

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

**WEST VIRGINIA HIGHLANDS
CONSERVANCY and
APPALACHIAN VOICES,**

Plaintiffs,

v.

CIVIL ACTION NO. 5:24-cv-00725

SOUTH FORK COAL COMPANY, LLC,

Defendants.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AND FOR CIVIL PENALTIES**

1. This is a citizen suit for declaratory judgment and mandatory injunctive relief and for civil penalties against Defendant South Fork Coal Company, LLC (“South Fork”) for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (“Clean Water Act” or “CWA”), and the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 et seq. (“SMCRA”) at its Lost Flats, Blue Knob, and Rocky Run Surface Mines in Greenbrier County, West Virginia.

2. As detailed below, Plaintiffs allege that Defendant South Fork discharged and continues to discharge pollutants into waters of the United States in persistent violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and of the conditions and limitations of three West Virginia/National Pollution Discharge Elimination System (“WV/NPDES”) Permits issued to South Fork by the State of West Virginia pursuant to Section 402 of the Clean Water Act.

3. Plaintiffs further allege that Defendant has violated and continues to violate performance standards under SMCRA and the terms and conditions of its surface mining permits.

JURISDICTION AND VENUE

6. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 33 U.S.C. § 1365 (Clean Water Act citizen suit provision), and 30 U.S.C. § 1270 (SMCRA citizen suit provision).

7. On October 16, 2024, Plaintiffs gave notice of the violations and its intent to file suit to the Defendant and its registered agent, the United States Environmental Protection Agency (“EPA”), the Office of Surface Mining, Reclamation, and Enforcement (“OSMRE”), and the West Virginia Department of Environmental Protection (“WVDEP”), as required by Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), and Section 520(b)(1)(A) of SMCRA, 30 U.S.C. § 1270(b)(1)(A).

8. More than sixty days, but fewer than 120 days, have passed since notice was served and neither EPA, OSMRE, nor WVDEP has commenced and diligently prosecuted a civil or criminal action to require compliance with the Clean Water Act or SMCRA.

9. Moreover, neither EPA nor WVDEP commenced an administrative penalty action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), or comparable state law to redress the violations prior to the issuance of the October 16, 2024 notice letter.

10. Venue in this District is proper pursuant to 33 U.S.C. § 1365(c)(1) because the sources of the Clean Water Act violations are located in this District, and pursuant to 30 U.S.C. § 1270(c) because the coal mining operations complained of are located in this District.

PARTIES

11. South Fork is a West Virginia limited liability company engaged in the business of coal mining.

12. At all relevant times, South Fork owned and operated Lost Flats #1 and #2 Surface Mines in Greenbrier County, WV, which are regulated by Surface Mining Permits S013878 and S303393 and which discharges pollutants from various outfalls pursuant to and subject to the effluent limitations of WV/NPDES Permit No. WV0096971.

13. At all relevant times, South Fork owned and operated the Blue Knob Surface Mine in Greenbrier County, WV, which is regulated by Surface Mining Permit S300511 and which discharges pollutants from various outfalls pursuant to and subject to the effluent limitations of WV/NPDES Permit WV1024744.

14. At all relevant times, South Fork owned and operated the Rocky Run Surface Mine in Greenbrier County, WV, which is regulated by Surface Mining Permit S301219 and which discharges pollutants from various outfalls pursuant to and subject to the effluent limitations of WV/NPDES Permit WV1030159.

15. At all relevant times, South Fork owned and operated the Laurel Creek Contour No. 1 Mine in Greenbrier County, WV, which is regulated by Surface Mining Permit S301016.

16. South Fork is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and Section 701(19) of SMCRA, 30 U.S.C. § 1291(19).

17. Plaintiff Appalachian Voices is a nonprofit organization that operates throughout Central Appalachia with offices in Virginia, North Carolina, and Tennessee. It has more than 1,100 members. Appalachian Voices works in partnership with local people and communities to

defend the natural heritage and economic future of the Appalachian region.

18. Plaintiff West Virginia Highlands Conservancy, Inc. (“WVHC”) is a nonprofit organization incorporated in West Virginia. It has more 1,500 members. WVHC works for the conservation and wise management of West Virginia’s natural resources.

19. Plaintiffs’ members suffer injuries to their aesthetic, recreational, environmental, and/or economic interests as a result of Defendant’s unlawful discharges of pollutants and violations of performance standards. Plaintiffs’ members fish, swim, observe wildlife, or otherwise use the waters affected by South Fork’s discharges and performance standard violations. Many of the streams that receive South Fork’s excess pollution are trout streams that are already listed as “impaired” under the CWA by some of the same pollutants that South Fork is discharging in excess of its permit limits. Plaintiffs’ members’ use and enjoyment of the waters downstream from Defendant’s operations are diminished and curtailed because of South Fork’s unlawful discharges and permit violations.

20. For example, WVHC member Aaron Fultz has for at least the past fifteen years regularly fished for trout in the South Fork of the Cherry watershed, including Becky Run and other tributaries that are impacted by South Fork’s unlawful discharges and permit violations. He is concerned and upset about the impacts of South Fork’s operations on the health of the streams he uses.

21. Additionally, WVHC and Appalachian Voices member Mike Beswick regularly boats in the area of the Laurel Creek watershed impacted by South Fork’s unlawful discharges and permit violations and is likewise concerned and upset about the impacts of South Fork’s operations on the health of the streams he visits.

22. If South Fork’s unlawful discharges and performance standard violations ceased, the harm to the interests of Plaintiffs’ members could be redressed. Injunctions and/or civil

penalties would redress Plaintiffs' members' injuries by preventing and/or deterring future violations of the limits and performance standards in South Fork's permits.

23. At all relevant times, Plaintiffs were and are "persons" as that term is defined by the CWA, 33 U.S.C. § 1362(5), and SMCRA, 30 U.S.C. § 1291(19).

STATUTORY AND REGULATORY FRAMEWORK

24. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the "discharge of any pollutant by any person" into waters of the United States except in compliance with the terms of a permit, such as a National Pollution Discharge Elimination System ("NPDES") Permit issued by the EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

25. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the permit issuing authority may issue a NPDES Permit that authorizes the discharge of any pollutant directly into waters of the United States, upon the condition that such discharge will meet all applicable requirements of the CWA and such other conditions as the permitting authority determines necessary to carry out the provisions of the CWA.

26. Section 402 of the CWA, 33 U.S.C. § 1342, directs the Administrator of EPA to prescribe conditions for NPDES permits to ensure compliance with the requirements of the CWA, including conditions on data and information collection, reporting, and other such requirements as the Administrator deems appropriate.

27. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on quantity, rate, and concentration of chemical, physical, biological, and other constituents of wastewater discharges. Effluent limitations are among the conditions and limitations prescribed in NPDES permits issued under Section 402(a) of the CWA, 33 U.S.C. § 1342(a).

28. At all times relevant to this complaint, the State of West Virginia has been authorized by EPA to administer a NPDES program for regulating the discharges of pollutants into the waters of West Virginia. Permits issued under this program are known as “WV/NPDES” permits.

29. Holders of WV/NPDES Permits are required to monitor their discharges and report their average monthly discharges and maximum daily discharges on a quarterly basis. Those reports are called “Discharge Monitoring Reports,” or “DMRs.”

30. Section 505(a) of the CWA, 33 U.S.C. § 1365(a), authorizes any “citizen” to “commence a civil action on his own behalf . . . against any person . . . who is alleged to be in violation of . . . an effluent standard or limitation under this chapter.”

31. Section 505(f) of the CWA, 33 U.S.C. § 1365(f), defines an “effluent standard or limitation under this chapter,” for purposes of the citizen suit provision in Section 505(a) of the CWA, 33 U.S.C. § 1365(a), to mean, among other things, an unlawful act under Section 301(a), 33 U.S.C. § 1311(a), of the CWA, a WQBEL, and “a permit or condition thereof issued” under Section 402, 33 U.S.C. § 1342, of the CWA.

32. In an action brought under Section 505(a) of the CWA, 33 U.S.C. § 1365(a), the district court has jurisdiction to order the defendant or defendants to comply with the CWA and to assess civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1365(d). *See* 33 U.S.C. § 1365(a).

33. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty payable to the United States of up to \$25,000 per day for each violation.

34. Pursuant to the Federal Civil Penalties Adjustment Act of 1990, 28 U.S.C § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, the court may assess a civil penalty of \$66,712 per day for each violation that occurred after November 2, 2015. *See* 40 C.F.R. § 19.4.

35. Under Section 505(d) of the CWA, 33 U.S.C § 1365(d), the court “may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such an award is appropriate.”

36. Section 506 of SMCRA, 30 U.S.C. § 1256, prohibits any person from engaging in or carrying out surface coal mining operations without first obtaining a permit from the Office of Surface Mining Reclamation and Enforcement (“OSMRE”) or from an approved state regulatory authority.

37. At all relevant times, the State of West Virginia has administered an approved surface mining regulatory program. *See* 30 C.F.R. § 948.10.

38. The legislative rules promulgated under the WVSCMRA provide that, as a general condition of all surface mining permits issued under the WVSCMRA, the permittee must comply with all applicable performance standards. W. Va. Code St. R. § 38-2-3.33.c.

39. Among the performance standards mandated by SMCRA and the West Virginia Surface Coal Mining and Reclamation Act (“WVSCMRA”) is that mining activities must be conducted in such a manner so as to “prevent material damage to the hydrologic balance outside the permit area.” 30 C.F.R. §§ 816.41(a), 817.41(a); W. Va. Code St. R. § 38-2-14.5.

40. Another performance standard mandated by SMCRA and the WVSCMRA is that “[d]ischarge from areas disturbed by [mining activities] shall be made in compliance with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency.” 30 C.F.R. §§

816.42, 817.42; W. Va. Code St. R. § 38-2-14.5.b. Further “[a]dequate facilities shall be installed, operated and maintained using the best technology currently available in accordance with the approved preplan to treat any water discharged from the permit area so that it complies with [effluent limitations].” W. Va. Code St. R. § 38-2-14.5.c; 30 C.F.R. § 816.41(d)(1).

41. Accordingly, violations of NPDES permit-imposed effluent limitations and applicable water quality standards are violations of SMCRA and WVSCMRA and the associated mining permits issued thereunder.

42. Further, the federal and state SMCRA performance standards require that “[r]evegetation shall be kept current by establishing a temporary or permanent vegetative cover on regraded areas by the end of the first growing season and a permanent cover by the end of the second growing season.” W. Va. Code St. R. § 38-2-14.15.f; *see also* 30 C.F.R. § 816.111. Additionally, those regulations require contemporaneous reclamation activities that achieve backfilling and rough grading within 180 days of mineral removal. W. Va. Code St. R. § 38-2-14.15.b.4–6.

43. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), authorizes any person adversely affected to bring an action in federal court to compel compliance with SMCRA against any “person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to [SMCRA].”

44. Section 520(d) of SMCRA, 30 U.S.C. § 1270(d), authorizes the Court to award the costs of litigation, including attorney and expert witness fees to any party whenever the court determines such an award is appropriate.

FACTS***Lost Flats Surface Mines***

45. South Fork operates the Lost Flats #1 and #2 Surface Mines pursuant to Mining Permits S013878 and S303393, respectively.

46. South Fork's pollutant discharges from the Lost Flats #1 and #2 Surface Mines are regulated under WV/NPDES Permit WV0096971. WVDEP reissued that permit most recently on July 1, 2020, with an expiration date of June 24, 2025.

47. Outfall 032 on Permit WV0096971 discharges stormwater runoff from the mine operation area into Becky Run, a tributary of the South Fork of the Cherry River.

48. The South Fork of the Cherry River is designated as a trout stream by the West Virginia Department of Natural Resources. Becky Run is currently listed as impaired for Iron (trout) on West Virginia's CWA § 303(d) List, and is a documented trout water.

49. The effluent limits for iron at Outfall 032 are 0.95 milligrams per liter (mg/l) monthly average and 1.64 mg/l daily maximum.

50. The effluent limitations for manganese at Outfall 032 are 2.0 mg/l monthly average and 3.47 mg/l daily maximum.

51. Per its discharge monitoring reports for the Lost Flats Surface Mines, South Fork has regularly violated permit limitations at Outfall 032. Between March 2020 and May 2024, South Fork violated the effluent limitations for iron and manganese at Outfall 032 as set forth below:

Month	Outfall	Parameter	Type	Limit	Reported	Unit	% Over
July 2024	032	Manganese	Monthly Avg.	2.0	2.16	mg/l	8%
May 2024	032	Iron	Month Avg.	0.95	1.5	mg/l	57.89%
May 2024	032	Iron	Daily Max.	1.64	1.67	mg/l	1.82%
April 2024	032	Iron	Month Avg.	0.95	1.68	mg/l	76.84%
April 2024	032	Iron	Daily Max.	1.64	1.68	mg/l	2.44%
March 2024	032	Iron	Month Avg.	0.95	2.16	mg/l	127%

March 2024	032	Iron	Daily Max.	1.64	2.16	mg/l	31.70%
Feb. 2024	032	Iron	Monthly Avg.	0.95	2.30	mg/l	142%
Feb. 2024	032	Iron	Daily Max.	1.64	2.31	mg/l	40.85%
Dec. 2023	032	Iron	Monthly Avg.	0.95	1.77	mg/l	86.32%
Dec. 2023	032	Iron	Daily Max.	1.64	1.77	mg/l	7.93%
Nov. 2023	032	Iron	Monthly Avg.	0.95	2.05	mg/l	115.79%
Nov. 2023	032	Iron	Daily Max.	1.64	2.34	mg/l	42.68%
Oct. 2023	032	Iron	Daily Max.	1.64	1.7	mg/l	3.66%
Aug. 2023	032	Iron	Monthly Avg.	0.95	1.12	mg/l	17.89%
Aug. 2023	032	Iron	Daily Max.	1.64	1.69	mg/l	3.05%
Jun. 2023	032	Iron	Monthly Avg.	0.95	2.01	mg/l	111.58%
Jun. 2023	032	Iron	Daily Max.	1.64	2.01	mg/l	22.56%
Apr. 2023	032	Iron	Monthly Avg.	0.95	1.22	mg/l	28.42%
Feb. 2023	032	Iron	Monthly Avg.	0.95	1.45	mg/l	52.63%
Jan. 2023	032	Iron	Monthly Avg.	0.95	2.75	mg/l	189.47%
Jan. 2023	032	Iron	Daily Max.	1.64	3.05	mg/l	85.98%
Dec. 2022	032	Iron	Monthly Avg.	0.95	2.08	mg/l	118.95%
Dec. 2022	032	Iron	Daily Max.	1.64	2.23	mg/l	35.98%
Nov. 2022	032	Iron	Daily Max.	1.64	1.75	mg/l	6.71%
Oct. 2022	032	Iron	Monthly Avg.	0.95	1.21	mg/l	27.37%
Aug. 2022	032	Iron	Monthly Avg.	0.95	1.47	mg/l	54.74%
May 2022	032	Iron	Monthly Avg.	0.95	1.06	mg/l	11.58%
Mar. 2022	032	Iron	Monthly Avg.	0.95	1.03	mg/l	8.42%
Feb. 2022	032	Iron	Monthly Avg.	0.95	1.24	mg/l	30.53%
Jan. 2022	032	Iron	Monthly Avg.	0.95	1.07	mg/l	12.63%
Oct. 2021	032	Iron	Monthly Avg.	0.95	1.34	mg/l	41.05%
Jul. 2021	032	Iron	Monthly Avg.	0.95	0.989	mg/l	4.11%
Mar. 2020	032	Iron	Monthly Avg.	0.95	0.988	mg/l	4.00%

52. Additionally, on April 30, 2024, WVDEP issued Notice of Violation #39 related to Surface Mining Permit No. S013878 based on South Fork's failure to comply with the revegetation requirements of the West Virginia surface mining program. *See* W. Va. Code St. R. § 38-2-14.15.f. WVDEP converted that Notice of Violation into Failure to Abate Cessation Order #44 on July 25, 2024, which remains in effect. On August 26, 2024, September 23, 2024, October 23, 2024, and December 2, 2024, WVDEP issued inspection follow-up reports stating that the agency had instituted the show cause process for this permit due to this violation remaining unabated. WVDEP issued a civil penalty for \$22,500.00 in association with Notice of

Violation #39 and Failure to Abate Cessation Order #44. On October 23, 2024, WVDEP informed South Fork that it was delinquent in the payment of those penalties.

Blue Knob Surface Mine

53. South Fork operates the Blue Knob Surface Mine pursuant to Mining Permit S300511.

54. South Fork's pollutant discharges from the Blue Knob Surface Mine are regulated under WV/NPDES Permit WV1024744. WVDEP reissued that permit most recently on June 2, 2023, with an expiration date of May 2, 2028.

55. Outfall 020 on Permit WV1024744 is a precipitation induced outlet that discharges into Blue Knob Branch, a tributary of Cold Knob Fork of the South Fork of the Cherry River.

56. Outfall 032 on Permit WV1024744 is a precipitation induced outlet that discharges into Middle Branch, a tributary of Laurel Creek, which in turn is a tributary of the Cherry River.

57. Outfall 037 on Permit WV1024744 is a precipitation induced outlet that discharges into an unnamed tributary of Blue Knob Branch, a tributary of Cold Knob Fork of the South Fork of the Cherry River.

58. Outfall 038 on Permit WV1024744 is a precipitation induced outlet that discharges into an unnamed tributary of Blue Knob Branch, a tributary of Cold Knob Fork of the South Fork of the Cherry River.

59. Outfall 039 on Permit WV1024744 is a precipitation induced outlet that discharges into an unnamed tributary of Becky Run, a tributary of the South Fork of the Cherry River.

60. The South Fork of the Cherry River, Becky Run, Blue Knob Branch, Middle Branch, Laurel Creek, and Cold Knob Branch are all trout streams. On the West Virginia 303(d) list, South Fork of the Cherry River is listed as impaired for pH, Becky Run is listed as impaired for iron (trout), Blue Knob Branch is listed as impaired for aluminum (trout), iron (trout), and pH, and Middle Branch is listed as impaired for iron (trout) and pH.

61. Under Permit No. WV1024744, the effluent limitations for iron at Outfalls 020, 038, and 039 are 0.95 mg/l monthly average and 1.64 mg/l daily maximum.

62. The effluent limitations for total suspended solids (“TSS”) at Outfall 020 are 35 mg/l monthly average and 70 mg/l daily maximum.

63. The effluent limitations for aluminum at Outfall 032 are 0.12 mg/l monthly average and 0.20 mg/l daily maximum.

64. The effluent limitations for manganese at Outfalls 037 and 039 are 2.00 mg/l monthly average and 4.00 mg/l daily maximum.

65. The effluent limitation for pH at Outfall 037 requires effluent pH to be between 6.0 and 9.0 standard units.

66. Per its discharge monitoring reports for the Blue Knob Surface Mine, South Fork has regularly violated the above-listed effluent limitations at the above-listed outfalls on Permit WV1024744. Between December 2019 and July 2024, South Fork violated the effluent limitations for iron, manganese, TSS, pH, and aluminum at Outfall 032 as set forth below:

Month	Outfall	Parameter	Type	Limit	Reported	Unit	% Over-Under
July 2024	037	Iron	Monthly Avg.	0.95	2.21	mg/l	135.79%
July 2024	037	Iron	Daily Max.	1.64	4.19	mg/l	155.49%
July 2024	038	Iron	Daily Max.	1.64	1.75	mg/l	6.7%
Apr. 2024	037	pH	Daily Min.	6	5.62	SU	6.76%
Feb. 2024	037	Manganese	Monthly Avg.	2.00	10.1	mg/l	405%
Feb. 2024	037	Manganese	Daily Max.	4.00	10.1	mg/l	152.5%
Jul. 2023	039	Manganese	Monthly Avg.	2.00	4.25	mg/l	112.50%

Jul. 2023	039	Manganese	Daily Max.	4.00	4.25	mg/l	6.25%
Jul. 2023	039	Iron	Monthly Avg.	0.95	1.97	mg/l	107.37%
Jul. 2023	039	Iron	Daily Max.	1.64	1.97	mg/l	20.12%
Feb. 2023	039	Manganese	Monthly Avg.	2.00	2.29	mg/l	14.50%
Apr. 2022	039	Manganese	Monthly Avg.	2.00	4.02	mg/l	101.00%
Apr. 2022	039	Manganese	Daily Max.	4.00	4.02	mg/l	0.50%
Nov. 2021	039	Manganese	Monthly Avg.	2.00	4.19	mg/l	109.50%
Nov. 2021	039	Manganese	Daily Max.	4.00	4.19	mg/l	4.75%
Oct. 2021	039	Manganese	Monthly Avg.	2.00	2.63	mg/l	31.50%
Jul. 2021	039	Manganese	Monthly Avg.	2.00	6.95	mg/l	247.50%
Jul. 2021	039	Manganese	Daily Max.	4.00	6.95	mg/l	73.75%
May 2021	039	Manganese	Monthly Avg.	2.00	5.00	mg/l	150.00%
May 2021	039	Manganese	Daily Max.	4.00	5.00	mg/l	25.00%
Apr. 2021	039	Manganese	Monthly Avg.	2.00	4.64	mg/l	132.00%
Apr. 2021	039	Manganese	Daily Max.	4.00	5.14	mg/l	28.50%
Apr. 2021	032	Aluminum	Monthly Avg.	0.12	1.21	mg/l	908.33%
Apr. 2021	032	Aluminum	Daily Max.	0.20	1.21	mg/l	505.00%
Apr. 2021	020	Iron	Monthly Avg.	3.00	3.34	mg/l	11.33%
Apr. 2021	020	TSS	Monthly Avg.	35.00	81.00	mg/l	131.43%
Apr. 2021	020	TSS	Daily Max.	70.00	103.00	mg/l	47.14%
Jan. 2020	032	Aluminum	Monthly Avg.	0.12	0.548	mg/l	356.67%
Jan. 2020	032	Aluminum	Daily Max.	0.20	0.70	mg/l	250.00%
Dec. 2019	039	Manganese	Monthly Avg.	0.95	10.4	mg/l	994.74%
Dec. 2019	039	Manganese	Daily Max.	1.64	10.4	mg/l	534.15%
Dec. 2019	032	Aluminum	Monthly Avg.	0.12	0.138	mg/l	15.00%

67. In addition to numeric effluent limitations, Permit WV1024744 also requires Whole Effluent Toxicity (“WET”) testing, which evaluates the chronic toxicity of South Fork’s discharges on aquatic life. The WET Limits were added to Permit WV1024744’s Outfalls 032, 033, and 034 on August 16, 2018 by Major Permit Modification #2, which required semi-monthly Chronic Toxicity testing on *Ceriodaphnia dubia*. Under the current version of the permit, reissued on June 2, 2023, South Fork is required to perform and report WET testing quarterly. The WET limits under both versions of South Fork’s permit are 0.82 TUc monthly average and 1.64 TUc daily maximum.

68. Despite reporting flow from Outfalls 032 and 034 on numerous occasions between September 2019 and May 2023, South Fork has never submitted the results of any WET testing.

69. Specifically, South Fork failed to perform the required semi-monthly WET testing despite reporting flow from Outfall 032 in September 2019, October 2019, November 2019, December 2019, January 2020, February 2020, March 2020, April 2020, June 2020, July 2020, August 2020, September 2020, and April 2021.

70. Likewise, South Fork failed to perform the required semi-monthly WET testing despite reporting flow from Outfall 034 in April 2020, May 2020, June 2020, July 2020, August 2020, September 2020, October 2020, December 2020, March 2021, April 2021, May 2021, August 2021, November 2021, February 2022, March 2022, February 2023, April 2023, and May 2023.

Rocky Run Surface Mine

71. South Fork operates the Rocky Run Surface Mine pursuant to Mining Permit S301219.

72. South Fork's discharges from the Rocky Run Surface Mine are regulated under WV/NPDES Permit WV1030159. WVDEP issued Permit WV1030159 on April 21, 2021, with an expiration date of April 19, 2026.

73. Outfalls 022 and 023 on Permit WV1030159 discharge surface water runoff from the mine operation area into Little Rocky Run, a tributary of the South Fork of the Cherry River.

74. Under Permit WV1030159, the effluent limitations for aluminum at Outfalls 022 and 023 are 0.17 mg/l monthly average and 0.29 mg/l daily maximum.

75. Though South Fork was reporting "no flow" or "not constructed" at the majority of its outfalls for many months since Permit No. WV1030159 was first issued, South Fork began

reporting flow in July 2023. Since July 2023, when flow has been reported, South Fork has regularly violated its permit effluent limitations for aluminum at Outfalls 022 and 023 as set forth below:

Month	Outfall	Parameter	Type	Limit	Reported	Unit	% Over
Sep. 2024	022	Aluminum	Daily Maximum	0.29	0.327	mg/l	12.76%
Sep. 2024	022	Aluminum	Monthly Avg.	0.17	0.273	mg/l	60.59%
Aug. 2024	022	Aluminum	Monthly Avg.	0.17	0.367	mg/l	115.88%
Aug. 2024	022	Aluminum	Daily Maximum	0.29	0.451	mg/l	55.52%
June 2024	022	Aluminum	Monthly Avg.	0.17	0.607	mg/l	257.06%
June 2024	022	Aluminum	Daily Maximum	0.29	0.607	mg/l	109.31%
May 2024	022	Aluminum	Monthly Avg.	0.17	2.03	mg/l	1094.12%
May 2024	022	Aluminum	Daily Maximum	0.29	2.15	mg/l	641.38%
Apr. 2024	022	Aluminum	Monthly Avg.	0.17	0.362	mg/l	112.94%
Apr. 2024	022	Aluminum	Daily Maximum	0.29	0.427	mg/l	47.24%
Oct. 2023	022	Aluminum	Monthly Avg.	0.17	0.673	mg/l	295.88%
Oct. 2023	022	Aluminum	Daily Maximum	0.29	0.673	mg/l	132.07%
Oct. 2023	023	Aluminum	Monthly Avg.	0.17	1.05	mg/l	517.65%
Oct. 2023	023	Aluminum	Daily Maximum	0.29	1.05	mg/l	262.07%
Jul. 2023	023	Aluminum	Monthly Avg.	0.17	0.348	mg/l	104.71%
Jul. 2023	023	Aluminum	Daily Maximum	0.29	0.348	mg/l	20.00%

Laurel Creek Contour No. 1 Mine

76. South Fork operates its Laurel Creek Contour No. 1 Mine pursuant to Mining Permit S301016.

77. On April 30, 2024, WVDEP issued Notice of Violation #8 related to the Laurel Creek Contour No. 1 Mine based on South Fork's failure to comply with contemporaneous reclamation requirements. *See* W. Va. Code St. R. § 38-2-14.15.b.4. On July 25, 2024, WVDEP converted Notice of Violation #8 into Failure to Abate Cessation Order #11. On August 26, September 23, October 23, and December 2, 2024, WVDEP issued inspection follow-up reports stating that the agency had instituted the show cause process for this permit due to this violation remaining unabated. WVDEP issued a civil penalty for \$22,500.00 in association with Notice of Violation #8 and Failure to Abate Cessation Order #11. On October 23, 2024, WVDEP informed

South Fork that it was delinquent in the payment of those penalties.

78. On April 30, 2024, WVDEP issued Notice of Violation #9 based on South Fork's failure to comply with the surface mining laws' revegetation requirements. *See* W. Va. Code St. R. § 38-2-14.15.f. On July 25, 2024, WVDEP converted Notice of Violation #9 into Failure to Abate Cessation Order #12. On August 26, September 23, October 23, and December 2, 2024, WVDEP issued inspection follow-up reports stating that the agency had instituted the show cause process for this permit due to this violation remaining unabated. WVDEP issued a civil penalty for \$22,500.00 in association with Notice of Violation #9 and Failure to Abate Cessation Order #12. On October 23, 2024, WVDEP informed South Fork that it was delinquent in the payment of those penalties.

Plaintiffs' 60-Day Notice Letter

79. Plaintiffs sent a notice of intent letter, postmarked on October 16, 2024, to South Fork notifying it that its discharges of pollutants in violation of WV/NPDES Permits WV0096971, WV1024744, and WV1030159 and its violations of surface mining performance standards reflected in WVDEP's Notices of Violation violate the Clean Water Act and SMCRA.

80. The notice letter was sent by certified mail, return receipt requested, to the following persons: Greg Whirley, Manager, South Fork Coal Company, LLC; Secretary Harold D. Ward, WVDEP; Michael Regan, Administrator of EPA; Adam Ortiz, Regional Administrator of EPA Region III; Deb Haaland, Secretary of the United States Department of Interior; Director of the OSMRE; Sharon Buccino, Principle Deputy Director of OSMRE; Glenda Owens, Deputy Director of OSMRE; Thomas Shope, Regional Director for the Appalachian Region of the OSMRE; and E. Forrest Jones Jr., Registered Agent for South Fork Coal Company, LLC.

81. The notice letter also notified South Fork of Plaintiffs' intent to sue South Fork for those violations at the end of the 60-day period required by statute and invited South Fork to

inform Plaintiffs if the company had taken any steps to remedy its violations.

82. South Fork contacted Plaintiffs on the last business day of the 60-day notice period. South Fork's correspondence disputed Plaintiffs' legal conclusions but did not describe measures the company had taken sufficient to remedy the violations alleged in Plaintiffs' complaint or prevent their future occurrence.

83. To Plaintiffs' knowledge, neither WVDEP nor the EPA or OSMRE instituted a court action to remedy the violations alleged in the notice letter. *See* 30 U.S.C. § 1270(b)(1)(B); 33 U.S.C. § 1365(b)(1)(B).

FIRST CLAIM FOR RELIEF

(Clean Water Act Violations of WV/NPDES Permit WV0096971)

84. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 83 *supra*.

85. South Fork's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the CWA, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

86. The iron and manganese limits in WV/NPDES Permit WV0096971 are "effluent standards or limitations" for purposes of section 505(a)(1) of the CWA because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

87. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit WV0096971 is actionable under section 505(a)(1) of the CWA. 33 U.S.C. § 1365(a)(1).

88. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

89. On information and belief, Plaintiffs allege that South Fork has violated the effluent limitations in WV/NPDES Permit WV0096971 on numerous occasions beginning in March of 2020.

90. Unless enjoined, South Fork will remain in continuing violation of the Clean Water Act.

91. On information and belief, Plaintiffs allege that South Fork is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit WV0096971 because South Fork has taken no meaningful action to eradicate the underlying cause of the violations.

92. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), South Fork is liable for civil penalties of up to \$66,712 per day of violation for its violations of the effluent limitations in WV/NPDES Permit WV0096971.

SECOND CLAIM FOR RELIEF
(SMCRA Violations at the Lost Flats Surface Mines)

93. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 92 *supra*.

94. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any “person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter.”

95. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

96. Under W. Va. Code St. R. § 38-2-3.33.c, all performance standards are

incorporated as conditions in permits issued under the State Act.

97. WV/NPDES Permit WV0096971 regulates South Fork's discharges from the Lost Flats #1 and #2 Surface Mines (Mining Permits S013878 and S303393).

98. On information and belief, Plaintiffs allege that South Fork has violated the effluent limitations in WV/NPDES Permit WV0096971 on one or more occasion beginning in March of 2020.

99. Further, as demonstrated by WVDEP's unabated NOV #39 and Failure to Abate Cessation Order #44, South Fork is in violation of the revegetation requirements of the West Virginia surface mining program. *See* W. Va. Code St. R. § 38-2-14.15.f.

100. Consequently, South Fork has committed one or more violations of the performance standards incorporated in the regulations under SMCRA.

101. Because those performance standards are permit conditions, South Fork is also in violation of the terms and conditions of Mining Permits S013878 and S303393.

102. Unless enjoined, South Fork will remain in ongoing and continuing violation of SMCRA.

103. On information and belief, Plaintiffs allege that South Fork is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit WV0096971 and the revegetation requirements of the West Virginia surface mining program because South Fork has taken no meaningful action to eradicate the underlying cause of the violations.

THIRD CLAIM FOR RELIEF

(Clean Water Act Violations of WV/NPDES Permit Number WV10247444)

104. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 103 *supra*.

105. South Fork's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the CWA, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

106. The iron, pH, manganese, aluminum, and total suspended solids limits and the WET testing and reporting requirements in WV/NPDES Permit WV1024744 are "effluent standards or limitations" for purposes of section 505(a)(1) of the CWA because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

107. Each and every discharge in excess of the effluent limitations or violation of a testing and reporting requirement in WV/NPDES Permit WV1024744 is actionable under section 505(a)(1) of the CWA. 33 U.S.C. § 1365(a)(1).

108. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

109. On information and belief, Plaintiffs allege that South Fork has violated the effluent limitations in WV/NPDES Permit WV1024744 on numerous occasions beginning in March of December 2019.

110. Unless enjoined, South Fork will remain in continuing violation of the Clean Water Act.

111. On information and belief, Plaintiffs allege that South Fork is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit WV1024744 because South Fork has taken no meaningful action to eradicate the underlying cause of the violations.

112. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), South Fork is liable for civil penalties of up to \$66,712 per day of violation for its violations of the effluent

limitations in WV/NPDES Permit Number WV0096971.

FOURTH CLAIM FOR RELIEF
(SMCRA Violations at the Blue Knob Surface Mine)

113. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 112 *supra*.

114. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any “person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter.”

115. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

116. Under W. Va. Code St. R. § 38-2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

117. WV/NPDES Permit Number WV1024744 regulates South Fork’s discharges from the Blue Knob Surface Mine (Mining Permit S300511).

118. On information and belief, Plaintiffs allege that South Fork has violated the effluent limitations in WV/NPDES Permit WV1024744 on one or more occasion beginning in December of 2019.

119. Consequently, South Fork has committed one or more violations of the performance standards incorporated in the regulations under SMCRA.

120. Because those performance standards are permit conditions, South Fork is also in violation of the terms and conditions of Mining Permit S300511.

121. Unless enjoined, South Fork will remain in ongoing and continuing violation of

SMCRA.

122. On information and belief, Plaintiffs allege that South Fork is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit WV1024744 because South Fork has taken no meaningful action to eradicate the underlying cause of the violations.

FIFTH CLAIM FOR RELIEF

(Clean Water Act Violations of WV/NPDES Permit Number WV1030159)

123. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 122 *supra*.

124. South Fork's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the CWA, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

125. The aluminum limits in WV/NPDES Permit Number WV1030159 are "effluent standards or limitations" for purposes of section 505(a)(1) of the CWA because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

126. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit WV1030159 is actionable under section 505(a)(1) of the CWA. 33 U.S.C. § 1365(a)(1).

127. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

128. On information and belief, Plaintiffs allege that South Fork has violated the aluminum effluent limitations in WV/NPDES Permit WV1030159 on one or more occasion since July of 2023.

129. Unless enjoined, South Fork will remain in continuing violation of the Clean

Water Act.

130. On information and belief, Plaintiffs allege that South Fork is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit WV1030159 because South Fork has taken no meaningful action to eradicate the underlying cause of the violations.

131. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), South Fork is liable for civil penalties of up to \$66,712 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV1030159.

SIXTH CLAIM FOR RELIEF
(SMCRA Violations at the Rocky Run Surface Mine)

132. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 131 *supra*.

133. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any “person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter.”

134. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

135. Under W. Va. Code St. R. § 38-2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

136. WV/NPDES Permit WV1030159 regulates South Fork’s discharges from the Rocky Run Surface Mine (Mining Permit S301219).

137. On information and belief, Plaintiffs allege that South Fork has violated the

effluent limitations in WV/NPDES Permit WV1030159 on one or more occasion beginning in July of 2023.

138. Consequently, South Fork has committed one or more violations of the performance standards incorporated in the regulations under SMCRA.

139. Because those performance standards are permit conditions, South Fork is also in violation of the terms and conditions of Mining Permit S300511.

140. Unless enjoined, South Fork will remain in ongoing and continuing violation of SMCRA.

141. On information and belief, Plaintiffs allege that South Fork is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit WV1030159 because South Fork has taken no meaningful action to eradicate the underlying cause of the violations.

SEVENTH CLAIM FOR RELIEF

(SMCRA Violations at Laurel Creek Contour No. 1 Mine)

142. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 141 *supra*.

143. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any “person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter.”

144. SMCRA and WVSMCRA performance standards require contemporaneous reclamation activities that achieve backfilling and rough grading within 180 days of mineral removal. W. Va. Code St. R. §§ 38-2-14.15.b.4–6.

145. SMCRA and WVSMCRA performance standards also require that “[r]evegetation shall be kept current by establishing a temporary or permanent vegetative cover on regraded

areas by the end of the first growing season and a permanent cover by the end of the second growing season.” W. Va. Code St. R. § 38-2-14.15.f.

146. Under W. Va. Code St. R. § 38-2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

147. As demonstrated by WVDEP’s unabated NOV #8 and Failure to Abate Cessation Order #11, South Fork is in violation of the contemporaneous reclamation requirements of the West Virginia surface mining program. *See* W. Va. Code St. R. §§ 38-2-14.15.b.4–6.

148. As demonstrated by WVDEP’s unabated NOV #9 and Failure to Abate Cessation Order #12, South Fork is in violation of the revegetation requirements of the West Virginia surface mining program. *See* W. Va. Code St. R. § 38-2-14.15.f.

149. Consequently, South Fork has committed one or more violations of the performance standards incorporated in the regulations under SMCRA.

150. Because those performance standards are permit conditions, South Fork is also in violation of the terms and conditions of Mining Permit S301016.

151. Unless enjoined, South Fork will remain in ongoing and continuing violation of SMCRA.

152. On information and belief, Plaintiffs allege that South Fork is in continuing and/or intermittent violation of SMCRA as a result of the violations of the contemporaneous reclamation and revegetation performance standards incorporated into Mining Permit S301016 because South Fork has taken no meaningful action to eradicate the underlying cause of the violations.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this court enter an Order:

- (1) Declaring that South Fork has violated and is in continuing violation of the Clean

Water Act and SMCRA;

(2) Enjoining South Fork from operating its facilities in such a manner as will result in further violations of the effluent limitations in its WV/NPDES Permits and performance standards incorporated into its Mining Permits;

(3) Ordering South Fork to immediately comply with all effluent limitations, monitoring and reporting requirements, and other terms and conditions of its WV/NPDES Permits;

(4) Ordering South Fork to immediately comply with the terms and conditions of its WVSCMRA Permits;

(6) Ordering South Fork to pay appropriate civil penalties up to \$66,712 per day for each CWA violation;

(7) Ordering South Fork to conduct monitoring and sampling to determine the environmental effects of their violations, to remedy and repair environmental contamination and/or degradation caused by their violations, and restore the environment to its prior uncontaminated condition;

(8) Awarding Plaintiffs' attorney and expert witness fees and all other reasonable expenses incurred in pursuit of this action; and

(9) Granting other such relief as the Court deems just and proper.

Dated: December 16, 2024

Respectfully submitted,



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