

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.: 2013-CA00051
DATE OF REPORT: NOVEMBER 10, 2014**

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

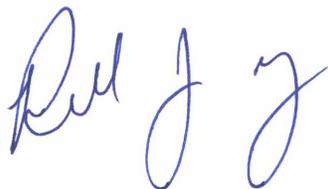
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The Inspector General’s Office remains dedicated to the principle that no public servant, regardless of rank or position, is above the law, and the strength of our government is built on the solid character of the individuals who hold the public trust.



Randall J. Meyer
Ohio Inspector General



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REPORT OF INVESTIGATION

FILE ID NUMBER: 2013-CA00051

SUBJECT NAME: Paul "Gus" Smithhisler

POSITION: Roadway Maintenance Program Manager

AGENCY: Ohio Department of Natural Resources,
Division of Engineering

BASIS FOR INVESTIGATION: Agency Referral

ALLEGATIONS: Misrepresentation;
Improper Billing by a Vendor

INITIATED: July 24, 2013

DATE OF REPORT: November 10, 2014

INITIAL ALLEGATION AND COMPLAINT SUMMARY

On July 19, 2013, Ohio Department of Transportation (ODOT) Office of Investigative Services filed an initial report with the Office of the Ohio Inspector General alleging improper billing by a vendor and possible misrepresentation by an Ohio Department of Natural Resources (ODNR) employee over a roadwork project at the Caesar Creek State Park in May and June 2013.

ODOT reported to the Office of the Ohio Inspector General that on April 2, 2013, ODOT District 8 had received a request from ODNR employee Paul “Gus” Smithhisler, the roadway maintenance program manager assigned to the Division of Engineering at ODNR, for the cooperative use of ODOT contracts to complete the Caesar Creek road project. ODOT believes that Smithhisler may have misrepresented the scope of the work to be completed on the project and that one of the vendors chosen by Smithhisler, Strawser Construction Inc., improperly billed ODOT for materials used during the project.

On July 24, 2013, the Office of the Ohio Inspector General opened an investigation.

BACKGROUND

Ohio Department of Natural Resources

The Ohio Department of Natural Resources (ODNR) is responsible for the state’s wildlife, forests, natural areas, state parks, geological and mineral resources, inland lakes and waterways, regulation of the issuance of hunting and fishing licenses, watercraft registrations, the Lake Erie coastline, and enforces state law in regard to natural resources and conservation. ODNR is also responsible for more than 714,000 acres of land, including 75 state parks, 21 state forests, 135 state nature preserves, and 140 designated wildlife areas. In addition, ODNR oversees 120,000 acres of inland waters, 7,000 miles of streams, 481 miles of the Ohio River, and 2.25 million acres of Lake Erie. ODNR has 10 operating divisions to carry out these functions, as well as a central administrative office that oversees day-to-day operations. The director of ODNR is appointed by the governor and confirmed by the Ohio Senate. Funding for ODNR is provided through general revenue funds, federal funds, and licenses and fees for those they regulate.

The ODNR Division of Engineering (DOE) provides professional and technical engineering and related administrative support services required by the ODNR land-holding divisions in

improving, utilizing, and managing their properties and associated resources. The chief engineer and his staff implement the statutory requirements of Chapter 1507 of the Revised Code, including serving as the ODNR liaison with ODOT on roadway maintenance projects. ODNR utilizes ODOT contracts for roadwork projects to be completed on ODNR property. ODOT issues the purchase orders for these projects while the project management is the responsibility of ODNR. Upon completion, ODOT inspects the final work to ensure that its quality standards are met. As part of ODNR's roadway maintenance program, ODOT sets aside monies for these projects and is the funding source for the work that is completed. As the ODNR Roadway Maintenance Program Manager, Smithhisler is the designated liaison with ODOT and he is responsible for coordinating and overseeing these projects.

INVESTIGATIVE SUMMARY

The two primary allegations in the original complaint, misrepresentation by ODNR and improper billing by a vendor, were the focus of this investigation. The Office of the Ohio Inspector General reviewed contracts, emails, and other records and information provided by ODNR and ODOT. Several ODNR, ODOT, and Strawser employees were interviewed during the course of this investigation. Unique terms and specific contracts are referenced throughout this report and the following definitions and explanation of applicable contracts are listed for clarification purposes:

Definitions

Chip seal – A resurfacing process where a thin film of heated asphalt liquid is sprayed on the road surface, followed by the placement of small aggregates (chips). The chips are then compacted to orient the chips for maximum adherence to the asphalt, and excess stone is swept from the surface.¹

¹ Source: Ohio Department of Transportation website:
<http://www.dot.state.oh.us/districts/D03/Pages/ChipSealFactSheet.aspx>

304 Aggregate – A resurfacing material that according to ODOT specifications can be comprised of one of five substances including gravel. The material is spread to a specified depth, compacted, and graded.²

Applicable ODOT Contracts³

DOT 101G – Asphalt Concrete and other Bituminous Mixes – This contract is between ODOT and a list of vendors who perform chip seal and other types of asphalt work for the state. This is a multiple award contract.

DOT 100 – Aggregate – This contract is between ODOT and a list of vendors who pick up and deliver aggregate materials to specified ODOT locations or work sites throughout the state. This is a multiple award contract.

Allegation #1 – Misrepresentation by ODNR

On April 2, 2013, ODOT District 8 Management Analyst Supervisor Emily Justison received the first of several emails from Smithhisler discussing a roadwork project and subsequent request for purchase orders for the project to be completed at the Caesar Creek State Park. ([Exhibit 1](#)) On April 22, 2013, at Justison’s request, Smithhisler sent her an email string with an attached map that identified and highlighted the five specific roads (R1, R2, R3, R4 and R34) within the park that were to be repaired and then resurfaced using the process called “chip sealing.” ([Exhibit 2](#)) Smithhisler had previously contacted two companies for the project; Strawser Construction Inc. (Strawser) and Pavement Management Inc. (Pavement Management). Both submitted proposals to Smithhisler for their part of the project. Strawser’s proposal, dated April 4, 2013, was for the materials necessary for the chip seal work and line striping⁴ ([Exhibit 3](#)) and Pavement Management’s proposal was for the road repairs to be completed. Smithhisler forwarded both of these proposals to Justison. On May 8, 2013, ODOT issued two purchase orders for the project; one to Strawser for the chip seal and line striping work ([Exhibit 4](#)) and one for the repair work to Pavement Management.

² Source: Ohio Department of Transportation website:

<http://www.dot.state.oh.us/Divisions/ConstructionMgt/OnlineDocs/2013MOP/300/304.htm>

³ Contracts are agreements between ODOT and private vendors who have gone through an approval process in advance of their engagement for the purposes of providing materials or services.

⁴ Line striping, while not identified in the initial emails, was part of the roadwork project.

Later, on May 13, 2013, Smithhisler forwarded an email string to his superiors indicating the actual roads to be repaired during the project, and attached two new maps and a spreadsheet. ([Exhibit 5](#)) One of the attached maps highlighted a road that differed from the map sent to ODOT. This road (R72) was to be resurfaced by Strawser using only 304 aggregate gravel. This gravel was to be spread, compacted, and then graded. This was different from the chip sealing method for which ODOT had issued Strawser the purchase order and ODOT was not made aware of this change.

On June 28, 2013, ODOT received an invoice from Strawser for chip seal and line striping materials believed to have been used on the five roads agreed to in the email exchanges with Smithhisler. On July 8, 2013, ODOT was notified by Smithhisler of the project's completion. On July 10, 2013, ODOT District 8 Staff Engineer Gary Middleton and other ODOT inspectors traveled to Caesar Creek to inspect the roads. They found that R34, one of the five roads listed in the email request to ODOT and highlighted on the map attached to that email had not been resurfaced with the chip seal process. After requesting additional information from Strawser, Middleton learned of and inspected the sixth road (R72) that had been resurfaced using a different method and different materials from chip sealing and for which the purchase order had been issued. This type of resurfacing work is covered under a separate ODOT contract (DOT100) from the contract covering chip seal work (DOT101G). Strawser is not an authorized vendor⁵ under the DOT100 contract. Middleton said the normal process for a DOT100 project is for ODOT to send it out to the authorized vendors on the contract for proposals. Strawser did sub-contract with Melvin Stone Hauling, LLC, who is an authorized vendor on the DOT100 contract, to deliver the aggregate material to the R72 work site but in doing so, circumvented the ODOT process.

In a December 11, 2013, telephone interview, Tim Herbst and Zack Helm of Strawser, contended that throughout the planning stages of this project there were discussions with Smithhisler about the work to be completed on the five original roads designated for the project. They said this was based on different factors, including cost and their recommendations for the type of work

⁵ Authorized vendors are private vendors who have gone through an approval process in advance of their engagement for the purposes of providing materials or services under ODOT contracts.

needed. At some point, the decision was made by Smithhisler to not chip seal R34; however, repairs to this road were to still be completed by Pavement Management. Again, these changes to the original plan and the subsequent final plan were forwarded to senior members at ODNR but not to ODOT.

ODOT was always under the belief that five roads were to be chip sealed during the project at Caesar Creek State Park. Smithhisler informed his superiors of the changes to the original plan but failed to notify ODOT. He acknowledged this during his December 12, 2013, interview with the Office of the Ohio Inspector General. Smithhisler stated he believed that the purchase order was for the maximum amount allocated for the overall project and that the goal was to complete all of the roadwork at or below that amount. Investigators found no evidence to suggest that Smithhisler had any ulterior motives for withholding the project change information from ODOT.

Strictly from a quality control standpoint, Middleton said that the work completed by Strawser, including the work on R72, met ODOT standards and was completed at a reasonable cost. Regardless, ODOT issued a purchase order under the belief that specific work was to be completed and it was not.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

Allegation #2 – Improper Billing by a Vendor

As stated earlier in this report, Strawser's proposal dated April 4, 2013, listed only the materials required for the chip seal and line striping work for the Caesar Creek project. The invoice dated June 28, 2013, later submitted to ODOT for payment from Strawser, was consistent with the proposal and only listed materials required for the chip seal and line striping process. ([Exhibit 6](#)) Since R72 was not repaved using the chip seal process, ODOT questioned Strawser about the invoice and listed materials. ODOT informed Strawser it would not pay for the work completed on R72 since it had not been authorized by ODOT and had violated their contract process. Strawser was also informed by ODOT that they would need to bill ODNR for the work

completed on R72. Ultimately, on November 12, 2013, Strawser submitted an amended invoice to ODOT for only the chip seal and line striping work they completed on four of the five original roads. ([Exhibit 7](#)) Strawser also submitted an invoice to ODNR for the work completed on R72. ([Exhibit 8](#)) ODOT has since paid Strawser for the actual chip seal work completed on the project and the invoice to ODNR is now pending payment. At no time, prior to or upon completion of the project, did Strawser list on their proposal or initial invoice any of the several hundred tons of 304 aggregate gravel used to resurface R72. This was only noted on the amended invoice sent to ODOT and the additional invoice sent to ODNR.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

CONCLUSION

ODNR employee Paul Smithhisler submitted an initial plan for the roadwork project at Caesar Creek State Park but failed to notify ODOT when that plan changed. Smithhisler did notify his superiors at ODNR of the changes; however, it was not ODNR's contracts that were being utilized nor was it their monies that were being used to facilitate the project. The monies and contracts belonged to ODOT and their processes should have been followed.

Strawser Construction submitted proposals and invoices to ODNR and ODOT for materials that led ODOT to believe that specific work would be completed using a specific roadway resurfacing method. This did not occur. Strawser submitted an initial invoice to ODOT only listing the materials needed for the work ODOT had authorized. It was only after being questioned by ODOT about the scope of the project and the actual work completed, that Strawser did submit an amended invoice noting the materials for the unauthorized work completed. Strawser has since been paid the adjusted amount on the amended invoice for the work they completed on four of the five roads that ODOT had originally authorized. Strawser has also submitted an invoice to ODNR for payment for the work not authorized by ODOT on the sixth road, R72.

RECOMMENDATION(S)

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

1. Review the actions of ODNR employee Paul Smithhisler and consider whether further administrative action is warranted.
2. Review with ODOT their processes for work that is completed under ODOT contracts and strictly adhere to these processes in the future.
3. Ensure that any changes in any future projects under the Parks Paving Program are immediately submitted to ODOT for approval.
4. Review with Strawser Construction and any future vendor, the ODOT contract process and the importance of detailed billing when conducting business with ODNR.

REFERRAL(S)

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

[\(Click here for Exhibits 1 – 8 combined\)](#)



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NAME OF REPORT: Ohio Department of Natural Resources

FILE ID #: 2013-CA00051

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
November 10, 2014

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