



**IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO**

**STATE OF OHIO, EX REL.,
MICHAEL DEWINE, OHIO
ATTORNEY GENERAL,**

Plaintiff,

vs.

ROVER PIPELINE, LLC, et al.,

Defendant.

CASE NO. 2017CV02216

JUDGE KRISTIN G. FARMER

JUDGMENT ENTRY

This matter came before the Court upon the motions of the following defendants to dismiss the Third Amended Complaint filed by the plaintiff, The State of Ohio ex rel. Michael Dewine, Attorney General ("State of Ohio"): Rover Pipeline, LLC ("Rover")/ Mears Group, Inc. ("Mears"), Pretec Directional Drilling, LLC ("Pretec"), Laney Directional Drilling Co. ("Laney"), Atlas Trenchless, LLC. ("Atlas"), and B & T Directional Drilling, Inc. ("B & T"). The State of Ohio filed a combined response to all of the motions to dismiss, to which the individual defendants have replied. Upon review, the Court finds as follows.

Procedural History

The State of Ohio filed an Amended Complaint on November 30, 2017. After the filing of the amended complaint, a "Notice of Removal to Federal Court" was filed on December 8, 2017. The Federal Court remanded this matter back to the Stark County Court of Common Pleas on January 31, 2018. In his Order remanding this matter back to Stark County, Judge John R. Adams found that, although the State of Ohio's complaint necessarily raises a federal issue in some capacity, the focal point of the litigation will be the Clean Water Act and as such, the federal court "cannot exercise jurisdiction without

disrupting the division of labor between the state of Ohio and the federal government.”

Upon remand, the State of Ohio filed a motion for leave to file a Second Amended Complaint. The Court granted the motion and the Second Amended Complaint was filed on April 17, 2018. After the filing of the Second Amended Complaint, the defendants filed motions to dismiss. Prior to ruling upon said motions, the State of Ohio filed an unopposed motion for leave to file a Third Amended Complaint. The Third Amended Complaint was filed on July 19, 2018. Thereafter, the defendants again filed motions to dismiss. Those motions, which have been fully briefed, are as follows:

1. B & T Directional Drilling, Inc.’s Motion to Dismiss Plaintiff’s Third Amended Complaint filed on September 7, 2018;
2. Rover Pipeline LLC and Mears Group, Inc.’s Motion to Dismiss filed on September 10, 2018 (referred to herein as “Rover’s Motion to Dismiss”);
3. Laney Directional Drilling Co.’s Motion to Dismiss filed on September 10, 2018;
4. Pretec Directional Drilling LLC’s Motion to Dismiss Third Amended Complaint filed on September 10, 2018; and
5. Atlas Trenchless LLC’s Motion to Dismiss filed on September 10, 2018.

The State of Ohio filed a collective memorandum contra to all defendants’ motions to dismiss on October 12, 2018. Defendants, Atlas Trenchless LLC, Pretec Directional Drilling LLC, and Laney Directional Drilling Co., and defendants, Rover, Mears, and B&T, filed separate reply briefs on November 2, 2018.

The Complaint filed by the State of Ohio

The State of Ohio’s complaint alleges that the defendants illegally discharged millions of gallons of drilling fluids to Ohio’s waters, causing pollution and degrading water quality across the state in construction of the Rover Pipeline, a 713-mile interstate natural

gas pipeline crossing 18 counties. Rover was the owner or operator of the drilling operations for the construction of the pipeline. Pretec, Laney, Atlas, Mears, and B&K were subcontractors hired by Rover to perform horizontal-directional-drilling activities related to the construction of the pipeline.

More specifically, the State of Ohio's complaint alleges the following:

Count One: Defendants (Rover, Pretec, Laney, Atlas, Mears, and B & T) discharged pollutants (drilling fluids) to waters of the state without point source NPDES permits.

Count Two: Defendant Rover Pipeline LLC failed to obtain a necessary storm water permit for its storm water discharges.

Count Three: Defendants (Rover, Pretec, Laney, Atlas, Mears, and B & T) violated Ohio's general water quality standards (unpermitted drilling fluid discharges into waters of the state and unpermitted storm water discharges into waters of the state).

Count Four: Defendants (Rover, Pretec, Laney, Atlas, Mears, and B & T) violated Ohio's wetland water quality standards (unpermitted drilling fluid discharges into wetlands).

Count Five: Defendant Rover Pipeline LLC violated the Director's Orders by failing to obtain coverage or even submit a notice of intent to obtain coverage under the Construction Storm Water Permit.

Count Six: Defendant Rover Pipeline LLC violated the Hydrostatic Permit.

Count Seven: Defendant Rover Pipeline LLC engaged in activities without effective certification. Plaintiff alleges that the Defendant engaged in activity from February 24, 2017 through May 15, 2017, without the state 401 water quality certification.

Rover's Motion to Dismiss

While separate, the defendants' motions to dismiss are, for the most part, duplicative in argument. Because Rover is the main defendant in this litigation, i.e., the claims arising against the other defendants are a result of actions taken at the behest of Rover, the Court will focus its consideration primarily on Rover's motion to dismiss. In its motion, Rover