

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

LOUIS F. GIAYASIS
CLERK OF COURTS
STARK COUNTY, OHIO
2017 NOV -3 PM 1:00

STATE OF OHIO, *EX REL.*
MICHAEL DEWINE
OHIO ATTORNEY GENERAL
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215

Plaintiff,

v.

ROVER PIPELINE, LLC
3738 Oak Lawn Ave.
Dallas, Texas 75219
c/o Corporation Service Company
Statutory Agent
50 West Broad Street, Suite 1330
Columbus, Ohio 43215

Defendant.

CASE NO. 2017 CV 02216
JUDGE **Farmer**
COMPLAINT FOR
INJUNCTIVE RELIEF
AND CIVIL PENALTIES

I. NATURE OF THE ACTION

During construction of an interstate, natural-gas pipeline, Defendant Rover illegally discharged millions of gallons of drilling fluids to Ohio's waters, causing pollution and degrading water quality on numerous occasions and in various counties across the state. Additionally, Rover's activities harmed pristine wetlands in Stark County that require the highest level of protection. Finally, Rover caused the degradation of Ohio's waters by discharging pollution in the form of sediment-laden stormwater to Ohio's waters on multiple occasions.

Rover failed to secure any water pollution permits designed to control these discharges. The company has a permit to address unrelated water pollution, but the company violated that permit as well. Whether its actions (and failures to act) stem from a series of calculated business

decisions or complete indifference to Ohio's regulatory efforts, Rover has endangered the environment in more than ten counties (including Stark) and violated state laws, rules, and permits designed to protect the quality of Ohio's waters.

Plaintiff State of Ohio, by and through the Attorney General Michael DeWine, and at the written request of the Director of the Ohio Environmental Protection Agency on September 20, 2017, hereby institutes this action to enforce R.C. Chapter 6111 and the rules and permits adopted thereunder against Defendant Rover, for injunctive relief and the assessment of civil penalties. Specifically, the Plaintiff alleges as follows:

II. GENERAL ALLEGATIONS

A. Defendants

1. Defendant Rover Pipeline, LLC ("Rover"), located at 3738 Oak Lawn Avenue, Dallas, Texas 75219, is a limited liability company organized under the laws of the State of Delaware and registered with the Ohio Secretary of State as a foreign limited liability company since July 10, 2014.

2. Corporation Service Company, 50 West Broad Street, Suite 1330, Columbus, Ohio 43215 is the statutory agent for Rover.

3. Rover is a "person," as defined by R.C. 1.59, R.C. 6111.01, Ohio Adm.Code 3745-32-01, Ohio Adm.Code 3745-33-01, and Ohio Adm.Code 3745-38-01.

4. At all times and locations relevant to this Complaint, Defendant Rover is the owner or operator of drilling operations for the construction of a 713-mile, interstate pipeline crossing 18 counties in Ohio including Stark County. Rover has control, authority, direction, and responsibility over underground horizontal-directional-drilling for the construction of the pipeline repeatedly referenced throughout this Complaint. Through this control, authority,

direction, and responsibility over the construction of the pipeline and/or through its activities, Rover caused, participated in, controlled, authorized, directed, and/or acted, or failed to act, in violation of R.C. Chapter 6111, the rules adopted, and the permits issued thereunder as alleged in this Complaint.

B. Jurisdiction and Venue

5. This Court has jurisdiction over the subject matter of this action, personal jurisdiction over Defendant Rover, and authority to grant the relief requested pursuant to R.C. 2307.382, R.C. 6111.07, and R.C. 6111.09.

6. At all times and locations, Defendant Rover has purposefully availed itself of this forum. The activities (or failures to act) and/or control, authority, direction, and responsibility over the activities (or failures to act) caused all environmental violations alleged in this Complaint in Ohio including Stark County. Defendant Rover has transacted business and/or contracted to supply services or goods in Ohio, and in Stark County specifically, or has an interest in, use, and/or possess real property in Ohio and in Stark County.

7. As the allegations in the Complaint reveal, the exercise of specific jurisdiction over Defendant Rover is proper and consistent with due process.

8. Venue lies in the Stark County Court of Common Pleas pursuant to Civ.R. 3(B) and Civ.R. 3(E).

9. Pursuant to Civ.R. 8(A), the State informs the Court that the amount sought is in excess of twenty-five thousand dollars (\$25,000.00).

C. Cooperative Federalism: the Relationship between Relevant Federal and State Law

10. Federal law—specifically, the Natural Gas Act—regulates “the transportation of natural gas in interstate commerce.” 15 U.S.C. § 717(b).

11. The Natural Gas Act yields to any state right reserved under the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.*, also known as the Clean Water Act. 15 U.S.C. § 717b(d).

12. Enacted in 1972, Congress intended the Clean Water Act to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

13. The Clean Water Act expresses the national goal of eliminating the discharge of pollutants into navigable waters by 1985. 33 U.S.C. § 1251(a)(1). Section 101(a)(2) of the Clean Water Act further establishes “that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983.” 33 U.S.C. § 1251(a)(2).

14. To achieve these goals, Section 301 of the Clean Water Act prohibits “the discharge of pollutants by any person,” except as permitted under certain sections of the Clean Water Act. 33 U.S.C. § 1311(a).

Clean Water Act – Rights Reserved for the States

15. The Clean Water Act recognizes that “[i]t is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources * * *.” 33 U.S.C. § 1251(b).

16. Congress also granted authority to the states by ensuring that “nothing * * * shall (1) preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution * * *.” 33 U.S.C. § 1370. Further, Congress made clear that the Clean Water Act shall not “be construed as impairing or in any

manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.” 33 U.S.C. § 1370.

17. Consistent with its delegated authority under federal law, Ohio has enacted laws and adopted rules prohibiting actions and mandating requirements in order to protect water quality. The pertinent laws and rules to this action are set forth in greater detail below.

Ohio’s Prohibition against Polluting Waters of the State

18. Revised Code 6111.04(A) prohibits any person from causing pollution or placing or causing to be placed “any sewage, sludge, sludge materials, industrial waste[s] or other wastes in a location where they cause pollution of any waters of the state” unless that person holds a valid, unexpired permit to do so. Such an action constitutes “a public nuisance,” under R.C. 6111.04(A)(2).

19. “Pollution,” as defined in R.C. 6111.01(A), includes, but is not limited to, the placing of “industrial waste” or “other wastes” in any “waters of the State.”

20. “Industrial waste,” as defined in R.C. 6111.01(C), “means any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, or business, or from the development, processing, or recovery of any natural resource, together with such sewage as is present.”

21. “Other wastes,” as defined in R.C. 6111.01(D), includes but is not limited to “dredged or fill material, or silt, other substances that are not sewage, sludge, sludge materials, or industrial waste.”

22. “Waters of the state,” as defined in R.C. 6111.01(H), means “all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems,

and other bodies or accumulations of water, surface and underground, natural or artificial * * * that are situated * * * within * * * this state * * *.”

Ohio’s NPDES Permitting Program for Point Source Discharges

23. Ohio administers a federally-delegated, National Pollutant Discharge Elimination System (“NPDES”) permit for point source discharges of any pollutant to waters of the state. *See, e.g.* 33 U.S.C. § 1342(b).

24. Ohio Adm.Code 3745-33-02(A), adopted under R.C. 6111.03, states that “[n]o person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant without applying for and obtaining an Ohio NPDES permit in accordance with the requirements of [Ohio Adm.Code Chapter 3745-33].”

25. Ohio Adm.Code 3745-33-01 defines “discharge of a pollutant or pollutants” as “any addition of any pollutant to waters of the state from a point source.”

26. Ohio Adm.Code 3745-33-01 defines “pollutant” as “sewage, industrial waste or other waste as defined by” R.C. 6111.01(B) to (D).

27. Ohio Adm.Code 3745-33-01 defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”

28. Upon information and belief, Defendant Rover uses drilling fluids—mixtures of water and bentonite—for its drilling operations. These drilling fluids ordinarily assist in the lubrication and encasement of the pipeline underground, but when discharged to waters of the state, are “industrial wastes” or “other wastes” under R.C. 6111.01 and also “pollutant[s]” under Ohio Adm.Code 3745-33-01.

29. At all times and locations relevant to this Complaint, Defendant Rover, through its control, authority, direction, and responsibility over its drilling operations, used equipment and created underground bores or channels for its pipeline, all of which are point sources as defined in Ohio Adm.Code 3745-33-01.

***Ohio's General NPDES Permits for
Storm Water Associated with Construction and Industrial Activities***

30. Ohio Administrative Code 3745-38-02(A)(1) provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant from a point source without applying for and obtaining an Ohio NPDES individual permit or obtaining authorization to discharge under an Ohio NPDES general permit.

31. "Discharge of any pollutant or pollutants" and "point source," as defined in Ohio Adm.Code 3745-38-01, share the same definitions in Ohio Adm.Code 3745-33-01 above.

32. Ohio Adm.Code 3745-38-02(B)(2)(a) authorizes the Director to "issue a general NPDES permit * * * for storm water point sources."

33. On April 11, 2013, pursuant to his authority in Ohio Adm.Code 3745-38-02(B)(2)(a), the Director issued a General NPDES Permit for Storm Water Discharges Associated with Construction Activities, Permit No. OHC000004 ("Construction Storm Water Permit"). The Construction Storm Water Permit is appended at **Attachment 1** and hereby incorporated by reference as if fully rewritten herein.

34. The Construction Storm Water Permit regulates storm water discharges associated with construction activities that enter waters of the State. *See Attachment 1 p. 3.*

35. "Construction activity" is defined in the Construction Storm Water Permit as "any clearing, grading, excavating, grubbing and/or filling activities that disturb" either "one or more acres of total land, or will disturb less than one acre of land but are part of a larger common plan

of development * * * that will ultimately disturb one or more acres of land.” Attachment 1, Part I, B.1, p. 3.

36. “Large construction activities” is defined by the Construction Storm Water Permit as involving the disturbance of five or more acres of land or will disturb less than five acres, but is a part of a larger common plan of development or sale which will disturb five or more acres of land. Attachment 1, Part III.G.2.e, p. 19.

37. Upon information and belief, in constructing its natural gas pipeline, Defendant Rover has cleared, graded, excavated, grubbed and/or filled at least 5 acres of total land. Defendant Rover is thus engaged in “construction activities” and “large construction activities” as defined in the Construction Storm Water Permit, Attachment 1, Part I, B.1, p. 3 and Part III.G.2.e, p. 19.

38. On May 8, 2017, pursuant to his authority in Ohio Adm.Code 3745-38-02(B)(2)(a), the Director issued a General NPDES Permit for Storm Water Discharges Associated with Industrial Activities, Permit No. OHR000006 (“Industrial Storm Water Permit”). The Industrial General Permit is appended at **Attachment 2** and hereby incorporated by reference as if fully rewritten herein.

39. The Industrial Storm Water Permit regulates storm water discharges associated with industrial activities that enter waters of the State. *See* Attachment 2 p. 1.

40. “Storm water discharge associated with industrial activity,” in pertinent part, includes storm water discharges from “construction activity including clearing, grading and excavation” involving the disturbance of five or more acres of land or that will disturb less than five acres, but is a part of a larger common plan of development or sale which will disturb five or more acres of land. Ohio Adm.Code 3745-39-04(B)(14)(j).

41. Upon information and belief, in constructing its natural gas pipeline, Defendant Rover has cleared, graded, excavated, grubbed and/or filled at least 5 acres of total land. Defendant Rover is thus considered to be engaged in industrial activity in accordance with Ohio Adm.Code 3745-39-04(B)(14)(j).

Limited Exemption from Storm Water Permitting for Oil and Gas Facilities

42. Federal regulations generally exempt oil and gas exploration, production, processing, or treatment operations or transmission facilities from obtaining a storm water permit for their activities. *See* 40 C.F.R. 122.26(c)(1)(iii).

43. Ohio's rules contain a similar exemption at Ohio Adm.Code 3745-39-04(A)(2)(b) with respect to storm water permitting, stating that no permit is required for discharges of storm water runoff from, in pertinent part, "[a]ll field activities or operations associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities, except in accordance with paragraph (C)(1)(c) of this rule."

44. However, both the federal and Ohio's exemption for oil and gas facilities are limited—they cease to apply when the otherwise exempted facility causes a discharge of storm water that contributes to a violation (exceedance) of a water quality standard. *See* 40 C.F.R. 122.26(c)(1)(iii)(C)¹ and Ohio Adm.Code 3745-39-04(C)(1)(c)(iii), respectively.

¹ 40 CFR 122.26(a)(2)(ii) states that "[d]ischarges of sediment from construction activities associated with oil and gas exploration, processing, or treatment operations or transmission facilities are not subject to the provisions of paragraph (c)(1)(iii)(C) of this section. However, the Ninth Circuit Court of Appeals vacated this subsection of the rule in *NRDC v. EPA*, 526 F.3d 591, 608 (9th Cir. 2008). As a result, storm water discharges composed entirely of sediment can trigger the requirement to obtain a storm water permit for an oil and gas operation if sediment contributes to a violation (exceedance) of a water quality standard.

45. Ohio Adm.Code 3745-1-02(B) defines “water quality standards” as “the rules set forth in [Ohio Adm.Code Chapter 3745-1] establishing stream use designations and water quality criteria protective of such uses for the surface waters of the state.”

46. In essence, if an oil or gas operation discharges, or controls, authorizes, directs, or has responsibility over a discharge of storm water that exceeds any of Ohio’s water quality standards, that operation must submit an application for an Ohio NPDES storm water permit pursuant to Ohio Adm.Code 3745-39-04(C) and/or 3745-38-02.

47. Upon information and belief, on at least the following dates and at the following locations, Defendant Rover caused point source discharges of sediment-laden storm water to waters of the state from its construction activities that violated (exceeded) water quality standards:

- (a) April 10, 2017: unnamed tributaries to the Woodsfield Reservoir in Monroe County;
- (b) April 12, 2017: Bull Creek, at Tank Road, southeast of the Village of Cygnet in Wood County;
- (c) May 2, 2017: unnamed tributary to South Branch Portage River located near the intersection of Pelton Road and Portage View Road, Bloomdale, Wood County;
- (d) May 3, 2017: Brushy Fork Creek, at 77960 Slater Road, Cadiz, Harrison County;
- (e) May 4, 2017: an unnamed tributary to Eckert Ditch, located on Cloverdale Road north of Oil Center Road, Wood County;
- (f) May 4, 2017: an unnamed tributary to Pea Vine Creek, Belmont County;
- (g) May 5, 2017: Brush Creek, located near the Village of Cadiz, Harrison County;
- (h) May 5, 2017: Hammer Creek, located southwest of the intersection of County Road 2 and County Road H, Henry County;

- (i) May 5, 2017: an unnamed tributary to Lost Creek, located at County Road 11, south of County Road J, Henry County;
- (j) May 5, 2017: Huff Run and Wetland W8H-TU-225, located at Access 12 – Lindentree Road, Sandy Township, Tuscarawas County;
- (k) May 5, 2017: an unnamed tributary of Conotton Creek, Wetland W4ES-TU-217, and Wetland W4ES-TU-217 at Access 6 – Dawn Road, Warren Township, Tuscarawas County; and
- (l) May 8, 2017: an unnamed tributary to Sandy Creek and/or Wetland W3H-TU-223, located at Access 15 – Sandyville Road, Sandy Township, Tuscarawas County.

48. At least as early as May 12, 2017, Ohio EPA notified Defendant Rover that its storm water discharges contributed to violations of Ohio’s water quality standards including but not limited to Ohio Adm.Code 3745-1-04(A) and/or (C), and as a result, the storm water permit exemption for oil and gas operations no longer applied. Consequently, Defendant Rover was required to obtain coverage under an Ohio NPDES permit to regulate its storm water discharges pursuant to Ohio Adm.Code 3745-39-04(C)(1)(c)(iii).

49. Following this notification, Rover continued to engage in construction activities without a permit and continued to discharge sediment-laden storm water. Upon information and belief, on at least the following dates and at the following locations, Defendant Rover’s construction activities caused point-source discharges of sediment-laden storm water to waters of the state:

- (a) July 13, 2017: Old Bean Creek, located in Fulton County;
- (b) July 14, 2017 and July 17, 2017: an unnamed tributary to Cat Run, located in Monroe County;
- (c) July 25, 2017: McMahan Creek, located in Belmont County;
- (d) July 25, 2017: Conotton Creek, located in Tuscarawas County;
- (e) July 28, 2017: Dining Fork, located in Carroll County; and

- (f) September 20, 2017: a tributary of Irish Creek, at Branch Road SE in Loudon Township, Carroll County.

Ohio's Water Quality Standards

50. Ohio adheres to “the policy of the Congress to * * * protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution * * *” by adopting the water quality standards in Ohio Adm.Code Chapter 3745-1. 33 U.S.C. § 1251(b).

51. Ohio Adm.Code 3745-1-04(A) provides, in part, that “all surface waters of the state” shall be “[f]ree from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life.”

52. Ohio Adm.Code 3745-1-04(B) provides, in part, that “all surface waters of the state” shall be “[f]ree from floating debris, oil, scum and other floating materials entering the waters as a result of human activity in amounts sufficient to be unsightly or cause degradation.”

53. Ohio Adm.Code 3745-1-04(C) provides, in part, that “all surface waters of the state” shall be “[f]ree from materials entering the waters as a result of human activity producing color, odor or other conditions in such a degree as to create a nuisance.”

54. Ohio Adm.Code 3745-1-51 incorporates Ohio Adm.Code 3745-1-04 and adds criteria specific to wetlands.

55. Ohio Adm.Code 3745-1-51(A) provides that “[t]he hydrology necessary to support the biological and physical characteristics naturally present in wetlands shall be protected to prevent significant adverse impacts on:

- (1) Water currents, erosion or sedimentation patterns;
- (2) Natural water temperature variations;
- (3) Chemical, nutrient and dissolved oxygen regimes of the wetland;
- (4) The movement of aquatic fauna;
- (5) The pH of the wetland; and

- (6) Water levels or elevations, including those resulting from ground water recharge and discharge.”

56. Ohio Adm.Code 3745-1-51(B)(1) provides that “[w]ater quality necessary to support existing habitats and the populations of wetland flora and fauna shall be protected to prevent significant adverse impacts on:

- (a) Food supplies for fish and wildlife;
- (b) Reproductive and nursery areas; and
- (c) Dispersal corridors, as that term is defined in rule 3745-1-50 of the Administrative Code.”

57. Ohio Adm.Code 3745-1-02(B) defines “[w]etlands” as “those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. ‘Wetlands’ includes swamps, marshes, bogs, and similar areas that are delineated in accordance with 1987 United States army corps of engineers wetland delineation manual and any other procedures and requirements adopted by the United States army corps of engineers for delineating wetlands.”

58. For the purposes of this Complaint, “wetlands” are “marshes * * * springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface and underground, natural or artificial * * * that are situated * * * within * * * this state * * *,” and thus, wetlands are “waters of the state” under R.C. 6111.01(H).

59. Wetlands are assigned quality designations under Ohio Adm.Code 3745-1-54. Pertinent to this Complaint, wetlands assigned to “Category 3” are the highest quality of wetlands categorized under Ohio law. Ohio Adm.Code 3745-1-54(D)(1)(c).

Director’s Authority to Issue Orders under R.C. Chapter 6111

60. Under R.C. 6111.03(H)(1), the Director of Ohio EPA has the authority to “issue * * * orders to prevent, control, or abate water pollution * * *.”

61. On or before April 13, 2017 and continuing to date to be determined, Defendant Rover deposited spent drilling mud containing diesel fuel residuals at the Oster Sand and Gravel Disposal Pit located near the City of Massillon's public water system's public drinking water intake and the Beach City Quarry located in proximity to the City of Canton's Sugarcreek drinking wellfield.

62. To address the contaminated drilling waste and Defendant Rover's other environmental violations, the Director of Ohio EPA, pursuant to R.C. 6111.03, issued Orders against Defendant Rover on July 7, 2017 ("Director's Orders" affixed hereto as **Attachment 3**).

63. The Orders, in part, required Defendant Rover to submit various plans for approval to protect against surface and ground water pollution. Pursuant to the Orders, Ohio EPA approved the following plans submitted by Defendant Rover on or about the following dates:

- (a) "Release Prevention and Emergency Response Contingency Plan": August 4, 2017;
- (b) "Material Removal Plan-Oster and Beach City Quarries (version 3)"—Rover's Industrial Waste Disposal Plan: August 4, 2017;
- (c) "Horizontal Directional Drill (HDD) Sampling Plan": August 4, 2017;
- (d) "Tuscarawas River Wetland Restoration Plan": August 3, 2017;
- (e) "Stark County Sample and Analysis Plan": August 11, 2017;
- (f) "Stark County Plan – Ground Water Monitoring Well Installation Work Plan Supplement": August 11, 2017;
- (g) "Aqua Massillon Plan": August 11, 2017;
- (h) "Work Plan for Installation of Monitoring Wells: Aqua Massillon (Oster Sand and Disposal Pit) and Quarry Plan (Beach City Quarry)": August 10, 2017;
- (i) "Quarry Plan": August 11, 2017; and
- (j) "Storm Water Pollution Prevention Plan": August 11, 2017

64. The Orders also required Defendant Rover to perform ground water assessments following any release of contamination to groundwater and implement corrective measures if sampling shows that ground water quality has been impacted. Attachment 3, ¶¶18, 19, 30, 31, 42, and 43.

65. The Orders also mandated that Defendant Rover provide relief to nearby residents, Aqua Massillon, or the City of Canton, as applicable, if sampling shows that Defendant is contaminating any water supply well downgradient, including drilling new drinking water wells, or siting and development of a new drinking water well field including permitting and installation of drinking water supply wells in the new field, taking into account the costs of design, such that a sustainable or adequate, and uncontaminated source of ground water is assured. Attachment 3, ¶¶20, 32, 44, and 45.

66. Finally, the Orders required Rover to submit a notice of intent to obtain coverage under Ohio EPA's Construction Storm Water Permit by July 14, 2017. Attachment 3, ¶8.

Rover's Only NPDES Point Source Discharge Permits: Hydrostatic General Permits

67. On October 31, 2012, pursuant to his authority in R.C. 6111.035, the Director issued a General NPDES Permit for discharges resulting from hydrostatic test water for a limited duration from a point source to waters of the state, Permit No. OHH000002 ("Hydrostatic Permit"). The Hydrostatic Permit is appended at **Attachment 4** and hereby incorporated by reference as if fully rewritten herein

68. At all times relevant to this Complaint, Defendant Rover operated under the Hydrostatic Permit. The Director assigns authorization under the Hydrostatic Permit depending on the location of the discharge. As pertinent to this Complaint, Nos. 0GH00217 and 0GH00218 regulate Defendant Rover's activities in Harrison and Belmont Counties; Nos. 3GH00071 and

3GH00072 regulate Defendant Rover's activities in Stark and Wayne Counties; and Nos. 2GH00035 and 2GH00036 regulate Defendant Rover's activities in Seneca and Wood Counties. The language of the Hydrostatic Permit remains the same regardless of the number assigned to the authorization.

69. These hydrostatic permits regulate point-source releases of hydrostatic water from tanks and pipelines used to detect leaks and determine the structural integrity of relevant equipment.

Ohio's Enforcement of Water Pollution Control

70. Revised Code 6111.07(A) provides that "[n]o person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violate any order, rule, or term or condition of a permit issued or adopted by the director of environmental protection pursuant to those sections. Each day of violation is a separate offense."

71. The Director adopted Ohio Adm.Code 3745-1-02, 3745-1-04, 3745-1-51, and 3745-1-54 under R.C. 6111.041.

72. The Director adopted Ohio Adm.Code 3745-32-01, 3745-32-02, 3745-33-01, 3745-33-02, and 3745-39-04 under R.C. 6111.03.

73. The Director adopted Ohio Adm.Code 3745-38-01 and 3745-38-02 under R.C. 6111.03 and R.C. 6111.035.

74. Revised Code 6111.07(B) provides that "[t]he attorney general, upon written request of the director, shall bring an action for an injunction against any person violating or threatening to violate this chapter or violating or threatening to violate any order, rule, or condition of a permit issued or adopted by the director pursuant to this chapter."

75. Revised Code 6111.09(A) provides that “[a]ny person who violates [R.C. 6111.07] shall pay a civil penalty of not more than ten thousand dollars per day of violation,” and the Ohio Attorney General shall commence an action against any person for any violation of R.C. 6111.07 upon the Ohio EPA Director’s written request.

D. Allegations are incorporated in all Counts.

76. The allegations contained in Paragraphs 1 through 75 of this Complaint are incorporated into each and every Count of this Complaint as if fully restated therein.

III. CLAIMS FOR RELIEF

***COUNT ONE
ROVER DISCHARGED POLLUTANTS TO WATERS OF THE STATE
WITHOUT POINT SOURCE NPDES PERMITS***

77. Revised Code 6111.04(A)(1) prohibits any person from causing or placing or causing to be placed any industrial wastes or other wastes, in a location where they cause pollution of any waters of the state without a valid, unexpired permit issued by the Director of Ohio EPA.

78. Ohio Adm.Code 3745-33-02(A) prohibits any person from discharging any pollutant or causing, permitting, or allowing a discharge of any pollutant without applying for and obtaining an Ohio NPDES permit in accordance with Ohio Adm.Code Chapter 3745-33.

79. Defendant Rover, through its control, authority, direction, and responsibility, caused the following point-source discharges to waters of the state. To date, Defendant Rover has failed to apply for and obtain point-source NPDES permits in violation of R.C. 6111.04(A)(1) and Ohio Adm.Code 3745-33-02(A).

80. On or before April 8, 2017 and continuing until a date to be determined, Defendant Rover discharged approximately 1,000 gallons of drilling fluids to waters of the state—i.e.,

wetlands located near the crossing of Indian Fork River, near Dawn and Miller Hill Roads, in Warren Township, Tuscarawas County (latitude 40° 31.06” North / longitude 81° 17.173” West).

81. On or before April 10, 2017 and continuing until a date to be determined, Defendant Rover discharged approximately 600 gallons of drilling fluids to waters of the state, including an unnamed stream, pond, and wetlands located in Richland Township, Belmont County (latitude 40.03.59.9 North / longitude 80.58.36.4 West).

82. On or before April 13, 2017 and continuing until a date to be determined, Defendant Rover discharged approximately several million gallons of drilling fluids to waters of the state—i.e., wetlands identified as high quality Category 3, located adjacent to the Tuscarawas River in Navarre Township, Stark County (latitude 40.40 270 North / longitude 81.29 098 West). Upon information and belief, these drilling fluids included diesel fuel as an additive.

83. On or before April 14, 2017 and continuing until a date to be determined, Defendant Rover discharged approximately 50,000 gallons of drilling fluids to waters of the state—i.e., wetlands located near Amoy Pavonia Road, Mifflin Township, Richland County (latitude 40.49.759 North / longitude 82.25.071 West).

84. On or before April 22, 2017 and continuing until a date to be determined, Defendant Rover discharged approximately 200 gallons of drilling fluids to waters of the state—i.e., an unnamed ditch located at 4489 Prairie Lane Road, Wooster Township, Wayne County.

85. On or before May 8, 2017 and continuing until a date to be determined, Defendant Rover discharged approximately 10,000 gallons of drilling fluids to waters of the state—i.e., a stream and a pond located in Monroe Township, Harrison County.

86. On or before June 2, 2017 and continuing until a date to be determined, Defendant Rover discharged approximately 420 gallons of drilling fluids to waters of the state—i.e., wetlands located at North Orchard Rd., NE and Creek 82, Sandy Township, Tuscarawas County.

87. On or before July 2, 2017 and continuing until a date to be determined, Defendant Rover discharged approximately 5,000 gallons of drilling fluids to waters of the state—i.e., wetlands identified as Category 3, located adjacent to the Tuscarawas River in Navarre Township, Stark County (latitude 40.40 270 North / longitude 81.29 098 West).

88. On or before July 3, 2017 and continuing until a date to be determined, Defendant Rover discharged approximately 2,500 gallons of drilling fluids to waters of the state—i.e., wetlands identified as Category 3, located adjacent to the Tuscarawas River in Navarre Township, Stark County (latitude 40.40 270 North / longitude 81.29 098 West).

89. On or before July 14, 2017 and continuing until a date to be determined, Defendant Rover discharged approximately 1,000 gallons of drilling fluids to waters of the state—i.e., wetlands located at 9236 Riverland Ave., SW, Bethlehem Township, Stark County.

90. On or before October 11, 2017 and continuing until a date to be determined, Defendant Rover discharged approximately 1200 gallons of drilling fluids to waters of the state—i.e., wetlands located in Washington Township, Belmont County.

91. The acts or omissions alleged in this Count constitute violations of R.C. 6111.04(A) and Ohio Adm.Code 3745-33-02(A), which constitute violations of R.C. 6111.07(A), for which Defendant Rover is liable and subject to injunctive relief pursuant to R.C. 6111.07(B) and for which Defendant Rover is liable to pay to the State of Ohio a civil penalty up to ten thousand dollars (\$10,000.00) for each day of each violation including each day subsequent to filing this Complaint under R.C. 6111.09.

COUNT TWO
ROVER FAILED TO OBTAIN A GENERAL STORM WATER PERMIT
FOR ITS STORM WATER DISCHARGES

92. Revised Code 6111.04(A)(1) prohibits any person from causing or placing or causing to be placed any industrial wastes or other wastes, in a location where they cause pollution of any waters of the state without a valid, unexpired permit issued by the Director of Ohio EPA.

93. Ohio Adm.Code 3745-38-02(A), issued pursuant to R.C. 6111.035, prohibits any person from discharging any pollutant or causing, permitting, or allowing a discharge of any pollutant from a point source without applying for and obtaining an individual NPDES permit in accordance with Ohio Adm.Code Chapter 3745-33 or obtaining authorization to discharge under a general NPDES permit under Ohio Adm.Code Chapter 3745-38.

94. At least as early as May 12, 2017, Ohio EPA notified Defendant Rover that its previous storm water discharges contributed to violations of Ohio's water quality standards including but not limited to Ohio Adm.Code 3745-1-04(A) and/or (C), and as a result, the storm water permit exemption for oil and gas operations in Ohio Adm.Code 3745-39-04(A)(2)(b) no longer applied. Consequently, Defendant Rover was required to obtain coverage under an Ohio NPDES permit to regulate its storm water discharges pursuant to Ohio Adm.Code 3745-39-04(C)(1)(c)(iii).

95. From May 12, 2017 to present, Rover has failed to obtain coverage under Ohio EPA's Construction Storm Water Permit or Industrial Storm Water Permit in violation of R.C. 6111.04(A)(1), Ohio Adm.Code 3745-38-02(A) and Ohio Adm.Code 3745-39-04(C)(1)(c)(iii).

96. The acts or omissions alleged in this Count constitute violations of R.C. 6111.04(A), Ohio Adm.Code 3745-38-02(A) and Ohio Adm.Code 3745-39-04, which constitute violations of R.C. 6111.07(A), for which Defendant Rover is liable and subject to injunctive relief pursuant to

R.C. 6111.07(B) and for which Defendant Rover is liable to pay the State of Ohio a civil penalty up to ten thousand dollars (\$10,000.00) for each day of each violation including each day subsequent to filing this Complaint under R.C. 6111.09.

COUNT THREE
ROVER VIOLATED OHIO'S GENERAL WATER QUALITY STANDARDS

97. Ohio Administrative Code 3745-1-04, adopted pursuant to R.C. 6111.041, requires, in pertinent part, that all surface waters of the state shall be free from: (A) suspended solids or other substances that enter the waters as a result of human activity that will adversely affect aquatic life; (B) floating debris, oil, scum and other floating materials entering the waters as a result of human activity in amounts sufficient to be unsightly or cause degradation of the waters; and/or (C) materials entering the waters as a result of human activity producing color, odor or other conditions in such a degree as to create a nuisance.

98. Upon information and belief, each of Defendant Rover's unpermitted drilling fluid discharges into waters of the state, as detailed in Paragraphs 80 through 90 of this Complaint were severe enough to violate Ohio's general water quality standards as set forth in Ohio Adm.Code 3745-1-04(A), 3745-1-04(B), and/or 3745-1-04(C).

99. Upon information and belief, each of Defendant Rover's unpermitted storm water discharges into waters of the state, as detailed in Paragraphs 47 and 49 of this Complaint were severe enough to violate Ohio's general water quality standards as set forth in Ohio Adm.Code 3745-1-04(A), 3745-1-04(B), and/or 3745-1-04(C).

100. The acts or omissions alleged in this Count constitute violations of Ohio Adm.Code 3745-1-04, which constitute violations of R.C. 6111.07(A), for which Defendant Rover is liable and subject to injunctive relief pursuant to R.C. 6111.07(B) and for which Defendant Rover is

liable to pay the State of Ohio a civil penalty up to ten thousand dollars (\$10,000.00) for each day of each violation including each day subsequent to filing this Complaint under R.C. 6111.09.

COUNT FOUR
ROVER VIOLATED OHIO'S WETLAND WATER QUALITY STANDARDS

101. Specific to waters of the state that are wetlands, Ohio Adm.Code 3745-1-51(A), adopted pursuant to R.C. 6111.041, requires the protection of the hydrology necessary to support the biological and physical characteristics naturally present in wetlands to guard against significant adverse impacts on: (1) water currents, erosion or sedimentation patterns; (2) natural water temperature variations; (3) Chemical, nutrient and dissolved oxygen regimes of the wetland; (4) the movement of aquatic fauna; (5) the pH of the wetland; and (6) water levels or elevations, including those resulting from ground water recharge and discharge.

102. Also specific to wetlands, Ohio Adm.Code 3745-1-51(B)(1), adopted pursuant to R.C. 6111.041, requires the protection of water quality necessary to support existing habitats and the populations of wetland flora and fauna shall be protected to prevent significant adverse impacts on: (a) food supplies for fish and wildlife; (b) reproductive and nursery areas; and (c) dispersal corridors.

103. Upon information and belief, Defendant Rover's unpermitted drilling fluid discharges into wetlands, as detailed in Paragraphs 80 through 83 and Paragraphs 86 through 90 of this Complaint, were severe enough to violate Ohio's wetland water quality standards in Ohio Adm.Code 3745-1-51(A) and/or 3745-1-51(B)(1).

104. Upon information and belief, Defendant Rover's unpermitted storm water discharges into wetlands, as detailed in Paragraph 47(k) of this Complaint were severe enough to violate Ohio's wetland water quality standards in Ohio Adm.Code 3745-1-51(A) and/or 3745-1-51(B)(1).

105. The acts or omissions alleged in this Count constitute violations of Ohio Adm.Code 3745-1-51, which constitute violations of R.C. 6111.07(A), for which Defendant Rover is liable and subject to injunctive relief pursuant to R.C. 6111.07(B) and for which Defendant Rover is liable to pay the State of Ohio a civil penalty up to ten thousand dollars (\$10,000.00) for each day of each violation including each day subsequent to filing this Complaint under R.C. 6111.09.

***COUNT FIVE
ROVER VIOLATED THE DIRECTOR'S ORDERS***

106. The Director's Orders (Attachment 3, ¶ 8), issued under R.C. 6111.03, require Rover to submit a notice of intent to obtain coverage under Ohio EPA's Construction Storm Water Permit by July 14, 2017.

107. To date, Defendant Rover has failed to obtain coverage under the Construction Storm Water Permit or even submit a notice of intent to obtain coverage under the Construction Storm Water Permit.

108. The acts alleged in this count constitute violations of the Director's Orders, which constitute violations of R.C. 6111.07(A), for which Defendant Rover is liable and subject to injunctive relief under R.C. 6111.07(B), and Defendant Rover is liable to pay civil penalties up to ten thousand dollars (\$10,000.00) for each day of each violation including each day subsequent to filing this Complaint under R.C. 6111.09.

***COUNT SIX
ROVER VIOLATED THE HYDROSTATIC PERMIT***

Rover's Effluent Limit Violations – Suspended Solids and Oil and Grease

109. Table 001 (Part III. A.1.) and Part V. A. of Defendant Rover's Hydrostatic Permit Nos. 2GH00035 and 2GH00036 require Defendant Rover to comply with a total-suspended-

solids effluent limit of 45 milligram per liter (“mg/L”) for a daily maximum and 30 mg/L for monthly average. Attachment 4 p. 6, 10.

110. On or about August 5, 2017, Defendant Rover violated these limits in NPDES permit Nos. 2GH00035 and/or 2GH00036 by discharging effluent with suspended solids measuring 60 mg/L from a segment of its operation referred to as Spread C, Line A into Honey Creek in Seneca County.

111. On or about August 19, 2017, Defendant Rover violated these limits in NPDES permit No. 2GH00035 by discharging effluent with suspended solids measuring 87 mg/L from a segment of its operation referred to as Spread C, Line A into Honey Creek in Seneca County.

112. Table 001 (Part III. A.1.) and Part V. A. of Defendant Rover’s Hydrostatic Permit No. 2GH00035 also requires Defendant Rover to comply with an oil-and-grease effluent limit of 10 mg/L. Attachment 4 p. 6, 10.

113. On or about July 29, 2017, Defendant Rover violated this limit in Hydrostatic Permit Nos. 2GH00035 and/or 2GH00036 by discharging effluent with oil and grease measuring 30.5 mg/L from a segment of its operation referred to as Spread D, Line A into the South Fork, Portage River in Wood County.

Rover’s Failure to Report Effluent Limit Violations

114. Part V. S. 1.a. and Part V. A. of Defendant Rover’s Hydrostatic Permit Nos. 2GH00035 and 2GH00036 require Defendant Rover to report noncompliance as a result of any violation of a daily maximum discharge limit for pollutants including suspended solids and oil and grease within 24 hours of discovery by e-mail or telephone. Attachment 4 p. 10, 18.

115. At least through on or about August 31, 2017, Defendant Rover failed to report its violation of maximum discharge limits for suspended solids (discharged on or about August 5,

2017 and on or about August 19, 2017 into Honey Creek in Seneca County) and for oil and grease (discharged on or about July 29, 2017 into South Fork, Portage River in Wood County) in violation of Hydrostatic Permit Nos. 2GH00035 and/or 2GH00036.

Rover's Failure to Monitor for All Parameters – Iron and pH

116. Table 001 (Part III. A.1.) and Part V. A. of Defendant Rover's Hydrostatic Permit Nos. 0GH00217, 0GH00218, 3GH00071, and 3GH00072 require monitoring of parameters including iron and pH. Attachment 4 p. 6, 10.

117. On or about July 12, 2017, Defendant Rover discharged effluent including iron from a segment of its operation referred to as Spread B, Line A into Killbuck Creek in Wayne County, regulated by Hydrostatic Permit Nos. 3GH00071 and/or 3GH00072. Defendant Rover failed to produce a sample result for iron as required for this discharge.

118. On or about July 29, 2017, Defendant Rover discharged effluent and failed to produce a sample result of pH as required for the discharge from a segment of its operation referred to as Spread 1, Line A into Clearfork Creek in Harrison County, regulated by Hydrostatic Permit Nos. 0GH00217 and/or 0GH00218.

119. On or about August 1, 2017, Defendant Rover discharged effluent including iron from a segment of its operation referred to as Spread B, Line B into Muddy Fork in Wayne County, regulated by Hydrostatic Permit Nos. 3GH00071 and/or 3GH00072. Defendant Rover failed to produce a sample result for iron as required for this discharge.

120. On or about August 4, 2017, Defendant Rover discharged effluent including iron from a segment of its operation referred to as Spread B, Line A into Muddy Fork in Wayne County, regulated by Hydrostatic Permit Nos. 3GH00071 and/or 3GH00071. Defendant Rover failed to produce a sample result for iron as required for this discharge.

Rover's Failure to Report or Properly Report Discharge Information

121. Part V. L.1, Part V. L.3. and/or Part V. L.4. and Part V. A. of Defendant Rover's Hydrostatic Permit Nos. 0GH00218, 3GH00071, and 3GH00072 require Defendant Rover to mail signed, complete, and accurate discharge monitoring reports to Ohio EPA by the 20th day of the month following the month of interest on forms provided by Ohio EPA. Attachment 4 p. 10, 15, 16.

122. Before on or about August 31, 2017, Defendant Rover failed to submit discharge monitoring reports for a discharge that occurred on or about July 27, 2017 from Spread A, Line A into Sugar Creek in Stark County as required by Hydrostatic Permit Nos. 3GH00071 and/or 3GH00072.

123. On or about September 15, 2017, Defendant Rover submitted a discharge monthly report to Ohio EPA and indicated that "no discharge" occurred. Defendant Rover failed to submit the required sample analysis for the discharge that occurred on or about August 30, 2017 from a segment of its operation referred to as Spread A, Line A into Wheeling Creek in Belmont County as required by Hydrostatic Permit No. 0GH00218. To date, Defendant Rover has failed to report this required sample analysis.

Rover's Failure to Properly Sample – pH, Dissolved Oxygen, and Chlorine

124. Part V. M. and Part V. A. of Defendant Rover's Hydrostatic Permit Nos. 0GH00217 and 0GH00218 require Defendant Rover to sample parameters in accordance with 40 C.F.R. 136, "Test Procedures For The Analysis of Pollutants," which in turn requires the sampling of field data for pH, dissolved oxygen, and chlorine immediately within 15 minutes of collection. 40 C.F.R. 136, Table II: Required Containers, Preservation Techniques, and Holding Times. Attachment 4 p. 10, 16.

125. Until on or about August 31, 2017, Defendant Rover failed to sample pH, dissolved oxygen, and chlorine field data immediately within 15 minutes of collection and instead performed laboratory analysis on these parameters.

* * *

126. The acts or omissions alleged in this Count constitute violations of Rover's Hydrostatic Permit Nos. 0GH00217, 0GH00218, 2GH00035, 2GH00036, 3GH00071, 3GH00072, which constitute violations of R.C. 6111.07(A), for which Defendant Rover is liable and subject to injunctive relief pursuant to R.C. 6111.07(B) and for which Defendant Rover is liable to pay to the State of Ohio a civil penalty up to ten thousand dollars (\$10,000.00) for each day of each violation including each day subsequent to filing this Complaint under R.C. 6111.09.

COUNT SEVEN
ROVER ENGAGED IN ACTIVITIES WITHOUT EFFECTIVE CERTIFICATION

127. Ohio Adm.Code 3745-32-02(B), adopted under R.C. 6111.03, prohibits any person from engaging in an activity requiring a state 401 water quality certification prior to obtaining that certification from Ohio EPA.

128. Ohio Adm.Code 3745-32-02(C), adopted under R.C. 6111.03, states that no state 401 water quality certification is effective until all applicable fees have been paid.

129. On February 24, 2017, the Ohio EPA Director journalized a state 401 water quality certification for Defendant Rover. However, Defendant Rover failed to pay all fees for the state 401 water quality certification until May 15, 2017.

130. Consequently, from February 24, 2017 through May 15, 2017, Defendant Rover engaged in activity requiring the state 401 water quality certification without an effective certification.

131. The acts or omissions alleged in this Count constitute violations of Ohio Adm.Code 3745-32-02(B) and Ohio Adm.Code 3745-32-02(C), which constitute violations of R.C. 6111.07(A), for which Defendant Rover is liable and subject to injunctive relief pursuant to R.C. 6111.07(B) and for which Defendant Rover is liable to pay the State of Ohio a civil penalty up to ten thousand dollars (\$10,000.00) for each day of each violation including each day subsequent to filing this Complaint under R.C. 6111.09.

PRAYER FOR RELIEF

THEREFORE, Plaintiff respectfully requests that this Court:

- A. Permanently enjoin Defendant Rover to comply with R.C. Chapter 6111 and the rules adopted thereunder;
- B. Permanently enjoin Defendant Rover from discharging any pollutant, other wastes, or industrial wastes into wetlands and other waters of the state except in compliance with R.C. Chapter 6111, the rules adopted thereunder, and any necessary permits and/or 401 certifications issued pursuant to R.C. Chapter 6111 or rules adopted thereunder;
- C. Permanently enjoin Defendant Rover to submit to Ohio EPA a written notice of intent to obtain coverage under Construction Storm Water Permit or Industrial Storm Water Permit;
- D. Permanently enjoin Defendant Rover to obtain coverage and comply with the Construction Storm Water Permit or Industrial Storm Water Permit;
- E. Permanently enjoin Defendant Rover to comply with the Ohio EPA-approved plans as named below:
 - (a) “Release Prevention and Emergency Response Contingency Plan”;

- (b) “Material Removal Plan-Oster and Beach City Quarries (version 3)”—Rover’s Industrial Waste Disposal Plan;
- (c) “Horizontal Directional Drill (HDD) Sampling Plan”;
- (d) “Tuscarawas River Wetland Restoration Plan”;
- (e) “Stark County Sample and Analysis Plan”;
- (f) “Stark County Plan – Ground Water Monitoring Well Installation Work Plan Supplement”;
- (g) “Aqua Massillon Plan”;
- (h) “Work Plan for Installation of Monitoring Wells: Aqua Massillon (Oster Sand and Disposal Pit) and Quarry Plan (Beach City Quarry)”;
- (i) “Quarry Plan”; and
- (j) “Storm Water Pollution Prevention Plan.”

F. Permanently enjoin Defendant Rover to perform ground water assessments following any release of contamination to groundwater and implement corrective measures if sampling shows that ground water quality has been impacted

G. Permanently enjoin Defendant Rover to provide relief to nearby residents, Aqua Massillon, or the City of Canton, as applicable, if sampling shows that Defendant is contaminating any water supply well downgradient, including drilling new drinking water wells, or siting and development of a new drinking water well field including permitting and installation of drinking water supply wells in the new field, taking into account the costs of design, such that a sustainable or adequate, and uncontaminated source of ground water is assured.

H. Permanently enjoin Defendant Rover to comply with the Hydrostatic Permit Nos. 0GH00217, 0GH00218, 3GH00071, 3GH00072, 2GH00035, and 2GH00036.

I. Permanently enjoin Defendant Rover to submit the required sample analysis for the discharge that occurred on or about August 30, 2017 from a segment of its operation referred to as Spread A, Line A into Wheeling Creek in Belmont County as required by Hydrostatic Permit No. OGH00218.

J. Order Defendant Rover, pursuant to R.C. 6111.09, to pay civil penalties in an amount of ten thousand dollars (\$10,000.00) for each day of each violation;

K. Order Defendant Rover to reimburse Ohio EPA for all costs incurred;

L. Order Defendant Rover to pay all costs and fees for this action, including attorney fees assessed by the Office of the Ohio Attorney General;

M. Retain jurisdiction of this suit for the purpose of making any order or decree which it may deem necessary at any time to carry out its judgment; and

N. Grant such other relief as may be just.

Respectfully submitted,

MICHAEL DEWINE
OHIO ATTORNEY GENERAL



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