



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
KNOXVILLE ENVIRONMENTAL FIELD OFFICE
3711 MIDDLEBROOK PIKE
KNOXVILLE, TENNESSEE 37921-6538
PHONE (865) 594-6035 STATEWIDE 1-888-891-8332 FAX (865) 594-6105

February 18, 2021

Paul Lojek, President
Alden Resources, LLC
332 W. Cumberland Gap Parkway, Suite 100
Corbin, KY 40701

RE: Transfer of Ownership
Alden Resources, LLC
Area 6
ARAP NR19MS.001
NPDES Permit TN0070408
SMCRA Permit 3333
Campbell County

Dear Mr. Lojek:

In accordance with the provisions of The Tennessee Water Quality Control Act (Tennessee Code Annotated, Sections 69-3-101 et seq.) and Chapter 0400-40-01 of the rules of the Tennessee Division of Water Resources the enclosed permit is hereby transferred to Alden Resources, LLC. The continuance and/or reissuance of this permit are contingent upon your meeting the conditions and requirements as stated therein.

If you have any questions concerning this correspondence, contact Dan Murray at (865) 594-5555.

Sincerely,

A handwritten signature in blue ink that reads "Bryan Epperson".

for Jennifer Doda
Director
Division of Water Resources

JD:BWE:DRM

Enclosures

cc: NPDES Permit File

Email: U.S. EPA Region IV
USACE, Nashville
Mr. Mark Snyder, OSMRE
Mr. Nat Cloer, Davis Creek Energy



**ARAP Permit NR19MS.001
Transfer of Ownership**

Authorization to discharge under the
National Pollutant Discharge Elimination System

Issued By

**Tennessee Department of Environment and Conservation
Division of Water Resources
3711 Middlebrook Pike
Knoxville, Tennessee 37921-6538**

Under authority of the *Tennessee Water Quality Control Act of 1977 (T.C.A. 69-3-101 et seq.)* and pursuant to §401 of *The Clean Water Act (33 U.S.C. 1341)*

Discharger: **Alden Resources, LLC**
Area 6

is authorized to conduct alterations to waters of the state:

at a 204.6 acres facility located in **Cambell** County at latitude **36°29'33.6"**, longitude **-84°01'28.3"**

waters to be affected consist of **1316 linear feet of stream and 0.745 acres of wetland**

within the following subwatersheds identified as: **Unnamed tributaries to Hogcamp Branch and Granny Branch**

in accordance with monitoring requirements and other conditions set forth herein.

This permit shall become effective on: **April 1, 2020**

This permit shall expire on: **March 31, 2025**

Transfer date: **February 18, 2021**

A handwritten signature in blue ink that reads "Bryan Epperson". The signature is written in a cursive style and is positioned above a horizontal line.

for Jennifer Dodd
Director
Division of Water Resources

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RATIONALE

RATIONALE.....R-1

Part I

A. AQUATIC RESOURCE ALTERATION PERMIT REQUIREMENTS

During the period beginning with the effective date of this permit and lasting through the expiration date of this permit, the permittee is authorized to conduct the alterations to state jurisdictional waters associated with the mining and related facilities indicated on the approved area maps. This permit covers stream and wetland alterations originating within the National Pollutant Discharge Elimination System (NPDES) and Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) permitted areas and limited to only those indicated in the approved plans.

1. Special Conditions:

- a. All stream rehabilitation activities (including the placement of all aquatic habitat structures) shall begin contemporaneously with the mine reclamation activities. Each stream shall be reconstructed to the specifications in the approved plans and this permit.
- b. The applicant must provide monitoring of the reconstructed streams using a methodology with sufficient sensitivity to demonstrate an improvement in any one or more of the physical, chemical or biological characteristics of each affected stream reach in comparison to the current existing condition prior to the new alterations.
- c. Minor modifications to the approved plans necessary to accommodate site conditions may be authorized provided the changes do not result in new or expanded alterations to waters, or additional dredge or fill of waters. **The applicant shall notify the Division prior to any modification of the approved plans necessary to accommodate site conditions.** Such modifications shall not be implemented until the Division has reviewed the changes to determine that they are consistent with the activities authorized in the permit or that additional permit action or public notice is required.
- d. Measures in the stream or riparian zones that, in consultation with the appropriate federal or state resource agencies [e.g. Tennessee Wildlife Resources Agency (TWRA), Division of Natural Areas (DNA), U. S. Fish and Wildlife Service (USFWS, etc.)], are deemed appropriate for the protection of threatened or endangered species or the enhancement of the habitat for these species are authorized.
- e. Sediment and erosion controls (Best Management Practices) must be in place prior to commencing and maintained during construction activities.

2. General Conditions:

- a. It is the responsibility of the applicant to convey all terms and conditions of this permit to all contractors. A copy of this permit, approved plans and any other documentation pertinent to the activities authorized by this permit shall be maintained on site at all times during periods of construction activity.
- b. Work shall not commence until the applicant has received the federal §404 permit from the U. S. Army Corps of Engineers, a §26a permit from the Tennessee Valley Authority

- or authorization under a Tennessee NPDES Storm Water Construction Permit, where necessary. The applicant is responsible for obtaining these permits.
- c. The work shall be accomplished in conformance with the accepted plans, specifications, data and other information submitted in support of the application and the limitations, requirements and conditions set forth herein.
 - d. Streambeds shall not be used as transportation routes for construction equipment. Temporary stream crossings shall be limited to one point in the construction area, and erosion prevention and sediment control (EPSC) measures shall be utilized where stream banks are disturbed.
 - e. Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the state. All spills must be reported to the appropriate emergency management agency, and measures shall be taken immediately to prevent the pollution of waters of the state, including groundwater, should a spill occur.
 - f. Temporary or permanent soil stabilization shall be accomplished after final grading or other earth work. Permanent stabilization with perennial vegetation or other permanently stable, non-eroding surface shall replace any temporary measures as soon as practicable. Vegetative species must be on an approved native species planting list for the geographic region (i.e. *Landscaping with Natives*; http://www.tneppc.org/pages/landscaping#native_plants).
 - g. All work shall be carried out in such a manner as will prevent violations of water quality criteria as stated in *Rule 0400-40-03-.03 of the Rules of the Tennessee Department of Environment and Conservation*. This includes, but is not limited to, the prevention of any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of waters of the state for any of the uses designated by *Rule 0400-40-04*. These uses include fish and aquatic life (including trout streams and naturally reproducing trout streams), livestock watering and wildlife, recreation, irrigation, industrial water supply, domestic water supply, and navigation.
 - h. Impacts to waters of the state other than those specifically addressed in the plans and this permit are prohibited. All streams, springs and wetlands shall be fully protected prior, during and after construction until the area is stabilized. Any questions, problems or concerns that arise regarding any stream, spring or wetland either before or during construction shall be addressed to the Division of Water Resources – Mining Section at the Knoxville Environmental Field Office (865-594-6035).
 - i. Adverse impacts to formally listed state or federal threatened or endangered species or their critical habitat is prohibited.
 - j. This permit does not authorize adverse impacts to cultural, historical or archeological features or sites.

B. MITIGATION AND MONITORING REQUIREMENTS

1. Required Mitigation Activities

- a. The proposed stream rehabilitation activities are considered improvements of the existing conditions (pre-SMCRA mining alteration) in the affected streams with no functional loss. Therefore, no additional compensatory mitigation is required for the

proposed activities. Rehabilitation shall occur in the manner specified in the approved plans to reconstruct stream channels for the features indicated in the approved plans. Construction of the rehabilitated stream channels shall be completed within 30 days of the completion of backfill and grading.

- b. The 0.745 acres wetlands to be affected by the proposed mining are incidental to pre-SMCRA mining related activities. Due to the location and surface disturbance conditions leading to the formation of these wetland features they are considered of low resource value. Therefore, compensatory mitigation shall occur on site and by the conversion of bench ponds, 2.98 acres, to wetlands post mining. The spillways of the ponds being converted as wetland mitigation shall be lowered within 30 days of the Division authorizing the ponds' removal and prior to phase III bond release of the surface mining permit.

2. Required Monitoring Activities

- a. The permittee shall monitor the reconstructed stream reaches to demonstrate a functional lift prior to termination of the permit. The performance goals (HGM or SQT) shall demonstrate an improvement in any one or more of the physical, chemical or biological characteristics of each affected stream reach in comparison to the current existing condition prior to the new mining activity.
- b. The permittee shall conduct an annual vegetative survey of the compensatory wetland mitigation as follows:
 - i. A Rapid Test for Hydrophytic Vegetation in each mitigation wetland. All dominant species are OBL or FACW, or a combination of the two, based on visual assessment. Record only the dominants on the data form. If the plant community passes the rapid test, then the vegetation is hydrophytic.
 - ii. If the wetland does not pass the Rapid Test, then a Dominance Test (The "50/20 rule") must be conducted. The dominance test identifies hydrophytic plant species as OBL, FACW, or FAC. Plus (+) and minus (-) modifiers are not used for the hydrophytic vegetation indicators. A feature may be a wetland when the dominant species are the most abundant plant species that individually or together account for more than 50 percent of the total coverage of vegetation, plus any additional species that, by itself, comprise at least 20 percent of the total.

When two consecutive annual reports demonstrate that the wetland mitigation features meet either the Rapid Test or the Dominance test for two consecutive years the permittee may request termination of wetland monitoring.

- c. A **Reporting Checklist** will be provided with the Aquatic Resource Alteration Permit (ARAP). This checklist shall be completed annually to document development of the alterations and subsequent mitigation. A completed copy with supporting photographs is to be provided with the annual monitoring report.
- d. All monitoring shall include the results from any ecological performance standards required under an associated United States Army Corps of Engineers (USACE) permit. This information shall be provided to the Division within 30 days of submittal to the USACE.

- e. A copy of any USACE Compliance Certification issued shall be provided to the Division on completion of the project.

3. Submission of Monitoring Results

- a. The permittee shall submit monitoring information on an annual basis for the term of the permit or until mitigation performance goals have been met. If mitigation performance goals are not met prior to the term of the permit then the applicant shall apply for a renewal at least 90 days prior to the permit expiration date.
- b. An electronic copy of monitoring reports and supporting information shall be provided to the Division of Water Resources-Mining Section at TDEC.Mining@TN.gov or on compact disk to the Division of Water Resources-Mining Section, 3711 Middlebrook Pike, Knoxville, Tennessee 37921.
- c. Copies shall also be provided to the appropriate Division of Water Resources Environmental Field Office and the U.S. Army Corps of Engineers-Nashville District Office, which is located at 3701 Bell Road, Nashville, Tennessee 37214.
- d. The annual monitoring report shall be due by March 1 following each monitoring year. The first Monitoring report is due March 1, 2021.

PART II

A. GENERAL PROVISIONS

1. Duty to Reapply

Permittee is not authorized to conduct alterations to state jurisdictional waters after the expiration date of this permit. In order to receive authorization to discharge fill or otherwise alter waters beyond the expiration date, the permittee shall submit such information and forms as are required to the Director no later than 90 days prior to the expiration date.

2. Right of Entry

The permittee shall allow the Director, the Regional Administrator of the U.S. Environmental Protection Agency, or their authorized representatives, upon the presentation of credentials to:

- a. Enter upon the permittee's premises where an effluent source is located or where records are required to be kept under the terms and conditions of this permit, and copy these records;
- b. Inspect any monitoring equipment or method or any collection, treatment, pollution management, or discharge facilities required under this permit.

3. Availability of Reports

Except for data determined to be confidential under *Section 308 of The Federal Clean Water Act of 1977*, as amended, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the Division of Water Resources.

4. Proper Operation and Maintenance

Proper operation and maintenance shall be implemented at this site to control and minimize pollutants from entering jurisdictional waters. The permittee shall visually inspect the ARAP area BMPs or other treatment devices established to control storm water discharges associated with the alterations.

5. Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal right, nor any infringement of federal, state, or local laws or regulations.

6. Severability

The provisions of this permit are severable. If any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, then the application of such provision to other circumstances and to the remainder of this permit shall not be affected thereby.

7. Other Information

If the permittee becomes aware that he failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application, or in a report to the Director, then the permittee shall promptly submit such facts or information.

8. Best Management Practices (BMPs)

The permittee shall utilize Best Management Practices to prevent or minimize erosion and the contribution of suspended solids and sediment to surface waters and/or adjacent properties. Such practice(s) shall be implemented to reduce the impacts caused by disturbances created by the installation of culverts, the construction of haulroads, access roads, spoil storage, and stockpile areas, and other related activities.

Best Management Practices (BMPs) include, but are not limited to, rapid grading, mulching, and revegetation of disturbed areas, straw bales, sediment traps and swells, vegetative buffer zones, erosion control structures, and rock check dams. BMPs are used in conjunction with effluent limitation guidelines as supplemental or auxiliary erosion

control measures and are not to be considered as substitutes for monitoring requirements of point source discharges.

Additional information regarding acceptable practices may be found in the **Tennessee Erosion and Sediment Control Handbook**, most recent revision, which is available from the Division.

B. CHANGES AFFECTING THE PERMIT

1. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned changes that will result in change of the physical characteristics, additions or deletions of the activities authorized in the permit.

2. Transfer of Ownership

Individual permits are not transferable to any person except after notice to the commissioner, as specified below.

- a. The permittee notifies the Commissioner of the proposed transfer at least thirty (30) days in advance of the proposed transfer date;
- b. The notice includes a written agreement between the existing and new permittee containing a specified date for transfer of the permit responsibility, coverage, and liability between them;
- c. The permittee must provide the following information to the commissioner in their formal notice of intent to transfer ownership:
 - (1) The permit number of the subject permit;
 - (2) The effective date of the proposed transfer;
 - (3) The name and address of the transferor;
 - (4) The name and address of the transferee;
 - (5) The names of the responsible parties for both the transferor and transferee;
 - (6) A statement that the transferee assumes responsibility for the subject permit;
 - (7) A statement that the transferor relinquishes responsibility for the subject permit;
 - (8) The signatures of the responsible parties for both the transferor and transferee pursuant to the signatory requirements of this part; and
 - (9) A statement regarding any proposed modifications to the facility, its operations, or any other changes, which might affect the permit, limits and conditions contained in the permit.

3. Change of Mailing Address

The permittee shall promptly provide to the Director written notice of any change of mailing address. In the absence of such notice, the original address of the permittee will be assumed to be correct.

C. NON-COMPLIANCE

1. Effect of Non-Compliance

All alterations to waters shall be consistent with the terms and conditions of this permit. Any permit non-compliance constitutes a violation of applicable state and federal laws and is grounds for enforcement action, permit termination, permit modification, or denial of permit reissuance.

2. Reporting of Non-Compliance

a. 24-Hour Reporting

In the case of any non-compliance which could cause a threat to the public drinking water supplies, or any other discharge which could constitute a threat to human health or the environment, a required notice of non-compliance shall be provided to the Division of Water Resources within twenty-four (24) hours from the time the permittee becomes aware of the circumstances.

Telephone No. (865) 594-6035

Fax No. (865) 594-6105

Email: TDEC.Mining@TN.gov

Additionally, written submission shall be provided within five (5) days of the time the permittee becomes aware of the circumstances unless the Director on a case-by-case basis waives this requirement. The permittee shall provide the Director with the following information:

- (1) A description of the cause of non-compliance;
- (2) The period of non-compliance, including exact dates and times, or, if not corrected, the anticipated time non-compliance is expected to continue; and
- (3) The steps being taken to monitor, reduce, eliminate, and prevent recurrence of the non-compliance.

This written notice shall not be considered as excusing or justifying the failure to comply with the permit conditions. The details may be incorporated by reference to the written five (5) day notification.

5. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact to the waters of Tennessee resulting from non-compliance with this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the non-compliance. In an enforcement action, it shall not be a defense for the permittee that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. LIABILITIES

1. Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for non-compliance. Notwithstanding this permit, the permittee shall remain liable for any damages sustained by the state of Tennessee including, but not limited to, fish kills and losses of aquatic life and/or wildlife, as a result of the discharge of fill to any surface waters. Additionally, notwithstanding this permit, it shall be the responsibility of the permittee to conduct its alteration activities in a manner such that public or private nuisances or health hazards will not be created.

2. Liability under State Law

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or *The Federal Clean Water Act of 1977*, as amended.

3. Liability to Obtain Required Permits

It is a violation of this permit to fail to obtain a permit or permit coverage for any activity that requires a permit under *The Tennessee Water Quality Control Act of 1977*.

PART III

A. GENERAL REQUIREMENTS

Prior to the creation of any disturbed area within the projected area of operation, and prior to changes, corrections, modifications, or adjustments in the location of any affected feature, an Engineering Plan shall be submitted to and approved by the Division of Water Resources.

No mining activity shall be conducted within the projected area of operation unless the detailed Engineering Plan for the specific area of operation or disturbance has been approved

in advance. The Engineering Plan shall include those documents, maps, drawings, and other materials as required by the Division.

B. ANTIDegradation STATEMENT

Pursuant to the *Rules of the Tennessee Department of Environment and Conservation, Chapter 0400-40-03-.06*, titled "Tennessee Antidegradation Statement," and in consideration of the Department's directive in attaining the greatest degree of protection for water resources, the permittee shall further be required, pursuant to the terms and conditions of this permit, to comply with the conditions and schedules of compliance required to implement applicable water quality standards, to comply with a State Water Quality Plan or other state or federal laws or regulations.

C. DEFINITIONS

1. "*Access Road/Haul Road*" is any road constructed, maintained, or used by the operator of a mining facility primarily for the purpose of transporting raw materials, equipment, manufactured products, waste material, or by-products, and is located within the affected area.
2. "*Activity*" means any and all work or acts associated with the performance, or carrying out of a project or a plan, or construction of a structure.
3. "*Adjacent*" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the State by man-made dikes or barriers, natural river berms and the like are "adjacent wetlands".
- c. "*Aquatic Resource Alteration Permit*" or "*ARAP*" means a permit pursuant to T.C.A. § 69-3-108 of the Act, which authorizes the alteration of properties of waters of the State which result from activities other than discharges of wastewater through a pipe, ditch or other conveyance.
- d. "*Best Management Practices (BMPs)*" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices to prevent or reduce the pollution of waters of the State. BMP's include methods, measures, practices, and design and performance standards.
- e. "*Certification*" means an Aquatic Resource Alteration Permit under the Tennessee Water Quality Control Act which certifies, either unconditionally or through imposition of terms under which the activity must be carried out, that the activity will comply with applicable provisions of §§ 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act and Chapter 0400-40-01 of the rules of the Board of Water Quality, Oil and Gas and the Department of Environment and Conservation and the Act.
- f. "*Channelization*" means the alteration of stream channels including but not limited to straightening, widening, or enlarging.

- g. “*Clean Water Act*” or “*Act*” means the *Federal Clean Water Act of 1977* (formerly referred to as *The Federal Water Pollution Control Act* or *The Federal Water Pollution Control Act Amendments of 1972*), as amended.
- h. “*Commissioner*” means the Commissioner of the Tennessee Department of Environment and Conservation or the Commissioner’s duly authorized representative.
- i. “*Constructed Wetland*” means intentionally designed, built and operated on previously nonwetland sites for the primary purpose of wastewater treatment or retention; such wetlands are not created to provide mitigation for adverse impacts or other wetlands.
- j. “*Controlled surface mine drainage*” means any surface mine drainage that is pumped or siphoned from the active mining area.
- k. “*Cumulative impacts*” means the impact on resource values which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.
- l. “*Debris*” means woody materials, trash, flotsam, dislodged vegetation, and other potentially mobile materials which may, when located within a stream channel, contribute to flow blockage. This does not include gravel, sand, soil or its constituents such as silt, clay or other sediments.
- m. “*Ditch*” means a man-made excavation for the purpose of conveying water. Ditches do not include streams, modified streams or canals.
- n. “*Director*” means the Regional Administrator or the State Director, as the context requires or an authorized representative.
- o. “*Division*” means the Division of Water Resources.
- p. “*Emergency*” means a situation where life or substantive improvements to real property is in immediate danger.
- q. “*Existing conditions*” means the biological, chemical, bacteriological, radiological, and physical conditions of a stream or wetland at the time the project is proposed by a quantitative assessment tool or other defensible scientific method as approved or determined by the Division.
- r. “*Mine*” shall mean an area of land, surface or underground, actively mined for the production of a natural resource. Such areas shall also include any adjacent land, the uses of which is incidental to any such activities; all lands affected by the construction of new roads or the improvement or use of existing roads, except maintained public roads, to gain access to the site of such activities and for haulage; excavations, workings,

impoundments, dams, dumps, stockpiles, overburden piles, holes or depressions, repair areas, storage areas, and other areas upon which are sited structures, or other property or materials on the surface, resulting from or incidental to such activities.

20. "*National Pollutant Discharge Elimination System (NPDES)*" means the Federal Environmental Protection Agency's (EPA) national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing water quality permits. The term includes an "approved state program."
21. "Reclamation Area" means the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced. (*40 CFR Part 434.11 (k) (1)*).
22. "*Regional Administrator*" means the Administrator for the Environmental Protection Agency or his authorized representative.
23. "*Tennessee Water Quality Control Act of 1977,*" as amended, *TCA 69-3-101 et seq.*, is the act that sets forth the guidelines and procedures for the abatement and prevention of pollution to the waters of the state. The act enables the state of Tennessee to qualify for full participation in the NPDES permit program.
24. "*Waters*" means any and all water, public and private, on or beneath the surface of the ground, which are contained within, flow through, or border upon Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters. The term "waters" also includes tributary streams, drainways, and conveyances that enter or drain into any and all water, public or private, on or beneath surface of the ground, which are contained within, flow through, or border upon Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownerships which do not combine or effect a junction with natural surface or underground waters.

RATIONALE

**Aquatic Resource Alteration Permit
(ARAP)/§401 Certification**

**DAVIS CREEK ENERGY, LLC
ARAP NR19MS.001
NPDES Permit TN0070408
SMCRA Permit 3333
Cotula, Campbell County, Tennessee**

Permit Writer: Dan Murray

February 4, 2021

I. APPLICANT

**Alden Resources, LLC
332 W. Cumberland Gap Parkway, Suite 100
Corbin, KY 40701**

Contact: Paul Lojek, President

Facility Address: Westborne Lane, Cotula, TN 37729

Nature of Business: Coal Surface Mine Non-Controlled Drainage

**LOCATION: Davis Creek Area 6
Campbell County, TN
Latitude: 36.487635, Longitude: -84.021481**

PROPOSED ALTERATIONS: Stream and Wetland

II. PERMIT STATUS

ARAP NR19MS.001 expires five (5) years from date of issuance

ARAP NR19MS.001 transferred February 4, 2021

ARAP NR19MS.001 effective April 1, 2020

ARAP NR19MS.001 expires March 31, 2025

Application for Permit Renewal to be Received by December 31, 2024

III. FACILITY AND RECEIVING WATERS

Davis Creek Energy Area 6 is a proposed coal surface mine in the headwaters of Hogcamp Branch and Granny Branch in Campbell County, Tennessee. The classified uses for these streams are fish and aquatic life, livestock watering and wildlife, recreation, and irrigation. See *Rules of the Tennessee Department of Environment and Conservation, Chapter 0400-40-04*. Hogcamp Branch is listed as impaired from siltation/sedimentation on the 2018 *303(d) List of Impaired Waters* due to impacts from abandoned mining. The receiving streams are also part of the approved *Total Maximum Daily Load (TMDL) for the Clear Fork of the Cumberland River for Siltation, March 12, 2009*.

IV. APPLICATION TYPE AND BACKGROUND INFORMATION

Davis Creek Energy has applied for a new Individual Aquatic Resource Alteration Permit (ARAP) for its proposed surface coal mine Area 6, NPDES TN0070408. The proposed activity is in Campbell County and would include alterations to streams and wetlands previously disturbed by mining, pre-Surface Mining Control and Reclamation Act (SMCRA). Communications with the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) indicate that the agency has received no comments on the pending SMCRA Permit 3333, and is not required to have a hearing. Therefore, a Local Interagency Working Agreement (LIWA) public hearing for all permit agencies will not be held. However, the Division will follow its regulatory requirements for public participation as specified in the Rules of the Tennessee Department of Environment and Conservation, Chapter 0400-40-05.

Davis Creek Energy proposes to mine pre-SMCRA strip benches associated with the Rich Mountain and Log Mountain Coal Seams. The applicant has attempted to avoid and minimize any new impacts to streams and wetlands during the proposed mining. Stream alterations shall be limited to those reaches previously disturbed by mining. The total length of stream alteration proposed is 1316 linear feet. The applicant's proposed mitigation activities would include the restoration and enhancement of approximately 2110 linear feet of stream.

Additionally, Davis Creek Energy proposes to alter approximately 0.745 acres of wetland. Mitigation for any wetland loss will be by the conversion of bench ponds into 2.98 acres of post-mining wetlands. Two open water pits (0.79 acre) associated with the pre-SMCRA mining will also be eliminated during reclamation of the site.

V. ALTERNATIVES ANALYSIS

Davis Creek Energy considered alternatives to proposed stream and wetland alterations in developing the submitted ARAP plan. The alternatives considered were evaluated for practicability and impacts on water quality.

Davis Creek Energy considered avoiding alterations to all stream and wetland features within the proposed permit area. The company determined that this alternative was economically prohibitive due to the loss of the extractable resource and stop and startup costs.

Davis Creek Energy's preferred option is the proposed 1,316 feet of stream alteration and 0.745 acres of wetland impact with compensatory mitigation and the avoidance of significant alterations to any stream features that were not previously disturbed by mining. New disturbance in these reaches would be restricted to discrete stream crossings in compliance with *T.C.A. §69-3-108(f)*. Other stream alterations would be minimized and limited to 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. Alterations to wetlands are limited to those occurring on existing pre-SMCRA mine benches within the permit area.

Based on its review of available information, the Division has made a preliminary determination that this is the least environmentally impactful practicable alternative.

VI. NEW PERMIT CONDITIONS

A. Special Conditions:

Special Conditions are established in the permit specific to the site and activities proposed. These specify specific activities which may be required or prohibited in the permit. As stream rehabilitation activities (including the placement of all aquatic habitat structures) are associated with surface mining stream reconstruction must be contemporaneous with the mine reclamation activities. In the case of Davis Creek Energy multiple state and federal agencies exhibit regulatory or oversight authority over the facility that have the potential to effect the ARAP\§401 Certification. These agencies may require additional measures to protect species of concern (e.g. threatened or endangered).

B. General Conditions:

General Conditions are permit requirements established common to most sites and activities requesting Coverage under an ARAP\§401 Certification. These specify specific activities which may be required or prohibited in the permit.

VII. STATE OF TENNESSEE ANTIDegradation POLICY

Tennessee's Antidegradation Statement is found in Rule 0400-40-03-.06. It is the purpose of Tennessee's standards to fully protect existing uses of all surface waters as established under the Act.

The proposed alterations are associated with the waterbody segment identified by the Division as segment ID# TN TN05130101016_0210. This waterbody segment is

identified by the Department as having available parameters, except for the following unavailable parameters: sedimentation/siltation.

The Department has preliminarily determined that Hogcamp Branch and the associated wetlands have unavailable parameters for habitat. The effected stream reaches have been altered previously by pre-SMCRA surface mining that have resulted in stream flow paths being altered and the formation of on bench wetlands. Accordingly, habitat alterations that cause significant degradation cannot be authorized.

The Department has made a preliminary determination that the proposed activity will not result in significant degradation. As explained in the Mitigation section below, the impact will not result in an overall net loss of resource values from existing conditions given the proposed compensatory mitigation. Streams that have not been significantly degraded by previous mining related activities shall be avoided in accordance with *T.C.A. 69-3-108(f)(1)*. The streams to be altered have been previously disturbed by mining such that they no longer have a natural geomorphology, follow the natural topography, or fail to meet water quality standards for chemistry or biological integrity. To the extent practicable, these resources will be reconstructed in the original stream location prior to pre-SMCRA mining and in such a manner as to provide functional lift. Post-mining treatment structures on the site will be converted to 2.98 acres of wetlands as mitigation for the 0.745 acres of on bench wetlands eliminated during reclamation.

VIII. MITIGATION AND MONITORING REQUIREMENTS

A. Required Mitigation Activities

Davis Creek Energy is avoiding significant alterations to stream features that were not previously disturbed by mining. New disturbance in these reaches would be restricted to discrete stream crossings in compliance with *T.C.A. §69-3-108(f)*. Other stream alterations would be minimized and limited to operations to improve the quality of stream segments previously disturbed by mining. Alterations to wetlands are limited to those occurring on existing pre-SMCRA mine benches within the permit area and will be offset by converting sediment treatment structures to wetlands post-mining.

1. The proposed stream rehabilitation activities are considered improvements of the existing conditions (pre-SMCRA mining alteration) in the affected streams with no functional loss. Therefore, no compensatory mitigation in addition to the stream rehabilitation activities is required for the proposed activities. Rehabilitation shall occur in the manner specified in the approved plans to reconstruct stream channels for the features indicated in the approved plans.
2. The 0.745 acres wetlands to be affected by the proposed mining are incidental to pre-SMCRA mining related activities. Due to the location and conditions in which these features formed they are considered of low resource value. Therefore, compensatory mitigation shall occur on site and by the conversion of bench ponds, 2.98 acres, to wetlands post mining.

B. Required Monitoring Activities

Davis Creek Energy evaluated the site using Tennessee's Stream Quantification Tool (SQT)/Stream Debit Tool (SDT) protocols and the USACE Hydrogeomorphic Approach (HGM). Davis Creek Energy has chosen the HGM approach as the most appropriate and scientifically defensible measure for quantifying functional lift in the affected small, high gradient, headwater stream reaches.

As the existing wetlands are incidental to pre-SMCRA surface mining, wetland monitoring for the constructed wetlands will consist of USACE rapid measures for vegetative surveys.

X. PERMIT DURATION

The permit will be issued for a five (5) year term.