



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

March 9, 2011

Re: NOTICE OF DECISION

Economic and Social Necessity

Davis Creek Energy, LLC – Area 5

Draft NPDES Permit TN0069183

Campbell County, Tennessee

Dear Concerned Citizen:

Please accept this correction of the earlier Notice of Decision of Economic and Social Necessity for Draft NPDES Permit TN0069183. The previously issued Notice of Decision dated February 7, 2011 was an early draft issued in error. Please replace that version with this correct Notice dated March 9, 2011.

This correction in no way changes the position of the Division of Water Pollution Control in this matter. The March 9th version of the Notice of Decision does, however, elaborate the Division's position with greater thoroughness and detail, and accordingly should better serve the needs of the public participation process.

The Division apologizes for any confusion or inconvenience this error may cause. Thank you for your continued interest in Tennessee's water quality.

Sincerely,

Jonathon E. Burr

Program Manager 1

Division of Water Pollution Control – Mining Section



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NOTICE OF DECISION
Economic and Social Necessity

Davis Creek Energy, LLC
Area 5
Campbell County, Tennessee
Draft NPDES Permit TN0069183

Dear Concerned Citizen:

The Division of Water Pollution Control has determined that a proposed new discharge to high quality waters by Davis Creek Energy, LLC, is justified for economic and social development in accordance with TDEC *Rule 1200-4-3-.06 (4)(d)*. The new discharge will enter Davis Creek, unnamed tributaries of Davis Creek, and Hogcamp Branch. Davis Creek is currently designated as an Exceptional Tennessee Water (ETW) because the stream is habitat for the federally listed threatened *Blackside Dace*. The decision of the Division is based upon the following considerations:

- The mining activity will provide much needed jobs in a county with unemployment well above the national and state average.
- The "No Action" alternative of **not** mining as proposed will allow existing unregulated discharges from previously mined areas currently causing degradation to Davis Creek to continue unchecked.
- The mining proposed in this permit involves mining of previously mined areas. The reclamation plan associated with the permit will reclaim much of the previously disturbed areas as well as the permittee's activity. This will result in a net improvement in water quality, and stream conditions cleaner and more stable for blackside dace populations by the end of the permit.
- The Aquatic Resource Alteration Permit associated with this proposal will result in a net gain of water resource value, thus providing another improvement to water quality and habitat by restoring stream reaches previously disturbed by historic mining.

Tennessee's Antidegradation Policy prohibits degradation of Exceptional Tennessee Waters (ETWs) unless and until it is affirmatively demonstrated to the Department that the new discharge is justified as a result of necessary economic or social development and that it will not interfere with or become injurious to any of the classified uses for such waters.

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The company has developed a Protection and Enhancement Plan for the Blackside Dace. This plan is a requirement of the U. S. Fish and Wildlife Service (USFWS) and OSM for mining areas that drain to primary and secondary protection zones for the Blackside Dace.

The purpose of the plan is to monitor stream health and the Blackside Dace population before, during, and after mining activities. Macroinvertebrate sampling will continue biannually at established sampling stations in both primary and secondary zones of protection and fish surveys will be conducted annually within the primary protection zone. TDEC has also conducted sampling at selected locations within the protection zones.

The alternatives considered as part of this anti-degradation process center mainly on the "no action" alternative, or not to mine at this location, as opposed to the action of issuing permit coverage to allow mining. It is the Department's opinion that permitting the proposed mining offers opportunities to improve water quality in Davis Creek over the long term, while the "no action" alternative does nothing to alleviate problems from past mining.

The activities proposed under this permit involve mining in previously mined and disturbed areas. As mining is completed, reclamation activities will include much of these previously mined areas that were not reclaimed as part of the original disturbance. This will result in a net improvement in water quality to Davis Creek in the long term, thus gradually improving water quality and habitat conditions for Blackside Dace populations, while pollution controls mandated in the permit conditions should be adequate to limit degradation until this reclamation is complete.

While Davis Creek is not currently listed as Impaired on Tennessee's 303(d) list of Impaired Waters, water quality data indicate the stream experiences on-going degradation from past mining activities. Levels of iron, manganese, aluminum, sulfates and conductivity in Davis Creek are elevated above ecoregion background levels. The Department believes that the potential for short-term degradation is offset in this case by the opportunity to eliminate current unregulated degradation to Davis Creek from historic mining activities via the reclamation required in this permit.

In a broader sense, the Department believes there are general social benefits to a local community that can be achieved any time lands disturbed by past mining are reclaimed. While difficult to quantify, these benefits include public safety, increased value of adjacent properties, overall stability of the watershed, improved fisheries and other recreation, and improved water quality for downstream users.

The other alternatives considered focused on the choices of mining technologies and strategies as well as the pollution control methods to be employed. It is the opinion of the Department that the mining and reclamation plans submitted by the applicant represent appropriate methods and best available technologies.

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Facility operations will benefit the local community and local labor market. These benefits for the affected community include facility employment opportunities and new jobs with projected average salaries of \$52,000, well above the local median household income. Additional economic benefits include facility support, supply services, projected revenues through sales taxes, and severance taxes of \$100,000. Campbell County has a current unemployment rate of 12.2%, significantly higher than the state (9.4%) and national averages (9.8%).

The economic and social information demonstrates that the company has the technological and financial capacity to install, operate, and maintain pollution control measures to protect high quality waters. Davis Creek presently measures full use support. The NPDES permit establishes discharge limitations for Total Suspended Solids, Settleable Solids, Iron, Manganese, and pH.

Davis Creek Energy, LLC, has applied for an NPDES permit to discharge treated wastewater and stormwater from a new coal surface/auger mining operation located near the Cotula Community in Campbell County. The facility is located at latitude 36°29'38", longitude 84°01'37". The project consists of 555.73 acres.

In addition, Davis Creek Energy, LLC has applied for an Aquatic Resource Alteration Permit/401 Certification. This permitting process utilized avoidance and minimization that will reduce on-site and off-site degradation to water resources. The process involves dewatering of ponds, shaping and blending of earthen pond embankments to create shallow pools of 18" depth, followed by the planting of cattails and other indigenous species to create vegetation necessary for wetland development. These proposed activities will comply with the "Responsible Miner Act". The ARAP mitigation will result in a net gain in resource value due to the proposed enhancement and restoration of previously disturbed stream reaches.

A public meeting was held concerning the economic and social necessity decision for the proposed activity on December 21, 2010, at the Knoxville Environmental Field Office, Tennessee Department of Environment and Conservation, 3711 Middlebrook Pike, Knoxville, Tennessee.

The Division notified the public of the meeting through Public Notice M2010-18 on October 28, 2010. The notice was also published in the *LaFollette Press*, LaFollette, Tennessee, on October 28, 2010. The company's notification of the proposed discharge activity and meeting included publication in the *LaFollette Press* on October 28, 2010, and by posting a sign at the entrance to the facility on October 29, 2010. The comment period extended until January 3, 2011.

Six (6) people attended the public meeting. Attendees included representatives of TDEC, the mining company and their consultants, United Mountain Defense, and Statewide Organizing for Community Empowerment (formerly SOCM). TDEC personnel summarized the purpose, scope, procedures, and decision process for the public meeting.

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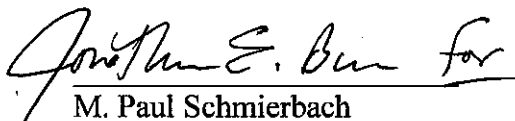
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The consultants representing the company provided a summary of the project, reviewed project plans and maps with attendees, and explained economic and social data from the application. Comments for and against the proposed project and the information submitted to justify the new discharge activity as necessary for the economic and social development in the project area were heard and considered in our decision. Written comments and requests for information and data were received during the comment period. Many of the comments received involved issues outside the scope of the Economic and Social review process, such as monitoring of discharges, pollution control design, and permit conditions – these issues will be addressed under the NPDES review process and Public Notice. Relevant comments included questions about the sources of the economic data provided by the applicant and requests for information concerning ETWs and anti-degradation review process. A summary of the comments received is attached.

TDEC will conduct a Reasonable Potential Analysis (RPA) for a list of pollutant parameters from effluent data collected after commencement of discharge. Specific conductance and biological assessment will be measured. Measures to protect and monitor the federally listed threatened *Blackside Dace* will be included in the mine plan and permit application.

Within 30 days of this decision notification, intergovernmental coordination agencies or affected third persons may petition the Water Quality Control Board for a declaratory order under *TCA* §4-5-223 and the Board will convene a contested case. If no petitions for a declaratory order are made within 30 days of this notice, TDEC will proceed with processing the NPDES permit application. Activities justified by this economic and social justification shall comply with all applicable state water quality criteria.


M. Paul Schmierbach
Environmental Program Manager
Division of Water Pollution Control

3/9/2011
Date