

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF
INVESTIGATION



AGENCY: OHIO DEPARTMENT OF NATURAL RESOURCES
FILE ID NO.: 2012-CA00124
DATE OF REPORT: DECEMBER 4, 2014

The Office of the Ohio Inspector General ... The State Watchdog

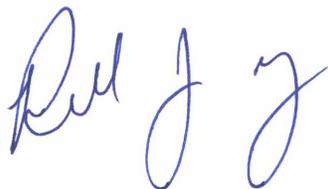
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Statutory authority for conducting such investigations is defined in *Ohio Revised Code §121.41* through *121.50*. A *Report of Investigation* is issued based on the findings of the Office, and copies are delivered to the Governor of Ohio and the director of the agency subject to the investigation. At the discretion of the Inspector General, copies of the report may also be forwarded to law enforcement agencies or other state agencies responsible for investigating, auditing, reviewing, or evaluating the management and operation of state agencies. The *Report of Investigation* by the Ohio Inspector General is a public record under *Ohio Revised Code §149.43* and related sections of *Chapter 149*. It is available to the public for a fee that does not exceed the cost of reproducing and delivering the report.

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Randall J. Meyer
Ohio Inspector General



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF INVESTIGATION

FILE ID NUMBER: 2012-CA00124

SUBJECT NAME: Benjamin Harpster

POSITION: Mineral Resources Inspector

AGENCY: Ohio Department of Natural Resources

BASIS FOR INVESTIGATION: Agency Request

ALLEGATIONS: Conflict of Interest

INITIATED: February 15, 2013

DATE OF REPORT: December 4, 2014

INITIAL ALLEGATION AND COMPLAINT SUMMARY

The Ohio Department of Natural Resources (ODNR) forwarded a complaint from Michael (Mike) Coyer, owner of Black Swamp Oil Field Services, to the Office of the Ohio Inspector General on December 13, 2012. Coyer alleged that Benjamin (Ben) Harpster, a mineral resources inspector, while acting in his official capacity, may have provided “insider information” in an effort to divert potential customers to his father’s company, Bradner Oil, LLC. The incident involved a well in Findlay owned by Richard Kirk.

On December 14, 2012, the Office of the Ohio Inspector General initiated a preliminary inquiry into this allegation. After reviewing records provided by ODNR and conducting preliminary interviews with the complainant and Chad Kirk (Richard Kirk’s son), the Office of the Ohio Inspector General identified three well plugging projects where Bradner Oil had completed the work for the landowners. For one of these projects, the Hancock County Landfill, Ben Harpster was the inspector. On February 5, 2013, the Office of the Ohio Inspector General opened an investigation into Coyer’s complaint, as well as the project at the Hancock County Landfill. During the course of the investigation, investigators identified an additional project on a land parcel in Wood County, where Harpster was the inspector for three wells plugged by his father’s company, Bradner Oil.

BACKGROUND

The Ohio Department of Natural Resources (ODNR) promotes, protects, and manages Ohio’s state parks and outdoor recreational, natural, and wildlife areas. ODNR provides for the safe operation of watercraft, regulates surface and underground mineral mining and the production of oil and gas, and ensures that mined lands are reclaimed. ODNR maps and evaluates Ohio’s mineral and water resources and inspects dams and levees. It provides technical assistance on soil conservation, ensures wise utilization of the state’s forest resources, and administers a statewide system of nature preserves and scenic rivers. ODNR manages wildlife resources by enforcing laws on fishing, hunting, and trapping.¹

¹ Source: Biennial budget documents.

ODNR Division of Oil and Gas Resources Management (DOGRM)

In 2010, the Oil and Gas Program became a stand-alone division within the Ohio Department of Natural Resources. The primary function of the DOGRM is to ensure the responsible development of Ohio's energy and mineral resources in a safe and environmentally sound manner. It is mandated by Chapter 1509 of the Ohio Revised Code and Chapter 1501:9 of the Ohio Administrative Code to protect correlative rights, the environment, and public safety. Trained and experienced professional staff review permit applications, enforce the state regulations for drilling and plugging wells, and gather and provide oil and gas well information to the industry and public.²

The DOGRM administers the orphan well program in Ohio. The program was established in 1977 to plug improperly abandoned oil and natural gas wells. It is funded by a portion of the state tax on oil and gas production. Proper plugging of orphan wells is necessary to protect public health and safety, conserve natural resources, and allow the efficient development of Ohio's oil and gas resources. The DOGRM uses four programs to plug these wells:

1. The Emergency Services Program is used for wells that present an immediate hazard and threaten physical harm to the public.
2. The Traditional Program is used for wells that do not qualify for emergency action. The wells are grouped by priority and geographic location for state contract bid.
3. The Landowner Grant Program allows pre-qualified landowners to obtain bids and select a contractor to plug and restore the well, then be reimbursed for 100 percent of the reasonable costs. Wells are selected on a priority basis until all the funds for the year are spent. To qualify, the landowner must submit an application and provide a plugging plan that is approved by the orphan well program.
4. The Cost-Share Grant Program is available to local governments for wells on public property.³

² <http://oilandgas.ohiodnr.gov/citizens/oil-gas-faq>

³ <http://oilandgas.ohiodnr.gov/orphanwellprogram>

INVESTIGATIVE SUMMARY

The complaint from Coyer alleged that Harpster, an ODNR mineral resources inspector, was attempting to divert potential customers by providing “insider information” to his father’s business, Bradner Oil. The complaint involved a well in Findlay owned by Richard Kirk that needed service due to a possible gas leak. Harpster, in the course of his duties, inspected the well, assessed there was a possible leak underground, and on October 23, 2012, emailed Richard Kirk a written list of nine contractors who could perform the service. This “List of Contractors that do Service and Plugging work in the Northwest Ohio area” was in alphabetical order, and Bradner Oil, owned by Harpster’s father, was listed third. ([Exhibit 1](#)) All of the contractors on the list were preapproved by ODNR for oil and gas work.

After reviewing the provided list, Chad Kirk contacted Bob Harpster, the owner of Bradner Oil. Harpster told Kirk that he was familiar with the well because he had a conversation with Ben about it earlier. Chad Kirk discussed potential pricing with Bob Harpster, but Bob Harpster never submitted a bid. Chad Kirk also solicited bids from two other contractors: Michael Coyer, owner of Black Swamp Oil, and Tony Kryder, owner of Second Oil Ltd. These two contractors came to the site to check out the leak, and Black Swamp Oil completed the repair to Kirk’s well.

When interviewed on September 26, 2013, Bob Harpster recalled discussing the well project with Chad Kirk by telephone. However, he said he declined to bid on the project or even look at the well since the well was located in the city.

During his interview with investigators, Bob Harpster reviewed a copy of an email he had received from his son on December 18, 2012, entitled “Findlay Pics,” with four photos of Kirk’s well attached. Bob Harpster recalled looking at the photos on his phone. Bob stated that Ben did not give him any other additional information; specifically, that Bob received the exact same information that Ben had sent to the other two contractors. During a review of Ben Harpster’s state email account, investigators found no emails showing that Ben Harpster had sent the “Findlay Pics” photos to any other contractors.

During an interview conducted by the Office of the Ohio Inspector General on September 30, 2013, Ben Harpster reviewed the December 18, 2012, email and the attached four photos. Harpster stated that he shared photos of this well with three contractors: Black Swamp Oil, Bradner Oil, and Second Oil Ltd. Harpster said he printed the photos and gave them to Mike Coyer and Tony Kryder, the owners of Black Swamp and Second Oil, and that he used his state-issued portable printer to print the photos. Harpster said he has always been very careful not to recommend Bradner Oil or to give a landowner only one contractor's name. It is standard practice for ODNR inspectors to provide a list of at least three contractors in the area. In this case, Ben Harpster emailed a written list of nine contractors to Richard Kirk, the landowner, and it was up to Kirk to contact whomever he wished.

When interviewed on October 11, 2013, Mike Coyer stated he did not recall receiving any photos from Ben Harpster on the Kirk well project. During his interview on October 17, 2013, Tony Kryder also stated, "I've never seen pictures," when discussing the Kirk well project. Kryder said Harpster may have sent photos in an email that Kryder never opened. Kryder stated he did not receive any printed photos from Ben Harpster. Once again, a review of Ben Harpster's state email showed the photos were only emailed to Bob Harpster.

In summary, Ben Harpster emailed Bob Harpster about the Kirk's well project and attached to the email four photos of the well. During the review by the Office of the Ohio Inspector General, no evidence was found that these four photos had been sent from Ben Harpster's state email account to either of the other two contractors. Black Swamp Oil, the complainant's company, completed the repair work on the Kirk's well. Though Bob Harpster stated that he did not go to the site nor bid on the job to repair Kirk's well, he was given additional information, the four photos that Ben had not provided to the other two contractors.

OTHER MATTERS

As part of the investigation, the Office of the Ohio Inspector General received and reviewed ODNR inspection records and plugging reports from northwestern Ohio that occurred after March 2011, when Ben Harpster started employment with ODNR. Investigators focused on

reports in which the work had been completed by Bradner Oil, and the inspection was conducted by Ben Harpster. Two projects were identified where this had occurred:

1. The plugging of two wells at the Hancock County Landfill which was completed under the ODNR Landowner Grant Program, and
2. A private project where three wells, owned by Todd and Amy Miller, were plugged in Wood County.

Two other Landowner Grant Program projects awarded to Bradner Oil after March 2011 were identified. However, Ben Harpster was not the inspector on these projects. Only the wells at the Hancock County Landfill project were inspected by Ben Harpster. ([Exhibit 2](#)) Since the Hancock County Landfill project involved public monies, investigators also reviewed emails and correspondence concerning the bidding process for that project.

The Hancock County Landfill Project (Bidding Process)

The Hancock County commissioners were expanding the county's landfill, located northwest of Findlay, when they discovered two abandoned wells. In order to continue the expansion, the wells had to be plugged. Hancock County reached out to ODNR to participate in the Landowner Grant Program and Ben Harpster was assigned as one of the inspectors for the project.

Steve Williamson, a senior geologist from ARCADIS US, Inc., an engineering company and contractor on the expansion project, solicited bids from three plugging contractors as requested by ODNR. These three contractors, Huwer Drilling, Bradner Oil, and Second Oil Ltd., were sent emails by Williamson who also followed up with telephone calls.

On behalf of his company Bradner Oil, Bob Harpster was the only contractor that submitted a bid for the project.⁴ After receiving this sole bid, Williamson emailed Ben Harpster at ODNR on June 8, 2012, to ask if he could proceed with the process. Ben Harpster replied by email and advised Williamson, "As long as you made an effort to collect three bids than (sic) that should be sufficient for us. Just because Mr. Harpster is the only one who responded does not mean we

⁴ The contractor on this project was Bradner Oil; however, Huwer Drilling assisted as a subcontractor.

can't move forward ...” Ben Harpster said if Williamson could document that he had requested bids from three companies, Williamson could go ahead and select Bradner Oil as the lowest and best bid. ([Exhibit 3](#))

Terracina Maxwell, ODNR natural resources administrator, handled the bidding process for the Orphan Well and Landowner Grant Programs. Maxwell left ODNR in November 2012, and is now working in the private sector. During an interview with Maxwell on August 7, 2013, she reviewed copies of emails sent by Steve Williamson soliciting bids from three contractors:

1. Bob Huwer of Huwer Drilling, sent on June 4, 2012;
2. Bob Harpster of Bradner Oil, sent on June 4, 2012; and
3. Tony Kryder of Second Oil Ltd., sent on June 6, 2012.

Maxwell also reviewed the email from Ben Harpster on June 8, 2012. Maxwell said her response to Steve Williamson would have been the same as Harpster's response; “Just document the bids you solicited and then send in the bid for the job.”

Both Ben Harpster and his father stated that Ben has never provided any information to his father that was not public information. Both stated that since Ben started working with ODNR, Ben had never stopped by a work site where Bradner Oil was working unless he was there on official business as an inspector.

The Office of the Ohio Inspector General reviewed Ben Harpster's position description as mineral resources inspector and found no mention of any role in the bidding process. Investigators also reviewed his state email account and state cell phone records and found no issues that indicated he provided his father any information that would assist in the bidding process. Maxwell stated she does not recall discussing the bid process with Ben Harpster and there is no evidence that Harpster had knowledge of the bid amount. In this case, there was only one bid submitted for the Hancock County Landfill project, and that bid came from Bob Harpster for Bradner Oil.

Hancock County Landfill and Wood County Inspections

According to plugging reports received from ODNR, Ben Harpster inspected the work completed by Bradner Oil on the Hancock County Landfill project and on a project in Wood County involving four wells on private property. Harpster had been assigned by his supervisors as an inspector for both projects even though it was known by his supervisors that Bob Harpster was his father.

Hancock County Landfill Project

Investigators interviewed Steve Williamson by telephone on June 19, 2013. Williamson has performed ground water monitoring and engineering for Hancock County for more than 20 years. Williamson said he was onsite at the Hancock County Landfill expansion project during much of the work. Williamson said he and others onsite were aware that the ODNR inspector was Bob Harpster's son. Williamson said Ben Harpster was professional and quite strict with the inspections he was conducting and at one point, came out, measured the grout density and required his father's company to adjust it to meet inspection standards.

Wood County Project (Todd and Amy Miller)

The second project was a well plugging project in Wood County on an 80-acre wooded parcel owned by Todd and Amy Miller. In this case, the Millers alone were responsible for the payment to their chosen contractor. There were four abandoned wells on the property in need of plugging. After being plugged by Bradner Oil, three of the wells were inspected by Ben Harpster and the fourth was inspected by another ODNR mineral resources inspector, Brian Logue.

The Office of the Ohio Inspector General interviewed Todd Miller on July 19, 2013, to determine how he had selected Bradner Oil to perform the work. Miller said he called ODNR to find out how to get the wells plugged. He later received a packet in the mail with the plugging permit applications and a list of contractors who could perform the work. Miller called about five contractors on the list to obtain estimates, and chose Bradner Oil because their bid was the lowest. Miller said he did not receive any referrals for a contractor from the inspector, Ben Harpster. Miller said, "I never met him until after the work was already started." Miller had

interaction with Ben Harpster when he went to the site to sign off on the work as each well was plugged. While he was on site, Miller spoke with the senior Harpster who informed him that Ben was his son. Miller said the senior Harpster also told him his son had worked for him at Bradner Oil before he was hired by the state. Miller said Ben Harpster was “very professional,” and Miller was pleased with the work.

At the onset of this investigation, the Office of the Ohio Inspector General reviewed Harpster’s ODNR personnel file. Harpster has been employed as a mineral resources inspector at ODNR since March 2011. In his original State of Ohio job application, dated February 7, 2011, Harpster disclosed that he had business interests which are or have been involved in state business and he listed Bradner Oil Co. as the name of the business. ([Exhibit 4](#)) Investigators also learned that Harpster completed ODNR’s mandatory one-hour ethics training for new employees on May 18, 2011. In his interview, Ben Harpster recalled that conflict of interest was discussed during this ethics training.

The Office of the Ohio Inspector General also interviewed Ben Harpster’s immediate supervisor, Will Ziegler on June 24, 2013. ODNR Division of Oil and Gas Resources Management Deputy Chief Bob Worstall was also present during the interview. Ziegler and Worstall were both aware that Ben Harpster’s father owned Bradner Oil and that Bob Harpster was operating his business where his son Ben was assigned to conduct inspections in northwest Ohio. Neither Ziegler nor Worstall recalled ever addressing the fact that Ben’s inspection of the work completed by his father’s company could create a conflict of interest. Ziegler stated, “I did not have any discussions with him like this might be a potential conflict of interest myself. I don’t know if anyone else did or not.”

Based on the information learned during this investigation, there was never any question about the quality of work performed by Bradner Oil or the inspections completed by Ben Harpster. However, the fact that Ben was being assigned by his supervisors to inspect the work completed by his father’s company created a potential conflict of interest.

CONCLUSION

The Office of the Ohio Inspector General initiated an investigation after receiving information from ODNR alleging that Ben Harpster, a mineral resources inspector, may have a possible conflict of interest because he is working in northwest Ohio where his father has an oil business. The complainant also alleged that Ben Harpster may be providing inside information to his father related to potential work projects.

From the original complaint concerning the well repair work for Richard and Chad Kirk, the Office of the Ohio Inspector General found that Ben Harpster emailed four photos to his father, and while he said he provided hard copies of these photos to other contractors, investigators found no evidence to indicate that he did so. It is unknown if the receipt of these photos influenced the senior Harpster's decision not to go to the site or bid on the project. Regardless, Ben Harpster should not have made any statement or provided any information to any landowner or contractor that could be construed as a conflict of interest.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe that an appearance of impropriety occurred in this instance.

During the investigation, concerns arose as to whether or not Ben Harpster interfered with or had any influence over the bidding process for the Hancock County landfill project. From interviews and a review of emails and other records, the Office of the Ohio Inspector General found no evidence to support this allegation.

Accordingly, the Office of the Ohio Inspector General finds no reasonable cause to believe a wrongful act or omission occurred in this instance.

In addition, investigators learned that from March 2011 through July 2013, Ben Harpster was assigned by his supervisors to inspect the plugging work performed by Bradner Oil on two separate projects. The Office of the Ohio Inspector General found no evidence of any preferential treatment given to Bradner Oil and no evidence that these inspections were not done according to ODNR specifications. Every person interviewed who witnessed the work

performed on both projects stated that Harpster was professional and knowledgeable as an inspector. Nevertheless, in order to avoid any conflict or appearance of conflict of interest, ODNR management should have assigned another inspector to both projects.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe that an appearance of impropriety occurred in this instance.

RECOMMENDATION(S)

The Office of the Ohio Inspector General makes the following recommendation(s) and asks the director of the Ohio Department of Natural Resources to respond within 60 days with a plan detailing how the recommendation(s) will be implemented. The Ohio Department of Natural Resources should:

1. Assign an inspector other than Ben Harpster to conduct all inspections of work performed by Bradner Oil, effective immediately.
2. ODNR should only provide a written copy of local contractors to landowners who need work performed, and refrain from any discussion or recommendations.
3. Review the internal process for inspectors being involved in the bidding process for the orphan well and landowner grant programs to ensure they are not privy to bid information during the process.

REFERRAL(S)

The Office of the Ohio Inspector General has determined that no referrals are warranted for this report of investigation.

[\(Click here for Exhibits 1 – 4 combined\)](#)



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OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Ohio Department of Natural Resources

FILE ID #: 2012-CA00124

KEEPER OF RECORDS CERTIFICATION

This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.

Jill Jones
KEEPER OF RECORDS

CERTIFIED
December 4, 2014

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