



John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Craig W. Butler, Director

12/28/2018

NEXUS Gas Transmission, LLC  
Attn: Richard Paglia, Vice President  
5400 Westmeimer Court  
Houston, TX 77056

RE: Director's Final Findings & Orders  
NPDES  
Sandusky County  
2GH00038

Ladies and Gentlemen:

Transmitted herewith is one copy of the Director's Final Findings & Orders in the referenced matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. Fowler".

Kevin J. Fowler, Supervisor  
Permit Processing Unit  
Division of Surface Water

KJF/dks

Enclosure

**CERTIFIED MAIL**

cc: L. Reeder, DSW  
R. Demuth, DSW  
B. Palmer, DSW  
J. Martin, DSW  
Fiscal  
M. McCarron, PIC  
H. Griesmer, PIC  
J. Lee, PIC  
T. Poffenbarger, NWDO/DSW  
Compliance Section  
B. Fischbein, Legal  
P. Fallah, DEFA  
J. Dragovich, DEFA  
File

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of :  
 :  
 :  
NEXUS Gas Transmission, LLC : Director's Final Findings and  
5400 Westheimer court : Orders  
Houston, TX 77056

**Respondent**

**PREAMBLE**

It is agreed by the Parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to NEXUS Gas Transmission, LLC ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("EPA") under Ohio Revised Code (R.C.) §§ 6111.03 and 3745.01.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondent and its assigns and successors in interest liable under Ohio law. No change in ownership of Respondent or its Facilities as defined in these Orders 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 R.C. Chapter 6111 and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has made the following findings:

- 1 Respondent is the owner and operator of the NEXUS Pipeline Project which is a 255-mile interstate natural gas pipeline that originates in eastern Ohio, travels to the northwest in Ohio and ends in southeastern Michigan.

**Hydrostatic Test Water Discharge Violations**

2. As part of pipeline construction, Respondent must test for leaks and structural integrity of the pipeline prior to putting the asset in service. This is done, in part, by filling the pipeline with water (hydrostatic test water) under pressure and monitoring for potential leaks.
3. Upon completion of the test, the hydrostatic test water contains pollutants and is an industrial waste as defined in ORC Section 6111.01.
4. Ohio EPA issued Respondent coverage under Ohio's General NPDES permit for Hydrostatic Test Water, for discharges in the following counties:

Facility	Permit	County
NEXUS Gas Transmission, LLC	2GH00038*BG	Multiple
NEXUS Gas Transmission, LLC	3GH00075*BG	Multiple

5. Pursuant to ORC Section 6111.04(C), no person to whom a permit has been issued 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 in excess of the permissive discharges specified under an existing permit without first receiving a permit from the director to do so.
6. R.C. § 6111.07(A) prohibits any person from violating, or failing to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violating 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.
7. In violation of ORC Section 6111.04(C), Respondent discharged pollution in excess of its permit limits on the following date:

Permit	County	Station	Parameter	Limit Type	Limit (mg/L)	Reported Value (mg/L)	Reported Date
2GH00038	Sandusky	13	TSS	Max	45	82	9-Aug-18

8. Pursuant to ORC 6111.07(A), under the terms and conditions of the Hydrostatic NPDES permit, Respondent is required to notify in writing or via e-mail the appropriate OHIO EPA district office, Division of Surface Water, at least two weeks prior to the commencement of hydrostatic testing.

9. In violation of its NPDES permits and ORC Section 6111.07(A), Respondent failed to notify OHIO EPA within 2 weeks prior to commencement of the August 9, 2018, discharge in Sandusky County.
10. Ohio EPA issued an NOV dated August 28, 2018, for the discharge occurring on August 9, 2018 in Sandusky County.

#### **Unpermitted Discharges of Drilling Fluids to Waters of the State**

11. Pursuant to ORC Section 6111.04(A)(1), no person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state without a permit.
12. On July 10, 2018, Ohio EPA performed an inspection pursuant to a self-reported inadvertent return (IR) by Respondent of a discharge of approximately 200 gallons of horizontal directional drilling fluid, which consists of bentonite and water, into a wetland located in West Township, Columbiana County. This discharge was not done pursuant to a permit issued by Ohio EPA and therefore is a violation of 6111.04(A)(1). Cleanup was conducted by the company, in accordance with the Ohio EPA-approved NEXUS HDD Monitoring and Inadvertent Return Contingency Plan ("HDD Contingency Plan"), and Ohio EPA considers the wetland to be cleaned up/restored. A NOV/ROV letter was sent August 13, 2018.
13. On July 11, 2018, Ohio EPA conducted a site inspection at the IR location listed in Finding 11. During the inspection a second IR of approximately 500 gallons had flowed into a wetland. This discharge was not done pursuant to a permit issued by Ohio EPA and therefore is a violation of 6111.04(A)(1). Cleanup was conducted by the company, in accordance with the Ohio EPA-approved HDD Contingency Plan, and Ohio EPA considers the wetland to be cleaned up/restored. A NOV/ROV letter was sent on August 13, 2018.
13. On July 17, 2018, Ohio EPA was informed by Respondent of a discharge of approximately 20,000 gallons of horizontal directional drilling fluid, into a tributary (Liberty Hi Road Ditch) of the Maumee River. This discharge was not done pursuant to a permit issued by Ohio EPA and therefore is a violation of 6111.04(A)(1). Cleanup was conducted by the company and Ohio EPA considers the tributary to be cleaned up/restored. A NOV was issued July 18, 2018. An e-mail was sent on July 23, 2018 acknowledging clean-up efforts completed on July 20, 2018 and that no further action was required for this incident.

#### **Storm Water Discharges**

14. "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 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).
15. Respondent has cleared, graded, excavated, grubbed and/or filled at least five (5) acres of total land and thus Respondent is considered to be engaged in industrial activity in accordance with Ohio Adm. Code 3745-39-04(B)(14)(j).
16. Storm water discharge associated with industrial activity are generally subject to an industrial storm water NPDES permit pursuant to Ohio Adm. Code 3745-39-04(A)(1)(b).
17. Federal law 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).
18. 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, lain 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."
19. 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) and Ohio Adm. Code 3745-39-04(C)(1)(c)(iii), respectively.
20. 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.

21. Based on inspections conducted on June 2, 2018, June 28, 2018 and August 24, 2018, Ohio EPA staff observed sediment laden discharges to waters of the state causing a turbid plume. NOV's were sent on June 20, 2018, July 5, 2018 and August 28, 2018.
22. Respondent's discharges violated R.C. 6111.04(A), OAC Rule 3745-33-02(A), and OAC Rule 3745-1-04.

#### **V. ORDERS**

1. Respondent shall pay the amount of forty nine thousand, six hundred and thirty seven (\$49,637.00) 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". 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 43215-1049

A copy of the check shall be sent to Larry Reeder, Environmental Manager, Enforcement Section, or his successor, at the following address:

Ohio EPA  
Division of Surface Water  
Attn: Larry Reeder  
P.O. Box 1049  
Columbus, Ohio 43215-1049

#### **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 as defined in Ohio Administrative Code Rule 3745-33-03(F).

#### **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 described in these Findings and Orders .

#### **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 the 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  
Lazarus Government Center  
Division of Surface Water  
Attn: Enforcement Manager  
50 West Town Street, Suite 700

[P.O. Box 1049]  
Columbus, Ohio 43215 [43216-1049]

[For mailings use the post office box number and zip code in brackets]

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

#### **XI. RESERVATION OF RIGHTS**

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

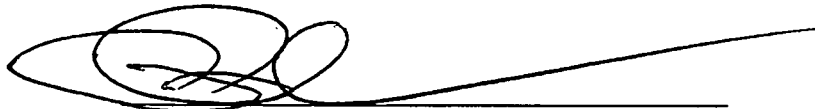
Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO ORDERED AND AGREED:  
Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Craig W. Butler, Director

12-24-18  
Date

**IT IS SO AGREED:  
NEXUS Gas Transmission, LLC  
By: Spectra Energy NEXUS Management, LLC,  
in its capacity as operator**

  
\_\_\_\_\_  
Signature

12/21/18  
Date

Richard M. Paglia  
Printed or Typed Name

Vice President  
Title