

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Rover Pipeline, LLC
3738 Oak Lawn Ave.
Dallas, TX 75225

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**Director's Final
Findings and Orders**

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Rover Pipeline, LLC ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03, 3704.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of Respondent shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner and operator of hydraulic directional drilling operations in numerous counties throughout Ohio.
2. Ohio EPA, through delegation of U.S. EPA, implements the federal NPDES permitting program in the state of Ohio.
3. Ohio EPA, pursuant to congressional mandate, adopts water quality standards for the State of Ohio that are approved by U.S. EPA pursuant to 33 U.S.C § 1313 and issues

water quality certifications for federal permits proposing a discharge into federally regulated waters that the proposed discharge will comply with the state's water quality standards.

4. Ohio EPA's open burning program is federally-approved as part of the State Implementation Plan that implements the federal Clean Air Act in the State of Ohio.

Inadvertent Returns

Inadvertent Return 1704-79-0701

5. While conducting horizontal directional drilling activities on April 8, 2017, Respondent discovered and reported to Ohio EPA an inadvertent return of approximately 1,000 gallons of bentonite slurry in a wetland area near the crossing of Indian Fork River, near Dawn and Miller Hill Roads, Warren Township, Tuscarawas County (lat. 40 31.06" N/ long. 81 17.173" W).
6. The release was located approximately 100 yards west of an operating directional boring rig. The drilling fluids accumulated within an estimated 2,500 square foot area of the wetland.
7. Ohio EPA Emergency Response arrived on site and observed drilling fluids which included bentonite and cuttings from the natural formation coating the area with a layer of mud that impacted water quality. Respondent had installed silt fence and straw bales as containment around the release location.
8. The wetland area near the crossing of Indian Fork River is a water of the state as that term is defined in ORC § 6111.01.

Inadvertent Return 1704-07-0711

9. While conducting horizontal directional drilling activities on April 10, 2017, Respondent discovered and reported to Ohio EPA an inadvertent return of approximately 600 gallons of bentonite slurry. The drilling fluids entered into an unnamed stream, wetland and pond in Richland Township, Belmont County (lat. 40.03.59.9 N/ long. 80.58.36.4 W).
10. The unnamed stream, wetland and pond are waters of the state as that term is defined in ORC § 6111.01.

Inadvertent Return 1704-76-0751

11. While conducting horizontal directional drilling activities on April 13, 2017, Respondent discovered and reported to Ohio EPA an inadvertent return of several million gallons of bentonite slurry. The break out point for the drilling fluids was

located within a Category 3 wetland adjacent to the Tuscarawas River in Navarre Township, Stark County (lat. 40.40 270 N/ long. 81.29 098 W).

12. The drilling fluids accumulated within an estimated 500,000 square foot area. Drilling fluids which included bentonite and cuttings from the natural formation coated the area with a layer of mud and impacted water quality.
13. The wetland area near the Tuscarawas River is a water of the state as that term is defined in ORC § 6111.01.

Inadvertent Return 1704-70-0756

14. While conducting horizontal directional drilling activities on April 14, 2017, Respondent discovered and reported to Ohio EPA an inadvertent return of approximately 50,000 gallons of bentonite slurry during a pilot hole drilling operation. The breakout point for the drilling fluid entered a wetland near Amoy Pavonia Road, Mifflin Township, Richland County (lat. 40.49.759 N long 82.25.071 W), and impacted water quality.
15. The wetland is a water of the state as that term is defined in ORC § 6111.01

Inadvertent Return 1704-34-0777

16. While conducting horizontal directional drilling activities on April 17, 2017, Respondent discovered and reported to Ohio EPA an inadvertent return of approximately 200 gallons of bentonite slurry while drilling. The breakout point surfaced on a pond located at Highway 151 and Caldwell Road, Monroe Township, Harrison County, and impacted water quality.
17. The pond is a water of the state as that term is defined in ORC § 6111.01.

Inadvertent Return 1704-85-0827

18. While conducting horizontal directional drilling activities on April 22, 2017, Respondent discovered and reported to Ohio EPA an inadvertent return of approximately 200 gallons of bentonite slurry while drilling. The breakout point for the drilling fluid entered an unnamed ditch located at 4489 Prairie Lane Road, Wooster Township, Wayne County, and impacted water quality.
19. The unnamed ditch is a water of the state as that term is defined in ORC § 6111.01.

Inadvertent Return 1704-34-0972

20. While conducting horizontal drilling activities on May 8, 2017, Respondent discovered and reported to Ohio EPA an inadvertent return of approximately 10,000 gallons of

bentonite slurry during the installation of a natural gas pipeline. The breakout point for the drilling fluids surfaced in a pond and a stream in Monroe Township, Harrison County, and impacted water quality.

21. The pond and stream are waters of the state as that term is defined in ORC § 6111.01

Storm Water Violations

22. Concurrent with construction activities of the Rover Pipeline on April 12, 2017, Respondent conducted trench dewatering activities which resulted in turbid discharges to Bull Creek at Tank Farm Road in Wood County, southeast of the Village of Cygnet (lat. 41° 13'19" N/ long. 83° 35' 43" W).
23. While constructing the Rover Pipeline in Monroe County, storm water run-off containing sediment and turbid discharges related to trench dewatering entered unnamed tributaries to Woodsfield Reservoir in Monroe County. Ohio EPA noted impacts to the reservoir on April 5, 2017 and again on April 10, 2017.
24. Concurrent with construction activities of the Rover Pipeline on April 11, 2017, Ohio EPA staff noted excessive vehicle tracking of mud onto public roads in Wood, Richland and Crawford Counties, resulting from the active construction of Rover Pipeline.
25. Concurrent with construction activities of the Rover Pipeline on May 3, 2017, Respondent conducted trench de-watering activities which resulted in turbid discharges directly into Brushy Fork Creek in the location of 77960 Slater Road in Cadiz, Ohio.
26. While constructing the Rover Pipeline on April 11, 2017, Ohio EPA staff observed discharges of sediment laden water from a filter bag designed specifically to treat contaminated storm water. The treatment system and associated discharges were noted in Wood County near the intersection of Pelton Road and Portage View Road, Bloomdale, Ohio.
27. While constructing the Rover Pipeline on May 2, 2017, Ohio EPA staff observed discharges of sediment laden water from a filter bag designed specifically to treat contaminated storm water, without an approved NPDES Permit. The treatment system and associated discharges were noted in Wood County near the intersection of Pelton Road and Portage View Road, Bloomdale, Ohio.

28. Concurrent with construction activities of the Rover Pipeline on May 5, 2017, Respondent conducted dewatering activities which resulted in turbid discharges to waters of the state near the Village of Cadiz, Harrison County.
29. While constructing the Rover Pipeline on May 4, 2017, Ohio EPA observed dewatering bags with operating pumps discharging sediment to waters of the state on Cloverdale Road, north of Oil Center Road, Wood County.
30. While constructing the Rover Pipeline on May 5, 2017, Ohio EPA observed sediment laden storm water discharges entering waters of the state southwest of the intersection of County Road 2 and County Road H, Henry County.
31. While constructing the Rover Pipeline on May 5, 2017, Ohio EPA observed sediment laden storm water discharges entering waters of the state at County Road 11, south of County Road J, Harrison County.
32. While constructing the Rover Pipeline in Belmont County, storm water run-off containing sediment entered an unnamed tributary to Pea Vine Creek. Ohio EPA noted impacts to the stream bottom and streambanks of the unnamed tributary on May 4, 2017.
33. While constructing the Rover Pipeline in Tuscarawas County, storm water run-off containing sediment entered an unnamed tributary to Sandy Creek. Ohio EPA noted impacts to the stream bottom and streambanks of the unnamed tributary on May 8, 2017.
34. While constructing the Rover Pipeline on May 5, 2017, Ohio EPA staff observed storm water run-off containing sediment entering an unnamed tributary of Sandy Creek and Wetland W3H-TU-223 at Access 15- Sandyville Road in Sandy Township, Tuscarawas County.
35. While constructing the Rover Pipeline on May 5, 2017, Ohio EPA staff observed storm water run-off containing sediment entering Huff Run and Wetland W8H-TU-225 at Access 12- Lindentree Road in Sandy Township, Tuscarawas County.
36. While constructing the Rover Pipeline on May 5, 2017, Ohio EPA staff observed storm water run-off containing sediment entering Wetland W4ES-TU-217, at Access 6- Dawn Road in Warren Township, Tuscarawas County.
37. While constructing the Rover Pipeline on May 5, 2017, Ohio EPA staff observed the placement of dewatering bags and the deposition of sediment from dewatering activities within Wetland W4ES-TU-217, which was to be avoided.

38. While constructing the Rover Pipeline on May 5, 2017, Ohio EPA staff observed dewatering bags with operating pumps discharging sediment to the wetland and an unnamed tributary of Conotton Creek at Access 6- Dawn Road in Warren Township, Tuscarawas County.
39. While constructing the Rover Pipeline on May 5, 2017, Ohio EPA staff observed a dewatering bag placed near an unnamed tributary to Conotton Creek to dewater groundwater. The discharge from the dewatering bag was rust colored, causing discoloration of the receiving waterbody.

401 Violations

40. Ohio EPA received a complete 401 application for the Rover Pipeline Project from Respondent on August 9, 2016.
41. The 401 certification was issued to Respondent on February 24, 2017.
42. Respondent commenced construction activities requiring the 401 certification on/or around February 24, 2017.
43. Ohio Administrative Code ("OAC") Rule 3745-32-02(B) states that no person shall engage in an activity requiring a 401 certification prior to obtaining that certification from Ohio EPA.
44. OAC Rule 3745-32-02(C) states that no 401 certification issued pursuant to this chapter shall be effective until all applicable fees have been paid.
45. An invoice was sent to Respondent on February 24, 2017, with a due date of March 26, 2017. Payment was not received until May 15, 2017, in violation of OAC Rule 3745-32-02(B) and (C).

Unauthorized Discharges and Water Quality Violations

46. Pursuant to ORC § 6111.04, no person shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes without a valid, unexpired permit.
47. Pursuant to ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.

48. OAC Rule 3745-1-04 provides, in part, that the following general water quality criteria shall apply to all surface waters of the state including mixing zones: To every extent practical and possible as determined by the Director, these waters shall be: (A) Free 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; and (C) Free 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.
49. OAC Rule 3745-1-51 provides, in part, that in addition to the criteria listed in OAC 3745-1-04, the following narrative criteria shall apply to wetlands: (A) 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; (3) Chemical, nutrient, and dissolved oxygen regimes of the wetland; (4) The movement of aquatic fauna; and (6) water levels or elevations, including those resulting from ground water recharge and discharge; (B) water quality necessary to support existing habitats of wetland flora and fauna, including food supplies for fish and wildlife and reproductive and nursery areas; and (C) conditions shall not occur that will have a significant adverse impact on the ability of the wetland to be used for wetland-dependent recreational opportunities in or on the water.
50. Respondent discharged bentonite clay slurry into waters of the state without obtaining an Ohio NPDES permit or Section 401 water quality certification or obtaining authorization to discharge under a general NPDES or Section 401 nationwide permit, in violation of ORC §§ 6111.04 and 6111.07, and OAC Rules 3745-33-02(A), 3745-38-02(A), and 3745-32-02(B).
51. Respondent's discharges violated OAC Rule 3745-1-04(A) by depositing substances into waters of the state and adjacent wetlands as a result of human activity that settled to form objectionable sludge deposits and that adversely affected aquatic life.
52. Respondent's discharges violated OAC Rule 3745-1-04(C) by discharging substances into waters of the state and adjacent wetland as a result of human activity that altered the natural color or other conditions of waters of the state and adjacent wetland in such a degree as to create a nuisance.
53. Respondent's discharges violated OAC Rule 3745-1-51(A) by causing significant adverse impacts on the waters of the state and adjacent wetland's sedimentation patterns, dissolved oxygen regimes, movement of fauna, water elevations, and adverse impacts to food supplies for fish and wildlife.
54. Pursuant to 33 U.S.C. §1342(l)(2) of the Clean Water Act and 40 C.F.R. 122.26(c)(1)(iii), Respondent is required to obtain a NPDES permit for storm water

runoff from construction activities, if the storm water runoff is contaminated by contact with any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of oil and gas exploration, and contributes to a water quality standard violation.

55. ORC 6111.03(J)(1) provides that the Director may issue permits in compliance with all requirements of the Federal Water Pollution Control Act and mandatory regulations adopted thereunder. That section further provides that permit terms and conditions set by the Director shall be designed to achieve and maintain full compliance with mandatory requirements of the Federal Water Pollution Control Act that are imposed by regulation of the Administrator of the United States Environmental Protection Agency. In 40 C.F.R. 122.26, the Administrator requires dischargers of storm water associated with construction activity that disturbs more than one (1) acre of land to obtain an individual NPDES permit or coverage under a storm water general permit.
56. Because Respondent disturbed more than one (1) acre of land, Respondent is required to submit a Notice of Intent ("NOI") to obtain coverage under Ohio's NPDES Construction Storm Water General Permit and to develop and implement a Storm Water Pollution Prevention Plan ("SWP3").
57. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
58. The Director has given consideration to and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

Open Burning Violation

59. OAC Rule 3745-19-04(A) prohibits any person or property owner from allowing or causing open burning, as defined in OAC Rule 3745-19-01(K), in an unrestricted area except as allowed by rule or law.
60. OAC Rule 3745-19-04(C)(4) allows, after written permission from Ohio EPA, open burning of land clearing waste disposal provided that certain conditions are observed. These conditions include, but are not limited to, a requirement that the fire be located at a point no less than one thousand feet from any inhabited building not located on the premises where the open burning is to occur.
61. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704. OAC Chapter 3745-19 was adopted by the Director pursuant to ORC Chapter 3704.

62. Pursuant OAC Rule 3745-19-04(C)(4), on March 13, 2017, Ohio EPA received a written application for permission to open burn from Excel Mulching. The application requested permission to use open burning as the method of disposing land clearing waste generated by the installation of the Burgettstown Lateral pipelines which are part of the Rover Pipeline Project. Specifically, Excel Mulching requested to open burn at 49 sites along the pipeline in Jefferson County, Ohio. The 49 sites are located in unrestricted areas as defined in OAC Rule 3745-19-01(N).
63. On March 29, 2017, Ohio EPA granted permission to open burn the land clearing waste material at the 49 sites provided that Excel Mulching complied with the written permission and OAC Rule 3745-19-04(C). This included the requirement that all fire sites be at least one thousand feet from any inhabited building.
64. On April 11, 2017, Ohio EPA received a complaint regarding open burning being conducted on the pipeline's right of way, near Township Road 240, Toronto, Ohio. An investigation conducted by Ohio EPA on April 12, 2017, revealed that the open burning fire site was located within thousand feet of an inhabited building, in violation of the March 29, 2017 written permission, OAC Rule 3745-19-04(C)(4)(c) and ORC § 3704.05(G).
65. Respondent is the developer and operator of the Rover Pipeline Project; therefore, Respondent is responsible for the all activities associated with the construction and operation of the pipeline.
66. As part of the construction project, Respondent contracted with Excel Mulching to open burn the land cleaning waste generated as part of the pipeline construction. Therefore, Respondent is responsible for the illegal open burning violation which occurred on or around April 11, 2017.
67. OAC Rule 3745-19-05(A)(5) states that a violation of a condition set forth by Ohio EPA in granting permission to open burn may be grounds for revocation of such permission and refusal to grant future permission, as well as for the imposition of other sanctions provided by law. This includes the assessment of civil penalties.
68. Based on the above Findings, the Director of Ohio EPA finds that Respondent allowed burning within a thousand feet of an inhabited building, in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G).

V. ORDERS

1. Respondent shall immediately implement the Release Prevention and Emergency Response Contingency Plan ("Contingency Plan") that identifies measures to protect public health and the environment, which was submitted for review and approval to Ohio EPA on April 29, 2017. If Ohio EPA provides written comments to the Contingency Plan, Respondent shall submit a revised plan ten (10) days after

receiving Ohio EPA's comments.

2. Within seven (7) days of Ohio EPA's approval of the Contingency Plan, Respondent shall discontinue using the initial plan submitted and implement the approved Contingency Plan.
3. Within thirty (30) days from the effective date of these Orders, Respondent shall submit to Ohio EPA, 401/Wetland/Environmental Mitigation Section, for review and approval, a Wetland Restoration Plan ("WRP") for the restoration of the impacted acres of Category 3 wetland outlined in the above listed Findings. In addition to the restoration, Respondent shall include in the WRP, the mitigation of an additional ___ acres of Category 3 wetland to be preserved, enhanced, or restored either onsite or offsite.
4. Ohio EPA will review the WRP and may establish additional requirements to the WRP if the plan is deemed deficient. After review of the plan, Ohio EPA may approve the plan as submitted, or approve the plan with additional conditions. Upon the approval of the WRP by Ohio EPA, Respondent shall implement the plan and complete all necessary remediation requirements required by the plan within six (6) months from the date Ohio EPA approves the WRP or an alternate deadline approved by Ohio EPA.
5. Within seven (7) days from the effective date of these orders, pursuant to 40 CFR 122.26, Respondent shall submit a NOI to obtain coverage under the under Ohio's NPDES Construction Storm Water General Permit.
6. Within fourteen (14) days from the effective date of these Orders, Respondent shall submit its SWP3 to Ohio EPA for review and approval.
7. Respondent shall pay the amount of seven hundred and fourteen thousand dollars (\$714,000.00) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for the total amount. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the Respondent, to:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

A photocopy of the check shall be sent to Larry Reeder, Ohio EPA, Division of Surface Water, Central Office in accordance with Section X of these Orders.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03(D).

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to activities occurring on or at the site.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Central Office
Division of Surface Water
50 W Town Street., Suite 700
Columbus, Ohio 43215
Attn: Enforcement Manager- 401 Section

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative or a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Craig W. Butler, Director

Date

IT IS SO AGREED:

Rover Pipeline, LLC

Signature

Date

Printed or Typed Name and Title