3) require a response without a direct relationship to the project, and/or 4) requested information or involved matters beyond the regulatory authority of the Division.

Subjects included in the comments and the Division's response follow: (Several of the public comments representing similar concerns and issues are grouped together under specific categories.)

A. Water Quality and NPDES Permit Action Comments

A-1) Commenter(s) indicated that the draft permit would allow degradation of waters with available parameters in violation of Tennessee's antidegradation statement.

Response: The commenter is correct in stating that available parameters exist in the receiving waters for many water quality parameters. A commenter noted while citing Rule 0400-04-03-.06(3)(a) "new or increased discharges that would cause degradation above the level of de minimis for any available parameter for any criterion, or a new domestic wastewater discharge, will only be authorized if the applicant has demonstrated to the Department that there are no practicable alternatives to prevent or lessen degradation associated with the proposed activity". The draft permit terms and conditions do not authorize degradation of any available parameter above the level of de minimis and therefore comply fully with Tennessee's Antidegradation Statement.

The receiving streams that are part of the approved Total Maximum Daily Load (TMDL) for the Clear Fork of the Cumberland River, March 12, 2009, including streams with available parameters for total suspended solids, such as Davis Creek, for the discharges from the proposed facility must comply with the Waste Load Allocation (WLA) prescribed in the TMDL. The WLA for the proposed activity is 21,662.8 pounds per year or approximately 105.9 pounds per acre per year. This is less than the watershed WLA target which is 276.1 pounds of TSS per acre per year. Compliance with the TMDL Waste Load Allocation will result in a reduction of sediment loading below existing conditions in the watershed from the site during mining. Therefore, discharges from the facility will result in no measurable degradation and be protective of waters with available parameters and unavailable parameters.

A-2) Commenter(s) indicated that the draft permit would allow degradation of waters with unavailable parameters in violation of Tennessee's antidegradation statement. Commenter indicated that the waters should be considered as having unavailable conditions for conductivity according to available scientific literature.

Response: As noted in the draft permit Hogcamp Branch and Granny Branch (Division determination) have unavailable parameters for sediment/siltation, and Davis Creek has unavailable parameters for Escherichia coli. Compliance with the TMDL's waste load allocation will actually result in a reduction of sediment loading from the affected area and prevent measureable degradation in the receiving stream. The proposed activity should not have Escherichia coli as a component of its effluent discharges, and therefore, this is not a parameter authorized for discharge by the NPDES permit. The remining and reclamation activities proposed should be protective of the existing biological integrity of the streams

The Division is also aware of the scientific literature on conductivity that the commenter cited as well as the EPA methodology for establishing a conductivity benchmark. In previous review of the documents cited by the commenter the Division has rejected the scientific validity of establishing a numeric effluent limit for conductivity in Tennessee as a pollutant. Conductivity is the measure of the ability of an aqueous solution to carry an electrical current, and thus the measure has no inherent toxicity. This is demonstrated in the document EPA/600/R-10/023F, March 2011, where an extirpation value for the aquatic beetle Oulimnius was calculated at >2791µS in West Virginia and 320µS for Kentucky. For comparison drinking water in the United States generally runs from 50 to 1500µS.

While reviewing the EPA benchmark study, the Division's sampling study found that sampling bias with the sampling methodology influenced whether "conductivity sensitive organisms" were collected. For instance, species such as Lepidostoma and Pycnopsyche were collected using qualitative multi-habitat sampling methods but were often absent from quantitative single habitat samples within the same stream reach sampled. Also, as the commenter noted there is a high degree of variation in conductivity between one stream reach and another stream reach. Additionally, significant variation can exist in conductivity from one sample event to the next within the same stream reach; however, the Division still believes that conductivity is an indicator parameter and valuable monitoring tool. Therefore, conductivity is required as a reporting limit on coal mine discharges. Discharges with a trend of increasing conductivity in the effluent can alert the permittee and Division to potential issues within the treatment system and lead to the identification and elimination of pollutants prior to an adverse effect on an instream water quality standard.

A-3) Commenter(s) indicated the reasonable potential analysis in the draft permit is insufficient. Concerns included lack of representative data, cumulative impacts and no reasonable potential analysis for iron, manganese and aluminum. Concern was expressed over temperature and requested a limit. Commenter felt that the selenium reasonable potential analysis was improperly modeled and that a numeric limit should be incorporated into the permit.

Response: As the proposed activity is a new surface mine there is no existing effluent data for which to conduct a reasonable potential analysis. Federal regulations found at 40 CFR Part 122.21(k)(5)(vi) require the submittal of applicable parameters on form 2C for the reasonable potential analysis within 24 months of the first discharge from the facility. There are currently two NPDES permits in the Hogcamp Branch and Davis Creek watershed. Davis Creek Energy Area 1 is in reclamation with no wastewater treatment structures and only a storm water monitoring point remaining. At Davis Creek Energy Area 5 no surface mining has occurred, and no wastewater treatment structures are constructed. The site has never discharged, and thus no reasonable potential analysis exists from this mine. Davis Creek Energy Area 4 has been reclaimed, and the NPDES permit has been terminated; however, Davis Creek Energy Area 4 is adjacent to Area 6 and has the most recent set of data to use as a surrogate and is the most appropriate site with a reasonable potential analysis to use as a surrogate until the ponds are constructed for Area 6.

Cumulative impacts were considered for Area 6, specifically for the primary pollutant of concern for surface mines which is sediment. Cumulative impacts are precisely what Total Daily Maximum Load (TMDL) models consider when developing a waste load allocation, and when implemented properly, reduce the loading of the pollutant of concern within the watershed. Additionally, iron and manganese have New Source Performance Standards effluent limitations in the permit for which any discharge must comply. No additional reasonable potential analysis is required for these parameters because the assumption is that any coal facility has the reasonable potential to violate a water quality standard for iron and manganese, and the effluent limitations are promulgated accordingly. The Division has not adopted a water quality standard for aluminum, and New Source Performance Standards applicable to coal mine facilities do not establish an effluent limitation for aluminum.

The permittee requested a waiver from testing and reporting of temperature in accordance with 40 CFR Part 122.21(k)(5)(ii). The Division still requires that discharges from the facility's outfall comply with the instream narrative water quality standard for temperature.

The Division disagrees that the reasonable potential analysis on selenium was not modeled correctly. In fact, selenium was evaluated using the assumption that the receiving stream has a 7Q10 flow of 0 cfs, and therefore, the effluent is the entire stream flow with no dilution which is more stringent than the technical support document guidance; however, during the period that the application was under review and the permit was being drafted the State's Water Quality Standards (WQS) for selenium changed, lowering the criterion. Therefore, an effluent limit for selenium will be added to the NPDES permit to comply with the most current WQS.

A-4) Commenter(s) stated the draft permit fails to propose limits on sediment sufficiently stringent to protect water quality. Commenter commented that neither the table nor the footnote in the draft permit refer to the waste load allocation (WLA) for this mine, which the rationale calculates to be 21,662.8 lbs/year, based on the TMDL target load of 276.1 pounds of TSS per acre per year multiplied by the 204.6 acres of permit area. That WLA must be expressly provided in the limitations section of the permit.

Response: As addressed in the responses to *A-1* and *A-2* compliance with the TMDL's waste load allocation will actually result in a reduction of sediment loading from the affected area and prevent measureable degradation in the receiving stream. The EPA approved Total Maximum Daily Load (TMDL) for the Clear Fork of the Cumberland River, March 12, 2009 establishes a waste load allocation that reduces sediment loading below background concentrations within the watershed. The sediment leaving the permitted acreage will be reduced below the target load of the TMDL's waste load allocation of 276.2 lbs./ac./yr. to 105.9 lbs./ac./yr. at the established effluent limitations in the permit for TSS under the assumption that each outfall is continuously discharging at the monthly average of 35 mg/L; however, most if not all of the discharges will likely discharge only in response to precipitation and still must meet

the monthly average of 35 mg/L, so the actual loading should be significantly less than TMDL requirements for sediment reduction. The assumptions made for this permit under the TMDL are conservative, and the resulting reduction in pollutant loading for sediment is below background conditions. This is consistent with the State's Antidegradation Policy.

The WLA will be added as a footnote to the effluent limitations of the permit, per the commenter's request.

A-5) Commenter(s) indicated TDEC must comply with the endangered species act in issuing this permit.

Response: The Division has complied with the endangered species act during development of the draft permit. A copy of the draft permit was provided to the U.S. Fish and Wildlife Service (USFWS), and the Division has not received any USFWS comments at the close of the comment period. It should be noted that the USFWS comment referenced by the commenter is from December 7, 2012, with no context provided or specific mention of Area 6. The NPDES and ARAP applications for Area 6 were received in 2018 and 2019. Therefore, the Division believes the USFWS comment was a general comment concerning the blackside dace (*Chrosomus cumberlandensis*) and not specific to Area 6.

The blackside dace has not been collected in Granny Branch, Hogcamp Branch, the unnamed tributary of Davis Creek or their unnamed tributaries that will receive discharges from Area 6. The nearest recorded occurrence of blackside dace is 1.7 miles upstream of the confluence with the unnamed tributary of Davis Creek and a total stream distance of 2.5 miles from the closest outfall. Davis Creek flows into Hickory Creek approximately 2.4 miles downstream from the confluence of Davis Creek and Hogcamp Branch. It is approximately 7 miles downstream from the confluence of Davis Creek and Hickory Creek to the next recorded population of blackside dace (1993 translocation) in the No Business Branch Tributary of Hickory Creek. The Division believes that the permit terms and conditions are protective of fish and aquatic life.

The USFWS may, in coordination with the federal Office of Surface Mining Reclamation and Enforcement (OSMRE), require Davis Creek Energy to develop a blackside dace protection and enhancement plan (PEP) in conjunction with the SMCRA permit; however, those consultations would be ancillary to the requirements of the state's water quality permits.

A-6) Commenter(s) indicated that TDEC should require Davis Creek Energy to measure the concentration of pollutants in the coal to be mined.

Response: The Division does not require chemical analysis of the coal seam because the constituents of the coal seams are not sole indicators of the water quality that is discharged from the site. Several factors may affect the water quality including the composition of non-coal strata above and below the coal seam, the type of mining, the use of best management practices and the wastewater treatment being utilized; however, the Rich Mountain (Blue Gem) and Log Mountain (Jellico) coal seams in Campbell County are relatively low ash and low sulfur (Luther, Division of Geology Bulletin 63, 1959).

A-7) Commenter(s) indicated that the permit should require additional monitoring.

Response: The Division will require that the applicant meet the Special Condition Analysis Requirement of the NPDES permit and EPA Form 2C within 24 months of a discharge and upon renewal of the permit. As indicated in the response to *A-3* the Division believes the reasonable potential analysis and permit effluent limits are sufficient to characterize pollutant sources and protect in-stream water quality criteria. The Division will not arbitrarily require additional sampling for parameters not specified in the Special Condition Analysis Requirement. As indicated in the response to *A-3* the Division has not adopted a numeric criterion for aluminum. Aluminum is the most abundant metal in the earth's crust and assumed

to be present in the receiving streams. Aluminum toxicity varies with its bioavailability which is a function of pH, hardness and dissolved organic carbon. Division data from Hogcamp Branch on April 20, 2012, indicated that aluminum in Hogcamp Branch was 33.9 µg/L at a hardness of 333 and pH of 8.32.

A-8) Commenter(s) indicated TDEC should subject any new reasonable potential analysis to public review and comment.

Response: At the time of permit renewal the NPDES permit draft, including any new reasonable potential analysis, will be available for public review and comment. Should a reasonable potential analysis in the interim demonstrate the potential to exceed a numeric criterion that requires reopening the permit to add an effluent limitation the NPDES permit draft, including any new reasonable potential analysis, will be made available for public review and comment.

A-9) Commenter(s) requested a narrative permit condition.

Response: The Division believes that compliance with narrative water quality standards is inherent to the NPDES permit's Antidegradation Statement found in Part III, G.

B. Wetland and ARAP Permit Action Comments

B-1) Commenter(s) indicated guarantees should be in place for restoring any short and long term damage to streams and wetlands.

Response: This is the purpose of the Aquatic Resource Alteration Permit (ARAP). The ARAP authorizes the alteration of streams that have been previously disturbed by pre-SMCRA mining, exhibit seasonal flow and are not fully meeting their classified uses; however, the ARAP permits also require streams to be reconstructed in their approximate original drainages prior to pre-SMCRA mining and redirect surface flow away from pre-SMCRA benches, pits and spoils to the extent practicable.

The effected wetlands are not naturally occurring features in uplands but are incidental to the pre-SMCRA mine disturbances and formed predominately by the diversion of hydrology into the old strip pits and mine benches. The ARAP will require that the wetland features be mitigated by converting the treatment ponds to wetlands, post mining.

B-2) Commenter(s) indicated much of the area has been extensively mined and the streams impacted. Mining will only add to the destruction of waterways.

Response: The commenter is correct that many of the small tributaries have been altered by pre-SMCRA surface mining and serve as a source of the pollutants for which the receiving streams are listed as impaired; however, the landowner, in extracting the coal resource, is reconstructing stream channels that were altered by the pre-law surface mining which will serve to reduce the impacts from the previous land disturbance. The "Responsible Miners Act" requires the mining not occur within 100 feet of streams except for "streams that for operations to improve the quality of stream segments previously disturbed by mining and for activities related to and incidental to the removal of coal from its original location" Tenn. Code Ann. § 69-3-108 (f).

C. Administrative and Non-Permit Actionable Comments

C-1) Commenter(s) indicated that this project is remining of an area that was mined in the 1960's and 1970's prior to significant environmental regulation. The project has been formulated to remediate the pre-law impacts and minimize and mitigate new environmental impacts. Why does it take so long to go through the permitting process?

Response: The Division agrees that the public participation process can extend the time frame for issuance of water quality permits. The coal mine permitting process also requires review and coordination with other agencies to make certain that all regulatory requirements for coordination are met prior to permit issuance. To the extent practicable the Division does its best to meet the regulatory times frames and expedite the public participation process.

C-2) Commenter(s) indicated that while public hearings and comment periods are a good thing for affected parties within the community of the project, environmental groups and other parties outside of the immediate community use the public participation process to delay and extend the time period for issuance of a permit. This is unfair to the applicant/property owner.

Response: The Division recognizes that the hearing process and comment period can extend the time frame for permit issuance. There were several commenters present for the public hearing and informal technical session from the local community in Campbell County. These individuals also provided comments on the draft permit(s). The Division's regulation 0400-40-05-.06 is written to solicit water quality-based comments, concerns and provide public participation opportunities for all affected parties, including the applicant and the local community. While there were several individuals who attended the public hearing that do not live or reside in Campbell County and several representatives of local, state and national non-governmental organizations (NGOs) who attended the public hearing and/or submitted comments for the record there is nothing in regulation or statute that precludes these individuals or entities from participating or providing comment during the public participation process. The public participation process includes all members of the public.

C-3) Commenter(s) indicated that the Division's conservative interpretation of 0400-40-05-.06(12), "If there is a significant public interest in having a hearing, the Commissioner shall hold one in the geographical area of the proposed discharge. Instances of doubt should be resolved in favor of holding the hearing.", does not follow a reasonable set of criteria for deciding when a hearing will be held. The commenter further indicates that the Division should develop a set of criteria to reject "talking point" or "robo call" type comments from parties that are not part of the affected community for preventing undue economic hardship on the applicant.

Response: The Division recognizes that the public hearing process can slow the time frame for issuance of permits. To that effect the Division schedules a hearing as soon as it becomes apparent that there is significant public interest and, on occasion, as soon as a permit is drafted and noticed. The rule does not limit significant interest to just parties in the affected communities and establishes a criterion that "Instances of doubt should be resolved in favor of holding the hearing." Therefore, the Division must consider all requests for a public hearing in the most conservative light; however, since the NPDES permit is a water quality discharge permit the Division reserves the right to deny public hearing requests based solely on issues not related to water quality or the terms and conditions of the proposed NPDES permit. These issues may include, but are not limited to, dust, noise, blasting, mine safety, truck traffic and property devaluation.

C-4) Commenter(s) indicated that this permit would further degrade an area of Campbell County that has already suffered extensive degradation from coal mining and should not be further treated as a sacrifice zone. Strip mining for coal is manifestly incompatible with this North Cumberland Plateau ecosystem. The outstanding biological richness of the North Cumberland Plateau vastly exceeds any amount of energy obtained by burning the coal beneath. "The state government and citizen conservation groups have invested immense money and labor into securing the Cumberlands against the sad fate that has befallen much of the Southern Appalachians from coal mining, and TDEC must not do violence to this moral imperative by approving 'Davis Creek Energy Area 6.' The lush and profuse deciduous forests carpeting this landscape are a stronghold of an ecosystem that has been fragmented by roads, chopped by bulldozers, scraped by logging, and otherwise crippled throughout

most of the eastern US. No morally sane person can entertain such transmutation of a Cumberland forest into a barren, bleak moonscape with an embarrassing veneer of grasses for 'reclamation.' To liquidate over 400 acres of these forests and the abundance of life that infuses every cubic inch of soil (or 'overburden,' in the arrogant jargon of miners) is a heinous, biocidal act of violence."

Response: The Division recognizes the commenter's concerns for historical and current land disturbance activities within the Cumberland Mountain Thrust Block Ecoregion and is aware of state agencies' and citizen conservation group's efforts to conserve and manage certain public and privately held lands in the vicinity; however, the Division's regulatory authority is limited to water quality and the activities covered under the ARAP and NPDES permit processes. The Division does not issue a permit to surface mine coal, log, or develop forest roads. Additionally, the surface and mineral rights for the property of Davis Creek Area 6 are privately held and are not owned or managed by a state agency or a citizen conservation group. The Division cannot exceed its statutory authority and is required to issue a water quality discharge (NPDES) permit, provided that the applicant has provided sufficient plans and supporting information to demonstrate that it can meet the applicable effluent limitations and is protective of water quality standards in accordance with the state's regulatory requirements.

C-5) Commenter(s) indicated TDEC's deliberation cannot exclude the gross violation of the public interest, at the state, national, and global scales, entailed in the strip-mining of Campbell County for a fossil fuel whose continued burning we cannot survive. The outstanding biological richness of the North Cumberland Plateau vastly exceeds any amount of energy obtained by burning the coal beneath. Overshadowing this entire sordid discussion of coal mining is the stark reality that human survival depends upon urgently breaking this suicidal habit of burning buried carbon, sequestered over eons, in a geological flash of time. Every pound of coal extracted by Davis Creek will contribute to the exploding level of carbon dioxide in our air, now approaching 415 ppm, the highest in several million years. This proposed mine is inextricably bound to a national and global energy trajectory that entails driving that level to 500 to 600 ppm or beyond, resulting in a climate that human civilization cannot survive in any recognizable form. TDEC absolutely may not feign ignorance of the deadly physical, chemical, and biological implications of its mining permit for the habitability of our climate and hence our planet or deem such matters 'outside the scope' of the permit. The present loss of the Caribbean as a recognizable geographic place, island by island, is a direct corollary the fossil fuel project that TDEC now farcically treats as routine water-pollution applications. As the very survival of our children is at stake in whether coal burning continues, every point of public policy contact with this insidious, suicidal industry is implicated and must be determined by our climate needs. Should TDEC approve this permit, it will be adding its assent and bureaucratic contribution to a century infested with Hurricane Harveys, Marias, Dorians, and other unfathomable storms beyond our children's capacity to cope, and surely beyond their capacity to forgive you.

Response: To reiterate the Division's response to Comment C-4 the Division cannot exceed its statutory authority and is required to issue a water quality discharge (NPDES) permit, provided that applicant has provided sufficient plans and supporting information to demonstrate that it can meet applicable effluent limitations and is protective of water quality standards. Davis Creek Energy has indicated the Rich Mountain and Log Mountain coal seams being mined are specialty coals believed to be similar to the Blue Gem and Jellico Coal seams. Such specialty coals are used as a carbon source with silica and metals to make silicon metal. The silicon metal is used in the manufacturing of solar cells, microchips and steel. While the Division recognizes the commenter's climate concerns over the combustion of coal it does not believe that that the comment is relevant to the water quality permits.

C-6) Commenter(s) stated that they were opposed to the permit or that TDEC should deny the permit or don't allow any more surface mining.

Response: The permits the Division reviewed are water quality permits that authorize the discharge of treated mine wastewater or alteration and mitigation of streams and wetlands. The Division must make the decision to issue or deny a permit based on whether the applicant has submitted sufficient information to indicate that they will or will not comply with the statute and regulation governing water quality permits. The Division's permitting authority does not deny or provide a landowner the right to use or mine their property or resource. Consequently, the water quality permits are not issued or denied based on opposition or support for the project but solely on demonstration in the application and supporting plans of the ability to comply with the applicable water quality regulations and permit terms and conditions.

Decision

The Division has reviewed the plans, alternatives analysis and conducted the required antidegradation review, including the status of the receiving streams.

The Division has considered available data regarding 303(d) stream listings, Exceptional Tennessee Waters (ETW) and information concerning federal and state listed endangered or threatened aquatic species.

The Division responded to both oral and written comments contained in the hearing record. Public participation included the opportunity for review by the Environmental Protection Agency (EPA), Office of Surface Mining Reclamation and Enforcement (OSMRE), United States Army Corps Of Engineers (USACE), United States Fish and Wildlife Service (USFWS), Tennessee Wildlife Resources Agency (TWRA) and the Tennessee Historical Commission, as well as other state and local agencies and individuals who requested to be included on an email or mailing list for public notice announcements.

Based on its review of all relevant data, the Division has determined that the ARAP and NPDES permit comply with applicable statutory and regulatory requirements, are protective of water quality and can be issued.

This permit action may be appealed to the Board of Water Quality, Oil and Gas pursuant to Tenn. Code Ann. § 69-3-105(i) and Tenn. Comp. R. & Regs. 0400-40-05-.12.

Bryan W. Epperson
NPDES Program Manager
Division of Water Resources - Mining Unit

Date 3/6/2020