

UNITED STATES DEPARTMENT OF THE INTERIOR  
Office of Surface Mining  
Reclamation and Enforcement

**TEN-DAY NOTICE**

Number X24-111-440-003 TV 4

Originating Office: Beckley Area Office  
US DOI, Office of Surface Mining  
313 Harper Park Drive  
Beckley, West Virginia 25801  
Telephone Number: (304) 255-5265

Ten-Day Notice to the State of **West Virginia**

You are notified that, as a result of Citizen Information  
(e.g. a federal inspection, citizen information, etc.) the Secretary has reason to believe that the person described below is in violation of the Act or a permit condition required by the Act. If the State Regulatory Authority fails within ten days after receipt of this notice to take appropriate action to cause the violation(s) described herein to be corrected, or to show cause for such failure and transmit notice of your action to the Secretary through the originating office designated above, then a Federal inspection of the surface coal mining operation at which the alleged violation(s) is occurring will be conducted and appropriate enforcement action as required by Section 521 (a)(1) of the Act will be taken.

Permittee: SOUTH FORK COAL COMPANY, LLC County: GREENBRIER  
*(Or Operator if No Permit)*  
Mailing Address: 1295 ASHFORD HILL RD, , ASHFORD, WV 25009  
Permit Number: U-3019-91 Mine Name: SOUTH FORK DEEP MINE  
*(Multiple Permits See Remarks)*

- Surface
- Underground
- Other

**01 NATURE OF VIOLATION AND LOCATION:**

**Permittee failed to include PEP(s) for the federally endangered species Candy Darter and its critical habitat for permits U-3019-91, O-3013-11, O-3012-11, O-3022-11, S-3012-19, S-3002-19, S-3005-11, S-3033-93, S-3010-16, S-3002-19, and S-138-78**

Section of State Law, Regulation or Permit **Reg 38-2-3.16.b**  
Condition believed to have been violated:

**02 NATURE OF VIOLATION AND LOCATION:**

**Permittee failed to comply with an Order, issued by WVDEP, requiring the permittee to submit permit revisions that includes PEP(s) within 45 days of issuance of the Order for multiple permits**

Section of State Law, Regulation or Permit **Reg 22-3-17.a**  
Condition believed to have been violated:

**03 NATURE OF VIOLATION AND LOCATION:**

**Permittee failed to seek a determination that mining is permissible for permit O-3022-11**

Section of State Law, Regulation or Permit **Reg 22-3-22(a), 22-3-22(d)(5), 38-2-3.21.c**  
Condition believed to have been violated:

Remarks or Recommendations:

Date of Notice: **07/31/2024**

Signature of Authorized Representative: \_\_\_\_\_

Page 1 of 2

Print Name and ID: **Mark Carter ID# 440**

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**TEN-DAY NOTICE**

Number X24-111-440-003 TV 4

Originating Office: Beckley Area Office  
US DOI, Office of Surface Mining  
313 Harper Park Drive  
Beckley, West Virginia 25801

Telephone Number: (304) 255-5265

Ten-Day Notice to the State of **West Virginia**

**04 NATURE OF VIOLATION AND LOCATION:**

**Permittee failed to reclaim permits S-3005-11 and S-138-78 in accordance with the approved Reclamation Plan.**

Section of State Law, Regulation or Permit **Reg 38-2-14.15.a**  
Condition believed to have been violated:

NATURE OF VIOLATION AND LOCATION:

Section of State Law, Regulation or Permit  
Condition believed to have been violated:

NATURE OF VIOLATION AND LOCATION:

Section of State Law, Regulation or Permit  
Condition believed to have been violated:

NATURE OF VIOLATION AND LOCATION:

Section of State Law, Regulation or Permit  
Condition believed to have been violated:

NATURE OF VIOLATION AND LOCATION:

Section of State Law, Regulation or Permit  
Condition believed to have been violated:

NATURE OF VIOLATION AND LOCATION:

Section of State Law, Regulation or Permit  
Condition believed to have been violated:

Date of Notice: **07/31/2024**

Signature of Authorized Representative: \_\_\_\_\_

Print Name and ID: **Mark Carter ID# 440**



# U.S. DEPT. OF THE INTERIOR OFFICE OF SURFACE MINING



## Citizen Complaint

Citizen Complaint Number

**CC24-111-002**

Date Complaint Received

**06/20/2024**

Complainant

**WEST VIRGINIA HIGHLANDS CONCERNVANCY**

Did citizen request confidentiality?

**N**

Nature of Complaint

**COMPLAINANT ALLEGES THAT THE REGULATING AUTHORITY HAS IMPROVIDENTLY ISSUED PERMI O-3022-11, PERMITTEE HAS FAILED TO COMPLY WITH REGULATING AUTHORITY ORDERS, FAILED TO INSTITUTE PROTECTION ENHANCEMENT PLANS, AND RECLAIM PERMITS.**

Performance Standard Category  
(Check all that apply)

- A. Administrative
- B. Hydrologic Balance
- C. Topsoil & Subsoil
- D. Backfilling & Grading
- E. Excess Spoil Disposal
- F. Coal Mine Waste
- G. Use of Explosive
- H. Subsidence Control Plan
- I. Roads
- J. Signs & Markers
- K. Distance Prohibitions
- L. Revegation
- M. Postmining Land Use

Acknowledgement Letter

**07/03/2024**

FO Decision Letter to Citizen

Citizen Informal Review Request

Informal Review Date

Result of Informal Review

Citizen Notified of Review Results

Comments

Empty box for comments.



# U.S. DEPT. OF THE INTERIOR OFFICE OF SURFACE MINING

## Mine Site Evaluation State Program



<b>1. Permittee/Person</b> <input style="width:95%;" type="text" value="SOUTH FORK COAL COMPANY, LLC"/>		<b>9. Permit Number</b> <input style="width:95%;" type="text" value="U-3019-91"/>		<b>10. Permit Type</b> <input style="width:95%;" type="text" value="PP"/>	
<b>2. Address</b> <input style="width:95%;" type="text" value="1295 ASHFORD HILL RD"/> <input style="width:95%;" type="text"/>		<b>11. Field Visit Date</b> <input style="width:95%;" type="text" value="7/2/2024"/> <small>mm - dd - yyyy</small>		<b>12. Purpose</b> <input style="width:95%;" type="text" value="CCR"/>	
<b>3. City</b> <input style="width:95%;" type="text" value="ASHFORD"/>		<b>4. State</b> <input style="width:95%;" type="text" value="WV"/>		<b>13. SRA Present</b> <input style="width:95%;" type="text" value="N"/>	
<b>5. Zip Code</b> <input style="width:95%;" type="text" value="25009"/>		<b>6. Phone Number</b> <input style="width:95%;" type="text" value="(304) 836-5860"/>		<b>14. Permit Status</b> <input style="width:95%;" type="text" value="IN"/>	
<b>7. Operator Name, if Different than Permittee</b> <input style="width:95%;" type="text"/>		<b>15. Site Status</b> <input style="width:95%;" type="text" value="AP"/>		<b>16. Facility Type</b> <input style="width:95%;" type="text" value="BD"/>	
<b>8. Mine Name</b> <input style="width:95%;" type="text" value="SOUTH FORK DEEP MINE"/>		<b>17. OSM Office #</b> <input style="width:95%;" type="text" value="111"/>		<b>18. CCID #</b> <input style="width:95%;" type="text" value="CC24-111-002"/>	
<b>9. Permit Number</b> <input style="width:95%;" type="text"/>		<b>19. Land Code</b> <input style="width:95%;" type="text" value="S"/>		<b>20. M.S.H.A. ID #</b> <input style="width:95%;" type="text" value="46-08505"/>	
<b>10. Permit Type</b> <input style="width:95%;" type="text"/>		<b>21. State Abbrev.</b> <input style="width:95%;" type="text" value="WV"/>		<b>22. County/Burrough</b> <input style="width:95%;" type="text" value="GREENBRIER"/>	
<b>11. Field Visit Date</b> <input style="width:95%;" type="text"/>		<b>23. AVS Permittee Entity ID Number</b> <input style="width:95%;" type="text" value="251407"/>		<b>24. State Office</b> <input style="width:95%;" type="text" value="Fayetteville"/>	

<b>25. Hours</b> <table style="width:100%; border-collapse: collapse;"> <tr><td style="width:10%; border: 1px solid black; text-align: center;">50.0</td><td style="width:90%;">a. Permit Review</td></tr> <tr><td style="border: 1px solid black; text-align: center;">0.0</td><td>b. Site Visit Time</td></tr> <tr><td style="border: 1px solid black; text-align: center;">0.0</td><td>c. Travel Time</td></tr> <tr><td style="border: 1px solid black; text-align: center;">12.0</td><td>d. Report Writing</td></tr> </table>	50.0	a. Permit Review	0.0	b. Site Visit Time	0.0	c. Travel Time	12.0	d. Report Writing	<b>26. Signature Block</b>  <hr/> <p style="text-align: center;">Signature:</p> <div style="border: 1px solid black; padding: 2px; text-align: center; margin: 5px auto; width: 80%;">Mark Carter, ID#440</div> <p style="text-align: center;">Inspector's Name:</p> <p style="text-align: center;">Date: <input style="width: 150px;" type="text" value="7/31/2024"/></p>	<b>27. Reviewing Official:</b>  <hr/> <p style="text-align: center;">Signature:</p> <div style="border: 1px solid black; padding: 2px; text-align: center; margin: 5px auto; width: 80%;">John Flesher</div> <p style="text-align: center;">Reviewer's Name:</p> <p style="text-align: center;">Date: <input style="width: 150px;" type="text" value="7/31/2024"/></p>
50.0	a. Permit Review									
0.0	b. Site Visit Time									
0.0	c. Travel Time									
12.0	d. Report Writing									

**Permit Type - Item 10** IP = Interim Program PP = Permanent Program NP = No Permit

**Purpose Type Codes - Item 12**

Oxx...Oversight  
Axx...Assistance

RFx...Reclamation Fees  
Fxx...Federal Actions

CCR...Citizen Complaint Referral (non-site visit)  
CC....Citizen Complaint (initial site visit)  
CCF...Assistance

**Joint Inspection - Item 13** A joint inspection is when a state inspector accompanies an OSM inspector at any time during the review of the mine site

**Permit Status - Item 14**

**A** Active: Coal mining activities occurring or permitted but not yet disturbed.  
**IN** Inactive (Permanent Program Permit): Phase II completed or Temporary Cessation of Operations. (Interim Program Permit): Coal mining completed and reclamation activities initiated.  
**BR** Bond Release: Reclamation completed and State Regulatory Authority(RA) has released all of the bond (Phase III Release).

**AB** Abandoned: All surface and underground coal mining activities have ceased and operator has left the site without completing reclamation as defined in 30 CFR 840:11(g).  
**AB1** Bond Forfeiture: Bond forfeiture officially in process or completed and reclamation in progress or not yet commenced.  
**AB2** Partially Reclaimed Forfeiture: Forfeited site where all bonds have been used to reclaim site, but site not reclaimed to Program standards.  
**AB3** Reclaimed Forfeiture: Forfeited site that has been reclaimed to Program standards.  
**NA** Not Applicable: When site is unpermitted.

**Site Status - Item 15**

**ND** No Disturbance: No coal mining and reclamation operations have been started.  
**EX** Coal Exploration: Coal exploration operations have started and where coal mining operations have not begun.  
**AP** Active Coal Producing: Coal surface mining activities are occurring.  
**AN** Active Non-Producing: Active non-producing facility such as tippie or preparation plant.  
**NM** No Mining: The Permit Status is active, site is not in Temporary Cessation, no surface coal mining activity, and site not regraded.

**MC** Mining Complete: No mining activity on site, site regraded and awaiting bond release.  
**TC** Temporary Cessation: The RA has granted cessation of mining pursuant to 30 CFR 816/817:13(b).  
**P1** Phase I Release: At least Phase I bond release granted for entire permitted area. For interim permits, partial bond release.  
**P2** Phase II Release: At least Phase II bond release for the entire permitted area.  
**P3** Phase III Release: Reclamation completed and the RA has released all bond.

**NS** Non-Site Visit: Status of site not determined.  
**FP** Forfeiture Pending: The RA is pursuing actions to revoke the permit, collect the performance bond(s), and/or reclamation of forfeited site is in progress.  
**FR** Forfeited and Reclaimed: Forfeiture reclamation completed.  
**FO** Abandoned Site: Abandoned site that is permitted but there is no bond.  
**WC** Wildcat: Coal mining and reclamation operations have or are taking place and the activity is not covered by the required permits from the RA.

**Facility Type Codes - Item 16**

A....Surface  
B....Underground  
C....Preparation Plant

D....Ancillary (Haulroad, Conveyor, and/or Rails)  
E....Refuse and/or Impoundment  
F....Loading Facility and/or Tlpple  
G....Stockpiles

H...Exploration Permits  
I....Notice of Intent to Explore  
J....Exempt 16 and 2/3

K....Government Financed Construction Exemption  
L....Remining site permitted under 30 CFR 785.25

**Small Business Regulatory Enforcement Fairness Act (SBREFA)**

**Your Comments are Important**

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you are a small business (a business with 500 or fewer employees including those of affiliates) and wish to comment on the enforcement or compliance activities of OSM, call 1-888-REG-FAIR (1-888-734-3247).

**U.S. DEPT. OF THE INTERIOR  
OFFICE OF SURFACE MINING  
Mine Site Evaluation**

Permittee/  
Person **SOUTH FORK COAL COMPANY, LLC**

Permit  
Number **U-3019-91**

Field Visit  
Date **7/2/2024**

**State Program  
Continuation Page**

## 28. Performance Standard Categories

Codes:1=Compliance, 2=Noncompliance, 3=Not Planned, 4=Not Started, 5=Noncompliance Identified Elsewhere, 6=Previously Cited, 7=Permit Defect

**A. Administrative**

1. 2 Mining within Valid Permit
2.        Mining within Bonded Area
3. 2 Terms & Conditions of Permit
4.        Liability Insurance
5.        Ownership and Control
6.        Temporary Cessation
7.        AML Rec. Fees - Non-Respondent
8.        AML Rec. Fees - Failure to Pay

**B. Hydrologic Balance**

1.        Drainage Control
2.        Inspections & Certifications
3.        Siltation Structures
4.        Discharge Structures
5.        Diversions
6.        Effluent Limits
7.        Ground Water Monitoring
8.        Surface Water Monitoring
9.        Drainage - Acid-Toxic Materials
10.        Impoundments
11.        Stream Buffer Zones

**C. Topsoil & Subsoil**

1.        Removal
2.        Substitute Materials
3.        Storage and Protection
4.        Redistribution

**D. Backfilling & Grading**

1.        Exposed Openings
2. 2 Contemporaneous Reclamation
3.        Approximate Original Contour
4.        Highwall Elimination
5.        Steep Slopes (includes downslope)
6.        Handling of Acid and Toxic Materials
7.        Stabilization (rills and gullies)

**E. Excess Spoil Disposal**

1.        Placement
2.        Drainage Control
3.        Surface Stabilization
4.        Inspections & Certifications

**F. Coal Mine Waste (Refuse Piles/Impoundments)**

1.        Drainage Control
2.        Surface Stabilization
3.        Placement
4.        Inspections & Certifications
5.        Impounding Structures

**G. Use of Explosives**

1.        Blaster Certification
2.        Distance Prohibitions
3.        Blast Survey/Schedule
4.        Warnings & Records
5.        Control of Adverse Effects

**H.        Subsidence Control Plan**

**I. Roads**

1.        Road Construction
2.        Certification
3.        Drainage
4.        Surfacing and Maintenance
5.        Reclamation

**J. Signs & Markers**

1.        Signs
2.        Markers

**K.        Distance Prohibitions**

**L. Revegetation**

1.        Vegetative Cover
2.        Timing

**M.        Postmining Land Use**

**N. Other**

General  
Performance  
Category

                      
                      
                    

### Performance Standard Categories 30 CFR Counterparts

**A. Administrative**

- |                                    |                         |
|------------------------------------|-------------------------|
| 1. Valid Permit                    | 773.11                  |
| 2. Mining within Bonded Area       | 773.11                  |
| 3. Terms & Conditions of Permit    | 773.17                  |
| 4. Liability Insurance             | 800.60                  |
| 5. Ownership and Control           | 778.13                  |
| 6. Temporary Cessation             | 842.11(e) & 816/817.131 |
| 7. AML Rec. Fees -- Non-Respondent | 870.15(b)               |
| 8. AML Rec. Fees -- Failure to Pay | 870.15(a)               |

**B. Hydrologic Balance**

- |                                     |           |
|-------------------------------------|-----------|
| 1. Drainage Control                 | 45        |
| 2. Inspections & Certifications     | 49(a)(10) |
| 3. Siltation Structures             | 46        |
| 4. Discharge Structures             | 47        |
| 5. Diversions                       | 43        |
| 6. Effluent Limits                  | 42        |
| 7. Ground Water Monitoring          | 41(c)     |
| 8. Surface Water Monitoring         | 41(e)     |
| 9. Drainage--Acid - Toxic Materials | 41(f)     |
| 10. Impoundments                    | 49        |
| 11. Stream Buffer Zones             | 57        |

**C. Topsoil & Subsoil**

- |                           |       |
|---------------------------|-------|
| 1. Removal                | 22(a) |
| 2. Substitute Materials   | 22(c) |
| 3. Storage and Protection | 22(c) |
| 4. Redistribution         | 22(d) |

**D. Backfilling & Grading**

- |                                       |                                   |
|---------------------------------------|-----------------------------------|
| 1. Exposed Openings                   | 816/817.13, 14, 15, & 823.11 & 21 |
| 2. Contemporaneous Reclamation        | 100                               |
| 3. Approximate Original Contour       | 102(a)(1)                         |
| 4. Highwall Elimination               | 102(a)(2)                         |
| 5. Steep Slopes (includes downslope)  | 107                               |
| 6. Handling of Acid & Toxic Materials | 102(c)                            |
| 7. Stabilization (rills and gullies)  | 95(b)                             |

**E. Excess Spoil Disposal** (816/817.71-74)

- |                                 |       |
|---------------------------------|-------|
| 1. Placement                    | 71(e) |
| 2. Drainage Control             | 71(f) |
| 3. Surface Stabilization        | 71(g) |
| 4. Inspections & Certifications | 71(h) |

**F. Coal Mine Waste (Refuse Piles/Impoundments)** 816/817.81-84

- |                                   |       |
|-----------------------------------|-------|
| 1. Drainage Control               | 83(a) |
| 2. Surface Stabilization          | 83(b) |
| 3. Placement                      | 83(c) |
| 4. Inspections and Certifications | 83(d) |
| 5. Impounding Structures          | 84    |

**G. Use of Explosives** (816/817.61-68)

- |                               |         |
|-------------------------------|---------|
| 1. Blaster Certification      | 61(c)   |
| 2. Distance Prohibitions      | 61(d)   |
| 3. Blast Survey/Schedule      | 62-64   |
| 4. Warnings & Records         | 66 & 68 |
| 5. Control of Adverse Effects | 67      |

**H. Subsidence Control Plan** (817.121-122)

**I. Roads** (816/817.150-151)

- |                              |               |
|------------------------------|---------------|
| 1. Road Construction         | 150(c)        |
| 2. Certification             | 151(a)        |
| 3. Drainage                  | 150(b)-151(d) |
| 4. Surfacing and Maintenance | 150(e)-151(d) |
| 5. Reclamation               | 150(f)        |

**J. Signs & Markers** 816/817.11

- |            |                        |
|------------|------------------------|
| 1. Signs   | 11(a),(b),&(c)         |
| 2. Markers | 11(a),(b),(d),(e),&(f) |

**K. Distance Prohibitions** (761.11)

**L. Revegetation** (816/817.111-116)

- |                     |           |
|---------------------|-----------|
| 1. Vegetative Cover | 111 & 116 |
| 2. Timing           | 113       |

**M. Postmining Land Use** (816/817.133)

**OSM Action**  
 1) Deferred to State Action  
 2) TDN Issued  
 3) NOV Issued  
 4) FTA-CO Issued  
 5) IH-CO Issued  
 6) ID-CO Issued (Imminent Danger to Public)  
 7) Previously cited by RA, abatement pending  
 8) Abated during or before OSM inspection  
 9) Follow-up of Federal Action  
 0) Off-site impact with no violation

**Off-Site Impacts**  
 For each type of impact and resource affected, enter "N, D, or J" to describe the degree of off-site impact:  
 N - Minor Occurrence  
 D - Moderate Occurrence  
 J - Major Occurrence

**U.S. DEPT. OF THE INTERIOR  
OFFICE OF SURFACE MINING  
Mine Site Evaluation**

Permittee/ Person	SOUTH FORK COAL COMPANY, LLC	Permit Number	U-3019-91	Field Visit Date	7/2/2024	<b>State Program Continuation Page</b>
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A. Specific State Law/Regulations Violated: Reg 38-2-3.16.b

B. Description: Permittee failed to include PEP(s) for the federally endangered species Candy Darter and its critical habitat for permits U-3019-91, O-3013-11, O-3012-11, O-3022-11, S-3012-19, S-3002-19, S-3005-11, S-3033-93, S-3010-16, S-3002-19, and S-138-78

C. Performance Standard: A3

D. Abated (Y/N): N

E. OSM Action: 2

F. OSM Action Number: X24-111-440-003

Viol#: 01

G. Optional:

H. Any Off-Site Impacts (Y/N): N

I. Latitude: 0380931

J. Longitude: 0802316

K. Elevation:

**L. Off-Site Impacts**

	People	Land	Water	Structures
Blasting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hydrology	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Encroachment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

A. Specific State Law/Regulations Violated: Reg 22-3-17.a

B. Description: Permittee failed to comply with an Order, issued by WVDEP, requiring the permittee to submit permit revisions that includes PEP(s) within 45 days of issuance of the Order for multiple permits

C. Performance Standard: A3

D. Abated (Y/N): N

E. OSM Action: 2

F. OSM Action Number: X24-111-440-003

Viol#: 02

G. Optional:

H. Any Off-Site Impacts (Y/N): N

I. Latitude: 0380931

J. Longitude: 0802316

K. Elevation:

**L. Off-Site Impacts**

	People	Land	Water	Structures
Blasting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hydrology	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Encroachment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

A. Specific State Law/Regulations Violated: Reg 22-3-22(a), 22-3-22(d)(5), 38-2-3.21.c

B. Description: Permittee failed to seek a determination that mining is permissible for permit O-3022-11

C. Performance Standard: A1

D. Abated (Y/N): N

E. OSM Action: 2

F. OSM Action Number: X24-111-440-003

Viol#: 03

G. Optional:

H. Any Off-Site Impacts (Y/N): N

I. Latitude: 0380931

J. Longitude: 0802316

K. Elevation:

**L. Off-Site Impacts**

	People	Land	Water	Structures
Blasting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hydrology	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Encroachment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

A. Specific State Law/Regulations Violated: Reg 38-2-14.15.a

B. Description: Permittee failed to reclaim permits S-3005-11 and S-138-78 in accordance with the approved Reclamation Plan.

C. Performance Standard: D2

D. Abated (Y/N): N

E. OSM Action: 2

F. OSM Action Number: X24-111-440-003

Viol#: 04

G. Optional:

H. Any Off-Site Impacts (Y/N): N

I. Latitude: 0380931

J. Longitude: 0802316

K. Elevation:

**L. Off-Site Impacts**

	People	Land	Water	Structures
Blasting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hydrology	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Encroachment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## MINE SITE EVALUATION NARRATIVE

**Permit Number:** U-3019-91, O-3022-11, S-3012-19, S-3005-11, S-3033-93, S-3010-16, S-3002-19, O-3012-11, O-3013-11, S-3033-93, and S-138-78 (Permits)

**Permittee:** South Fork Coal Company, LLC

**Inspection Date:** 6/24/2024

**Inspection Type:** CCR

**Participants:** Mark Carter OSMRE

This Citizen Complaint Referral was initiated by a complaint received by OSMRE from the West Virginia Highlands Conservancy (citizen) on June 20, 2024.

The citizen alleges that a Protection Enhancement Plan(s) (PEP) addressing the critical habitat of the listed species (Candy Darter) are not included in the Permits.

The citizen alleges the permittee failed to comply with an order of the Director issued by West Virginia Department of Environmental Protection (WVDEP) between 4/10/2024 and 4/30/2024 on inspection reports (MR-6's) that stated that the permittee had 45 days from the issuance of the order to submit an insignificant revision that included a PEP(s) for multiple permits.

The citizen alleges that permits U-3019-91, O-3022-11, and S-3012-19 encroach upon National Forest lands and have been improvidently permitted. Specifically, a section of Permit O-3022-11 crosses the U.S. National Forest lands, referred to as Tract M on the Permit's proposal and drainage map .

The citizen alleges that the permittee has failed to reclaim permits S-3005-11 and S-138-78.

Please see the attached Ten-Day Notice (TDN) that includes the following violations.

**TDN Violation # 1:** Permittee failed to include PEP(s) for the federally endangered species Candy Darter and its critical habitat for permits U-3019-91, O-3013-11, O-3012-11, O-3022-11, S-3012-19, S-3002-19, S-3005-11, S-3033-93, S-3010-16, S-3002-19, and S-138-78. *38-2-3.16.b* (see below for regulatory provisions violated)

**TDN Violation # 2:** Permittee failed to comply with an Order, issued by WVDEP, requiring the permittee to submit permit revisions that includes PEP(s) within 45 days of issuance of the Order for permits U-3019-91 (4/10/2024 MR-6), O-3013-11(4/22/2024 MR-6), O-3012-11 (4/22/2024 MR-6), O-3022-11 (4/10/2024 MR-6), S-3012-19 (4/10/2024 MR-6), S-3002-19 (4/22/2024 MR-6), S-3005-11 (4/22/2024 MR-6), and S-138-78 (4/30/2024 MR-6). *22-3-17.a* (see below for regulatory provisions violated)

**TDN Violation # 3:** Permittee failed to seek a determination that mining is permissible for permit O-3022-11 where it crosses U.S. Forest Lands, referred to as Tract M on the Permit proposal and drainage map.. *22-3-22(a)*, *22-3-22(d)(5)*, *38-2-3.21.c* (see below for regulatory provisions violated)

**TDN Violation # 4:** Permittee failed to reclaim permits S-3005-11 and S-138-78 in accordance with the approved Reclamation Plan. *38-2-14.15.a* (see below for regulatory provisions violated)

## MINE SITE EVALUATION NARRATIVE

### **38-2-3.16** *Fish and Wildlife Resources Information*

**38-2-3.16.b.** *Each application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife 38CSR2 and related environmental values, including compliance with the Endangered Species Act, during the surface mining and reclamation operations and how enhancement of these resources will be achieved where practicable.*

**§22-3-22.** *Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable.*

**(a)** *The director shall establish a planning process to enable objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of this state are unsuitable for all or certain types of surface-mining operations pursuant to the standards set forth in subdivisions (1) and (2) of this subsection: Provided, that such designation shall not prevent prospecting pursuant to section seven of this article on any area so designated.*

**(d)** *After the third day of August, one thousand nine hundred seventy-seven, and subject to valid existing rights, no surface-mining operations, except those which existed on that date, shall be permitted.*

**(5)** *On any federal lands within the boundaries of any national forest: Provided, That surface coal mining operations may be permitted on the lands if the secretary of the interior finds that there are no significant recreational, timber, economic or other values which may be incompatible with the surface-mining operations: Provided, however, That the surface operations and impacts are incident to an underground coal mine.*

### **38-2-3.21** *Prohibitions and Limitations on Mining*

**38-2-3.21.c.** *Where the proposed operation would include Federal lands within the boundaries of any national forest when the applicant seeks a determination that mining is permissible under paragraph (5), subsection (d), section 22 of the Act, the applicant shall submit a permit application to the field office of the Federal Office of Surface Mine Reclamation and Enforcement with a request that such determinations be made.*

**§22-3-17.** *Notice of violation; procedure and actions; enforcement; permit revocation and bond forfeiture; civil and criminal penalties; appeals to the board; prosecution; injunctive relief.*

**(a)** *If any of the requirements of this article, rules promulgated pursuant thereto or permit conditions have not been complied with, the director shall cause a notice of violation to be served upon the operator or the operator's duly authorized agent. A copy of the notice shall be handed to the operator or the operator's duly authorized agent in person or served by certified mail addressed to the operator at the permanent address shown on the application for a permit. The notice shall specify in what respects the operator has failed to comply with this article, rules or permit conditions and shall specify a reasonable time for abatement of the violation not to exceed thirty days. If the operator has not abated the violation within the time specified in the notice, or any reasonable extension thereof, not to exceed sixty days, the director shall order the cessation of the operation or the portion thereof causing the violation, unless the operator affirmatively demonstrates that compliance is unattainable due to conditions totally beyond the control of the operator. If a violation is not abated within the time specified or any extension thereof, or any cessation order is issued, a mandatory civil penalty of not less than seven hundred fifty dollars per day per violation shall be assessed. A cessation order remains in effect until the director determines that the violation has been abated or until modified, vacated or terminated by the director or by a court. In any cessation order issued under this subsection, the director shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.*



## MINE SITE EVALUATION NARRATIVE

### **38-2-14.15. Contemporaneous Reclamation Standards.**

**14.15.a. General.** *This subsection establishes general performance standards relating to backfilling, regrading, and stabilization for all surface mining operations within the State. The mining and reclamation plan for each operation shall reflect these standards in describing how the mining operations and reclamation operations are to be coordinated to minimize total land disturbance and to keep reclamation operations as contemporaneous as possible with the advance of mining operations. Particular emphasis must be given to (1) limiting the size and number of excess spoil disposal fills; (2) locating and configuring excess spoil disposal fills in such a way so as to minimize land disturbance; (3) controlled handling and placement of all spoil material; and (4) the timing and sequence of backfilling and regrading operations which will minimize the ratio of disturbed and unreclaimed area versus undisturbed and reclaimed area. All surface mining operations shall be conducted in such a manner so as to comply with the approved reclamation plan and the standards set forth in this subsection.*