

STATE OF OHIO  
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF  
INVESTIGATION



AGENCY: OHIO ENVIRONMENTAL PROTECTION AGENCY  
FILE ID NO.: 2015-CA00020  
DATE OF REPORT: APRIL 12, 2016

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*“Safeguarding integrity in state government”*

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Randall J. Meyer  
Ohio Inspector General



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**OFFICE OF THE INSPECTOR GENERAL**  
RANDALL J. MEYER, INSPECTOR GENERAL

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**REPORT OF INVESTIGATION**

**FILE ID NUMBER:** 2015-CA00020

**SUBJECT NAME:** Michael Sherron

**POSITION:** Environmental Specialist

**AGENCY:** Ohio Environmental Protection Agency,  
Division of Environmental Response and  
Revitalization

**BASIS FOR INVESTIGATION:** Agency Referral

**ALLEGATIONS:** Failure to Comply with State or Department  
Rules, Procedures, or Policies

**INITIATED:** April 27, 2015

**DATE OF REPORT:** April 12, 2016

## **INITIAL ALLEGATION AND COMPLAINT SUMMARY**

On April 13, 2015, the Office of the Ohio Inspector General received from the Ohio Environmental Protection Agency (OEPA) a notification memorandum reporting suspected illegal or improper activity by one of its employees. Specifically, that Environmental Specialist 2 Michael Sherron, who serves as an on-scene coordinator, acted outside the scope of his official duties after responding to a fuel spill in Martins Ferry, Ohio.

In the memorandum it was alleged that Sherron left the scene of the fuel spill to assist in interviewing and interrogating a suspect who had been identified by the Martins Ferry Police Department (MFPD). It was also alleged that Sherron provided guidance to the police detective as to whether or not Miranda warnings should be given to the suspect prior to questioning. The author of the memorandum further believed that Sherron incurred additional and unnecessary costs for the OEPA while acting outside of the scope of his duties.

The Office of the Ohio Inspector General opened an investigation on April 23, 2015.

## **BACKGROUND**

### *Ohio Environmental Protection Agency*

The Ohio Environmental Protection Agency is charged with protecting the environment and public health by ensuring compliance with environmental laws. To carry out this mission, the OEPA issues permits, conducts inspections, monitors and reports on environmental quality, provides public education, takes enforcement actions against violators and responds to spills and other environmental emergencies. Low-interest loans, subsidies, and grants are also provided to local governments for various environmental construction, restoration, protection, and clean-up projects. The director of the OEPA is appointed by the governor and confirmed by the Ohio Senate. The OEPA

is funded through licenses, permits, and fees charged to those they regulate, and federal funds.<sup>1</sup>

Michael Sherron works as an environmental specialist and is assigned as an on-scene coordinator at the OEPA Division of Environmental Response and Revitalization (DERR) within the agency. An OEPA Environmental Specialist 2 is a job classification specification governed by the state of Ohio. A job classification specification contains detailed information that includes the job title, job code, pay range, collective bargaining unit, essential job functions, illustrative job duties, major worker characteristics, minimum qualifications, training and development required after employment, and any unusual working conditions. The specific position description duties and working titles of OEPA employees who fall under this job classification can vary depending on the assignment and needs of the OEPA individual districts. The two working titles reviewed during this investigation were OEPA on-scene coordinator and OEPA special investigator.

### **INVESTIGATIVE SUMMARY**

In furtherance of the investigation, the Office of the Ohio Inspector General contacted Kathleen Botos, administrative investigations supervisor of the Ohio Environmental Protection Agency, and requested copies of job descriptions, policies, training records, emails, and other documents related to Sherron's official duties and the incident in Martins Ferry.

On May 4, 2015, investigators met with Botos to discuss the complaint received by the Office of the Ohio Inspector General. Botos said she was first made aware of the incident involving Sherron on April 9, 2015, in an email from Sherron's supervisor, Ed Gortner. The email documented the one-hour and 15-minute conversation between Sherron and Gortner discussing the Martins Ferry incident. It was noted during this

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<sup>1</sup> Source: Biennial budget documents.

meeting with Botos that the MFPD had opened an investigation based on the belief that the fuel spill had been caused by an act of vandalism.

Investigators also received and reviewed a timeline of events written by Botos. This timeline included an entry dated Thursday, April 9, 2015, that read:

Advised via email of allegations. Talked to Ed Gortner to get background information. Was told that DERR Chief Pete Whitehouse had talked to Sherron and advised that he was going to be getting a verbal reprimand for this incident and, that Gortner was supposed to issue the reprimand this afternoon. Gortner advised not to take any disciplinary action until I (Botos) had a chance to review the video from the incident.

In the timeline, Botos made note that she reviewed the video of the interview and interrogation conducted by Sherron and the MFPD. Botos wrote that she attempted to contact the police officer in the video; however, the officer was not on-duty at the time of the call.

The next entry, dated April 10, 2015, summarized two conversations Botos had with two different Martins Ferry police officers and her conversation with DERR management (no specific person is shown) where instructions were given to not send Sherron into the field for emergency responses until further notice.

An entry dated April 13, 2015, indicated that after discussing the issue with the OEPA director's office, a notification memorandum was sent to the Governor's Office, the Office of the Ohio Inspector General, and the Ohio State Highway Patrol. The memorandum said there was a belief Sherron may have lead the Martins Ferry police officers to believe he was a criminal investigator with the authority to file criminal charges against suspects. Two follow-up entries read that after reviewing the complaint

and consulting with the Belmont County Prosecutor's Office, the Ohio State Highway Patrol decided not to initiate an investigation.

Botos said it was the position of the OEPA that Sherron acted outside the scope of his job duties and should not have assisted the Martins Ferry Police Department with the criminal investigation and interview of the suspect. Botos said OEPA determined that Sherron should have notified his supervisor and passed the information to an OEPA special investigator to assist in the investigation.

As investigators reviewed the documents provided, it was apparent that managers and administrators at OEPA had completed several steps of the internal investigative process. Based on the investigative actions taken by the OEPA regarding this incident, the Office of the Ohio Inspector General returned the complaint to Botos to continue and complete her internal investigation of Sherron.

### **OTHER MATTERS**

The original complaint received by the Office of the Ohio Inspector General focused on the suspected illegal or improper activities of Environmental Specialist 2 Michael Sherron. Specifically, whether or not Sherron acted outside the scope of his job duties as an OEPA on-scene coordinator during the incident in Martins Ferry, and whether or not he should have notified his supervisor or an OEPA special investigator prior to assisting the Martins Ferry Police Department with its investigation.

When investigators met with Kathleen Botos on May 4, 2015, they were provided the position descriptions of Sherron and that of another environmental specialist who was assigned as a special investigator. Botos also provided a copy of OEPA policy DERR-00-ER-002, titled "Role of the On-Scene Coordinator." Botos later forwarded by email additional OEPA policies related to Sherron's duties.

Investigators reviewed Sherron’s position description as an on-scene coordinator. In part, the job duties listed for the position read:

As backup On Scene Coordinator, responds to and investigates emergency incidents which involve the release of contaminants ...

Provides guidance and technical assistance to the regulated community, contractors, consultants, governmental officials and the public regarding state and federal laws, regulations, and procedures related to agency clean-up programs.

The special investigator position description was also reviewed and found to have similar language to Sherron’s position description with regard to assisting governmental officials: “Provides technical assistance and consultation to engineers, scientists, governmental officials, and citizens dealing with environmental matters.”

With most state of Ohio position descriptions, the job duties of the position are identified and listed in order of importance. A separate column to the left of the listed job duties identifies the percentage of time a person assigned to the position can be expected to perform to the corresponding duty listed. Position descriptions do not provide additional details as to how or to what extent the duties are to be performed.

Investigators also reviewed the provided policy. Section III (G) – On-Scene Coordinator (OSC) identified who the OSC is and reads, in part:

Field responder in the ER Unit, whose job duties include the investigation and mitigation of pollution incidents and/or coordination of clean-up activities with other responders. An OSC is also responsible for the documentation of the circumstances surrounding the incident as well as the collection of any documentation and/or evidence that may be associated with the incident (in conjunction with local officials when necessary).

A third policy, DERR-00-ER-004 – Emergency Response Enforcement Guidance Document, was received by email from Botos and also describes in Section A, the role of the on-scene coordinator. The policy reads:

The purpose of this Enforcement Guidance Document (EGD) is to establish clear guidance to be used by the Emergency Response (ER) On-Scene Coordinators (OSC) as they deal with enforcement issues. The ultimate goal of this guidance is the development of a solid and complete enforcement case with consistency throughout the District Offices and Central Office.

In this particular policy, the responsibilities of the OSC read much more investigative in nature and includes tasking the OSC with conducting interviews. Specifically, Section B(2) of the policy, titled “Interviews” reads:

It may be necessary to conduct additional interviews, when anticipating escalated enforcement, with persons having information regarding the incident in question. These interviews shall be conducted to obtain pertinent information such as who, what, where, when and why. All questions and responses in the interview must be documented in the DOIR [District Office Investigative Report]. If the answer to the question is they do not know, this still must be documented to show the question was asked and answered. Incident requiring extensive interviews may be coordinated with the Special Investigations Unit (SIU); however, any potential criminal case or sworn statements must be coordinated with SIU.

On June 24, 2015, investigators met with Karen Haight of the OEPA Office of Employee Services to discuss the complaint. Haight was asked about the process the OEPA uses in developing position descriptions for its employees. Haight said the request for a new position is initiated in the field by a district manager. The managers write the specifics of the job description and identify the duties the employee would be required to perform. When asked about the wording of the job duties in a new position description, Haight said that specific job duties are usually written by a district office manager and may vary

depending on the needs of the individual districts. She said it would not be uncommon for the language describing the duties in one position description to differ from another, even though the working titles of the two descriptions are the same. Haight was asked if there was any documented training or policies available that would clearly spell out the responsibilities of Sherron's position as an on-scene coordinator and when he would have been required to notify a supervisor or special investigator while at the scene of an incident. Haight believed, that as a training issue, the question posed would be better addressed by James Sferra, environmental administrator, or Ed Gortner, the district manager of Sherron's assigned district.

On June 26, 2015, investigators met with Environmental Manager Ed Gortner and Environmental Administrator James Sferra. Gortner is Sherron's immediate supervisor and is mentioned previously in this report as the person who discussed the Martins Ferry incident with Sherron.

Both men were asked about the consistency of the wording of the job duties on the position descriptions of employees who are assigned under the working titles of an on-scene coordinator or special investigator. Both confirmed the position descriptions and the job duties listed for employees who carried the same working titles may differ from one another depending on the needs of the district where they are assigned to work.

Gortner commented that in Sherron's case, his position description as an on-scene coordinator differed from other OSCs in that Sherron was assigned as a *backup* OSC. Gortner said Sherron's primary responsibilities were for *remedial response* situations, not *emergency response* incidents. He explained a remedial response situation as being a long term clean-up project of a site that may have been contaminated years prior, and an emergency response as an incident of an immediate need, such as a fuel spill.

Gortner said the difference is usually reflected in the percentages of time the employee is expected to perform a specific job duty listed on the employee's position description. He also said in some cases, one employee may have additional duties listed on his or her position description that may not appear on other descriptions of employees who carry the same working title. In these cases, Gortner said it was his responsibility as the district manager to develop and write the specific job duties and position descriptions and submit them to the OEPA central office for approval.

Gortner was asked if he felt having boilerplate language would be beneficial when writing job duties for position descriptions. Both he and Sferra agreed it would. They felt this would assist in consistency and uniformity in position descriptions. Both felt the job duties, especially for the special investigator positions, should be uniform and show little difference in the wording from one employee's description to another.

Gortner and Sferra both noted to investigators that Sherron and the other on-scene coordinators had been informed in the past what their duties and responsibilities were and in what circumstances they would be required to contact their supervisor or a special investigator. Both agreed an on-scene coordinator's responsibilities did not include any investigation beyond identifying the responsible party of a fuel spill incident. The responsible party would be the land or company owner who ultimately would be responsible for the clean-up of the spill and not necessarily the person who caused the spill. Gortner and Sferra said the on-scene coordinators had also received this information and direction at an in-service training conducted in the past. When asked for any written documentation that specifically indicated Sherron or other on-scene coordinators acknowledged their understanding of their responsibilities, investigators were told there was no documentation other than sign-in sheets for the training. Gortner and Sferra noted that the previous administrator of the section preferred to relay this information verbally rather than through written documentation.

Shortly after the meeting with investigators, Sferra provided a binder containing the OEPA policies for DERR. During a review of these policies by the Office of the Ohio Inspector General, many were found to be outdated and had not been revised for several years. The oldest revision date of the provided policies was the previously mentioned DERR-00-ER-004 – Emergency Response Enforcement Guidance Document – which was last revised on May 1, 1995, and appears to be still in use by the agency.

### **CONCLUSION**

The Office of the Ohio Inspector General received from the Ohio Environmental Protection Agency (OEPA) a notification memorandum reporting suspected illegal or improper activity by one of its employees; specifically, that an employee had acted outside the scope of his official duties after responding to a fuel spill in eastern Ohio. Investigators learned that OEPA had completed several internal investigative steps and had recommended the employee receive a reprimand for his actions. As such, the Office of the Ohio Inspector General returned the original complaint to the agency so the internal investigation could be completed.

While reviewing documents and policies provided at the onset of this investigation, and from information learned during meetings with OEPA administrators, the Office of the Ohio Inspector General addressed issues involving position descriptions, job responsibilities, and policies.

To that end, investigators found inconsistencies in the language of position descriptions, a lack of clarity in defining the role of an OEPA on-scene coordinator, and outdated policies in need of review or revision.

### **RECOMMENDATION(S)**

The Office of the Ohio Inspector General makes the following recommendations and asks the director of the Ohio Environmental Protection Agency to respond within 60 days with a plan detailing how these recommendations will be implemented:

1. In order to improve consistency, the OEPA should consider creating boilerplate language for job duties for use when developing position descriptions.
2. The OEPA should develop and implement an annual review process of agency policies and update or revise the policies as necessary.
3. The OEPA should clearly define the roles and responsibilities of the agency's employees through their position descriptions, and orientation and in-service trainings. All employees should be required to acknowledge they understand their defined role at the agency.

### **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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RANDALL J. MEYER, INSPECTOR GENERAL

**NAME OF REPORT: Ohio Environmental Protection Agency**

**FILE ID #: 2015-CA00020**

**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**  
**April 12, 2016**

*MAILING ADDRESS*

OFFICE OF THE INSPECTOR GENERAL  
JAMES A. RHODES STATE OFFICE TOWER  
30 EAST BROAD STREET – SUITE 2940  
COLUMBUS, OH 43215-3414

*TELEPHONE*

(614) 644-9110

*IN STATE TOLL- FREE*

(800) 686-1525

*FAX*

(614) 644-9504

*EMAIL*

OIG\_WATCHDOG@OIG.OHIO.GOV

*INTERNET*

WATCHDOG.OHIO.GOV