

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO, EX REL.,
DAVE YOST, OHIO
ATTORNEY GENERAL

Plaintiff-Appellant

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. John W. Wise, J.
Hon. Patricia A. Delaney, J.

-vs-

Case No. 2019CA00056

ROVER PIPELINE, LLC; PRETEC
DIRECTIONAL DRILLING, LLC; MEARS
GROUP, INC.; LANEY DIRECTIONAL
DRILLING CO.; ATLAS TRENCHLESS,
LLC; AND B & T DIRECTIONAL
DRILLING, INC.

Defendants-Appellees

O P I N I O N

CHARACTER OF PROCEEDINGS:

Appeal from the Stark County Court of
Common Pleas, Case No. 2017-CV-
02216

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 9, 2019

APPEARANCES:

For Plaintiff-Appellant

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Inc., LLC

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Hoffman, P.J.

{¶1} Appellant State of Ohio, ex rel. Dave Yost, Ohio Attorney General, appeals the judgment of the Stark County Common Pleas Court dismissing its complaint against Appellees Rover Pipeline, LLC; Mears Group, Inc.; Pretec Directional Drilling, LLC; Laney Directional Drilling Co.; Atlas Trenchless, LLC; and B&T Directional Drilling, Inc.

STATEMENT OF THE CASE AND FACTS

{¶2} On July 19, 2018, Appellant filed a third amended complaint, the dismissal of which is the entry appealed from in the instant action. The complaint alleged Appellees illegally discharged millions of gallons of drilling fluids into Ohio's waters, causing pollution and degrading water quality across the state during construction of the Rover Pipeline, a 713-mile interstate natural gas pipeline crossing 18 Ohio counties. Appellee Rover was the owner/operator of the drilling operation for construction of the pipeline. The remaining Appellees were subcontractors hired by Rover to perform horizontal-directional drilling related to construction of the pipeline. Appellant sought civil penalties and injunctive relief.

{¶3} Specifically, Appellant's complaint alleged the following:

Count one: Appellees discharged pollutants (drilling fluids) into the waters of the state without point source NPDES permits.

Count two: Appellee Rover failed to obtain a necessary storm water permit for its storm water discharges.

Count three: Appellees violated Ohio's general water quality standards (unpermitted drilling fluid discharges and storm water discharges into waters of the state).

Count four: Appellees violated Ohio's wetland water quality standards by unpermitted drilling fluid discharges into wetlands.

Count five: Appellee Rover violated the Director of the EPA's orders by failing to obtain coverage or submit a notice of intent to obtain coverage for a Construction Storm Water Permit.

Count six: Appellee Rover violated the hydrostatic permit laws.

Count seven: Appellee Rover engaged in activity from February 14, 2017 through May 15, 2017, without the state 401 water quality certification.

{¶4} Appellees moved to dismiss the complaint pursuant to Civ. R. 12(B)(1) and (6), raising four basic arguments.

{¶5} First, Appellees argued Appellant's failure to act within one year on Rover's November 16, 2016, application for the State to issue a §401 certification under the federal Clean Water Act resulted in the State waiving its power to impose conditions and enforce environmental requirements for the pipeline project as a matter of federal law.

{¶6} Second, Appellees argued Rover received all necessary regulatory approvals from FERC (Federal Energy Regulatory Commission). They argued Appellant participated in the preparation of an Environmental Impact Statement (EIS) as a part of the process of obtaining FERC approval, and failed to identify additional State permitting requirements through the EIS process.

{¶7} Third, Appellees argued the State's claims are preempted by the Natural Gas Act, and the trial court therefore lacked subject matter jurisdiction.