

Scott A. Thompson
Executive Director



Mary Fallin
Governor

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

PUBLIC NOTICE

*****Revised*****

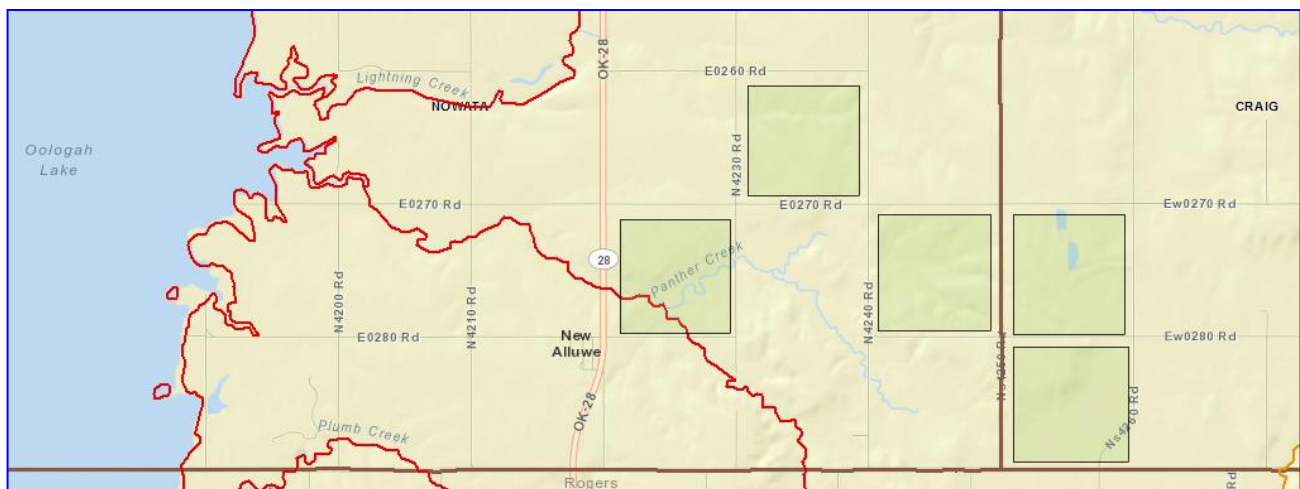
April 14, 2014

This is to give notice that the [Oklahoma Department of Environmental Quality \(DEQ\)](#) has received an application for a Water Quality Certification (WQC) for a coal mining project in the [Panther Creek watershed](#) in Craig and Nowata counties, Oklahoma. Under [Section 401 of the Clean Water Act \(CWA\)](#), the State is required to review any Federal permit regarding activities in jurisdictional waters. The purpose of the Certification review, according to DEQ regulations [[Title 252, Chapter 611-3-1\(a\)](#)], is to determine whether the proposed discharge will comply with the [Oklahoma Water Quality Standards](#) (WQS), and Sections 301, 302, 303, 306, and 307 of the CWA.

The application is from Mr. Clay Hartley of Phoenix Coal Company who has proposed filling unnamed tributaries of Panther Creek and associated ponds in Craig and Nowata Counties. The project will fill approximately 10,921 linear feet of intermittent and ephemeral streams, and 8.93 acres of open water. For mitigation, the applicant proposes on-site creation of 9.20 acres of open water and 10,921 linear feet of stream channels with associated riparian corridors. Detailed design will be accomplished using Natural Regrade© fluvial design software which is intended to replicate natural stream processes while establishing stability against erosion and maintaining water quality.

This Public Notice opens on March 12, 2014 and will close on **April 30, 2014.**

The project is located in Craig & Nowata counties in northeast Oklahoma in unnamed tributaries to Panther Creek in Sections 23, 25, 27, 30 & 31; Township 25 North; and Ranges 17 & 18 East.



A copy of the draft conditional Certification is enclosed. If you have any concerns regarding the proposed Water Quality Certification, please submit your comments in writing by 4:30 p.m. on **April 30, 2014** to:

Dr. Elena Jigoulina
Water Quality Division
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677
(405) 702-8200
Water.Comments@deq.ok.gov



You are receiving this notice because you are either on DEQ's list to receive all public notices or you are located downstream in an affected watershed. If you are receiving this notice in error, are getting multiple notices, or do not want to receive future notices, please let us know. In addition, DEQ's Watershed Planning & Stormwater Permitting Section sends out public notices about proposed changes in Waste Load Allocations, the Integrated Report, TMDLs, 404 projects, stormwater permits, and the CPP.

If you would like to receive any or all of these public notices via e-mail, please send your e-mail address to Water.Comments@deq.ok.gov. Also, please let us know if you want to receive notices for the entire State or just for your [watershed](#). **By receiving PDF public notices via e-mail, you will help save money and the environment by reducing the amount of paper we use to mail them.** In addition to helping the environment, you will be able to click on helpful FYI hyperlinks.



Note to newspapers: This notice is for informational purposes only. **Do not publish in the legal section or as a legal notice.**

May XX, 2014

Mr. Clay Hartley
Phoenix Coal Company
P.O. Box 498
Vinita, Oklahoma 74301

Re: Water Quality Certification for a coal mining project in the Panther Creek watershed in Craig and Nowata counties, Oklahoma, SWT-2013-380.

Dear Mr. Hartley:

The Department of Environmental Quality (DEQ) has received your request for a Water Quality Certification under Section 401 of the Federal Clean Water Act (CWA) [[33 U.S.C. §1251 et seq. \(1972\)](#)], for activities in the Panther Creek watershed to be permitted under Section 404 of the CWA. DEQ rules governing 401 Water Quality Certification are contained in Oklahoma Administrative Code (O.A.C.) § 252:611-3 (2011) pursuant to [27A O.S. §2-6-103\(C\)\(2\) \[OSCN 1999\]](#). For copies of the DEQ rules and regulations related to the 401 procedures, please access it online at www.deq.state.ok.us/rules/611.pdf or contact the DEQ Office of External Affairs at (800) 869-1400.

We have reviewed and examined the proposed project as described in your application (SWT-2013-380) and supporting materials. The unnamed tributaries of Panther Creek are assigned the following default beneficial uses through the Oklahoma Water Quality Standards (WQS) [OAC 785:45-5-3(a)]: Aesthetics, Fish & Wildlife Propagation-Warm Water Aquatic Community Subcategory, Primary Body Contact Recreation, and Agriculture: Irrigation & Livestock subcategories. To obtain a copy of the most recent version of the WQS, go online to http://www.owrb.ok.gov/util/rules/pdf_rul/current/Ch45.pdf or contact your nearest Oklahoma Water Resources Board Office in Tulsa at (918) 581-2924.

The application is for the filling of the unnamed tributaries in the Panther Creek watershed and associated ponds. The project will result in filling of approximately 10,921 linear feet of intermittent and ephemeral streams, and 8.93 acres of open water. As mitigation, the applicant proposes on-site creation of 9.20 acres of open water and 10,921 linear feet of stream channels with associated riparian corridors. Detailed design will be accomplished using Natural Regrade© fluvial design software which is intended to replicate natural stream processes while establishing stability against erosion and maintaining water quality.

The project is located in Craig & Nowata counties in northeast Oklahoma in unnamed tributaries to Panther Creek in Sections 23, 25, 27, 30 & 31; Township 25 North; and Ranges 17 & 18 East.

The conditions attached to this conditional Certification will be the same terms of any 404 permit. The State may require compliance with these conditions under State and/or federal law. Failure to comply with the conditions or any other applicable State requirements may result in proceedings brought by the State for the suspension, termination, modification or revocation of this Certification and/or for injunctive relief, damages and/or penalties as allowed by law. This Certification may be revoked or modified upon subsequent amendments or revisions to Oklahoma's WQS requirements or upon expiration of the federal permit for the described activity.

This conditioned Water Quality Certification does not supersede the requirements of a Section 404 permit from the U.S. Army Corps of Engineers, a permit required by the local floodplain board, or any other permit required for this project.

(Continued next page)

The certification is granted subject to the following conditions:

1. All spills of fuel¹ or other pollutants² in excess of five gallons shall be reported to DEQ's Pollution Prevention Hotline at 1-800-522-0206 within twenty-four (24) hours.
2. All fueling and servicing of vehicles and equipment shall be done above at least 100 feet from the first defined bank of the creek.
3. Activities authorized by Department of the Army permits sometimes require floodplain development permits. Communities participating in the National Flood Insurance Program are required by that program to review all proposed development to determine if a floodplain permit is required.
4. Permittees shall provide access to the property to DEQ for inspection purposes.
5. A mitigation plan dated July 15, 2013 was submitted to address all impacts to the aquatic environments due to the project. That plan shall be implemented with the following modifications:
 - Permittee shall increase the mitigation ratio for impacted streams by 20%.
 - Permittee shall provide a minimum of 1:1 mitigation for all affected waters of the State which are not under U.S. Army Corps of Engineers jurisdiction.
 - The waterbodies that comprise the mitigation project shall be provided long-term protection through real estate instruments or other appropriate mechanisms.
6. All materials and fuels used in the repair work of this project must be stored and/or stockpiled above the Ordinary High Water Mark (OHWM) and shall be removed from a likely flood zone prior to any predicted flood.

Sincerely,

Mark Derichsweiler, P.E.
Watershed Planning and Stormwater Permitting Section
Water Quality Division

cc: Michael Ware, Regulatory Branch, U.S. Army Corps of Engineers, Tulsa
Richard Hatcher, Director, Oklahoma Department of Wildlife Conservation
Dixie Porter, Field Supervisor, U. S. Fish and Wildlife Service, Tulsa
Derek Smithee, Water Quality Programs Division, Oklahoma Water Resources Board
Brooks Tramell; Monitoring, Assessment and Wetlands Programs; Oklahoma Conservation Commission
Sharon Parrish, EPA Region 6 (6WQ-EM)
Tom Bates, Public Protection Unit Chief, Attorney General of Oklahoma

¹ <http://www.deq.state.ok.us/factsheets/land/Dieselspill.pdf>

² Spills other than diesel or gasoline need to be addressed on a case by case basis. If reportable quantities (RQs) are exceeded, contact the National Response Center at 1-800-424-8802. The National Response Center must also be notified if there is a sheen or threat of a sheen on navigable waterways. Information regarding reportable quantities can be found on the following EPA webpage: www.epa.gov/superfund/policy/release/rq/.