

STATE OF OHIO  
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF  
INVESTIGATION



AGENCY: OHIO DEPARTMENT OF TRANSPORTATION  
FILE ID NO.: 2014-CA00071  
DATE OF REPORT: DECEMBER 23, 2015

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

*“Safeguarding integrity in state government”*

The Ohio Office of the Inspector General is authorized by state law to investigate alleged wrongful acts or omissions committed by state officers or state employees involved in the management and operation of state agencies. We at the Inspector General’s Office recognize that the majority of state employees and public officials are hardworking, honest, and trustworthy individuals. However, we also believe that the responsibilities of this Office are critical in ensuring that state government and those doing or seeking to do business with the State of Ohio act with the highest of standards. It is the commitment of the Inspector General’s Office to fulfill its mission of safeguarding integrity in state government. We strive to restore trust in government by conducting impartial investigations in matters referred for investigation and offering objective conclusions based upon those investigations.

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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**OFFICE OF THE INSPECTOR GENERAL**

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RANDALL J. MEYER, INSPECTOR GENERAL

**REPORT OF INVESTIGATION**

**FILE ID NUMBER:** 2014-CA00071

**SUBJECT NAME:** M&B Asphalt Co., Inc.  
1525 W. County Rd. 42  
Tiffin, Ohio

**POSITION:** State Contractor

**AGENCY:** Ohio Department of Transportation

**BASIS FOR INVESTIGATION:** Agency Referral

**ALLEGATION:** Use of Lower Grade Products or Asphalt Waste  
Products during ODOT Paving Projects in  
District 2

**INITIATED:** November 12, 2014

**DATE OF REPORT:** December 23, 2015

## **INITIAL ALLEGATION AND COMPLAINT SUMMARY**

On November 7, 2014, the Office of the Ohio Inspector General received an email from the Ohio Department of Transportation (ODOT) Office of Investigative Services reporting an issue concerning an asphalt contractor working on state paving projects. The email stated that ODOT District 2 (D2) Transportation Manager Randy Fry reported that on November 6, 2014, he was contacted by Jerry Cress, the former asphalt plant manager for M&B Asphalt Co., Inc. Cress alleged that he and other employees of M&B Asphalt were directed to use lower grade or waste products on ODOT paving projects in District 2. Fry stated that Cress told him that this was also occurring on local participating agency projects,<sup>1</sup> funded either wholly or in part by ODOT.

Fry stated that Cress cited two specific instances: In the first instance, Cress claimed that M&B Asphalt was contracted to use a premium-grade liquid binder for the State Route (SR) 19 paving project recently completed in D2. Cress said that once ODOT inspectors obtained their samples at the asphalt plant, Cress' supervisor had the tank switched to a lower-grade binder. The result of this switch would reduce the cost of materials to M&B Asphalt and could reduce the useful life of the asphalt road surface.

In the second instance, Cress claimed that M&B Asphalt included "waste asphalt" in the loads used to pave SR 224. Cress told Fry that M&B employees were directed to place the "waste asphalt" in the bottom of the trucks and then load new hot mix on top. The result of this practice would reduce the cost of materials to M&B Asphalt and ultimately could reduce the useful life of the road surface. When speaking with investigators, Fry noted that the SR 224 paving project was recently completed and the project was in the striping and guard rail installation phase.

## **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

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<sup>1</sup> ODOT's Local Projects staff coordinate several construction projects with various government agencies, providing support for local roadway construction.

by the Ohio Senate. The majority of ODOT funding comes from federal and state taxes on motor fuels.<sup>2</sup>

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 sections 121.42, 121.43, and 121.45 of the Ohio Revised Code for matters involving ODOT.

### **INVESTIGATIVE SUMMARY**

On November 17, 2014, the Office of the Ohio Inspector General interviewed Jerry Cress at his residence. Cress stated that he was recently laid off from his job at M&B Asphalt, where he had been employed for approximately five years. The past year, from approximately April 14, 2014, to October 30, 2014, he operated the asphalt plant for the company. Prior to his assignment to the asphalt plant, Cress said that he was employed by M&B Asphalt as a heavy equipment operator.

Cress stated that he had no prior experience operating an asphalt plant, but was offered the opportunity when the previous asphalt plant operator for M&B Asphalt had taken another job. Cress said that he worked with Kurt Clark, the senior foreman and his immediate supervisor, to learn how to operate the plant. According to Cress, Clark has been employed with M&B Asphalt for more than two years. Cress stated that Clark had worked 30 years in the area of asphalt laboratory testing and "... knew everything about asphalt." Cress said that Lynn Radebaugh, part owner of M&B Asphalt, was Clark's supervisor.

Cress stated that he was laid off from M&B Asphalt on October 31, 2014. He was surprised by the layoff, and asked Radebaugh why he was let go. Cress was told that he had "... messed up the load tickets too much" and made errors, including dumping loads of asphalt on the cabs of

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<sup>2</sup> Source: Biennial budget documents.

trucks. Cress said that Radebaugh told him it would probably be a good idea for him to seek employment elsewhere.

Cress stated that his layoff and termination was the reason he decided to come forward and report what he had observed. When asked why he did not report his concerns at the time they were occurring, Cress replied that he and his coworkers "... needed a pay check. Now that I'm unemployed it doesn't matter anymore."

Cress stated that the issues he reported occurred during 2014 on the ODOT SR 19 paving project near Fremont and on the SR 224 paving project. Cress was the asphalt plant operator during the time M&B Asphalt was working on both projects. Cress indicated that the contracted asphalt mix for the surface of these roadway projects was a premium 72-22 asphalt binder mix. Cress said that on at least three occasions during the SR 19 paving project and at least once during the SR 224 paving project, the tank holding the 72-22 liquid binder was nearly empty. Cress stated that after the ODOT inspectors had collected their samples for each of these three days, Clark directed Cress to open the other valve and fill the 72-22 tank with liquid binder from the 64-22 tank. The 64-22 binder, according to Cress, is used for mixing driveway grade or "normal" asphalt. Cress noted that he believed the cost differential, per ton, for the two different mixes was approximately \$600. In addition, Cress said that the 64-22 driveway mix would not hold up as well as the 72-22 mix used for flexible pavement on highways.

Cress was unable to recall the specific dates that the switching of the tanks occurred. He said the tanks held over 20,000 gallons of the liquid asphalt binder. Cress said that the three ODOT inspectors who visited the M&B plant on SR 42 in Tiffin and took liquid binder samples while he was the operator, were Jeff, Rodney and Travis. Cress added that he did not know their last names. Cress said that M&B Asphalt employees Junior Badillo and Bobby Sowers were both aware that Clark told Cress to switch binders. Cress said, "Junior was the ground man and Bobby was the loader operator" for him at the plant. Cress provided the Office of the Ohio Inspector General with telephone numbers to contact both Badillo and Sowers, and Cress stated that they would be willing to talk to investigators and verify what he (Cress) recounted.

Cress stated that Clark also directed him to run additional percentages of recycled asphalt product (RAP) in the mix on numerous days. Cress stated that he understood the state contract maximum for RAP in the two ODOT projects was 25 percent. Cress said that the plant crew would routinely mix with 35 percent RAP. Cress recalled Clark doing the calculations on his iPhone, and then showing Cress how the additional RAP and cheaper binder resulted in a savings of about \$10,000 per day. Cress said the savings resulted from M&B Asphalt not needing to purchase as much aggregate or premium binder.

Cress stated that ODOT requires asphalt mixtures to be inspected and tested for every 700 tons produced at the asphalt plant. However, Cress claimed that Clark would obtain two asphalt samples at the 500-ton mark and would generate two “test sample ticket” labels: one label indicating the sample was obtained at 500 tons and another label indicating the sample was obtained at 1,200 tons. According to Cress, this made it possible for M&B Asphalt to use a 35-percent RAP mix for the large amounts of asphalt that was not actually tested.

Cress said that Clark also directed him to blend uninspected RAP in the asphalt mixes. According to Cress, this routinely occurred on both the SR 19 and SR 224 paving projects. Cress stated that he was directed to use RAP from the uninspected pile until he heard someone shout, “White Truck!” This warning indicated that an ODOT inspector was at the plant and that Cress should start pulling from the inspected RAP pile. Cress said that the loader operator, Bobby Sowers, would corroborate this information.

Cress said there is a calibration sheet the ODOT inspectors use to measure the amount of RAP in the test samples. Cress said he was not familiar with how the calculations were made, but said that the ODOT inspectors would be able to explain it.

Cress stated that on another occasion (he was unable to recall the date), the plant crew had mixed 150 tons of top coat mix for a private job and learned later that the contractor actually needed only 90-100 tons. The excess top coat mix should have been dumped as waste and processed as RAP for use on another project. However, Cress said that Clark directed him to place the excess top coat mix down in the middle of the beds of the trucks assigned to the ODOT project and cover the mix with two loads of hot base mix material. Cress said the asphalt was delivered to

the ODOT site and laid. By covering the top coat mix with the base mix for the ODOT project, the excess top coat mix did not need to be dumped, ground up, and then inspected before it was used. Though the top coat mix is actually a more expensive mix, Cress noted that the finer aggregate and additional sand in the top coat mix does not hold up as well as the base mix for highway use. According to Cress, the base mix uses a larger aggregate.

On December 15, 2014, the Office of the Ohio Inspector General met with Ohio Department of Transportation (ODOT) Asphalt Materials engineers David Powers, P.E.<sup>3</sup> and Eric Biehl, P.E. at the ODOT Office of Materials Management in Columbus. Powers and Biehl provided to investigators background information on what types of asphalt pavement mixes are used and the testing that could be performed on any asphalt samples provided. Both engineers indicated that the asphalt project specifications would be available from the ODOT District 2 engineering personnel.

Powers and Biehl indicated that there are primarily three types of asphalt mixes paving companies currently use and a fourth type (88-22M) that is being tested in some areas:

76-22M Mix – Flexible pavement topcoat that contains approximately 4+ percent polymer.

70-22M Mix – Flexible pavement topcoat that contains approximately 2½ percent polymer.

64-22 Mix – Base and driveway general usage mixture that contains no polymer.

88-22M Mix – A newer asphalt pavement mix (proprietary) that is being used in high traffic areas, particularly on bridges and major highway intersections, where two high-volume state routes cross. The mix contains approximately 7½ percent polymer and is being tested to determine if its use extends the maintenance life of the pavement in these areas.

Powers and Biehl stated that the 72-22 mix mentioned by the complainant (Cress) was probably an error, noting that such a mix does not exist.

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<sup>3</sup> P.E. = Professional engineer.

Powers and Biehl said the likely purchasing sources in northwest Ohio for the asphalt binder liquid with SBS polymer would be Seneca Petroleum Company, Owens Corning, or Marathon Asphalt Products.

Powers and Biehl indicated that a laboratory would be able to test for the presence of SBS polymer from core samples taken from the project(s). The engineers cautioned that there may be trace amounts of polymer in any sample, due to the use of RAP which may contain SBS polymer. Both engineers were confident that a competent tester would be able to differentiate, based on the amount of polymer extracted from the distillate during testing.

Powers and Biehl stated that the RAP percentages were more problematic. The percentages could only be evaluated through visual inspection of the samples to look for excessive aggregate size or quantities of waste material such as cloth, plastic, etc. A 10-percent increase in the amount of RAP used would not be detectable through visual inspection. Powers and Biehl stated that the instance cited by Cress regarding the excess topcoat mix being added to the truckloads of hot base mix would also not be detectable through laboratory testing.

Additionally, Powers and Biehl noted that the cost estimates provided by the complainant (Cress) were overstated. The average cost for the various types of asphalt used is approximately \$60-\$80 per ton; the most expensive type of asphalt used is the 76-22M mix costing just over \$100 per ton. According to Powers and Biehl, the purported cost savings, as alleged by the complainant, for M&B Asphalt using an additional 10-percent uninspected RAP was also overstated because the cost for virgin aggregate is generally \$8 per ton.

Powers and Biehl indicated that the ODOT Asphalt Materials Lab offered to complete any testing the Office of the Ohio Inspector General required. Biehl provided to investigators access to the ODOT construction manual with pricing information for asphalt placing by the ton, for each month of 2014. Additionally, D2 Transportation Manager Fry provided an Excel spreadsheet summary of the M&B Asphalt jobs worked in the district during 2013 and 2014.

[\(Exhibit 1\)](#)

The Office of the Ohio Inspector General issued a Subpoena Duces Tecum to M&B Asphalt Co., Inc.; Marathon Petroleum Company; Seneca Petroleum Company; and Owens Corning Roofing and Asphalt LLC; for copies of all purchase records, invoices, payment records, and delivery receipts for the calendar year 2014 for the following products:

PG 76-22M Polymer Modified Asphalt Binder  
PG 70-22M Polymer Modified Asphalt Binder  
PG 88-22M Polymer Modified Asphalt Binder

All four companies complied and provided the requested records.

The Office of the Ohio Inspector General reviewed the subpoenaed records and calculated the total amounts of each type of liquid asphalt binder purchased by, and delivered to, M&B Asphalt during 2014.

On May 22, 2015, the Office of the Ohio Inspector General sent summaries of the liquid asphalt polymer binder purchased and delivered to M&B Asphalt for the 2014 construction season to D2 Transportation Manager Fry. Summaries were sent for the amounts of the liquid asphalt binders 70-22M, 76-22M, and 88-22M. ([Exhibit 2](#)) Fry and the ODOT District 2 engineering staff then compared the amounts of binder purchased and used to the engineers' calculation as to what should have been used according to the ODOT project plans. On June 1, 2015, Randy Fry advised that his District 2 team had "... double checked the queried tonnages versus our hard files here and they match ... ."

The Office of the Ohio Inspector General made numerous attempts to contact M&B Asphalt employees Junior Badillo and Bobby Sowers at the mobile telephone numbers provided by Cress. Voice messages were left each time requesting a return call, but no return calls were received.

The Office of the Ohio Inspector General also conducted research on local online municipal court records, and several traffic citations were noted for Junior Badillo and Bobby Sowers. A visit was made to the addresses listed, and cards requesting contact were left at each of their

residences. However, both Badillo and Sowers did not contact the Office of the Ohio Inspector General.

The Office of the Ohio Inspector General made several additional attempts to re-contact the complainant, Jerry Cress, at the telephone number he provided. Three voicemails were left asking him to return the investigator's calls. No response was received.

## **CONCLUSION**

The Office of the Ohio Inspector General received a referral from the Ohio Department of Transportation District 2 transportation manager, who indicated that he had been contacted by Jerry Cress, a former employee of M&B Asphalt Co., Inc. Cress stated that he had, for the past year, from approximately April 14, 2014, to October 30, 2014, operated the asphalt plant for the company. Prior to his assignment to the asphalt plant, Cress said he was employed by M&B Asphalt as a heavy equipment operator. Cress stated that he had no prior experience operating an asphalt plant.

Cress indicated in his complaint that his supervisor directed him to use a lesser grade of liquid asphalt binder in the paving mix for the Ohio Department of Transportation paving projects in District 2. Cress also said that he was instructed to use a 35-percent recycled asphalt mixture instead of the 25-percent recycled asphalt product mix specified in the project plans. These activities allegedly occurred during the 2014 paving season, while the complainant was the asphalt plant operator.

The Office of the Ohio Inspector General obtained all the liquid asphalt binder purchase and delivery records from M&B Asphalt and its vendors. Totals were calculated for each type of binder and the summary information provided to the District 2 transportation manager and his engineering staff, who compared the amounts to the tonnages needed to complete the 2014 ODOT paving projects in the district. The liquid asphalt binder amounts corresponded to what would have been needed for the asphalt project tonnage used to complete the 2014 paving projects.

The Office of the Ohio Inspector General has made numerous unsuccessful attempts to contact the complainant and the two individuals who the complainant said could corroborate his allegations.

**Accordingly, the Office of the Ohio Inspector General does not find reasonable cause to believe a wrongful act or omission occurred in this instance.**

**RECOMMENDATION(S)**

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

**REFERRAL(S)**

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



STATE OF OHIO  
**OFFICE OF THE INSPECTOR GENERAL**

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RANDALL J. MEYER, INSPECTOR GENERAL

**NAME OF REPORT: Ohio Department of Transportation**

**FILE ID #: 2014-CA00071**

**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 23, 2015**

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