

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-CA00032
DATE OF REPORT: DECEMBER 23, 2015

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Randall J. Meyer
Ohio Inspector General



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REPORT OF INVESTIGATION

FILE ID NUMBER: 2014-CA00032

SUBJECT NAME: Ohio Department of Transportation
District 9
650 Eastern Avenue
Chillicothe, Ohio 45601

POSITION: ODOT District 9 Highway Technicians

AGENCY: Ohio Department of Transportation
District 9
650 Eastern Avenue
Chillicothe, Ohio 45601

BASIS FOR INVESTIGATION: Agency Referral

ALLEGATIONS: Violation of the Clean Water Act;
Illegal Dumping of Ditch Spoils into Salt Creek

INITIATED: April 21, 2014

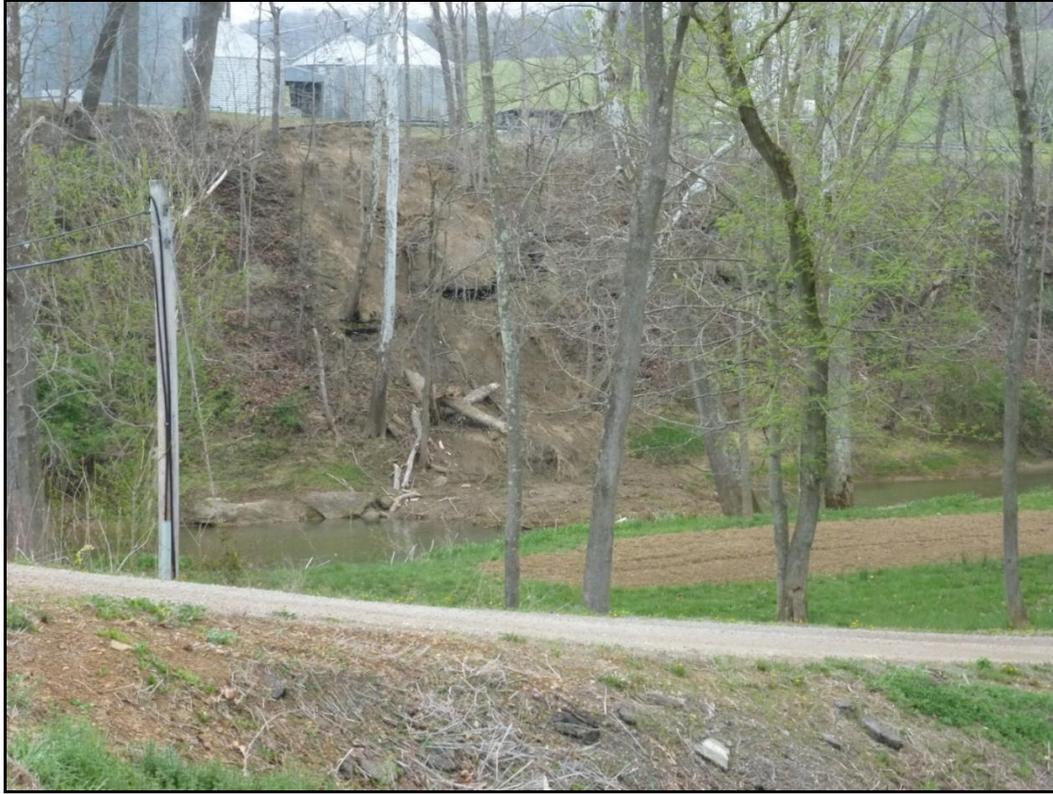
DATE OF REPORT: December 23, 2015

INITIAL ALLEGATION AND COMPLAINT SUMMARY

On April 17, 2014, the Office of the Ohio Inspector General received information from Chief Investigator John Shore of the Ohio Department of Transportation (ODOT), Office of Investigative Services (OIS), concerning a suspected incident of illegal dumping of dirt and debris into Salt Creek in western Vinton County near the Ross County line. Shore reported that on April 7, 8, and 9, 2014, a crew from the ODOT District 9 Ross County maintenance garage was involved in ditch cleaning operations along State Route (SR) 327 and US Route 50 in Ross County. The District 9 crew disposed of the ditch spoils, which are dirt and debris excavated from roadside drainage ditches, over and along the guardrail at two locations along SR 327 inside the Vinton County line. Vinton County is part of ODOT District 10. On April 9, 2014, the transportation manager assigned to the Vinton County ODOT garage observed the Ross County crew dumping the ditch spoils over the guardrail into Salt Creek. The Vinton County transportation manager asked the ditching crew leader to stop the dumping and notified the District 10 environmental coordinator. It is estimated that approximately 15-20 dump truck loads of ditch spoils were discharged into Salt Creek at dumping Site #1.



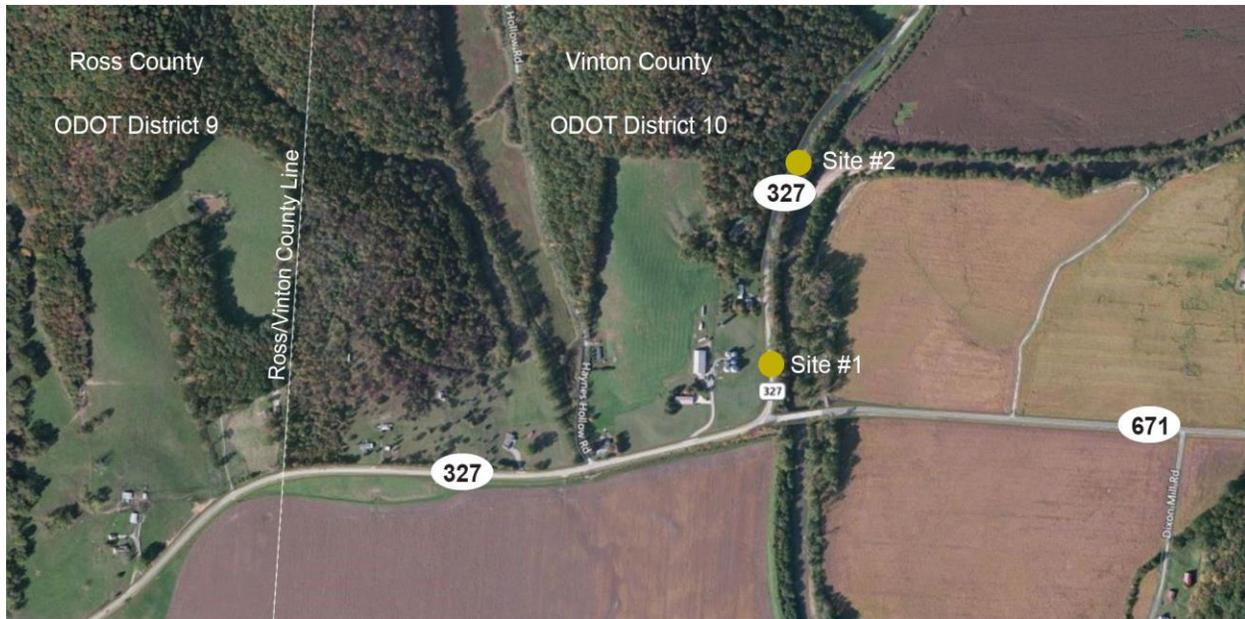
Source: ODOT/OIS - View of the material in the creek at dumping Site #1. Note how the material slid down the steep embankment.



Source: ODOT/OIS - This view at dumping Site #1 is from the drive on the opposite side of the creek. The guardrail where the trucks dumped from is visible. The embankment is 50-60 feet in height.

Approximately five to six dump truck loads of ditch spoils were dumped along the stream bank at another location (Site #2) near Pike Run, a tributary of Salt Creek. None of the material dumped at Site #2 reached the stream.

Dump Site Locations in Vinton County



Source: Bing Maps

The Office of the Ohio Inspector General opened an investigation on April 21, 2014.

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.¹

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 (ODOT). This statute designated the assigned 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

¹ Source: Biennial budget documents.

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 April 17, 2014, the Office of the Ohio Inspector General met with Chief Investigator John Shore of the Ohio Department of Transportation Office of Investigative Services (ODOT OIS). Shore reported information concerning an ODOT District 10 transportation manager reporting District 9 ODOT employees for suspected illegal dumping that occurred on April 9, 2014. ODOT had also immediately self-reported the incident to the U.S. Army Corps of Engineers, as required by section 404 of the Clean Water Act, (33 USC Section 1344). The United States Army Corps of Engineers issued to ODOT a Notice of Violation dated April 17, 2014. [\(Exhibit 1\)](#) The United States Army Corps of Engineers violation notice was also sent to the U.S. Environmental Protection Agency (USEPA) and the Ohio Environmental Protection Agency (OEPA).

On April 17, 2014, Chief Investigator Shore and the Office of the Ohio Inspector General contacted BCI Environmental Enforcement Unit Special Agent Supervisor Doug Young. Young is in charge of the U.S. Attorney's Office Environmental Crimes Task Force for Ohio. On April 22, 2014, the Office of the Ohio Inspector General met again with Shore and received a package of preliminary investigation information. Included in the package of information were scanned black and white and color photos taken on April 10, 2014; ODOT 502 work order forms;² a Google Earth overhead view of both SR 327 dump sites; emails from ODOT Environmental Director Timothy Hill; ODOT Incident Report and Governor's Office Referral; Ross County crew written statements; Ross County Crew training records; and photos taken by Shore [\(Exhibit 2\)](#) on the morning of April 22, 2014.

On April 23, 2014, the Office of the Ohio Inspector General met with BCI Environmental Special Agent Supervisor Doug Young and provided him with a copy of all the information received to date. Young advised that the Environmental Crimes Task Force had other pending investigations that involve dumping by ODOT. Young said that he planned to submit this matter

² ODOT 502 work order forms are daily forms that list assignments for ODOT highway technicians.

to the task force at its meeting scheduled for April 24, 2014. Young asked that ODOT OIS Chief Investigator Shore and the Office of the Ohio Inspector General join the meeting via conference call at 1:00 p.m. on April 24th.

On April 24, 2014, at 1:00 p.m., the Office of the Ohio Inspector General and ODOT OIS Chief Investigator John Shore joined a meeting of the Environmental Crimes Task Force via conference call. Also participating in the meeting were members of the U.S. EPA Criminal Investigation Division (CID), Ohio EPA, Ohio BCI&I Environmental Enforcement Section, U.S. Army Corps of Engineers and the U.S. Attorney's Office. Identified task force members were:

- Doug Young, special agent supervisor, BCI&I Environmental;
- Brent Kirkpatrick, special agent, BCI Environmental;
- Bill Palmer, supervisor of OEPA Office of Special Investigations (OSI);
- Scott Shane, investigator for OEPA Office of Special Investigations (OSI);
- Lisa Matovic, resident agent in charge of the USEPA-CID (Criminal Investigative Division); and
- Tom Kohl, special agent, USEPA-CID

A discussion was held concerning the Vinton County dumping into Salt Creek by the ODOT District 9 work crew. The task force decided to accept the case and include it with other ODOT-related investigations being conducted by task force investigators. During the meeting, BCI Special Agent Brent Kirkpatrick was assigned as the lead investigator for the team.

On May 2, 2014, BCI Special Agent Kirkpatrick contacted the Office of the Ohio Inspector General to provide an update on the Environmental Crimes Task Force investigative activities. Kirkpatrick said that, on May 1, 2014, he (Kirkpatrick), Kohl, and Shane, met with Tim Hill and Matt Perlik of the ODOT Office of Environmental Services. Kirkpatrick told investigators that the meeting went well and both of the ODOT employees were very cooperative. Kirkpatrick stated Perlik provided a copy of the remediation plan for the incident that had been prepared in response to the violation notice from the U.S. Army Corps of Engineers. A copy of this plan was obtained by the Office of the Ohio Inspector General on May 5, 2014. ([Exhibit 3](#))

On May 22, 2014, ODOT Transportation Manager Kendra Thomas was interviewed in a conference room at Ohio Department of Transportation District 9 Headquarters, located in Chillicothe, Ohio. The interview was conducted by a multijurisdictional investigative team consisting of Kirkpatrick, Kohl, Shane, and the investigator for the Office of the Ohio Inspector General (this group will hereafter be referred to as the multijurisdictional investigative team). This and all other interviews began with the ODOT employee being advised the interview was voluntary, that they were not required to speak with the members of the investigative team, and if they did, they were free to end the interview and leave at any time.

Thomas stated she has been employed as a transportation manager in District 9 for more than six years. Thomas said that she was not at the SR 327 work site on April 9, 2014, and did not have any first-hand knowledge of what had happened. Thomas said she "... heard about it the next day," explaining that she was told the transportation manager from District 10 confronted the District 9 work crew on April 9, 2014, asking what they were doing.

Thomas said she drove out to the site about three weeks after the incident. She viewed the dump area from the bridge and said she thought, "... they shouldn't have dumped there because all the dirt would go straight into the water." Thomas described the bank as very steep and said, "... it's not plausible they didn't know the creek was there."

Thomas said she had overheard conversations around the District 9 garage after the incident. She could not be sure who exactly was involved in the conversations, but thought it may have been Jeff Ragland talking about doing "... quick dumps, revving the truck engine to get the truck bed to go up quicker and higher so that dirt dumps faster and farther from the truck bed." Thomas heard Ragland was acting as a "spotter" at the dump site. Thomas concluded by saying she believed ODOT Highway Technician 3 Matt Day and Ragland probably knew the most about what had happened that week.

On May 22, 2014, ODOT Transportation Administrator and County Manager Mike Darbyshire was interviewed by the multijurisdictional investigative team. Darbyshire stated he had been employed with ODOT for approximately 38 years. He has been a transportation administrator

and Ross County manager for Ohio District 9 since March 2008. Darbyshire began his interview by stating the dates in the body of his written statement, which was made April 11, 2014, should have been correctly marked, “April 7-9, 2014,” not April 7-10, 2014, since the ditching operation only ran from the 7th to the 9th.

Darbyshire stated he became aware of a problem concerning the dumping of ditch spoils into Salt Creek at approximately 1:00 p.m. on April 9, 2014, when he received a telephone call from Highway Technician Matt Day. Day was assigned as the crew leader, April 7-9, 2014, for a ditching operation on state route 327 in Ross County. According to Darbyshire, Day called him on April 9 and began their conversation by stating, “Darby, I really screwed up.”

Darbyshire told investigators that Day told him the transportation manager from Vinton County stopped by the SR 327 work area and informed him the material his crew was dumping was going into Salt Creek. Darbyshire stated Day told him he immediately stopped work and went to check the site. Once Day checked the site, he told Darbyshire the material the crew had dumped on the April 8 had slid down the bank into the creek. Darbyshire said Day told him that only one load had been dumped into the creek on the April 9 when the transportation manager from Vinton County had stopped them from dumping. Darbyshire also said Day told him that they had dumped in the area the two previous days.

Darbyshire said Day told him Jeff Ragland was the “spotter” at the dumping site where the material went into the creek. Darbyshire stated the transportation manager from Vinton County who confronted the work crew was David Stiffler from the Vinton County garage.

Darbyshire stated to investigators that he spoke with each District 9 employee involved in the matter on April 11, 2014, and visited the dumping site on SR 327 on the morning of April 14, 2014. Darbyshire noted after viewing the dumping site, that he realized the employees had not been truthful with him. Darbyshire said once he surveyed the location, “... there was no way they didn’t know that material was going into Salt Creek” and that Ragland should have known. Darbyshire added, “... It is beyond comprehension why he would let that occur. ... I called BS on Ragland’s claim that he didn’t know the material was going into the creek.”

When asked who was in charge of supervising the work crews in the county, Darbyshire responded that Transportation Manager Bill Pickerrell³ was responsible for the work plans for the week, plans the daily schedule, and assigns the work crews.

Darbyshire said that he spoke with Matt Day on April 9, 2014, when he returned to the garage around 3:30 p.m., and asked Day how the decision was made to dump material in Vinton County. Darbyshire said Day told him he (Day) and Bill Pickerrell had discussed dumping sites. Darbyshire said that Pickerrell told him that he provided Day with a few suggested dumping spots in Ross County. Darbyshire added that Day then told him (Darbyshire) that he (Day) informed Pickerrell that he had several dumping locations in Vinton County, just up the road from where they would be ditching. Darbyshire said he discussed Day's claim with Pickerrell, and Pickerrell indicated Day's statement was correct. Pickerrell told Darbyshire that Day said the locations in Vinton County needed material and that he (Day) believed he was "doing them a favor."

On May 22, 2014, ODOT District 9 Highway Technician 2 Gregory R. Martin was interviewed by the multijurisdictional investigative team. Martin stated he has been employed with ODOT for more than 20 years. He said he was working on the SR 327 ditching crew on April 8 and April 9, 2014. Day was in charge of the crew and his (Martin's) job on both days was "middle man." As the middle man, Martin said he was responsible for overseeing traffic control at the ditching site, moving the flaggers as needed, and watching over traffic passing behind the track-hoe.

Martin indicated the material coming from the ditch was wet and sloppy and added that he did not know where the trucks were taking material to be dumped, but knew "... it was down the road in Vinton County." Martin stated that he knew the material was being dumped over a guardrail, but said it is normal practice to use ditch spoils as fill behind guardrail areas where there had been wash out or other erosion.

³ Bill Pickerrell was employed as an ODOT transportation manager during the period of time reviewed by investigators. Currently, Pickerrell is employed as an ODOT transportation administrator for Ross County.

Martin said that all highway technicians are trained on how to properly dump and, specifically, how to properly dump in waterways, so he had no concerns about the dumping location. Martin said he was not involved in the discussions about where to dump and did not view either site prior to April 9. When asked who was assigned to spotting duty at the dump location, Martin replied, "Jeff Ragland."

Martin said on the morning of April 9, the transportation manager from District 10 in Vinton County came to the ditching site and spoke to Matt Day, who was operating the track-hoe. Martin said he knew things were serious when Day told them to stop work and pack up. Martin said, "... we may have even taken a load of dirt back to the garage after the problem with the D10 guy." Martin said when he first heard about it, he did not think it was a big deal, "... but when I went and saw the dump site, I thought, oh <expletive>, we probably shouldn't have done that!" Martin was not sure exactly how many trucks were loaded at the SR 327 work site while he was there. Martin said he believed it was two to three truckloads on the first day and maybe one or two truckloads on the second day.

On May 22, 2014, ODOT District 9 Highway Technician 1 Rick Shannon was interviewed by the multijurisdictional investigative team. Shannon stated he has worked for ODOT since 2010 and has been assigned to the Ross County Garage for about a year. Shannon worked on the ditching project near the Vinton County line for three days, April 7-9, 2014.

Shannon said on the first day, April 7, he worked as a flagger at one end of the SR 327 work zone. On day two, April 8, Shannon operated a dump truck, hauling away the ditch spoils. Shannon said Day told him to go find Jeff Ragland and that he (Ragland) would show him where to dump the dirt. Shannon said he believed he dumped five to six loads on April 8. Shannon said he drove to where Ragland had cones set out, backed-up the truck, and then dumped the truck's contents when signaled by Ragland. Shannon said he did not leave his vehicle to see where the dirt was dumped.

Shannon worked as a flagger on the third day, April 9. On this day, Shannon stated he saw the ODOT brush crew from Vinton County when he was setting out cones around the perimeter of

the SR 327 work zone. He later observed the confrontation between the Vinton County transportation manager and Matt Day; however, Shannon noted he was about 100 yards away and could not hear the conversation.

Shannon stated he is “just a highway technician” and has “learned not to question authority.” He just did what he was told by Day. Shannon stated the dumping was “... only a problem because they got caught.” He continued by saying once he went down later and saw the outcome from the bridge he thought “holy <expletive>.”

On May 22, 2014, ODOT District 9 Highway Technician 1 Thomas A. Rolfe was interviewed by the multijurisdictional investigative team. Rolfe stated he has been employed as a highway technician 1 with ODOT for approximately five years. Rolfe said he worked on the ditching project on SR 327, near the Vinton County line, for three days, April 7-9, 2014. Rolfe noted that Day was the crew leader for all three days.

On the first day, April 7, Rolfe said he operated a dump truck, hauling away the ditch spoils. Rolfe said Day told him to take the dirt to the end of the guardrail to the pull-off (SR 327 dump Site #2). Jeff Ragland rode with him on the first load and helped him back-in and dump. Rolfe did not recall how many loads they dumped on the first day, but he believed it was less than five loads and that all were dumped at the pull-off location. Rolfe noted he did not dump any dirt at Site #1, where the material flowed into Salt Creek.

Rolfe also told investigators that on the second and third days, April 8 and 9, he worked as a flagger at one end of the SR 327 work zone. On April 9, Rolfe said he saw the ODOT brush crew from Vinton County putting up their work zone signs at the start of the day when he and Rick Shannon were setting out cones around the perimeter of their SR 327 work zone. Rolfe stated he later observed the Vinton County transportation manager and Matt Day talking; however, Rolfe noted that he was far away and could not hear their conversation. Rolfe said the next thing he knew, “... they were off the road.”

Rolfe said he could not attest to whether other employees discussed the Salt Creek dumping issue with him; however, he surmised a conversation probably occurred. Rolfe noted that he did not actually see the dumping area, but knew of the site's location because of employee conversations he had overheard.

On May 22, 2014, ODOT District 9 Highway Technician 2 Todd Jackson was interviewed by the multijurisdictional investigative team. Jackson stated he is employed by ODOT as a highway technician 2 and has worked for ODOT since approximately 2007. Jackson said on April 7, 2014, he operated a dump truck hauling ditch spoils at the SR 327 work zone. Jackson said he dumped three loads during the day on April 7, all at dump Site #2.

Jackson said Matt Day was the crew leader on April 7. Jackson said Day told him to "... drive the loads of dirt up around the corner to the pull-off and look for where Rolfe dumped." Jackson said that even though on his first trip he did not see Jeff Ragland riding with Rolfe, he speculated that the two may have been riding together. Jackson noted he knew the stream was there, because he left his truck and checked the area before he dumped. Jackson said he could see the stream from the pull-off area, and he believed at that time that his dirt could not slide down the bank. Jackson stated that he did not dump any loads of dirt over the guardrail at Site #1.

Jackson said he has overheard employees discussing the dumping and stated that, "... they are all idiots." Jackson told investigators that he believed the employees should have checked where they were going to dump before they dumped the dirt.

On May 23, 2014, ODOT District 9 Highway Technician 1 Donald Atchison was interviewed by the multijurisdictional investigative team. Atchison stated he has been employed with ODOT at the Ross County garage for about nine years. Atchison said he was assigned to Day's crew as a dump truck driver on April 9, 2014. Atchison said that morning at the work site, Day told him to, "... drive down the road until you see the cone by the guardrail and dump there." Atchison said Dustin Pfeifer spotted for him at the dump site and noted that he dumped only one load that morning. Atchison said he observed a man in an ODOT truck from Vinton County watching him dump, then drive away towards where Day was working the track-hoe. Atchison said when

he returned to the ditching site to get another load, he observed Day talking to that same man from Vinton County. When they were done talking, Atchison said Day told him, "... we wasn't dumping there no more." Atchison said they continued to work for a while longer; however, he was instructed to haul the ditch spoils to a different location in Chillicothe, dumping them at an ODOT right-of-way near the intersection of SR 35 and SR 50. Atchison estimated he hauled and dumped three loads at this new location.

Atchison told investigators that he knew dumping in waterways was not permitted. He noted that his co-worker (Pfeifer) helped him back-up and dump over the guardrail at the cone, (Site #1 on the photos above). Atchison stated he did not know the material was going in the creek. When questioned about why the crew was dumping the ditch spoils at Site #1 in Vinton County, Atchison said Day told him they were dumping over the guardrail into a hole on the bank. Atchison said he "... never left the truck," so he did not actually observe where the dirt was going. Atchison continued, "Matt's the boss; I do what he tells me." Atchison noted to investigators that he would have stopped the dumping had he seen the dirt going in the water.

On May 23, 2014, ODOT District 9 Highway Technician 2 Dustin Pfeifer was interviewed by the multijurisdictional investigative team. Pfeifer stated he has been employed by ODOT for approximately three-and-a-half years, and was assigned to the Ross County garage for the last two years.

Pfeifer said he was assigned to the SR 327 ditching crew on April 8 and April 9, 2014. Pfeifer stated that on April 8, he worked as a flagger for the entire day. Pfeifer did not leave the ditching work zone, and noted the crew was using two trucks. Pfeifer stated Matt Day was the crew leader, and recalled that on April 8, they had hauled between 15 and 20 dump truck loads of ditch spoils.

Pfeifer said on April 9, he drove a dump truck with the trailer for the track-hoe from the Ross County garage to the SR 327 work site. Pfeifer stated he rode in a dump truck with Donald Atchison when they hauled the first load of ditch spoils that morning. Pfeifer said they drove to

Site #1 and he spotted for the load. Pfeifer said he stood on the roadway in front of the truck to stop traffic while Atchison backed it up to the guardrail and dumped the load.

Pfeifer stated he did not look over the guardrail to check where the dirt was being dumped. Pfeifer also indicated they knew where to dump because Day directed them to dump where the crew had dumped the previous day, and that there was a cone at the dump site location indicating the correct spot.

Pfeifer recalled the transportation manager from Vinton County was sitting in his truck, watching them dump the first load. Pfeifer said the Vinton County transportation manager then drove to the ditching work site and spoke to Matt Day. After they spoke, Pfeifer said Day told the drivers to stop dumping at Site #1 and that they were directed to take the remaining loads of spoils for that day to an ODOT right-of-way location in Ross County. Pfeifer was unable to recall exactly where this site was located. Pfeifer told investigators he was well aware that dumping dirt in waterways was not permitted. Pfeifer noted that he believed Day was a competent crew leader.

On May 23, 2014, ODOT District 9 Highway Technician 2 Jeff Ragland was interviewed by the multijurisdictional investigative team. Ragland stated he has been employed with ODOT for approximately 5½ years, and had been assigned to work the entire time at the Ross County garage in District 9.

Ragland stated he was assigned to the SR 327 ditching crew on April 7 and 8, 2014, and was assigned as the “middle man” on April 7. As the middle man, Ragland was responsible for traffic to the rear of the track-hoe and was positioned between the flaggers, who were at each end of the ditching work area. Ragland recalled Day directing the dump truck drivers to dump the ditch spoils at the Site #2 pull-off.

Ragland stated Day was the crew leader for the SR 327 job and was responsible for selecting the places where the ditch spoils would be dumped. Ragland said he went to Site #2 with the first truck to show the driver where to dump the initial load. Ragland noted that they probably dumped only a few loads, maybe four or five, at the Site #2 location.

Ragland told investigators that on the second day, April 8, he was assigned as the spotter for the trucks at the Site #1 location. Ragland said he went to the spot by the guardrail where Day directed him to go and where the traffic cone had been placed. Ragland said he worked at the location all day, watching for traffic for the dump trucks and guiding them as they backed to the guardrail to dump the loads of ditch spoils. Ragland said the ditch spoil loads dumped on the second day were “mostly muck” since it had rained the previous day.

Ragland said Andrea Woods and Rick Shannon were driving the dump trucks on the second day, April 8, when Ragland was the spotter, and he thought Woods and Shannon dumped between 15 and 20 truckloads of ditch spoils at Site #1. Ragland said he did not realize the material being dumped over the guardrail at Site #1 was going into the water. Ragland emphasized he knew that dumping material into a waterway was prohibited. Ragland said the material was going over the guardrail, but was unable to explain why none of the material was piling up. Ragland also claimed that he did not hear any water splashing or trees and brush breaking.

Ragland stated to investigators that he was not working on the SR 327 job on April 9, 2014. He said Matt Day “... may have” called him around lunch time and told Ragland what had happened; how the Vinton County transportation manager had stopped the crew from dumping, and that he was calling the EPA to report ODOT District 9 for dumping in the creek. Ragland recalled Day saying something to the effect of “... we’re in trouble now.” When asked why Day would say “... we’re in trouble now,” Ragland replied, “... because we dumped the stuff in the water, can’t dump in water.”

Ragland said there have been no previous problems between the crews from ODOT District 9 and ODOT District 10. Ragland stated it is not unusual for a crew from one district to dump fill in an adjoining district’s area. Ragland said Day selected the spots to dump, and Ragland assumed the locations were picked because there were eroded areas by the guardrails that needed fill. Ragland said, “... I should of (sic) done it different, should of looked; I messed up.”

On May 23, 2014, ODOT District 9 Transportation Manager 1 Bill Pickerrell was interviewed by the multijurisdictional investigative team. Pickerrell stated he has been employed by ODOT since January 1994 and is currently a transportation manager 1 for District 9 in Ross County.

Pickerrell stated he had observed a need for ditching along SR 327 while he was out in the field on Friday, April 4, 2014. On Monday, April 7, 2014, Pickerrell said he met with Matt Day and assigned a crew to perform the ditching work. Pickerrell said he sat down with Day that morning, discussed the project, then the crew loaded the track-hoe and headed to the ditching job on SR 327 outside of Londonderry, near the Vinton County line.

Pickerrell stated he and Day also discussed locations for dumping the ditch spoils. Pickerrell indicated the choices were limited, due to recent rainfall and muddy conditions, and said he suggested a location on US 50 around the 37-mile marker. Pickerrell recalled Day telling him he (Day) knew of a closer location in Vinton County where he could place the material in washout areas around a guardrail.

Pickerrell stated Day told him that he would evaluate the Vinton County location once the crew arrived at the SR 327 job site to determine if the washout areas were suitable for dumping the spoils. Pickerrell said Day is a highway technician 3, is his senior crew leader, and has always been reliable. Pickerrell said Day has previous experience ditching and he trusted Day's judgement.

Pickerrell stated he received a phone call from Day on April 9, 2014, informing him about a problem with the ODOT Vinton County transportation manager. Day informed Pickerrell of what had happened and admitted he "screwed up." Pickerrell said Day took responsibility, and believes Day did not know the material was going into the creek. Pickerrell said Day used "bad judgement" and the material should have not been dumped at the Vinton County location. Pickerrell said, "... Matt was responsible, but the spotter (Ragland) should have known."

Pickerrell was asked about crews from District 9 dumping in District 10 without contacting the other district managers. He said they do it routinely, that "... they are one team," and even plow

snow across county lines. When informed that all the other ODOT employees interviewed indicated that dumping across county lines was never conducted without checking with the other county's transportation manager first, Pickerrell indicated he did not see this as a problem.

Pickerrell was asked about his conversations with Vinton County Transportation Manager David Stiffler, who confronted Day about the dumping. Pickerrell said he had not spoken to Stiffler about the incident.

When asked why he did not check on the SR 327 job, Pickerrell replied he has too much to do at the office and never checks on the crews in the field. Pickerrell noted that he has three to four crews out on any given day, and does not go out to assess the crews' work because he has crew leaders assigned to each crew to monitor them.

On May 23, 2014, ODOT District 9 Highway Technician 3 Matt Day was interviewed by the multijurisdictional investigative team. Day stated he has been employed with ODOT for approximately 15 years, with the majority of his time (13 years) assigned to the Ross County garage. Day stated he was assigned as the crew leader for three days on the SR 327 ditching project. Day said that before he left the Ross County garage on April 7, 2014, he had discussed various dumping site options with Pickerrell. Day stated he informed Pickerrell about a couple of potential dumping sites in Vinton County where he was aware there were erosion problems around the guardrails. According to Day, Pickerrell permitted him to choose the dumping locations "... as long as we stayed on the ODOT right-of-way."

Day told investigators that on the first day, April 7, it had rained and his crew was only able to collect four loads. These were all dumped at the Site #2 location. This site was a "pull-off" near the end of the guardrail and none of the material dumped at this location was near the creek. Day stated that on the second day, April 8, he assigned Jeff Ragland to be stationed at dumping Site #1 and act as a spotter. Day indicated he instructed Ragland to have the material dumped behind the guardrail and to place signs at each end of the operation. The "flagger ahead" sign was placed in the middle of the guardrail, near where the material was dumped. Day told

investigators he believed this was the reason why Ragland directed the trucks to dump at the Site #1 location.

Day stated he intended for the material to be dumped along the length of the guardrail – not in only one spot. Day operated the track-hoe again on the second day, and estimated that the crew dumped between 15 to 20 loads of the ditch spoil material at the Site #1 location. Day indicated he was not aware that the material was being dumped in one spot and spilling into the creek.

Day said on the third day, April 9, he again was operating the track-hoe and had filled one truck when he was confronted by the Vinton County ODOT District 10 transportation manager who informed him the material they were dumping was going into Salt Creek. Day said the transportation manager was quite upset and was going to report the crew to the ODOT environmental coordinator. Day said he had the crew stop work while he tried to contact his supervisors.

Day said he went to Site #1 on April 9, around lunch and saw what had happened. Day said, "... it made me sick to my stomach." Day said he immediately called Ragland, who was working on a different job. Day recalled Ragland saying that he did not know the material was going in the water. Day said he pressed Ragland, indicating that if he (Ragland) was standing outside the trucks near the guardrail, he had to know. Day said Ragland admitted, "... I had to dump there because that's where our signs ended." Day said he believes Ragland picked the dump spot with safety in mind, but he (Day) should have followed up with Ragland to make sure he understood his instructions about dumping along the guardrail.

Day said he was able to reach Bill Pickerrell shortly after lunch and Pickerrell directed him to call ODOT Transportation Administrator/County Manager Mike Darbyshire. Day stated he was able to speak with Darbyshire around 1:00 p.m. on April 9, and told him he (Day) had made a major mistake. Day said he told Darbyshire he did not know the material was going into the creek and the crew was not at fault. Day noted that he told Darbyshire that he (Day) admitted not explaining sufficiently what he wanted his crew to do and did not follow-up to check what dumping site had been selected. Day told investigators that he knows it is not permitted to dump

anything into waterways, and reiterated that this situation could have been avoided if only he had provided clearer instructions to the crew, then followed up to make sure the crew understood.

On July 15, 2014, the Office of the Ohio Inspector General received a telephone call from BCI Agent Brent Kirkpatrick who provided an update on the case status. Kirkpatrick advised that the task force would be putting together a summary of the case for Assistant Attorney General Robert Cheugh from the Attorney General's Environmental Enforcement Unit. Scott Shane from Ohio EPA had been assigned to work on the criminal referral package. Kirkpatrick stated that the Office of the Ohio Inspector General would be notified once the case was reviewed by the Vinton County prosecutor and Assistant Attorney General Cheugh from the Attorney General's Office. Kirkpatrick said the Army Corps of Engineers' citation and remediation enforcement action was still pending, but it did not appear the U.S. Attorney for the Southern District of Ohio would be taking the case. This information was confirmed by an update from Special Agent Supervisor Doug Young from the BCI Environmental Crimes Unit, on September 2, 2014. On October 24, 2014, the Office of the Ohio Inspector General received notification that the Ohio Attorney General's Office Environmental Crimes Unit had reviewed the case facts and declined a state prosecution on the matter.

On January 29, 2015, the Office of the Ohio Inspector General interviewed ODOT Highway Technician 1 Andrea Woods. Woods stated she has been employed as a highway technician 1 for ODOT in District 9 for approximately four years. Woods said that she was assigned to the ditching crew working on the SR 327 project on April 7 and 8, 2014. Woods stated Matt Day was the crew leader for both days and she was assigned as a flagger on the first day, April 7, and as a dump truck driver on the second day, April 8. Woods said she was not assigned to this crew on the third day and, therefore, was not present when the crew was confronted by the District 10 transportation manager about the dumping site.

Woods said Jeff Ragland was assigned by Day to perform the spotter duties for the two days she worked on the SR 327 project. Woods stated Ragland was responsible for waiting by the dumping area and assisting the trucks in backing and dumping the loads. Woods noted that due to the location on SR 327 where the drivers were directed to dump the ditch spoils, which was on

a slope near a curve, the drivers did not get out of the trucks. Woods explained that the drivers just followed the hand signals and directions of the spotter, Jeff Ragland. Woods said Ragland gave his hand signals standing at the rear of her truck next to the guardrail.

Woods said there were two dump trucks used on the day she was driving. The other truck was being operated by Rick Shannon. After being shown the aerial photo and map of the dumping sites, Woods indicated that all the loads she dumped on April 8 were at Site #1, where the material slid down the slope into Salt Creek.

Woods described the April 8 ditch spoils material as wet, but not as soupy as it had been on the first day, April 7. She said most of the water ran off as the trucks drove to the dump site. Woods said she was not given any special instructions to raise the truck bed faster or slower when she was dumping; stating her old truck only had one speed for raising the bed. Woods also stated she relied solely on Ragland's hand signals and could not hear any instructions, or other sounds when dumping due to the noise made by her truck's hydraulics.

Woods said she did not observe the ditch spoils going into the creek and thought the material was just filling in an eroded area behind the guardrail. She reiterated she was relying on Ragland, the spotter, and believed the material was building up on the bank. Woods said Ragland was standing right next to the guardrail, and after later viewing the location, Woods said, "... there was no way that he (Ragland) did not see and hear the material going down the bank and into that creek."

Woods said Matt Day, as the crew leader, was responsible for selecting the dumping locations and directed Ragland where to go. Woods stated Day wanted to "... hurry up and get things done; since the rain had stopped." Woods said, to her knowledge, Day did not check out the dumping site on April 8, and had just sent Ragland. Woods recalled she dumped "... maybe nine loads" on April 8, but could not be sure. Woods said ODOT crews all know you cannot dump material in any waterway, but from inside the truck, drivers could not tell the material was going into the creek. Woods reiterated that the drivers rely on the spotter, and as highway technicians 1, they "... just do what we are told; you don't question."

On March 19, 2015, the Office of the Ohio Inspector General spoke to Matt Perlik with the ODOT Office of Environmental Services. Perlik stated ODOT had negotiated with the U.S. Environmental Protection Agency the penalty for the violation and a restoration plan in December 2014. Perlik also noted that the permit application to perform restoration work was submitted in December 2014 and should be received from the U.S. Army Corps of Engineers in March 2015. The permit would restrict the restoration work to low-flow season (after August 2015). Once all the approvals and permits were acquired, Perlik indicated ODOT planned to commence the work in late August 2015. Perlik provided the documents to the Office of the Ohio Inspector General for review on April 3, 2015.

On June 3, 2015, the Office of the Ohio Inspector General met with Rich Winning, ODOT Deputy Director of Finance. Winning provided the documents related to the payment of the \$35,000 penalty that USEPA assessed ODOT. The payment to USEPA was made by wire transfer. [\(Exhibit 4\)](#)

On September 10, 2015, the Office of the Ohio Inspector General interviewed ODOT Transportation Engineer 4 Anthony “Tony” Durm. Durm was asked about the status of the Salt Creek restoration contract vendor selection and the United States Army Corps of Engineers permit status. Durm said the permit had been issued and he believed a vendor was selected to do the restoration work. Durm stated that it was his understanding ODOT District 9 was planning to have their employees do planting and stream bank restoration after the environmental clean-up company completed dredging at the site.

Durm said both he and ODOT Environmental Specialist 3 Michael Austin thought the dumping situation was highly unusual. Durm stated it is normal procedure to check with the environmental staff in the district for approval of sites prior to any dumping of fill. Durm also said he found it very unusual that a crew from another district would cross over and dump material without contacting anyone in that particular ODOT district’s environmental section, or at the very least, notifying the county transportation manager to determine a proper dump site.

Durm said he and his staff could not recall any previous instance in which this type of incident had occurred.

Durm said he and Austin both visited the dumping site and Durm noted it was "... unbelievable that they (the crew from D9) didn't know that they were dumping those ditch spoils over a 40 foot cliff into the creek. This was totally preventable."

On September 10, 2015, the Office of the Ohio Inspector General received from ODOT Assistant Environmental Administrator Matt Perlik the Nationwide Permit (NWP) #32 for the restoration work ([Exhibit 5](#)), specifying that Hull & Associates Inc. received the contract for the environmental mitigation work. The total amount of the contract was \$83,320. ([Exhibit 6](#)) Perlik said the work would be staged from the east bank on private property for which a signed real estate agreement had been obtained from the landowner ([Exhibit 7](#)). The cost of the temporary real estate easement was \$2,500. ODOT employees are intended to perform the work of regrading, seeding, mulching, and providing gravel to the driveway of the private land. Perlik said the timeline for the work was weather dependent, but would begin with an on-site pre-construction meeting with the contractor and the monitoring team on September 11, 2015. SunPro, a Hull & Associates subcontractor, planned to start staging equipment on Monday, September 14, 2015, and the vacuuming of the material would likely start on Tuesday, September 15, 2015. Perlik said SunPro hoped to complete the work by Friday, September 18, 2015.

On Monday, September 14, 2015, the Office of the Ohio Inspector General interviewed Ohio Department of Transportation Manager 1 David Stiffler. The interview began at approximately 8:45 a.m. and was conducted while observing the site preparation work of the environmental cleanup sub-contractor, SunPro, near the SR 671 bridge that crosses Salt Creek, near the private residence indicated on the work plans. Stiffler stated he has been employed with ODOT for more than 16 years; the last two as a transportation manager. He is currently the transportation manager for Vinton County, ODOT District 10. Stiffler said he had spoken to an investigator from the USEPA about the dumping incident "... sometime last summer" (2014).

Stiffler said on April 7, 2014, he had assigned a work crew to cut brush and trees along SR 327, east of SR 671 in Vinton County. The trees along the roadway had been damaged during a storm the previous week. Stiffler said his crew reported to him that members of an ODOT ditching crew from Ross County had approached them while they were finishing their job and asked them when they would be finished. The Vinton County ODOT crew thought it unusual and so reported the encounter to Stiffler. Stiffler said his crew indicated to him that the Ross County ODOT workers were rude and used expletives during their encounter. Stiffler said neither he, nor any of his crew members, could identify the Ross County workers.

Stiffler said he returned to the SR 327 area the morning of April 9, 2014. When he returned, he observed a truck dumping ditch spoils over the guardrail at the Site #1 location. Stiffler pulled up in his vehicle and asked the driver and the spotter for the individual's name who told them to dump spoils over the rail into the creek. Stiffler said both employees were rude, and said, "... our boss said we could dump it here." When Stiffler asked who their boss was, the spotter said, "He's in the track-hoe."

Stiffler said he drove to the ditching work site on SR 327 where he spoke to the crew leader who was operating the track-hoe. Stiffler said he asked him who told him that it was okay to dump the spoils at the sites in Vinton County. Stiffler said the crew leader replied, "... my boss said I could dump it there." Stiffler said he then asked, "... who is your boss?" and the crew leader replied "Billy Pickerrell." Stiffler said he told the crew leader to cease the dumping and he (Stiffler) was going to report the incident to the District 9 environmental section, because the actions of the crew were not permitted. Stiffler said he also told the crew leader that there had been no contact from District 9 about dumping in District 10 and that it is prohibited to dump fill material from one district to another with prior contact.

Stiffler said he returned to the dump site and took photos of where the dumping had occurred, then called Tony Durm at District 10 headquarters to report the incident. Stiffler said,

... I can't believe these guys would dump that stuff over a guard rail where the bank fell straight down 40 feet into the creek. There is no way that spotter and the drivers didn't know the spoils were going in the water.

The Office of the Ohio Inspector General asked Stiffler if he had been contacted by anyone from District 9 or Ross County about the incident since it had occurred. Stiffler replied he had not. When asked if Bill Pickerrell, specifically, had ever contacted him, Stiffler said he had never spoken with Pickerrell about this incident.

The Office of the Ohio Inspector General took photographs of SunPro, the environmental cleanup sub-contractor, staging on September 14, 2015, and received photographs of the SunPro clean-up progress from David Stiffler on September 17, 2015; September 23, 2015; and September 28, 2015. David Stiffler notified the Office of the Ohio Inspector General that SunPro completed their restoration work on September 28, 2015.



Source: OIG/DIG – SunPro Environmental staging equipment in preparation for restoration work on Salt Creek.



Source: David Stiffler, ODOT – SunPro Environmental crew at work.



Source: David Stiffler, ODOT – Clean-up work completed.

CONCLUSION

On April 17, 2014, the Office of the Ohio Inspector General received information from the Ohio Department of Transportation, Office of Investigative Services, concerning a suspected incident of illegal dumping of dirt and debris into Salt Creek in western Vinton County near the Ross County line. It was reported that on April 7, 8, and 9, 2014, a crew from the ODOT District 9 Ross County maintenance garage was involved in a ditch cleaning operation along SR 327 and US Route 50 in Ross County. The District 9 crew disposed of an estimated 20 dump truck loads of ditch spoils into Salt Creek, along SR 327, inside the Vinton County line. Vinton County is part of ODOT District 10. The transportation manager assigned to the Vinton County ODOT garage observed the Ross County crew dumping the ditch spoils over the guardrail into Salt Creek and notified the District 10 environmental coordinator to report the activity.

Interviews with ODOT employees and a review of the documentation provided by ODOT supports that the District 9 ODOT employees did discharge a significant amount of ditch spoils material into Salt Creek during the period of April 7 through April 9, 2014. The majority of the material was discharged into the waterway on April 8, 2014, when Highway Technician 2 Jeffrey Ragland was assigned as the spotter at Site #1 by crew leader and Highway Technician 3 Matthew Day.

According to interviews with the work crew on site for the days in question, Jeffrey Ragland worked all day as a spotter on April 8, 2014. He stood by the guardrail, near where a traffic cone had been placed, and directed the trucks where to back up to the guardrail, and then signaled the drivers to dump.



Source: ODOT/OIS – View of guardrail with cone marking dumping spot.

Although Ragland claimed he did not know the dirt was sliding into the creek, this is disputed by the other employees, supervisors, and investigators who viewed the location. Ragland was also unable to explain why he did not notice that the dirt was not piling up from behind the guardrail, and claimed to have neither seen nor heard the dirt sliding into the waterway. Ragland’s crew leader Matthew Day said he pressed Ragland, noting if he (Ragland) was standing outside the trucks near the guardrail, Ragland had to know the dirt was going into Salt Creek. Day said Ragland admitted, “... I had to dump there because that’s where our signs ended.”



Source: ODOT/OIS – View of Salt Creek when standing at guardrail next to cone marking dumping spot.

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

Highway Technician 3 Matthew Day was assigned as the crew leader on all three days, April 7, 8, and 9, 2014. Day was the individual who selected the dump sites in Vinton County after having discussed possible dumping sites in Ross County with his supervisor, Pickerrell. Day assigned Ragland to work as the spotter and took responsibility for not providing better direction and oversight to Ragland. Day said “... it made me sick to my stomach” when he saw what had happened. Day recalled Ragland said he did not know the material was going in the water. Day said he believes Ragland picked the dump spot with safety in mind, but that he (Day) should have followed-up to check the placement of the traffic cone and to verify Ragland understood his instructions about dumping along the guardrail.

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

ODOT District 9 Ross County Transportation Manager Bill Pickerrell stated he first learned about the dumping incident when he received a phone call from Matt Day on Wednesday, April 9, 2014, informing him about a problem with the ODOT Vinton County Manager. Day told Pickerrell what had happened and admitted he “screwed up.” Pickerrell said Day took responsibility, and he believed Day did not know the material was going into the creek. Pickerrell said Day used “bad judgement” and the material should have not been dumped at the Vinton County location. Pickerrell said, “... Matt was responsible, but the spotter (Ragland) should have known.”

Investigators asked Pickerrell to explain why crews from District 9 were dumping dirt in District 10 without contacting District 10 managers. Pickerrell said that the practice is done routinely, that “... they are one team,” and crews even plow snow across county and district lines. When informed that all the other ODOT employees interviewed indicated that dumping across county lines was never done without checking with the other county transportation manager first, Pickerrell indicated he did not see this as a problem.

Pickerrell was asked about his conversations with Vinton County Manager David Stiffler, who confronted Matt Day about the dumping. Pickerrell said he never spoke to Stiffler about the incident.

When asked why he did not check on the SR 327 job, Pickerrell replied he has too much to do at the office and never goes out to check on the crews in the field. Pickerrell noted that he has three to four crews out on any given day, but does not go out to see what they are doing since he assigns crew leaders. However, Pickerrell’s job description as transportation manager stated that he was responsible for inspecting “progress of ongoing & completed projects for assigned area.” By not performing his duties as assigned in his job description; specifically, by not supervising his work crews in the field, the Office of the Ohio Inspector General found that Bill Pickerrell did not comply with his supervisory duties.

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

In total, ODOT paid the following remediation and clean-up costs related to this incident:

Penalty assessed by the USEPA	\$35,000
Fee to pay penalty	\$500
Contract for clean-up costs	\$83,320
Temporary real estate easement on private property	\$2,500
TOTAL	<u>\$121,320</u>

This total does not include the cost of work performed by District 9 personnel to regrade, seed, mulch, and provide gravel to the driveway of the private land because these costs were not tracked by ODOT separately.

RECOMMENDATION(S)

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

1. Review the actions of ODOT employees Highway Technician 3 J. Matthew Day and Highway Technician 2 Jeffrey Ragland, to determine whether their conduct warrants administrative action.
2. Review the actions of ODOT employee William D. Pickerrell, to determine whether his conduct warrants administrative action for failure to supervise.
3. Review ODOT training policies governing the actions of ODOT employees involved in working around waterways and wetland areas and consider whether revisions are in order.
4. Upon concluding any changes to the policies governing work impacting waterways and wetland areas, consider whether additional training of employees is warranted.

5. Establish a formal policy to select and evaluate areas for dumping fill material.
Maintain an approved list of approved locations in each district environmental office.

REFERRALS

This investigation has been reviewed by the U.S. Attorney's Office for the Southern District of Ohio as well as the Assistant Attorney General for the Ohio Attorney General's Office Environmental Enforcement Unit. Both federal and state officials have declined to seek prosecution. The Ohio Department of Transportation has entered into a consent agreement with the U.S. Environmental Protection Agency, and has restored the impacted area, and paid a penalty of \$35,000.



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Ohio Department of Transportation

FILE ID #: 2014-CA00032

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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