STATE OF OHIO

OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

# REPORT OF INVESTIGATION

**AGENCY: OHIO DEPARTMENT OF TRANSPORTATION**
**FILE ID NO.: 2018-CA00023**
**DATE OF REPORT: MAY 2, 2019**

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

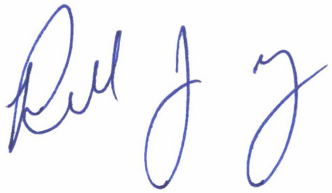
*"Safeguarding integrity in state government"*

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

Statutory authority for conducting such investigations is defined in *Ohio Revised Code §121.41* through *121.50*. A *Report of Investigation* is issued based on the findings of the Office, and copies are delivered to the Governor of Ohio and the director of the agency subject to the investigation. At the discretion of the Inspector General, copies of the report may also be forwarded to law enforcement agencies or other state agencies responsible for investigating, auditing, reviewing, or evaluating the management and operation of state agencies. The *Report of Investigation* by the Ohio Inspector General is a public record under *Ohio Revised Code §149.43* and related sections of *Chapter 149*. It is available to the public for a fee that does not exceed the cost of reproducing and delivering the report.

The Office of the Inspector General does not serve as an advocate for either the complainant or the agency involved in a particular case. The role of the Office is to ensure that the process of investigating state agencies is conducted completely, fairly, and impartially. The Inspector General's Office may or may not find wrongdoing associated with a particular investigation. However, the Office always reserves the right to make administrative recommendations for improving the operation of state government or referring a matter to the appropriate agency for review.

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

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| **FILE ID NUMBER:** | 2018-CA00023 |
| **SUBJECT NAME:** | Lloyd Rebar Co. |
| **POSITION:** | Vendor |
| **AGENCY:** | Ohio Department of Transportation |
| **BASIS FOR INVESTIGATION:** | Complaint |
| **ALLEGATIONS:** | Improper practices |
| **INITIATED:** | April 13, 2018 |
| **DATE OF REPORT:** | May 2, 2019 |

## INITIAL ALLEGATION AND COMPLAINT SUMMARY

On April 13, 2018, the Office of the Ohio Inspector General received a referral from the Ohio Department of Transportation (ODOT) regarding one of its subcontractors, Lloyd Rebar Co., alleging that the company was using a substandard epoxy coating on steel reinforcements for bridge construction. The complaint alleged the use of this epoxy could result in the failure of steel bridge supports. ODOT further alleged that employees at Lloyd Rebar Co. were instructed to hide paint cans and sprayers prior to the arrival of ODOT inspectors.

## BACKGROUND

*Ohio Department of Transportation*

The Ohio Department of Transportation (ODOT) 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 is appointed by the governor and confirmed by the Ohio Senate. The majority of ODOT's funding comes from federal sources, state taxes on motor fuels, and bond revenue.

## RELEVANT POLICIES AND PROCEDURES

*State of Ohio Department of Transportation Construction and Material Specifications - 709 Reinforcing Steel* and *709.00 Epoxy Coated Reinforcing Steel (Online Version 01/19/2018)* provides epoxy coated reinforcing steel standards as recommended by ASTM[1] A775/A 775M,[2] with the following modifications:

5.1 Ensure that steel reinforcing bars to be coated conform to 709.01, 709.03, or 709.05, and are free of oil, grease, or paint.

5.2 Ensure that the coating material meets the requirements listed in Annex A1 and is a color that facilitates inspection of the installed bar. The color is subject to approval of the Director.

[1] American Society for Testing and Materials, a voluntary standards developing organization. ASTM standards are voluntary in that their use is not mandated; however, government regulators often give voluntary standards the force of law by citing them in laws, regulations and codes. In the United States, the relationship between private-sector standards developers and the public sector was strengthened with the 1995 passage of the National Technology Transfer and Advancement Act (Public Law 104-113). The law requires that government agencies use privately developed standards whenever possible.

[2] ASTM A775 references the American Society for Testing and Materials standard specification for epoxy-coated steel reinforcing bars.

5.3 Sample required.

8.3.1 Evaluate the adhesion of the coating by bending production coated bars around a mandrel of specified size according to the bending tables in ASTM A 615 (ASTM A 615M) or ASTM A 996 (ASTM A 996M) as applicable. Perform the bend test for adhesion of the coating at a uniform rate, and ensure that it takes up to 90 seconds to complete. Place the two longitudinal deformations in a plane perpendicular to the mandrel radius, and ensure that the test specimens are at thermal equilibrium between 68 and 86 °F (20 and 30 °C).

12.1 Perform tests, inspection, and sampling at a site specified by the Director. Sampling for testing requires three 30-inch (1 m) samples for each bar size, for each coating lot, and for each heat of steel reinforcing bars.

14.1 Report of test results required.

Where reinforcing bar cages for pre-stressed concrete beams are fabricated by tack welding, patch the areas damaged by the tack welding according to ASTM A 775, Section 11, permissible Amount of Damaged Coating and Repair of Damaged Coating.

## INVESTIGATIVE SUMMARY

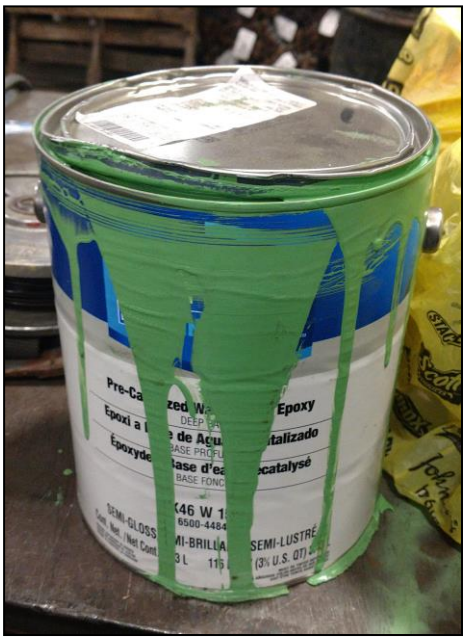
On April 13, 2018, the Office of the Ohio Inspector General called the complainant, Joel Loveless, to obtain further information. Loveless stated that he was currently at work and would have to call investigators back. The complainant did not return the investigators' call. On April 16, 2018, investigators called Loveless and again were not able to speak to him.

On April 16, 2018, the Office of the Ohio Inspector General met with ODOT employees who provided information related to the use of Greenbar[3] in construction projects subcontracted to Lloyd Rebar Co. ODOT employees told investigators that when Greenbar is cut or marred during installation or delivery, it must be touched-up with the same epoxy coating that was originally used to coat the Greenbar when it was manufactured. Investigators were advised the

[3] Greenbar refers to epoxy-coated reinforcing steel commonly used on bridges to protect against de-icing salts. Greenbar can also be used in continuous reinforced concrete pavement, parking garages, piers and docks, water towers, columns and parapets.

epoxy coating is provided to the fabricator (in this case, Lloyd Rebar Co.) by the manufacturer or provided to construction workers on-site by the fabricator. Investigators spoke to ODOT Office of Materials Management Transportation Engineer 3 Quoc Tran about ODOT inspections at Lloyd Rebar Co. Investigators were informed ODOT inspections are generally announced prior to the time the inspections occur so the subcontractor can have the necessary people and paperwork available when ODOT inspectors arrive. Investigators requested to accompany ODOT inspectors during an unannounced Quality Assurance Inspection at Lloyd Rebar Co.

On April 17, 2018, investigators accompanied Tran and ODOT Transportation Technical Specialist Audie Bostick to Lloyd Rebar Co., located in Shelby, Ohio. Upon arrival, Lloyd Rebar Co. employees placed a call to Max Hartings, the vice president of the company. While awaiting the arrival of Hartings, investigators observed a one-gallon Sherwin Williams paint can covered in green paint similar to the color of the epoxy covering the Greenbar. Investigators observed that the paint can was marked as a semi-gloss Sherwin Williams K45 W 153 Pre-Catalyzed Waterbased Epoxy.



Upon arrival, Hartings told investigators that Lloyd Rebar Co. was unable to provide ODOT inspectors with samples of Greenbar used in ODOT construction projects because the company had already delivered all the ODOT-designated Greenbar to its contracted construction sites. Investigators asked Hartings how Lloyd Rebar Co. employees touch-up the Greenbar when it is cut or marred. The investigators and inspectors followed Hartings to the location where the previously observed Sherwin Williams paint can was located. Hartings pointed to the Sherwin Williams paint can and stated that it was the coating employees used to touch-up the cut or marred Greenbar. Hartings stated they also used a spray epoxy paint which was purchased online; however, he did not have any spray epoxy paint remaining to show inspectors.

Investigators requested Hartings provide invoices for the spray epoxy paint. Hartings stated he would gather the invoices and provide them to investigators in a few days.

ODOT inspectors asked Hartings why Lloyd Rebar Co. was not using the Greenbar epoxy provided by the manufacturer for touch-up. Hartings stated he believed none of the fabricators or construction sites use the manufacturer's Greenbar epoxy. Investigators then asked Hartings if they ever used latex paint instead of epoxy when covering cut or marred Greenbar. Hartings stated they used the Sherwin Williams epoxy and the spray epoxy, but he did not comment on whether or not the company used latex paint. Tran showed Hartings a copy of the *State of Ohio Department of Transportation Construction and Material Specification Manual* and referenced ASTM 775 **(Exhibit 1)** requirements for Greenbar epoxy. Tran requested Hartings send documentation to ODOT showing that the Sherwin Williams epoxy paint used by Lloyd Rebar Co. met ASTM 775 standards.

Later that day, after investigators left Lloyd Rebar Co., Hartings emailed Tran and wrote: "Wanted to give you an update, I cannot find the receipts for the Epoxy paint that we purchased being that it was 6 months ago. I am looking at other avenues to obtain those."

On April 18, 2018, Tran emailed Hartings, stating,

> The Office of Materials Management is requesting test data for epoxy paint and spray paint Lloyd Rebar has used to touch up cut ends of epoxy coated reinforcing bars. We need the test data to confirm that the epoxy paint and spray paint conform to ASTM A775 specifications. Please provide this office this documentation by end of business Friday, 4/20/2018.

Also on April 18, 2018, Hartings emailed Tran a material report **(Exhibit 2)** for the Sherwin Williams epoxy paint. The report listed the paint as a "water based catalyzed epoxy." Tran forwarded Hartings' response to the Office of the Ohio Inspector General and stated that, "According to this document, the test method does not include Chloride Permeability, Salt Spray Resistance, and Chemical Resistance as required per ASTM A775." Therefore, ODOT determined the Sherwin Williams epoxy paint did not meet ASTM 775 standards.

On June 15, 2018, legal representatives for Lloyd Rebar Co. notified the Office of the Ohio Inspector General that the company did not have available and, therefore, could not provide invoices to investigators for the spray paint purchased by the company.

On July 30, 2018, legal representatives for Lloyd Rebar Co. supplied investigators with a document outlining how the company obtained and used epoxy patch kits. According to this document, Lloyd Rebar Co. used ABC Coating as its source to coat Greenbar, and ABC Coating supplied Lloyd Rebar Co. with the patching kits. Lloyd Rebar Co. alleged that,

> ABC coating informed Lloyd Rebar they were no longer allowed to ship patch kits due to federal restrictions pertaining to shipment of these items across state lines. New federal regulations pertaining to the shipment of hazardous materials meant shipping the patch kits would change a standard steel shipment into a hazardous material shipment.

Lloyd Rebar Co. further stated, through its legal counsel, that ABC Coating-provided Greenbar was initially coated with Nap-Gard or Valspar epoxy. Lloyd Rebar Co. claimed, "Lloyd Rebar is not a Valspar or 3M dealer and was therefore unable to purchase the Valspar patch kits independently over the counter or at a box store." Lloyd Rebar Co. stated, "After the coated rebar supplier stopped shipping patch kits, Lloyd Rebar began purchasing epoxy from Sherwin Williams." Lloyd Rebar Co. admitted purchasing and using a total of eight gallons of Sherwin Williams epoxy on ODOT-related work, which the company stated was the same epoxy investigators discovered during their unannounced inspection.

Upon reviewing this information, investigators were able to locate a 3M dealer located approximately 11 miles from Lloyd Rebar Co. that sells to the general public ASTM 775 compliant Scotchkote Fusion Bonded Epoxy Rebar Coating 413.

On April 23, 2018, Tran notified investigators that ODOT determined the Sherwin Williams epoxy Lloyd Rebar Co. was using did not meet ASTM A775 standards and was not an acceptable substitute to use to touch-up Greenbar for ODOT projects.

On August 13, 2018, ODOT sent a letter to Lloyd Rebar Co. advising the company that it was being removed from the ODOT Certified Supplier Program.

## CONCLUSION

The Office of the Ohio Inspector General, along with inspectors from the Ohio Department of Transportation, Office of Materials Management, conducted an unannounced inspection of Lloyd Rebar Co. to evaluate the validity of a complaint alleging the company was using latex paint to touch-up and coat Greenbar used in ODOT bridge construction projects. During the inspection at the Lloyd Rebar Co. fabrication facility, investigators did not observe any latex paint; however, investigators found a can of Sherwin Williams epoxy paint. The Sherwin Williams epoxy paint was found not to be in compliance with ODOT and ASTM standards for use with Greenbar on ODOT projects. Lloyd Rebar Co. claimed it was unable to obtain the proper epoxy patching material from their manufacturer, ABC Coating, due to federal regulations involving hazardous material shipping. Furthermore, Lloyd Rebar Co. claimed they were not a distributor for Valspar or 3M and therefore, were not able to obtain the proper patching material. However, investigators were able to locate for sale, from two suppliers, the 3M epoxy paint Lloyd Rebar Co. stated they could not obtain. One supplier was located approximately 11 miles from the Lloyd Rebar Co. facility.

The Office of the Ohio Inspector General was unable to determine if Lloyd Rebar Co. employees had concealed paint and sprayers from ODOT employees during their on-site inspections. However, because ODOT employees call ahead to schedule inspections, it is possible improper acts are covered up before the scheduled ODOT inspections actually occur. In a previous investigation (ROI #2015-CA00003), the Office of the Ohio Inspector General stressed the need for ODOT to conduct unannounced inspections to ensure compliance with accepted policies and procedures.

The Office of the Ohio Inspector General determined that Lloyd Rebar Co. did not conform to ODOT contract specifications and ASTM standards in bridge construction projects. On August 13, 2018, ODOT removed Lloyd Rebar Co. from the ODOT Certified Supplier Program for a minimum of 180 days, whereby Lloyd Rebar could then reapply for the program.

**Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe wrongful acts or omissions occurred in these instances.**

## RECOMMENDATION(S)

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

1. Consider a recommendation made in a previous report of investigation by the Office of the Ohio Inspector General, ROI #2015-CA00003, that ODOT conduct unannounced inspections of vendors who could potentially be substituting inferior products in place of products required by contract specifications. In this instance, we are again recommending that ODOT consider making unannounced inspections whereby suppliers do not receive notification prior to ODOT conducting an inspection.
2. Review contract violations and determine if the collection of financial penalties is warranted.

## REFERRAL(S)

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

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL
RANDALL J. MEYER, INSPECTOR GENERAL

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

**FILE ID #: 2018-CA00023**

## 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**
**May 2, 2019**

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