

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF
INVESTIGATION



AGENCY: OHIO DEPARTMENT OF TRANSPORTATION
FILE ID NO.: 2015-CA00003
DATE OF REPORT: MARCH 29, 2016

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

“Safeguarding integrity in state government”

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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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The Inspector General’s Office remains dedicated to the principle that no public servant, regardless of rank or position, is above the law, and the strength of our government is built on the solid character of the individuals who hold the public trust.



Randall J. Meyer
Ohio Inspector General



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REPORT OF INVESTIGATION

FILE ID NUMBER: 2015-CA00003

SUBJECT NAME: Walls Brothers Asphalt Co. Inc.
3690 Hollansburg Sampson Rd.
Greenville, OH 45331

Walls Brothers Asphalt Co. Inc.
9843 Dayton Greenville Pike
Brookville, OH 45309

POSITION: State Contractor

AGENCY: Ohio Department of Transportation – District 7
1001 St. Mary's Ave.
Sidney, Ohio 45365

BASIS FOR INVESTIGATION: Agency Referral

ALLEGATIONS: Use of Lower Grade/Uninspected Liquid Asphalt Binder during ODOT Paving Projects.

INITIATED: February 4, 2015

DATE OF REPORT: March 29, 2016

INITIAL ALLEGATION AND COMPLAINT SUMMARY

On February 2, 2015, Ohio Department of Transportation (ODOT) District 7 Construction Administrator David Ley reported an issue concerning an asphalt contractor to the ODOT Office of Investigative Services (OIS). Ley provided OIS with information that Charles Borgerding, of ODOT District 7 Materials Management, was contacted on January 22, 2015, by Barry Peck, a former employee of Walls Brothers Asphalt Co. Inc. regarding past practices at the asphalt plant. Peck indicated that the liquid asphalt binder used at the plant was manufactured using materials from a non-ODOT approved supplier. Peck also stated that he was directed to switch valves on the “A.C.”¹ tank to run non-approved asphalt binder after ODOT inspectors obtained their samples for ODOT projects. The non-approved binder was allegedly shipped to Walls Brothers from a source in Joliet, Illinois.

BACKGROUND

Ohio Department of Transportation

The Ohio Department of Transportation is responsible for maintaining the state’s system of highways, as well as overseeing the state’s rail, aviation, and public transportation systems. The department has 12 districts along with a central office located in Columbus, Ohio. The director, who serves as the agency’s chief executive officer, is appointed by the governor and confirmed by the Ohio Senate. The majority of ODOT’s funding comes from federal and state taxes on motor fuels.²

The Ohio General Assembly enacted Ohio Revised Code 121.51, effective July 3, 2007, which created the deputy inspector general for the Ohio Department of Transportation. This statute designated this deputy inspector general “... shall investigate all wrongful acts or omissions that have been committed or are being committed by employees of the department” and provides the deputy inspector general the same powers and duties regarding matters concerning the department as those specified in Ohio Revised Code sections 121.42, 121.43, and 121.45 for matters involving ODOT.

¹ AC tanks are asphalt cement tanks used to provide proper heating, storage, and agitation for liquid asphalts.

² Source: Biennial budget documents.

INVESTIGATIVE SUMMARY

On February 23, 2015, the Office of the Ohio Inspector General met with Ohio Department of Transportation District 7 Construction Administrator David Ley, Transportation Manager 3 John Berning, Highway Technician 4 Charles Borgerding, and Transportation Engineer 4 Carrie Koesters. The meeting took place at ODOT District 7 headquarters in Sidney, Ohio.

Borgerding provided background information concerning a complaint he received on January 22, 2015, from Barry Peck, a former employee of Walls Brothers Asphalt Co. Inc., a subsidiary of the John R. Jurgensen Company. Borgerding stated Peck alleged Walls Brothers was using an “unapproved” liquid asphalt binder from Joliet, Illinois, on several ODOT projects in western Ohio. At that time, it was unclear to Borgerding, Berning, Ley, and Koesters what exactly Peck meant by “unapproved.” Borgerding, Berning, Ley, and Koesters told investigators that Peck could have meant that either the binder was supplied by a non-certified liquid asphalt binder supplier, or that Walls Brothers was substituting a lower grade binder to increase profit margins. The ODOT officials stated that the 301 and 302³ base mixes would be the easiest to alter without apparent, noticeable detection, and would likely involve the substitution of non-polymer asphalt binders.

Borgerding stated that Peck was upset about being terminated from Walls Brothers and indicated Peck’s employment probably ended sometime in November or December of 2014, at the end of paving season. Borgerding said Peck told him Walls Brothers Foreman Scott Hood was the individual who instructed Peck to “change valves” and run the “unapproved” asphalt binder. Borgerding and Berning stated that prior to Peck’s departure from Walls Brothers, it was their understanding that Peck had been gradually demoted from plant operator to positions of lesser responsibility. Borgerding and Berning questioned Peck’s ability to effectively operate an asphalt plant. Borgerding added that Peck had been in the asphalt business for 15 years or more, and prior to joining Walls Brothers, Peck was employed by Barrett Paving Materials at its Camden, Ohio, plant.

³ Base course mixes such as 301 and 302 are generally coarse graded with larger aggregates to provide structural strength and to be placed in thicker layers for economy. Choice of 301 or 302 base mix is usually based on the thickness of the base course, with 302 used for thicker bases.

Koesters identified four ODOT projects that Walls Brothers were awarded in 2013 and 2014 (#302413, #23414, #26014, and #34314). Job #302413 utilized the Walls Brothers Phillipsburg plant (Brookville), and jobs #23414, #26014, and #34314 utilized their Fort Jefferson plant (Greenville). Investigators determined that Walls Brothers listed Veach Trucking as a subcontractor on all four ODOT projects. Veach Trucking transports liquid asphalt binder and other construction-related materials, and may have been used to transport liquid asphalt binders for the four projects previously listed.

The Office of the Ohio Inspector General requested and obtained copies of ODOT asphalt plant inspection reports pertaining to the projects awarded to Walls Brothers in 2013 and 2014 (#302413, #23414, #26014, and #34314). The ODOT plant inspection reports for 2013 and 2014 were reviewed by investigators and no problems were noted for either the asphalt mixes or the asphalt plant operations at the Walls Brothers Brookville or Greenville plant locations.

The Office of the Ohio Inspector General contacted Barry Peck regarding his complaint and the issues he raised with Charles Borgerding of ODOT. Peck stated that he was not sure whether he wanted to pursue the issue; it was just something he shared with “Chuck” (Charles Borgerding). Investigators requested a day and time to meet to discuss Peck’s concerns, but he stated that he would be out of town for work. Peck told investigators that they could call him the afternoon of Wednesday, April 8, 2015.

The Office of the Ohio Inspector General called and left a message with Barry Peck on April 8, 2015. Peck returned the call on April 9, 2015, and stated he was no longer interested in pursuing the issue he brought up with Charles Borgerding of ODOT District 7 Materials Management. Peck would not elaborate as to why he did not want to pursue his complaint, but stated that it was “...water under the bridge.” Peck would not provide any specifics about the allegation he made to Borgerding.

The Office of the Ohio Inspector General made multiple attempts to contact Bradley Scott Hood, who was identified by Peck as the supervisor who instructed him to switch tanks and use an

“unapproved” asphalt binder. Hood did not respond to repeated voice messages left on both his office phone and cell phone.

The Office of the Ohio Inspector General contacted ODOT District 7 and requested the total amount of liquid asphalt binder necessary to complete the work performed by Walls Brothers Asphalt on the four projects identified (#302413, #23414, #26014, and #34314). Subpoenas were issued to Walls Brothers Asphalt and Valley Asphalt, another subsidiary of the Jurgensen Company, now the operator of the asphalt plants. The subpoenas requested the purchase and delivery records for liquid asphalt binders related to the four ODOT projects.

The Office of the Ohio Inspector General conducted an analysis comparing the amount of liquid asphalt binder required to complete the four ODOT projects in question to the amount of liquid asphalt binder purchased by, and delivered to, the two Walls Brothers/Valley Asphalt plants. Specifically, investigators focused on the amounts of 70-22PM liquid asphalt binder, which contained polymer additives. The analysis showed that the amount of 70-22PM liquid asphalt binder required to complete the ODOT projects (#302413, #23414, #26014, and #34314) was 1,493.81 liquid tons. The subpoenaed purchase and delivery records indicated that Walls Brothers/Valley Asphalt purchased and took delivery of 2,005.64 liquid tons.

CONCLUSION

The Office of the Ohio Inspector General received a complaint from the construction administrator for Ohio Department of Transportation District 7 who had reported an issue concerning an asphalt contractor to the ODOT Office of Investigative Services. Construction Administrator David Ley stated that Charles Borgerding, of ODOT District 7 Materials Management, was contacted on January 22, 2015, by Barry Peck, a former employee of Walls Brothers Asphalt Co. Inc. Peck informed Borgerding about past practices at the asphalt plant he had previously worked. Peck indicated that the liquid asphalt binder used at the plant was manufactured using materials obtained from a non-ODOT approved supplier. Peck also stated that he was directed to switch valves on the “A.C.” tanks to run the non-approved binder after ODOT inspectors had obtained their samples for ODOT projects.

The Office of the Ohio Inspector General met with the asphalt materials staff of ODOT District 7 and obtained the asphalt plant reports for projects that may have been impacted by changes in the liquid asphalt binders utilized. Nothing in the ODOT asphalt plant inspection reports indicated any problems with the asphalt mix or plant operations.

ODOT asphalt materials engineers indicated that a laboratory would be able to test for the presence of SBS polymer from core samples taken from paving project(s). The engineers cautioned that test results may be skewed slightly due to the presence of amounts of polymer in any sample resulting from the use of reclaimed asphalt pavement (RAP) which may also contain SBS polymer. The engineers stated that they were confident that a competent tester could determine the amount of polymer used in extracted core samples that were evaluated; however, the engineers cautioned that a tester would need very specific core site information for the test results to be both accurate and useful.

The Office of the Ohio Inspector General contacted the original complainant, Barry Peck, on several occasions. Peck stated that he had reconsidered his complaint and did not wish to meet with investigators. Peck indicated that the matter was between him and his former supervisor. Peck stated that he considered the matter "...water under the bridge."

The Office of the Ohio Inspector General reviewed ODOT project data to determine the amount of 70-22PM liquid asphalt binder needed to complete projects #302413, #23414, #26014, and #34314. The total liquid asphalt binder required was 1,493.81 liquid tons. The subpoenaed purchase and delivery records from the Jurgensen Company subsidiaries indicated that Walls Brothers/Valley Asphalt purchased and took delivery of 2,005.64 liquid tons.

Without specific information concerning the dates and locations of liquid asphalt binder substitutions, the Office of the Ohio Inspector General is unable to determine which asphalt paving areas may have been impacted out of the hundreds of miles paved in ODOT District 7 during 2013 and 2014.

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

RECOMMENDATION(S)

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

- 1) Consider assigning additional personnel to make unannounced inspections of asphalt plant operations in districts with active roadway paving projects.

REFERRAL(S)

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



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NAME OF REPORT: Ohio Department of Transportation

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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
March 29, 2016

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