

Hurricane Creek Mining, LLC.

**SMCRA Permit No. 3341
NPDES Permit No. TN0070716
ARAP No. NW
Claiborne County, TN**

Sterling & Strays Mine No. 2

ARAP Permit & Water Quality Certification

Prepared by
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TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
 Division of Water Resources
 William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 11th Floor,
 Nashville, Tennessee, 37243
 1-888-891-8332 (TDEC)

Application for Aquatic Resource Alteration Permit (ARAP) & State §401 Water Quality Certification

OFFICIAL STATE USE ONLY	Site #:	Permit #:
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Section 1. Applicant Information (individual responsible for site, signs certification below)

Applicant Name (company or individual): Hurricane Creek Mining, LLC.		SOS #:	Status: N/A
Primary Contact/Signatory: Johnny Asher		Signatory's Title or Position: Managing Member	
Mailing Address: 3380 Cedar Fork Rd.		City: Tazewell	State: TN Zip: 37879
Phone: (423) 736 - 7667	Fax:	E-mail: asherfarms@gmail.com	

Section 2. Alternate Contact/Consultant Information (a consultant is not required)

Alternate Contact Name: Kyle Howard			
Company: Howard Engineering & Geology, Inc.		Title or Position: Environmental Scientist	
Mailing Address: P.O. Box 271 (2550 W. Hwy 72, Suite 1)		City: Harlan	State: KY Zip: 40831
Phone: (606) 573 - 6924 (ext. 120)	Fax:	E-mail: khoward@howardeng-geo.com	

Section 3. Fee (application will be incomplete until fee is received)

No Fee Fee Submitted with Application Amount Submitted: \$ 2,500.00

Current application fee schedules can be found at the Division of Water Resources webpage at:
<https://www.tn.gov/environment/permit-permits/water-permits/1/aquatic-resource-alteration-permit--arap-.html>
 or by calling (615) 532-0625. Please make checks payable to "Treasurer, State of Tennessee".

Billing Contact (if different from Applicant): Name: Email:
 Address: Phone:

Section 4. Project Details (fill in information and check appropriate boxes)

Site or Project Name: Sterling and Strays Surface Mine #2; SMCRA: 3341		Nearest City, Town or Major Landmark: Clairfield	
Street Address or Location (include zip): 5 Miles Southeast from TN 90's jct with Valley Creek Rd.			
County(ies): Claiborne		MS4 Jurisdiction:	Latitude (dd.dddd): 36.5383
			Longitude (dd.dddd): -83.8467

Resources Proposed for Alteration: Stream / River Wetland Reservoir

Name of Water Resource (for more information, access <http://tdeconline.tn.gov/dwr>): Tackett Creek, Valley Creek, Hurricane Creek, Pigeon Roost Br., Spruce Lick Br.

Brief Project Description (a more detailed description is required under Section 8):
 Rehabilitation, re-installation, and maintenance of existing stream crossings;
 Removal of Wetlands with payment to Tennessee Mitigation Fund

Does the proposed activity require approval from the U.S. Army Corps of Engineers, the Tennessee Valley Authority, or any other federal, state, or local government agency? Yes No

If Yes, provide the permit reference numbers: USACE 404 Permit: LRN-2009-00479 (exp: 12/10/2024)

Will the activity require a 401 Water Quality Certification: Yes No

If Yes, attach any 401 WQC pre-filing meeting request documentation

Is the proposed activity associated with a larger common plan of development: Yes No

If Yes, submit site plans and identify the location and overall scope of the common plan of development.

Plans attached? Yes No

If applicable, indicate any other federal, state, or local permits that are associated with the overall project site (common plan of development) that have been obtained in the past (e.g., construction general permit and/or other ARAP): Double Mountain Mining
 SMCRA: 3296

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Section 5. Project Schedule (fill in information and check appropriate boxes)	
Proposed start date: Fall 2023	Estimated end date: TBD
Is any portion of the activity complete now?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, describe the extent of the completed portion:	

The required information in Sections 6-11 must be submitted on a separate sheet(s) and submitted in the same numbered format as presented below. If any question is not applicable, state the reason why it is not applicable.

Section 6. Description	Attached	
	Yes	No
6.1 A narrative description of the scope of the project	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.2 USGS topographic map indicating the exact location of the project (can be a photographic copy)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.3 Photographs of the resource(s) proposed for alteration with location description (photo locations should be noted on map)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.4 A narrative description of the existing stream and/or wetland characteristics including, but not limited to, dimensions (e.g., depth, length, average width), substrate and riparian vegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.5 A narrative description of the proposed stream and/or wetland characteristics including, but not limited to, dimensions (e.g., depth, length, average width), substrate and riparian vegetation	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.6 In the case of wetlands, include a wetland delineation with delineation forms and site map denoting location of data points	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.7 A copy of all hydrologic or jurisdictional determination documents issued for water resources on the project site	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Section 7. Project Rationale	Attached	
	Yes	No
Describe the need for the proposed activity, including, but not limited to the purpose, alternatives considered and rationale for selection of least impactful alternative, and what will be done to avoid or minimize impacts to water resources	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Section 8. Technical Information	Attached	
	Yes	No
8.1 Detailed plans, specifications, blueprints, or legible sketches of present site conditions and the proposed activity. Plans must be 8.5 x 11 inches. Additional larger plans may also be submitted to aid in application review. The detailed plans should be superimposed on existing and new conditions (e.g., stream cross sections where road crossings are proposed)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8.2 For the proposed activity and compensatory mitigation, provide a discussion regarding the sequencing of events and construction methods and any proposed monitoring	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8.3 Depiction and narrative on the location and type of erosion prevention and sediment control (EPSC) measures for the proposed alterations and any other measures to treat, control, or manage impacts to waters	<input checked="" type="checkbox"/>	<input type="checkbox"/>

<p>Section 9. Water Resources Degradation (degree of proposed impact)</p> <p>Note that in most cases, activities that exceed the scope of the General Permit limitations are considered greater than <i>de minimis</i> degradation to water quality. Please provide your basis for concluding the proposed activity will cause one of the following levels of water quality degradation:</p> <p><input checked="" type="checkbox"/> a. <i>De minimis</i> degradation, no appreciable permanent loss of resource values</p> <p><input type="checkbox"/> b. Greater than <i>de minimis</i> degradation (if greater than <i>de minimis</i> complete Sections 10-11)</p> <p><i>For information and guidance on the definition of de minimis and degradation, refer to the Antidegradation Statement in Chapter 0400-40-03-.06 of the Tennessee Water Quality Criteria Rule:</i> https://publications.tnsosfiles.com/rules/0400/0400-40/0400-40.htm</p> <p><i>For more information on specifics on what General Permits can cover, refer to the Natural Resources Unit webpage at:</i> https://www.tn.gov/environment/permit-permits/water-permits/1/aquatic-resource-alteration-permit--arap-.html</p>

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Section 10. Detailed Alternatives Analysis		Attached	
		Yes	No
10.1	Analyze all reasonable alternatives and describe the level of degradation and permanent loss of resource value caused by each alternative. Assessment must consider options other than the "Preferred" and "No Action" alternatives. Provide associated rationale for selecting or rejecting all alternatives considered and demonstration that the least impactful practicable alternative was selected.	<input type="checkbox"/>	<input type="checkbox"/>
10.2	Discuss the social and economic consequences of each alternative	<input type="checkbox"/>	<input type="checkbox"/>
10.3	Demonstrate that the degradation associated with the preferred alternative will not violate water quality criteria for uses designated in the receiving waters, and is necessary to accommodate important economic and social development in the area	<input type="checkbox"/>	<input type="checkbox"/>

Section 11. Compensatory Mitigation		Attached	
		Yes	No
11.1	A detailed discussion of the proposed compensatory mitigation. Provide evidence of credit reservation if proposing to utilize a third-party provider.	<input type="checkbox"/>	<input type="checkbox"/>
11.2	Analysis of any proposed appreciable loss of resource value using the TN Stream Mitigation Guidelines. Provide Stream Quantification Tool (SQT) results if applicable. Include Existing Condition Score (ECS) and debit/credit calculations.	<input type="checkbox"/>	<input type="checkbox"/>
11.3	Describe how the compensatory mitigation would result in no net loss of resource value	<input type="checkbox"/>	<input type="checkbox"/>
11.4	Provide a detailed monitoring plan for the compensatory mitigation site if permittee-responsible project is proposed	<input type="checkbox"/>	<input type="checkbox"/>
11.5	Describe the long-term protection measures for the compensatory mitigation site if permittee-responsible project is proposed (e.g., deed restrictions, conservation easement)	<input type="checkbox"/>	<input type="checkbox"/>

Certification and Signature

An application submitted by a corporation must be signed by a principal executive officer; from a partnership or proprietorship, by the partner or proprietor respectively; from a municipal, state, federal or other public agency or facility, the application must be signed by either a principal executive officer, ranking elected official, or other duly authorized employee. ***I certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision. The submitted information is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. As specified in Tennessee Code Annotated Section 39-16-702(a)(4), this declaration is made under penalty of perjury. The project proponent hereby requests that the certifying authority review and take action on this CWA 401 certification request within the applicable reasonable period of time.***

Johnny Asher	Managing Member		6/12/23
Printed Name	Official Title	Signature	Date

Note that this form must be signed by the principal executive officer, partner or proprietor, or a ranking elected official in the case of a municipality; for details see **Certification and Signature** statement above. For more information, contact your local EFO at the toll-free number 1-888-891-8332 (TDEC). Submit the completed ARAP Application form (keep a copy for your records) to the appropriate EFO for the county(ies) where the proposed activity is located, addressed to **Attention: ARAP Processing**. You may also electronically submit the complete application and all associated attachments to water.permits@tn.gov.

EFO	Street Address	Zip Code	EFO	Street Address	Zip Code
Memphis	8383 Wolf Lake Drive, Bartlett	38133-4119	Cookeville	1221 South Willow Ave.	38506
Jackson	1625 Hollywood Drive	38305-4316	Chattanooga	1301 Riverfront Pkwy., Ste. 206	37402
Nashville	711 R S Gass Boulevard	37243	Knoxville	3711 Middlebrook Pike	37921
Columbia	1421 Hampshire Pike	38401	Johnson City	2305 Silverdale Road	37601



Section 6: Description

6.1 Narrative description of the scope of the project

Hurricane Creek Mining, LLC. is proposing to re-mine the Sterling and Stray coal seams on Bryson Mountain from Little Coal Gap to the head of Bear Creek in Claiborne County, Tennessee. A total of 5,379 linear feet (LF) of jurisdictional streams exist at the project site. The jurisdictional streams can be further quantified as 2,824 LF of ephemeral channels, 1,633 LF of intermittent streams, and 922 LF of perennial streams. Of the 5,379 feet of streams at the project site, only 1,260' linear feet will be impacted by the proposed project, which will necessitate the placement or replacement of twenty-one (21) closed bottom stream crossings into eleven (11) streams to facilitate transportation, maintenance, mining, and reclamation activities associated with the proposed project. Streams 2, 3, 4, 4A, 5, 5a, 6, 7, 8, and 10 will be crossed at both the Sterling and the Strays seams, while stream 9 will be crossed on the Sterling bench only. Streams 4, 8, and 9 have been classified as Wet Weather Conveyances as determined from QHP Phil Boggs and confirmed by TDEC on a site walk on 6/29/23. The proposed five (5) culverts to cross these three streams, will not be permitted through this proposed ARAP application, but are still considered jurisdictional waters on the USACE 404 permit. Stream 1 from previously permitted Double Mountain Mining 3296 is not being permitted by Hurricane Creek since the area has since been mined and now reclaimed. See Table 1 for culvert placement details. All of the streams will have a minimum 50' riparian buffer zone from the edge of each bank where no mining shall occur. The only impacts to take place within the buffer zone will be at the road crossings listed in Table 1. Upon completion of reclamation activities and Phase I bond release the culverts will be removed.

In addition to the stream impacts, eleven (11) wetlands and open water impoundments, totaling 2.34 acres, will need to be drained or dredged for utilization as sediment retention structures, for stabilizing benches, re-mining activities and/or for road construction. Table 2 identifies each of the 11 wetlands. Five (5) previously determined wetlands for the site were purchased and removed by Middlesboro Mining Operations. A total of 2.5 advanced credits were purchased for all the wetlands to be impacted for this project. In-lieu fees have been paid to the Tennessee Mitigation Fund for a total of \$56,250 and \$37,500 paid in December 2015 and February 2016 respectfully by Middlesboro Mining Operations. See Section 11, *Compensatory Mitigation* for a copy of the wetland credits purchased by Middlesboro Mining Operations. All of the waters of the state included in this application have been impacted by pre-law mining, timber harvesting, and road construction activities. The wetlands/open water impoundments (OWI) only exist due to the extensive stream damages that have resulted from these impacts. Field investigations have found evidence that these incidentally created wetlands and abandoned impoundments are contributing hydrology to unconsolidated push over spoil material causing stability problems resulting in landslides, which not only have the potential to do significant damage to the environment, but can also be potentially dangerous to human safety. The Applicant will be removing the OWI to improve site conditions. The Applicant is under the assumption that the in-lieu-fees associated with this permit have already been purchased in advance and no additional wetland credits will need to be purchased by Hurricane Creek Mining.

Wetland O has been discovered by QHP Phil Boggs and confirmed by TDEC as being an isolated wetland on the Sterling mine bench. Because this wetland is less than 0.10 acres, no additional ILF payment is being proposed by Hurricane Creek.

Table 1 – Summary of Stream Crossings for Sterling and Strays Surface Mine #2

Stream ID	Classification	Location (bench)	Culvert size	Culvert ID
Stream 2	Intermittent	Strays	36''x60'	C16
	Intermittent	Sterling	36''x60'	C15
Stream 3	Perennial	Strays	36''x60'	C14
	Perennial	Sterling	36''x60' (replace 18''x20')	C13
Stream 4	WWC	Strays	36''x60' (replace 20' logs)	C23
	WWC	Sterling	36''x60'	C22
Stream 4A	Intermittent	Strays	30''x60'	C25
	Intermittent	Sterling	30''x60'	C24
Stream 5	Intermittent	Strays	24''x60'	C12
	Intermittent	Sterling	24''x60'	C11
Stream 5A	Ephemeral	Strays	24''x60'	C21
	Ephemeral	Sterling	24''x60'	C20
Stream 6	Perennial	Strays	30''x60'	C10
	Perennial	Sterling	30''x60'	C9
Stream 7	Perennial	Strays	24''x60'	C8
	Perennial	Sterling	24''x60' (replaces 30''x20')	C7
Stream 8	WWC	Strays	30''x60'	C19
	WWC	Sterling	30''x60' (replaces 24''x25')	C6
Stream 9	WWC	Sterling	36''x60' (replaces 24''x25')	C5
Stream 10	Ephemeral	Strays	36''x60'	C18
	Ephemeral	Sterling	36''x60' (replaces 18''x25')	C17

* WWC denotes Wet Weather Conveyances not covered under this ARAP application but are still classified as being jurisdictional waters of the U.S. by the USACE 404 permit.

Table 2 – Disturbed Sterling and Strays Surface Mine #1 Wetlands

Wetland ID	Coordinates	Wetland (acres)	Pond (acres)	Isolated (acres)	Total (acres)	Current Status
E	N 36.5494 W 83.8415		0.32		0.32	Paid via ILF by Middlesboro Mining
F	N 36.5499 W 83.8425	0.06			0.06	Paid via ILF by Middlesboro Mining
G	N 36.5501 W 83.8431		0.27		0.27	Paid via ILF by Middlesboro Mining
H	N 36.5520 W 83.8446			0.16	0.16	
I	N 36.5514 W 83.8454			0.05	0.05	
J	N 36.55503 W 83.8454	0.38	0.56		0.94	Paid via ILF by Middlesboro Mining
K	N 36.5484 W 83.8476		0.43		0.43	Paid via ILF by Middlesboro Mining
L	N 36.5439 W 83.8469	0.07	0.19		0.26	Paid via ILF by Middlesboro Mining
M	N 36.5446 W 83.8446	0.10	0.37		0.47	Paid via ILF by Middlesboro Mining
N	N 36.56486 W 83.86089	0.20			0.20	Paid via ILF by Middlesboro Mining
O	N 36.56848 W 83.85677		0.03	0.09	0.12	No Mitigation Proposed
Total		0.81	2.17	0.30	3.28	

Wetlands (E through N) above were never disturbed from the previously permittee, but the 2.5 credits were purchased in advance for the Upper Cumberland Watershed in two installments by Middlesboro Mining Operations. Attached to this application is a copy of those receipts with payments made to the Tennessee Mitigation Fund. Wetland O was documented as an additional wetland by QHP Phil Boggs on 5/4/23 and confirmed by TDEC on 6/29/23. Due to the wetland not having a downstream connection and being less than 0.10 acres no additional ILF fees are being proposed by Hurricane Creek Mining to account for the newly added Wetland.

Section 6: Description

6.3 Photographs of site with location description

Previous site visits from January 25, 2011 Dave Turner and Dan Murray of TDEC, and Travis Wiley of USACE accompanied representatives from RLB Engineering, PSC on a jurisdictional walk of the project area. Eleven (11) streams and fourteen (14) wetlands/open water impoundments were identified as waters of the state of Tennessee during field investigations at that time. On May 1 & 2, 2013 a second field review of the project area was conducted by representatives from TDEC, USACE, EPA, OSM, and HEG. During the field review the classifications of two (2) of the streams, Stream #5 and Stream #5a, were changed, and an additional wetland was added. Stream #5 has been reclassified as intermittent, and Stream #5a is now classified as an ephemeral stream. The applicant has supplied HEG with a PDF copy of photographs completed by RLB Engineering, PSC. Photographs taken by RLB Engineering, in addition to photographs taken by Howard Engineering & Geology, Inc. of Streams 2 -10 are being submitted to fulfill the requirements of section 6.3.

More recent site visits to the field occurred on April 26 and May 4, 2023 by Phil Boggs a QHP consultant from Mark V Mining and Engineering Inc. In addition, the site was revisited on June 29, 2023 by Dan Murray and Chris Pracheil from TDEC. All previous streams and wetlands were confirmed with the addition of one additional stream and one wetland. These new features have been classified as Stream 4A which is an intermittent channel to the west of previously documented Stream 4 and wetland O which is on the northeastern part of the permit near outfall B19. Streams 4, 8 and 9 have been reclassified as being wet weather conveyances from the previous application. All stream and wetland locations can be found in Section 6.1 in Tables 1 and 2. These three streams will no longer be needed under the ARAP permit application but are still jurisdictional waters that will be covered with the 404 USACE permit. Streams 4, 8, and 9 are being left on the ARAP map so there is no confusion with the 404 permit.

With Stream 1 being previously impacted from surface mining and reclaimed, this stream is no longer in the permitted area being proposed by Hurricane Creek Mining. The additional 11 streams and wetland photos to be impacted by this permittee are documented below.



Location: 36.568874°, -83.856873° Date: 2023-05-04
Photograph #1 of pond at base of large highwall, taken by Phil Boggs viewing southwest.



Location: 36.568844°, -83.856728° Date: 2023-05-04
Photograph #2 of on bench wetland O below pond, taken by Phil Boggs
viewing southwest.



Location: 36.568481°, -83.856766° Date: 2023-05-04
Photograph #3 of wetland O spillway and exit channel, taken by Phil Boggs
viewing northwest.



Stream 2 facing downstream



Stream 2 substrate



Stream 2 substrate



Stream 2 facing upstream



Stream 3 culvert



Stream 3 facing downstream



Stream 3 substrate



Stream 3 facing upstream



Stream 4 culvert



Stream 4 facing downstream



Stream 4 left side



Stream 4 right side



Stream 4 substrate



Stream 4 facing upstream



Location: 36.564896°, -83.840996° Date: 2023-05-04
Photograph #1 of channel 4A flowing over Pre-SMCRA highwall, taken by Phil Boggs viewing upstream or southeast.



Location: 36.564983°, -83.841187° Date: 2023-05-04
Photograph #2 of intermittent channel 4A through spoil on bench, taken by Phil Boggs viewing upstream or southeast.



Location: 36.565006°, -83.841171° Date: 2023-05-04
Photograph #3 of intermittent channel 4A through spoil on bench, taken by Phil Boggs viewing downstream or northwest.



Location: 36.565136°, -83.841347° Date: 2023-05-04
Photograph #4 of braided channel 4A through spoil on bench, taken by Phil Boggs
viewing upstream or southeast.



Stream 5 facing downstream



Stream 5 substrate



Stream 5 substrate



Stream 5 facing upstream



Stream 5A facing downstream



Stream 5A substrate



Stream 5A facing upstream



Stream 6 facing upstream



Stream 6 facing downstream



Stream 6 substrate



Stream 7 culvert



Stream 7 facing downstream



Stream 7 substrate



Stream 7 facing upstream



Stream 8 facing downstream



Stream 8 substrate



Stream 8 substrate



Stream 8 substrate



Stream 8 facing upstream



Stream 9 lower culvert



Stream 9 culvert



Stream 9 facing downstream



Stream 9 facing upstream and substrate



Stream 10 culvert



Stream 10 facing downstream



Stream 10 facing downstream



Stream 10 facing downstream



Stream 10 left side



Stream 10 right side



Stream 10 substrate



Stream 10 facing upstream

Section 6: Description

6.4 A narrative description of existing stream and wetland characteristics

Narrative descriptions of the existing stream conditions on the project site were included with the photographs in section 6.3. These descriptions, as well as descriptions and photographs of reference reaches were provided in the original ARAP permit, previously submitted to TDEC, OSM, and USACE. Stream 1 (culvert 24) was the only culvert installed with the previous ARAP application. This stream and culvert have been reclaimed from the previous mining company and therefore will be dropped from this application. Streams 2, 3, 4, 4A, 5, 5a, 6, 7, 8, and 10 will be crossed at both the Sterling and Strays coal seams, while Stream 9 that will only be crossed at the Sterling coal seam. Stream dimensions for the impacted stream can be found below.

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WETLAND O

The wetland to be impacted is in an unnamed tributary of Pigeon Roost Branch of Hurricane Creek. At this location there has been an old sediment pond with a wetland attached at the base of the existing highwall. These appears to have been a sediment pond that was reclaimed by lowering of the spillway and allowing a wetland to form naturally on the bench. On the date of review by QHP specialist Phil Boggs documented the pond and wetland were impounding water, but there was no flow through the spillway of the exit channel. Proposed impacts are the surface re-mining and auguring of the Sterling and Stray seams which will require the removal and drainage of the pond and wetland that has formed from previous mining on the Sterling bench. Since the wetland is less than 0.1 acres, and considered isolated with no downstream connection, no mitigation is being proposed as a result the removal of this wetland. The individual wetland characteristics are as follows:

Reference Section -	Average depth of pond	3 - 5'
	Total impacted wetland area	0.0958 ac.
	Average width wetland	25'
	Substrate	100 % gravel-sand-silt-clay
	Average gradient	<1%
	Wetland side vegetation	forest/logging/mining

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STREAM 2

The stream to be impacted is Pigeon Roost Branch of Hurricane Creek. The existing stream is a high gradient stream that has been disturbed by the construction of a road crossing the stream in association with previous mining on the Sterling and Stray seams. Proposed impacts are the surface re-mining and auguring of the Sterling and Stray seams which will include installing temporary closed bottom stream crossings to minimize aquatic resource degradation. The crossings will be removed upon completion of mining and reclamation activities. The individual stream characteristics are as follows:

Reference Section -	Average depth of water flow	0.1'
	Total impacted stream length	200'
	Average width of water flow	0.5'
	Average width of channel	1.5'
	Substrate	80% gravel-sand-silt-clay 20% cobble-boulder 0% bedrock
	Average gradient	8%
	Stream side vegetation	forest/logging/mining

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STREAM 3

The stream to be impacted is an un-named tributary of Hurricane Creek. The existing stream is a high gradient stream that has been disturbed by the construction of a road crossing the stream in association with previous mining on the Sterling and Stray seams. Proposed impacts are the surface re-mining and auguring of the Sterling and Stray seams which will include installing temporary closed bottom stream crossings to minimize aquatic resource degradation. The crossings will be removed upon completion of mining and reclamation activities. The individual stream characteristics are as follows:

Reference Section -	Average depth of water flow	0.4'
	Total impacted stream length	200'
	Average width of water flow	1'
	Average width of channel	2.5'
	Substrate	74% gravel-sand-silt-clay 26% cobble-boulder 0% bedrock
	Average gradient	11%
	Stream side vegetation	forest/logging/mining

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STREAM 4 (WWC)

The stream to be impacted is an un-named tributary of Hurricane Creek. The existing stream is a high gradient stream that has been disturbed by the construction of a road crossing the stream in association with previous mining on the Sterling and Stray seams. Proposed impacts are the surface re-mining and auguring of the Sterling and Stray seams which will include installing temporary closed bottom stream crossings to minimize aquatic resource degradation. The crossings will be removed upon completion of mining and reclamation activities. The individual stream characteristics are as follows:

Reference Section -	Average depth of water flow	0.3'
	Total impacted stream length	200'
	Average width of water flow	1'
	Average width of channel	2.5'
	Substrate	65% gravel-sand-silt-clay 35% cobble-boulder 0% bedrock
	Average gradient	11%
	Stream side vegetation	forest/logging/mining

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STREAM 4A

The stream to be impacted is an un-named tributary of Hurricane Creek. The existing stream is a high gradient stream that has been disturbed by the construction of a road crossing the stream in association with previous mining on the Sterling and Stray seams. Proposed impacts are the surface re-mining and auguring of the Sterling and Stray seams which will include installing temporary closed bottom stream crossings to minimize aquatic resource degradation. The crossings will be removed upon completion of mining and reclamation activities. The individual stream characteristics are as follows:

Reference Section -	Average depth of water flow	0.2'
	Total impacted stream length	200'
	Average width of water flow	1.5'
	Average width of channel	3.0'
	Substrate	50% gravel-sand-silt-clay 35% cobble-boulder 15% bedrock
	Average gradient	15%
	Stream side vegetation	forest/logging/mining

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STREAM 5

The stream to be impacted is an un-named tributary of Hurricane Creek. The existing stream is a high gradient stream that has been disturbed by the construction of a road crossing the stream in association with previous mining on the Sterling and Stray seams. Proposed impacts are the surface re-mining and auguring of the Sterling and Stray seams which will include installing temporary closed bottom stream crossings to minimize aquatic resource degradation. The crossings will be removed upon completion of mining and reclamation activities. The individual stream characteristics are as follows:

Reference Section -	Average depth of water flow	0.1'
	Total impacted stream length	200'
	Average width of water flow	0.5'
	Average width of channel	1.5'
	Substrate	58% gravel-sand-silt-clay 42% cobble-boulder 0% bedrock
	Average gradient	18%
	Stream side vegetation	forest/logging/mining

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STREAM 5A

The stream to be impacted is an un-named tributary of Hurricane Creek. The existing stream is a high gradient stream that has been disturbed by the construction of a road crossing the stream in association with previous mining on the Sterling and Stray seams. Proposed impacts are the surface re-mining and auguring of the Sterling and Stray seams which will include installing temporary closed bottom stream crossings to minimize aquatic resource degradation. The crossings will be removed upon completion of mining and reclamation activities. The individual stream characteristics are as follows:

Reference Section -	Average depth of water flow	0.1'
	Total impacted stream length	200'
	Average width of water flow	0.8'
	Average width of channel	1.5'
	Substrate	94% gravel-sand-silt-clay 6% cobble-boulder 0% bedrock
	Average gradient	10%
	Stream side vegetation	forest/logging/mining

Hurricane Creek Mining, LLC.

PERMIT 3341

STREAM 6

The stream to be impacted is an un-named tributary of Hurricane Creek. The existing stream is a high gradient stream that has been disturbed by the construction of a road crossing the stream in association with previous mining on the Sterling and Stray seams. Proposed impacts are the surface re-mining and auguring of the Sterling and Stray seams which will include installing temporary closed bottom stream crossings to minimize aquatic resource degradation. The crossings will be removed upon completion of mining and reclamation activities. The individual stream characteristics are as follows:

Reference Section -	Average depth of water flow	0.3'
	Total impacted stream length	200'
	Average width of water flow	1'
	Average width of channel	2'
	Substrate	85% gravel-sand-silt-clay 15% cobble-boulder 0% bedrock
	Average gradient	18%
	Stream side vegetation	forest/logging/mining

Hurricane Creek Mining, LLC.

PERMIT 3341

STREAM 7

The stream to be impacted is an un-named tributary of Valley Creek. The existing stream is a high gradient stream that has been disturbed by the construction of a road crossing the stream in association with previous mining on the Sterling and Stray seams. Proposed impacts are the surface re-mining and auguring of the Sterling and Stray seams which will include installing temporary closed bottom stream crossings to minimize aquatic resource degradation. The crossings will be removed upon completion of mining and reclamation activities. The individual stream characteristics are as follows:

Reference Section -	Average depth of water flow	0.1'
	Total impacted stream length	200'
	Average width of water flow	0.8'
	Average width of channel	1.5'
	Substrate	80% gravel-sand-silt-clay 20% cobble-boulder 0% bedrock
	Average gradient	18%
	Stream side vegetation	forest/logging/mining

Hurricane Creek Mining, LLC.

PERMIT 3341

STREAM 8 (WWC)

The stream to be impacted is an un-named tributary of Spruce Lick Branch. The existing stream is a high gradient stream that has been disturbed by the construction of a road crossing the stream in association with previous mining on the Sterling and Stray seams. Proposed impacts are the surface re-mining and auguring of the Sterling and Stray seams which will include installing temporary closed bottom stream crossings to minimize aquatic resource degradation. The crossings will be removed upon completion of mining and reclamation activities. The individual stream characteristics are as follows:

Reference Section -	Average depth of water flow	0.1'
	Total impacted stream length	200'
	Average width of water flow	0.2'
	Average width of channel	1.5'
	Substrate	77% gravel-sand-silt-clay 23% cobble-boulder 0% bedrock
	Average gradient	6%
	Stream side vegetation	forest/logging/mining

Hurricane Creek Mining, LLC.

PERMIT 3341

STREAM 9 (WWC)

The stream to be impacted is an un-named tributary of Spruce Lick Branch. The existing stream is a high gradient stream that has been disturbed by the construction of a road crossing the stream in association with previous mining on the Sterling and Stray seams. Proposed impacts are the surface re-mining and auguring of the Sterling and Stray seams which will include installing temporary closed bottom stream crossings to minimize aquatic resource degradation. The crossings will be removed upon completion of mining and reclamation activities. The individual stream characteristics are as follows:

Reference Section -	Average depth of water flow	0.5'
	Total impacted stream length	100'
	Average width of water flow	0.2'
	Average width of channel	1.5'
	Substrate	64% gravel-sand-silt-clay 36% cobble-boulder 0% bedrock
	Average gradient	14%
	Stream side vegetation	forest/logging/mining

Hurricane Creek Mining, LLC.

PERMIT 3341

STREAM 10

The stream to be impacted is an un-named tributary of Tackett Creek. The existing stream is a high gradient stream that has been disturbed by the construction of a road crossing the stream in association with previous mining on the Sterling and Stray seams. Proposed impacts are the surface re-mining and auguring of the Sterling and Stray seams which will include installing temporary closed bottom stream crossings to minimize aquatic resource degradation. The crossings will be removed upon completion of mining and reclamation activities. The individual stream characteristics are as follows:

Reference Section -	Average depth of water flow	0.2'
	Total impacted stream length	200'
	Average width of water flow	0.5'
	Average width of channel	3'
	Substrate	64% gravel-sand-silt-clay 36% cobble-boulder 0% bedrock
	Average gradient	14%
	Stream side vegetation	forest/logging/mining

Section 6: Description

6.5 A narrative description of the proposed stream and wetland characteristics

All temporary road crossings will be removed after Phase II Bond release. Wetland mitigation in-lieu credits for the 2.5 acres of wetlands have been purchased by the previous permittee through the Tennessee Mitigation Fund. See Compensatory Mitigation, *Section 11* for a copy of the two increment purchases. The additional Wetland O discovered on May 4, 2023 was less than 0.1 acres with no downstream connection. No additional credits are being proposed by Hurricane Creek to compensate for the removal of this additional wetland.

Section 6: Description

6.6 Wetland delineation

All 2.5 acres of wetland in-lieu credits from the Sterling & Strays Surface Mine and fees have been made to the Tennessee Mitigation Fund. Middlesboro Mining Operations previously purchased advanced credits that accounted for all wetlands on site. See Attachment 1 and 2 for a copy of the receipt. Wetland O was discovered on May 4, 2023, as an additional wetland. This wetland had no downstream connection to WOTUS and is being classified as being isolated. See Attachment 3 for a detailed summary and location for this wetland.

Section 6: Description

6.7 A copy of all hydrologic or jurisdictional determination documents issued for the water resources on the project site.

A copy of the approved jurisdictional determination from 2014 is attached to this from (Attachment 4). The USACE permit was issued for 10 years and has an expiration date of December 10, 2024. The COE has received copies of the wetland credits purchased through the Tennessee Mitigation Fund. A copy of the USACE LRN-2009-00479 permit transfer to Hurricane Creek Mining can also be found in Attachment 4.

Section 7: Project Rationale

The purpose of the proposed project is surface coal re-mining and auguring of the Sterling and Strays coal seams on Rich Mountain in Claiborne County, Tennessee. In order for the applicant to accomplish mining and reclamation goals, alterations will need to be made to eleven (11) stream channels, 0.81 acres of wetlands (which have paid to the Tennessee Mitigation Fund by Middlesboro Mining), 0.30 acres of isolated wetlands, and 2.17 acres of open water impoundments (OWI). Three (3) streams are classified as being Wet Weather Conveyances (WWC) that will not need to be covered by this ARAP application but will still be classified as being jurisdictional waters on the USACE 404 permit. This leaves eight (8) streams covering sixteen (16) crossings that will be permitted through this ARAP application. It is necessary to install closed bottom stream crossings to minimize aquatic resource degradation while transporting coal and equipment across the streams. The crossings will be of a temporary nature, and will be removed after mining and reclamation activities have been completed. All of the wetlands and ponds at the proposed mining site exist as a result of the pre-SMCRA mining that has degraded the area. The OWI are old ponds that are decreasing the ground stability by saturating the unconsolidated push over spoil. This is a safety concern due to the landslides that have resulted from the previous permittee for this area. Removal of the old ponds will increase the ecological potential of the area, and does not require mitigation.

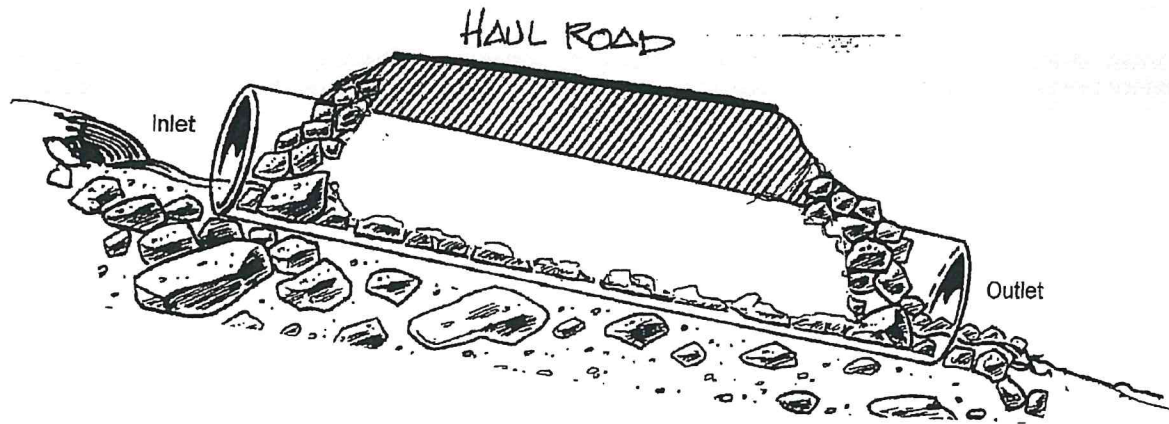
The overall project is justified because the Applicant has the legal right to retrieve coal from the coal seams that it leases. The overall project will be economically beneficial for the surrounding communities, while the proposed ARAP activity will minimize damages to the aquatic resources downstream of the stream impacts and create greater ground stability in the areas where the wetlands and open water impoundments are causing slides. By constructing closed bottom stream crossings where equipment and vehicles will be travelling, the Applicant is preventing sedimentation from entering the waterway. Once the crossings are no longer needed they will be removed, thus they pose no significant long term effects to waters of the state of Tennessee. The loss of wetlands, totaling 0.81 acres, have been compensated through mitigation projects stewarded by the Tennessee Mitigation Fund, purchased by Middlesboro Mining Operations in 2015 and 2016. A copy of these receipts can be found in the Mitigation Section of the permit package. The additional wetland O that was discovered by QHP specialist Phil Boggs was determined to be less than 0.10 acres and with no downstream connection to Pigeon Roost Branch. Therefore, no mitigation is being proposed for the removal of this additional wetland that was discovered.

Section 8: Technical Information

8.1 Detailed plans, blueprints, or legible sketches of present site conditions and the proposed activity.

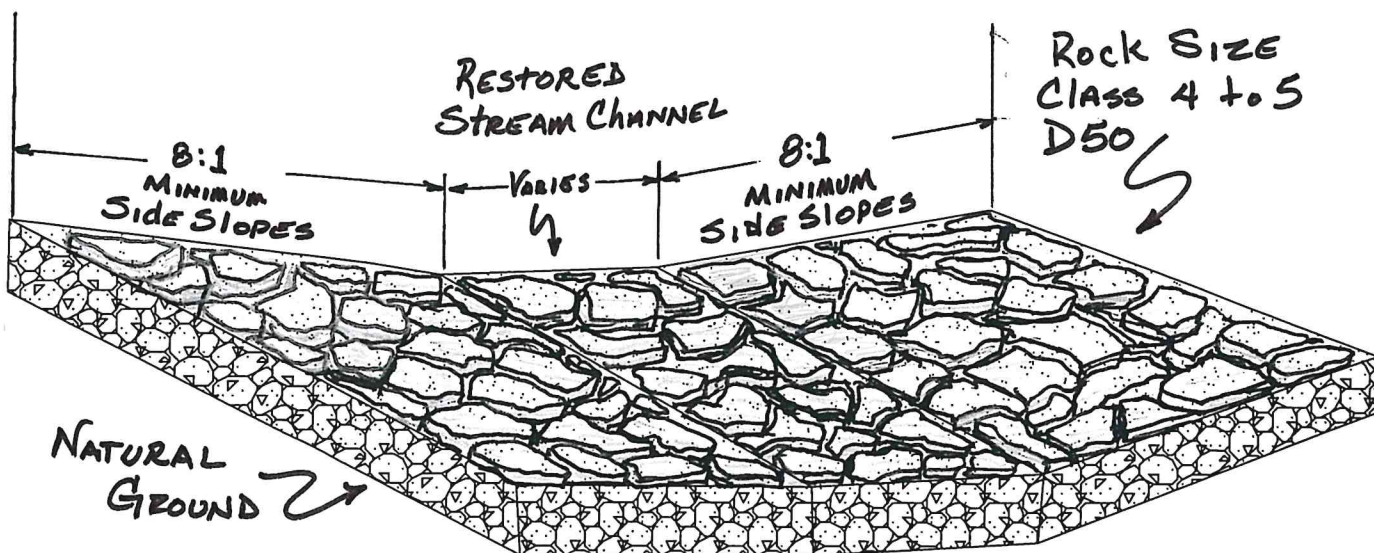
A copy of the latest ARAP and associated mine areas are being submitted as a digital copy attached to this application. In addition a 1:500 scale ERM and a 1:500 scale MOM is also being provided as digital copies.

Hard copy maps are also being dropped off at the TDEC office for your convenience at a 1:500 scale.



Typical closed bottom structures.

Note: Each culvert will be placed on the respective existing stream grade so that the ends will not be elevated above the streambed.



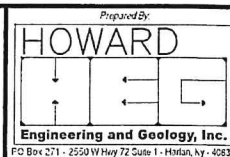
TYPICAL STREAM CHANNEL RECLAMATION with
CULVERT REMOVED

D50 STONE

CLASS 4 = 10" to 14" STONE
CLASS 5 = 14" TO 20" STONE

Hurricane Creek Mining, LLC.

OSMRE Permit #3341
Poplar Lick, Sterling, & Strays
ARAP Application
Typical Culvert Installation and Removal



Scale:
N/A

Page No.
1 of 1

Prepared By
Engineering and Geology, Inc.
PO Box 371, 2550 W Hwy 72 Suite 1 - Hamilton, NY - 12031

Section 8: Technical Information

8.2 *Sequencing of events for proposed activity and mitigation.*

Clearing and grubbing will be conducted in advance of the mining operation. Salvageable timber will be harvested and transported off site. Non-salvageable woody materials will be windrowed along the coal outcrop, placed in the backfill, chipped or burned. Available topsoil and alternative topsoil needed for backfilling and grading operations will be removed and stored for use at that time. Roads will be constructed as needed to gain access to the mining operation. The proposed operation will re-mine the Sterling and Strays coal seams utilizing the contour and auger mining method. Mining will begin in the Sterling seam Pit 1, east of Little Coal Gap, and progress west. Overburden generated from the initial pits will be used to backfill the existing orphan strip bench. This re-mining operation will attempt to reclaim approximately six and a half (6 ½) miles of pre-law highwall. Sediment control ponds and diversion ditches will be constructed prior to mining to route surface runoff to the sediment basins. Culverts will be placed in road crossings as mining approaches the streams to be skipped. After sufficient space has been created by contour mining, auger mining will commence. Backfilling and grading will be contemporaneous with mining activity. Topsoil or alternative topsoil will be redistributed and the disturbed areas will be scarified, fertilized, seeded and mulched by standard hydroseeding and manual methods. Trees and shrubs will be planted manually during the first favorable planting season following revegetation. Once final bond release is granted culverts and sediment basins will be removed.

Construction methods used to perform the proposed activity including mining, backfilling and grading, topsoil storage and redistribution, revegetation, etc. can be found in detail in Section III of the original OSM application for permit #3314. Machinery which may be used during construction includes (but are not limited to) excavators, back hoes, bulldozers, dump trucks and compactors. Trees will be planted manually with a shovel or dibble bar. Ground cover will be applied by a hydroseeder.

Section 8: Technical Information

8.3 Location and type of erosion prevention and sediment control measures for the proposed alterations.

Best management practices (BMPs) and proper engineering techniques will be used to prevent erosion and to control sedimentation for the proposed alterations while mining the Sterling and Strays coal seams. BMPs include, but are not limited to, the use of straw bales or silt fences at the road crossings, culverts of sufficient diameter to support a 100 year six hour storm event installed in the stream crossings, diversion ditches to route runoff away from the streams into sediment basins, and vegetative buffer zones along each stream bank to prevent sedimentation and erosion.

Section 10: Detailed Alternatives Analysis

10.1 - 10.3 Analyze, Discuss, and Demonstrate reasonable alternatives of degradation

Impacts to streams and wetlands have been minimized to the greatest extent that is practicable. Stream impacts have been minimized by restricting the number and locations of stream crossings to the fewest possible needed to achieve mining and reclamation goals. None of the streams at the project site will be mined through, and a riparian buffer zone which extends 50' from the edge of each bank will be in place to protect the streams from surface mining activities. Appropriate BMPs will be used to prevent sedimentation from impacting the channels further downstream of the constructed crossings. Not more than 200' of any single stream will be encapsulated during this project.

All possible alternatives were considered concerning the wetlands on site, including: (one) skipping the wetlands, (two) restoring the wetlands in their current locations, (three) relocating the wetlands off-site, and (four) purchasing mitigation credits from a mitigation bank. The previous permittee, Middlesboro Mining Operations decided to go the Alternative 4 route, which involved compensating the loss of the wetlands to the Tennessee Mitigation Fund by purchasing 2.5 acres of wetland credits. These credits were purchased in two increments, one in 2015 and the other in 2016. A copy of these receipts can be found in *Section 11 Compensatory Mitigation*. All wetland credits were purchased, however not all wetlands were removed from the previous permittee. Therefore, no additional credits will need to be purchased by Hurricane Creek Mining for this application.

An additional wetland O was discovered by QHP Phil Boggs and confirmed by TDEC as being an isolated wetland on the Sterling mine bench. Because this wetland is less than 0.10 acres and no downstream connection to waters of the U.S., no additional ILF payment is being proposed by Hurricane Creek.

Section 11: Compensatory Mitigation

11.1 Detailed discussion of the proposed mitigation

After Phase II Bond release, the culverts will be removed. Minor Road Stream Crossings are considered a *De minimis degradation* activity and do not require mitigation, however the Applicant will be very protective of sediment releases during the installation and removal and proposed culverts. Monitoring for sediment and erosion control at the stream crossings will be conducted as per the requirements of TDEC. Sumps will be installed on each side of the road crossings to trap sediment before it reaches the stream. The sumps will be cleaned out when they reach 50% of their sediment storage capacity. Sediment will be tested to determine toxicity prior to removal and disposal. Non-acidic/non-toxic sediment will be transported to a permitted area, allowed to dry, and used as spoil or topsoil material as appropriate. Acidic/toxic sediment will be disposed of per the approved Toxic Materials Handling Plan (TMHP) in Section 58.A.2.A, and covered with a minimum of four feet of clean non-toxic material.

Detailed discussion of the location and types of sediment control measures, the sequencing of events and construction methods can be found in *Section 8 Technical Information*. The open water impoundments are causing ground instability, and need to be removed in order to improve conditions on site. Removal of open water impoundments does not require on-site mitigation for this project because the Applicant has already purchased mitigation credits from the Tennessee Mitigation Fund to compensate for impacts to 2.5 acres of wetlands. The additional wetland O that was previously mentioned also will not require mitigation or additional ILF payment, since the wetland is less than 0.1 acres and no downstream connection to a blue line stream.

Section 11: Compensatory Mitigation

11.3 Detailed discussion of why the mitigation would result in a no net loss of resource value

Minor Road Stream Crossings are typically considered a *De minimis* activity which does not require mitigation. Stream impacts due to the temporary road crossings are so minor as to merit disregard. The Applicant will use best management practices to protect the streams from sediment releases during the installation and removal of culverts in all the impacted watersheds. There will be no permanent loss of resource value.

Mitigation for 2.5 acres of wetlands has been compensated for through the Tennessee Mitigation Fund by the previous permittee. The Tennessee Mitigation Fund wetland credits purchase has ensured that no net loss of resource value will occur from this proposed surface mining of the Sterling and Strays coal seam.

Section 11: Compensatory Mitigation

11.4 A detailed description of the proposed monitoring plan for the mitigation site

Mitigation of the minor road crossings is not required per se, but the Applicant intends to be protective of the sediment releases during construction and removal in order to protect the stream crossings to the fullest extent for the impacted watersheds. Temporary stream crossings are intended to protect streams from sedimentation, flooding, and stream bed or channel damage caused by transport and construction vehicles crossing the stream. Installation and removal of culverts will be done according to the specifications in the Tennessee Erosion and Sediment Control Handbook 4th Edition section 7.43. These specifications include performing in-stream work during dry conditions whenever possible, utilization of stream diversions or cofferdams to provide dry working conditions, stabilizing stream banks with riprap, construction culverts perpendicularly to the stream channel, installation of waterbars to defer road runoff away from the crossing, placing a geotextile on the streambed and banks prior to placement of the culvert and aggregate, installing the culvert on the natural streambed grade, selecting appropriately sized culverts, and use of durable riprap as fill material. The crossing structures will be removed as soon as they are no longer necessary for access, and the stream shall immediately be restored to its original cross-section and properly stabilized and restored to its pre-construction conditions. All temporary stream crossings will be inspected after every rainfall, or at least twice a week (whichever is more frequent), and all repairs will be attended to immediately.

A copy of the 2.5 acres of wetland credits purchased through the Tennessee Mitigation Fund are attached to *Section 11.3*. These credits were purchased in two phases, one for 1.5 acres totaling \$56,250 in December of 2015 (Attachment 1) and the other for 1.0 acres totaling \$37,500 in February of 2016 (Attachment 2). One additional Wetland O has been discovered by QHP Phil Boggs and confirmed by TDEC as being an isolated wetland on the Sterling mine bench. Because this wetland is less than 0.10 acres and has no downstream connection to a blue line stream, no additional ILF payment is being proposed by Hurricane Creek.

Section 11: Compensatory Mitigation

11.5 A discussion of long term protection measures for the site

No long term protection measures will need to be taken as all stream crossings proposed are considered *De minimis degradation* and will be removed during Phase II bond release. All wetlands, totaling 2.5 acres have been removed from the site and in-lieu fees paid to the TMF by the previous permittee.

Attachments

- 1) TMF Payment 1 of 2
- 2) TMF Payment 2 of 2
- 3) USACE Permit & Transfer
- 4) ARAP Map
- 5) MOM Map
- 6) ERI Map

MIDDLESBORO MINING OPERATIONS, INC

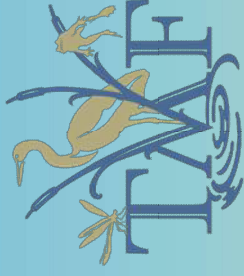
PAYEE: TMP
REMIT TO: Tennessee Mitigation Fund

CHECK: 0000004432
COMMENT:

DATE: 12/21/2015

INVOICE	DATE	VOUCHER	COMMENT	AMOUNT	DISCOUNT	NET AMOUNT
122115	12/21/2015	0000007066	NRS 13MS.008 / LRN-2009-00479	56,250.00	0.00	56,250.00
TOTALS:				56,250.00	0.00	56,250.00

DESCRIPTION	AMOUNT
Sale of 1.5 of 2.5 advanced wetland credits for the compensatory mitigation requirement for mining activities in Claiborne County in the Upper Cumberland Service Area. The permittee has a balance of 1.0 credits still outstanding.	\$56,250
NRS 13MS.008	
LRN-2009-00479	
<i>VC CAPITAL</i>	
<i>per Bill</i>	
<i>Covers 1/2 of Property</i>	
<i>1500-000-000</i>	
<i>VA Totale</i>	
SUBTOTAL	\$ 56,250.00
OTHER	-
TOTAL	\$ 56,250.00



TENNESSEE MITIGATION FUND
A Tennessee Wildlife Federation In-Lieu Fee Program

Hurricane Creek Mining, LLC.
OSM #3341
Attachment 2: TMF Payment 2

Tennessee ILF Advance Wetland Credit Certificate

THE RECIPIENT

Middlesboro Mining Operations

HAS PURCHASED 1.0 ADVANCED WETLAND CREDITS IN THE AMOUNT OF \$37,500 IN THE UPPER CUMBERLAND SERVICE AREA FOR WETLAND IMPACTS ASSOCIATED WITH MINING ACTIVITIES IN CLAIBORNE COUNTY. FEES ASSOCIATED WITH WETLAND MITIGATION ON THE PROPERTY ARE NOW PAID IN FULL.

TDEC FILE #: NRS 13MS.008

ARMY CORPS FILE#: LRN-2009-00479

CHRIS ROBERTS, DIRECTOR

FEBRUARY 18, 2016



TENNESSEE MITIGATION FUND
A Tennessee Wildlife Federation In-Lieu Fee Program



DEPARTMENT OF THE ARMY
NASHVILLE DISTRICT, CORPS OF ENGINEERS
EASTERN REGULATORY FIELD OFFICE
501 ADESA PKWY., SUITE 250
LENOIR CITY, TENNESSEE 37771

December 10, 2014

REPLY TO
ATTENTION OF:

Eastern Regulatory Field Office

SUBJECT: File No. 2009-00479; Public Notice No. 13-36, Proposed Wetland Fill, Temporary Culvert Stream Crossings, and Open Water Fill at Tributaries of Straight Creek and Tackett Creek, Cumberland River Mile 582.5L, Clairfield, Claiborne County, Tennessee (Sterling and Strays Mine #1; OSM 3264)

Appolo Fuels, Inc.
Attn: Gary Asher
P.O. Box 1727
Middlesboro, KY 40965

Dear Mr. Asher:

Enclosed is a Department of the Army permit for the subject activity. If changes in the location or plans of the proposed work are necessary for any reason, revised plans should be submitted promptly to this office. No deviations should be made in the approved plans without first obtaining approval from this office.

If you have any questions regarding this matter, please contact Mark M McIntosh at the above address or telephone (865) 986-7296. For additional information about our Regulatory Program, please visit our web site at <http://www.lrn.usace.army.mil/Missions/Regulatory.aspx>.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric G Reusch".

Eric G Reusch
Chief, Eastern Regulatory Section
Operations Division

Enclosures

DEPARTMENT OF THE ARMY PERMIT

PERMITTEE: Appolo Fuels, Inc.
C/o Gary Asher
P.O. Box 1727
Middlesboro, KY 40965

PERMIT NUMBER: LRN-2009-00479

ISSUING OFFICE: Nashville District Corps of Engineers

NOTE: The term you and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity under the authority of the commanding officer. You are authorized to perform work in accordance with the terms and conditions specified below.

PROJECT DESCRIPTION: The authorized work includes (1) the discharge of fill material for the installation and/or replacement of 21 temporary stream crossings in 11 streams (1,225 linear feet total impact) associated with haul road construction, and (2) the discharge of fill material and excavation in 12 wetlands, totaling 2.34 acres, and 6 open waters (ponds) totaling 2.84 acres. The authorized work is required to complete auger and surface coal mining and associated reclamation activities along the Sterling and Strays coal seams as authorized by the Office of Surface Mining and Reclamation and Enforcement (OSMRE) Surface Mining Control and Reclamation Act permit No. 3264.

PROJECT LOCATION: The proposed surface mining activities are located in tributaries of Tackett Creek, Valley Creek, Hurricane Creek, Pigeon Roost Branch, Bear Creek, and Spruce Lick Branch located in Claiborne County, Tennessee. The project site is located within the Straight Creek-Clear Fork watershed identified by the Hydrologic Unit Code (HUC 12 051301010601) and Tackett Creek watershed (HUC 12 051301010602). Straight Creek-Clear Fork and Tackett Creek are part of the Cumberland River watershed (HUC 05130101). The project site can be found on the Eagen and Fork Ridge 7.5 Minute quadrangle maps. Approximate center coordinates for the mining operation are Latitude 36.55271°N, Longitude 83.83743°W.

PERMIT CONDITIONS:

1. The time limit for completing the work authorized ends on **December 10, 2024**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you must make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity, or should you desire to abandon it without a good faith transfer, you may obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions: **Special Conditions of this authorization are provided on Pages 5 through 7 of this permit.**

Further Information:

Congressional Authorities. You have been authorized to undertake activity described above pursuant to:

- () Section 10 of the Rivers and Harbors Act of 1899
- (X) Section 404 of the Clean Water Act

Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.

- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

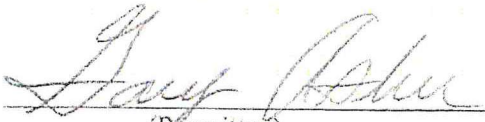
Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to:

- a. When you fail to comply with the terms and conditions of this permit.
- b. When the information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. When significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as this specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

Time Extensions. Permit condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.


Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.


(Permittee)

11/24/14
(Date)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

John L. Hudson, LTC Corps of Engineers
(District Commander)

By: 
Eric Reusch
Chief, Eastern Regulatory Section
Operations Division

12/10/2014
(Date)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.


(Transferee)

May 16 2013
(Date)

Department of the Army Permit Special Conditions (File No. LRN-2009-00479) Page 1 of 3

1. The authorized work shall be performed in accordance with the attached plans (LRN-2009-00479, Sheets 1-5); culvert placement summary, wetland and pond location summary, location map, jurisdictional waters map, typical culvert drawing, and overview map.
2. This authorization remains contingent upon, and must be constructed in accordance with, the project's approved Office of Surface Mining and Reclamation and Enforcement (OSMRE) Surface Mining Control and Reclamation Act permit No. 3264 issued on July 18, 2014. Should new information regarding the scope and/or proposed impacts of the project become available that was not submitted to this office during our review of the proposal, the Permittee shall submit written information concerning proposed modification(s) to this office for review and approval. If project plans change that would include additional impacts to waters of the United States (WOUS), the Permittee shall contact the U.S. Army Corps of Engineers Regulatory Branch (USACE) to obtain authorization prior to placing fill material in WOUS.
3. The Permittee shall comply with the conditions of the Aquatic Resource Alteration Permit/ 401 Water Quality Certification NR13MS.008 (attached), issued on July 24, 2014 and the conditions of the NPDES Permit No. TN0069281 (attached), issued on August 18, 2014.
4. In-Lieu Fee Program (ILF) Credit Purchase: Prior to initiating the authorized work in waters of the United States, the Permittee shall provide verification to the Corps that 2.34 ILF wetland credits have been purchased from the Tennessee Mitigation Fund. The required verification shall reference this project's permit number (LRN-2009-00479).
5. A minimum 50 foot riparian buffer zone on each side of the stream shall be preserved in its natural state above and below each road crossing within the mine permit boundary. Prior to the commencement of mining activities for this project, the limits of the riparian buffer zones shall be clearly flagged and staked by you and/or your contractors. All mining personnel shall be familiar with the locations of all stream channels to prevent encroachment from heavy equipment.
6. Best management practices (BMPs) shall be implemented during construction of the road crossings. BMPs include but are not limited to: utilization of silt fences, straw bales, check dams, limiting vegetation removal and bank shaping to the maximum extent practicable, mulching and seeding, and the prohibition of the use or storage of toxic or hazardous materials within the construction areas. Construction activities shall be performed during low flow conditions. All disturbed areas shall be seeded and mulched to minimize erosion. Appropriate bank protection measures shall be installed in channel or on barren areas requiring erosion control, including but not limited to native grasses and forbs, vegetation, and other acceptable clean non-contaminated material.
7. Upon completion of the coal extraction and reclamation activities, the Permittee shall remove all culverts authorized by this permit and restore the associated stream channels to a natural configuration, hydrology, and pre-construction functional capacity. The channels shall be stable after completion of channel restoration activities. A stable channel would not show evidence of significant bank erosion, head cutting, or other signs of instability.

8. The Permittee shall submit an as-built report for each stream crossing following the removal of culverts and completion of stream restoration at locations listed in the permit and permit drawings. The report shall show plan view and cross-section drawings for each restored crossing. The Permittee shall arrange an on-site meeting with the USACE within 30 days of submittal of the as-built report to determine if the stream crossing restoration sites have been constructed in accordance with the approved plans and permit conditions. Deficiencies, if any, shall be coordinated with the USACE and corrective measures shall be developed by the Permittee to allow the stream restoration areas to reach their pre-construction functional capacity. The permittee is responsible for implementing appropriate corrective measures as recommended by the USACE.
9. A determination of culvert removal and stream restoration success would be made by the USACE. If stream restoration has been implemented in accordance with permit conditions, the applicant would be released from future monitoring requirements or contingency measures. Otherwise, the applicant may be required to implement contingency measure(s), including additional mitigation to include payment of in-lieu fees. The responsibility of the permittee to complete the required culvert removal and stream restoration shall not be considered fulfilled until success has been demonstrated and written verification has been received from USACE.
10. Section 7 obligations under Endangered Species Act (ESA) shall be reconsidered if new information reveals impacts of the proposed project that may affected federally listed species or critical habitat in a manner not previously considered, if the proposed project is subsequently modified to include activities which were not considered during Section 7 consultation with the U.S. Fish and Wildlife Service (USFWS), or new species are listed or critical habitat designated that might be affected by your proposed project. This Department of the Army Permit authorization does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA **Section 10** Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS, both lethal and non-lethal "takes" of protected species are in violation of the ESA.
11. The Permittee shall conduct culvert replacement on the Sterling Bench at the Pigeon Roost Branch crossing (STR-2, 36.57085N, 83.85147W) and the Unnamed Tributary to Tackett Creek crossing (STR-10, 36.54282N, 83.83244W) with open-bottom culverts to address existing and/or potential passage of blackside dace.
12. In the event any previously unknown historic or archaeological sites, artifacts (funerary objects, sacred objects, and objects of cultural matrimony/patrimony, etc.) or human remains are uncovered while accomplishing the activity authorized by this permit, the permittee must cease all work immediately and contact local, state and county law enforcement offices (*only contact law enforcement on findings of human remains*), USACE Regulatory Branch at (615) 369-7500, and the Tennessee Historical Commission (615) 770-1096. The USACE would then initiate the Federal, State and tribal coordination required to comply with the National Historic Preservation Act and applicable State and local laws and regulations. Federally recognized tribes are afforded

a government-to-government status as sovereign nations and consultation is required under Executive Order 13175 and 36 CFR Part 800.



DEPARTMENT OF THE ARMY
NASHVILLE DISTRICT, CORPS OF ENGINEERS
REGULATORY DIVISION
3701 BELL ROAD
NASHVILLE, TENNESSEE 37214

June 16, 2023

SUBJECT: File No. LRN-2009-00479; Transfer Request, OSMRE Permit #3296, Unnamed Tributaries to Tackett Creek, Valley Creek, Hurricane Creek, Pigeon Roost Branch, Bear Creek, and Spruce Lick Branch, Claiborne County, Tennessee

Johnny Asher
3380 Cedar Fork Rd
Tazewell, TN 38789

Mr. Asher,

This confirms the transfer of Army Permit No. LRN-2009-00479 from the prior permittee, Apollo Fuels, Inc, to Hurricane Creek Mining, LLC in accordance with 33 CFR 325 Appendix A. Please note the attached permit, including all terms and conditions, will continue to be binding on the new permittee.

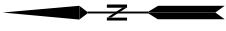
If you have any questions or concerns, please contact Mr. Brent Sewell at 615-417-0240, or e-mail Brent.J.Sewell@usace.army.mil.

Sincerely,

A handwritten signature in blue ink that reads "Heather N. Markway".

Heather N. Markway
Acting Chief, Technical Services Branch
Regulatory Division

Copies Furnished:
Kyle Howard
Howard Engineering and Geology, Inc.



Scale: 1" = 100'

- Legend**
- NPDES Outfalls (Blue dashed line)
 - Permit Boundary (Red solid line)
 - Jurisdictional Waters 404 (Green solid line)
 - Wet Weather Conveyance (Non-Jurisdictional TDEC) (Green dashed line)
 - Wetlands (Green wavy pattern)
 - Culvert Crossing (Black line with 'X')

Map Scale: 1" = 100'
Total Map Area: 3000' x 3000'
Total Project Area: 1000' x 1000'
Total Wetlands: 1000' x 1000'

HURRICANE CREEK MINING, LLC
1000' x 1000'
1000' x 1000'

HOWARD
1000' x 1000'

