



# The Commonwealth of Massachusetts

## Office of the Inspector General

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June 15, 2011

Mr. Richard M. Spirlet  
Chairman  
Westport Board of Selectmen  
Town of Westport  
816 Main Road  
Westport, MA 02790

Dear Chairman Spirlet:

At the request of the Westport Town Administrator, the Office of the Inspector General (OIG) initiated an investigation into matters involving the Westport Highway Department (WHD) in February, 2010. During the investigation, the OIG worked directly with and was assisted by the Westport Police Department. A Westport Police Lieutenant participated directly in many aspects of the investigation and made a significant contribution to the final results. The OIG expresses its gratitude to the Westport Police Department for its exceptional assistance in this investigation.

### **Investigative Summary**

This investigation was based upon a complaint received from the Westport (Town) Administrator concerning certain possibly inappropriate actions that were alleged to have been taken by the Westport Highway Surveyor (Surveyor). Among other things, the complaint alleged that the Surveyor had authorized WHD employees to give away Town purchased cold patch and chip seal to a local Contractor without requiring payment. This investigation focused upon that allegation and developed additional areas of concern which included bidding practices related to the purchase and delivery of sand and the use of WHD manpower, time and equipment

pertaining to the removal of large stones from a former Westport Selectman's private property.

The investigation revealed that the Surveyor did instruct a WHD Foreman to give away cold patch, chip seal stone, gravel and granite belonging to the WHD. The Surveyor instructed the Foreman to give these materials away to a local Contractor without paying for it. The Foreman advised during the interview that he gave away three truck loads of WHD cold patch to this contractor on three different occasions. Each time, the WHD Foreman loaded the Contractor's dump truck, using WHD equipment, with approximately six cubic yards of cold patch. Eighteen cubic yards of cold patch is equal to approximately thirty six tons of cold patch. The WHD paid \$101.50 per ton for the cold patch. The cold patch given away is worth approximately \$3654.00

During the interview with the OIG, both the Surveyor and the Contractor who received the cold patch admitted giving and receiving cold patch to and from each other. However both men vastly understated the amount provided and received. The Surveyor initially stated that he gave the Contractor ½ a yard of cold patch and later changed it to two 5 gallon buckets of cold patch. The Contractor advised during the interview that the Surveyor gave him a yard of cold patch and that he loaded the cold patch into his own truck. He advised that he has known the Surveyor for many years and considers him to be a good friend. The Surveyor advised that he gave the Contractor some patch to thank him for loaning his bulldozer to the WHD for a couple of days at no charge.

During the interview, the Surveyor denied ever giving away any stone used in the chip seal process to the Contractor. Moreover, he denied giving any gravel or granite belonging to the WHD to the Contractor. These denials were directly contradicted by the WHD Foreman who was directly and personally involved in giving away truck loads of chip seal stone, gravel and granite to the same Contractor who received truck loads of free cold patch from him at the direction of the Surveyor.

The Foreman advised that at the direction of the Surveyor, he had personally loaded the Contractor's dump truck with 12 loads of "clean" 3/8" stone that was left over from the Town road repair chip seal process. He advised that each load of stone placed onto the Contractor's truck involved about 15 to 18 yards of stone. He explained that "clean" stone is stone that is not

dropped onto the road during the chip seal repair process and is left over at the conclusion of the process.<sup>1</sup>

According to an Official of the All State Materials Group (All State), the Company that conducts the chip seal road repair work for the WHD, the 3/8" stone used in the chip seal repair process is treated with liquid asphalt before it is brought out to the roads needing repair. This treated stone is what the Foreman referred to as "clean" stone. The All State Official advised that at the end of a chip seal job there is treated stone left over that was not dropped on the road, i.e. "clean" stone. He advised that All State often gives the Surveyor this extra stone to use as he sees fit. When this happens the "clean" stone becomes the property of the WHD.

The Foreman also advised that at the direction of the Surveyor he loaded the Contractor's truck with about 6 loads of "dirty" stone. He explained that "dirty" stone is 3/8" stone that is actually dropped onto the road during the chip seal process and is swept up after the process is completed. Each truck load of "dirty" stone contained between 15 to 18 yards of dirty stone. The WHD bid specifications regarding this type of stone make clear that it belongs to the WHD once it is dropped on the road. The Surveyor informed the OIG, in express contradiction to the bid specifications, that the dirty stone remains the property of All State after being dropped on the road.

Based upon the above information, the OIG believes that the "clean" stone given to the WHD by All State at the conclusion of road repair jobs and "dirty" stone that is swept up off the street at the end of road repair jobs is property of the WHD and the Town of Westport.<sup>2</sup>

According to an analysis set forth later in the Investigative Details Section of this letter, the 12 truckloads of "clean" stone given to the Contractor by the WHD Foreman at the direction of the Surveyor is worth approximately

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<sup>1</sup> An All State official advised that on almost every chip seal job performed by his company there is left over stone at the conclusion of the job. This left over ("clean") stone was kept in reserve during the road repair process and never dropped on the ground.

<sup>2</sup> The Surveyor claimed that at the end of a WHD road repair job, both the left over clean stone and dirty stone remains the property of All State. The bid specifications for the WHD purchase and deployment of chip seal on Westport roads make clear that stone placed on the ground and swept up (i.e. "dirty" stone) in the chip seal process is the property of the awarding authority. The left over stone not dropped on the ground (i.e. "clean" stone) does remain property of All State but according to an All State Official, is often given away to the WHD at the end of jobs. When this happens the clean stone likewise becomes property of the WHD.

\$4800.00. The value of the 6 truckloads of “dirty” stone given to the Contractor at the direction of the Surveyor is worth approximately \$576.00.

The Foreman reported that at the direction of the Surveyor, he personally gave the same Contractor 6 truckloads of gravel (between 15 and 18 yards of gravel per truck). The gravel was property of the WHD. The OIG has calculated that 18 cubic yards of gravel is equal to approximately 24 tons of gravel. The Westport Police Department has determined that the WHD pays approximately \$6.60 cents per ton for gravel. The value of 24 tons of gravel in a truck is approximately \$158.40. The Foreman stated that he loaded six truckloads of gravel for the Contractor. The approximate value of the gravel given to the Contractor at the direction of the Surveyor is \$950.40.

The Foreman was interviewed by a Westport Police Lieutenant by telephone on May 20, 2011 concerning granite which belonged to the WHD that was given to the Contractor at the direction of the Surveyor. The Foreman advised that he gave the contractor approximately 30 granite blocks to the Contractor over approximately a five week period during the spring and summer of 2009. He advised that these granite blocks came from a State Highway Department project on Route Six near Sanford Road. The State Highway Department delivered this granite to the WHD and placed it behind the WHD. It was provided to the WHD without charge.

The Foreman advised that the Contractor would come to the WHD, speak with the Surveyor and then come down and have his truck loaded up with granite. The Foreman recalled giving the Contractor four or five truckloads of granite in the five week period. He stated that the Contractor used the majority of those granite blocks to line his private driveway.

During the investigation, the OIG reviewed WHD records pertaining to the purchase and delivery of sand. The records disclosed that between the dates of September 29, 2009 and November 17, 2009, the WHD bought \$19,703.00 worth of sand from the same vendor, G. Lopes Company (Lopes). The records further revealed that between October 6, 2009 and November 17, 2009 Estrella Trucking Inc. (Estrella) made numerous sand deliveries to the WHD at a total cost of \$11,160.00. During this time frame both Lopes and Estrella submitted several separate invoices for payment. All of the invoices submitted by both companies were under \$5000.00.

M.G.L. c. 30B, the Uniform Procurement Act, requires municipal purchasers to seek at least three quotes from reliable vendors for purchases between \$5000.00 and \$25,000.00. A review of WHD records disclosed no evidence that the WHD engaged in the required competitive quote process for the purchase and delivery of sand in 2009. In fact, the submission of invoices by both companies during the relevant time period suggests the possibility of bid splitting to avoid the competitive threshold of \$5000.00 which would have triggered the necessity of a competitive quote process. M.G.L. c. 30B, §11 specifically prohibits bid splitting in public contracting.

During the interview with the OIG, the Surveyor admitted that no competitive bidding process was followed for the purchase and delivery of sand in 2009. This admitted failure to follow the express requirements of Chapter 30B is further exacerbated by other failures by the Surveyor to follow Chapter 30B in additional separate matters brought to the attention of the OIG. These other failures involve the repair of a WHD truck and the disposal of surplus vehicles, equipment and scrap metal. The OIG reviewed these matters separately and issued two letters concerning them. (See attached letters). During interview with the OIG, the Surveyor advised that he had been elected to the position of Highway Surveyor seven years ago. He is not new to the position. He holds a position that requires familiarity with the public bidding laws. He is metaphorically speaking, "the Captain of this ship." The Surveyor's ignorance of these laws is clearly inexcusable.

Finally, the matter involving the Surveyor's decision to remove large boulders from the property of a former Westport Selectman and former Westport Superintendent of Schools became part of the OIG investigation. The original idea for this project had its genesis at an official meeting of Town officials including the Surveyor and a then current Selectman. During the meeting, the Selectman asked the Surveyor if he had any need for rocks at the WHD. He answered in the affirmative. Later on, while she was still serving as a Selectman, the WHD showed up at her residence to begin the rock removal. The Selectman declined to allow them to proceed and instead informed the OIG that she sought the advice of Town Counsel and the Town Administrator. She advised that both advised her that this would be okay as long as she filed a disclosure.

The Selectman later ran for reelection and lost. She subsequently contacted the Surveyor and asked him if still wanted the rocks on her property. She filed a disclosure with the Town Clerk and advised that the Town Clerk told

her that it was okay to proceed. (See attached disclosure). The disclosure makes clear that she would be responsible for any grading or other excavation work once the rocks were removed.

Records obtained from the WHD reveal that WHD workers spent at least eleven work days at the former Selectman's private residence digging up and hauling away large boulders that were located on her property. One former WHD employee who participated in this work advised that he was told by the Surveyor to remove huge rocks, backfill the land and bring the big rocks back to the WHD. Another WHD employee stated that WHD employees removed 25 or 30 six wheel dump trucks full of stone, including big boulders, from this property. He further advised that after the rocks were removed, 30 to 35 six wheel dump truck loads of loam were brought to the property by WHD employees to fill in the holes where the rocks had been taken from.

This deal between the former Selectman and the Surveyor raised the eyebrows of local neighbors. One neighbor complained about WHD employees conducting official business on the now former Selectman's land and asked the WHD employees to remove a rock from his land as well. The former WHD Foreman advised that this was in fact authorized by the Surveyor and was done to keep the neighbor quiet.

A former WHD employee authored a note in the WHD log book which reads, "Good deal for her." The former Selectman was able to have several WHD employees, using Town owned equipment, on Town paid time, spend at least eleven days at her private home, removing large boulder size rocks free of charge. Moreover, according to one WHD employee, after the removal of the rocks, the WHD employees filled in the holes with loam supplied by the WHD and seeded the areas as well. This appears to contradict the disclosure filed by the former Selectman which stated that she would be responsible for any grading or excavation work on the property that had to be done once they have removed the rock from her land. If this was a good deal for the former Selectman, it was clearly a bad deal for the taxpayers of Westport. One WHD employee advised that the former Selectman's neighbors were told that the rocks were going to be used to stop beach erosion but they were instead taken to the Town pit and dumped.

## **Investigative Details**

### **The Cold Patch Giveaway**

At the outset of this investigation the OIG learned that a WPD official had received information that two ten wheel truck loads of cold patch had been removed from the WHD on October 23, 2009. The WHD Foreman (now retired) had allegedly assisted in the loading of the cold patch into the ten wheel truck. After consulting with the WPD, investigators from this office, accompanied by a WPD official, interviewed the retired Foreman concerning his knowledge of the cold patch matter.

### **Interview of the Highway Department Foreman**

The retired WHD Foreman (hereinafter Foreman) was interviewed and advised that in approximately the spring of 2009, the WHD ran out of cold patch which is used by the WHD to repair Town roads. The WHD had no money to purchase more cold patch and the WHD began to fill potholes with gravel. The Foreman advised that people in the Town began to complain about this method of repairing pot holes. The Foreman stated that the Surveyor approached the Westport Finance Committee (WFC) about the problem. The WFC subsequently authorized the purchase of two loads of cold patch by the WHD.

The Foreman estimated that the two loads of cold patch amounted to approximately 40 yards and had a value of approximately \$10,000.00. The cold patch was purchased from and delivered by All State Materials Group (All State). The Foreman advised that the cold patch was delivered in approximately the late summer or early fall of 2009 according to his recollection. He stated that there should be records of the purchase which would show the actual date of purchase and the date of authorization by the WFC.

The Foreman stated that shortly after the delivery of the cold patch to the WHD, the Surveyor approached him on a work day and informed him that a local Contractor (Contractor) would be coming down to the WHD and that the Foreman should give him some cold patch. The Contractor arrived at the WHD at about 10:00 am on the same day. The Contractor was driving a green and black 10 wheel dump truck that he owns. The Foreman recalled that the truck had the letters "WEC" written on the side and the words

Westport Excavating were on it as well. He explained that this is the name of the Contractor's company. The Foreman advised that he inquired from the Contractor as to how much cold patch he needed and ended up giving him about 6 yards. The Foreman loaded the cold patch into the Contractor's truck. The Foreman advised that another WHD employee may have seen this activity take place. The Foreman used a WHD John Deere 544 front end loader to load the cold patch into the Contractor's truck. The Foreman advised that the Contractor left and did not pay for the cold patch.

The Foreman stated that the Contractor returned about a month later and obtained an additional 6 yards of cold patch without paying for it. Once again the Surveyor spoke to the Foreman first and told him that the Contractor would be coming down and that he should give the Contractor some cold patch. The Foreman loaded the Contractor's truck with cold patch. The Foreman stated that other WHD employees may have witnessed this activity. The Foreman stated that two years earlier, in 2007, the Surveyor told the Foreman that the Contractor was coming down to the WHD and that the Foreman should give the Contractor some cold patch. The Contractor showed up and the Foreman loaded his truck with about 6 yards of cold patch.

The Foreman advised that he believed that the Surveyor permitted the Contractor to obtain cold patch without paying for it because the Contractor had done some work using his personal equipment for the WHD without getting paid for it. The Foreman explained that in 2007 and 2008 in approximately September of those years, the Contractor used his own equipment to move newly purchased sand into big piles at the WHD. The Foreman believed that the Surveyor was unable to pay the Contractor for the work so instead he gave him free cold patch. The Foreman stated that he felt that the Surveyor made a bad mistake in doing this because the WHD ran out of cold patch, needed a special appropriation to buy more, and the Surveyor turned right around and gave some of it away to the Contractor.

The Foreman advised that with respect to the cold patch given by the Surveyor to the Contractor in 2009 (as described above), the Contractor was expected to perform work and use his personal equipment on behalf of the WHD after he received the free cold patch. However, the Contractor did not perform the expected work or provide the use of his personal equipment to the WHD. Instead, the Foreman and another WHD worker performed the

work themselves. He explained that the work involved pushing WHD sand into a huge pile.

The OIG reviewed WHD records concerning the purchase of cold patch. The records disclosed an invoice #7000019505, dated June 29, 2009 submitted by Johnston Asphalt, LLC (an All State affiliate). This invoice disclosed that Johnston Asphalt delivered approximately 46 tons of cold patch to the WHD on June 18, 2009 at a total cost of \$4,677.12. The unit price per ton was listed at \$101.50. A second invoice #7000019297, dated May 31, 2009 from Johnston Asphalt revealed that Johnston Asphalt delivered approximately 44 tons of cold patch to the WHD on May 20, 2009 at a total cost of \$4,453.82. The unit price per ton was \$101.50 per ton. A third Johnston Asphalt invoice #7000018759 disclosed the delivery of 23.75 tons of cold patch to the WHD on March 23, 2009 at a cost of \$2410.63.

As mentioned above, the Foreman advised that he personally loaded the Contractor's private truck on three separate occasions with a total of approximately 18 cubic yards of cold patch that belonged to the WHD. Each time the Foreman did so at the express direction of the Surveyor. The OIG has determined through direct contacts with private businesses who sell cold patch to governmental entities that a cubic yard of cold patch is approximately equal to two tons of cold patch and weighs approximately 4000 lbs.<sup>3</sup> Thus, 18 cubic yards of cold patch is equal to 36 tons of cold patch. Johnston Asphalt sold the cold patch to the WHD for a unit price of \$101.50 per ton. The value of 36 tons of cold patch given away by the Surveyor to the Contractor is approximately \$3654.00.

### **Interview of a Highway Department Worker**

A WHD worker was interviewed and advised that the Surveyor is his boss at the WHD and was elected to be the head of the WHD six years ago. The WHD worker advised that in the summer of 2009, two loads of cold patch that belonged to the WHD were given away to a local Contractor by the Surveyor. The cold patch was obtained for the WHD through the efforts of the Surveyor. The Surveyor had to go to different meetings possibly with the Town Finance Committee or the Town Selectmen to obtain the needed money to buy the cold patch. The cold patch was purchased from a

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<sup>3</sup> The OIG spoke directly with the Freight on Board Sales Manager of Aggregate Industries, 1715 Broadway, Saugus, MA on 5/11/11 and an official of A.E. Stone, Inc., 1435 Doughty Road, Egg Harbor Township, New Jersey on 5/10/11 regarding this matter.

company known as All State. The cold patch was delivered to the WHD and it included approximately 56 yards of cold patch. The cold patch was placed in a lean-to by WHD workers.

The WHD worker advised that he was told by two WHD employees that the Contractor received two loads of cold patch. The Contractor took the two loads in a ten wheel or tri-axle truck. The two WHD employees both told him that the Surveyor told one of them to load the Contractor's truck with cold patch. The employee that loaded the cold patch onto the truck was the Foreman who is now retired. The Foreman argued with the Surveyor about whether this should be done and did not want to do it. The Foreman told the Surveyor that this involved "Buddy Cianci" politics and that you could go to jail for doing it. The WHD worker advised that the Contractor did not pay for the cold patch that he received.

The WHD worker advised that another WHD employee told him that the Contractor was supposed to perform a job for the WHD that involved piling sand up for the WHD but never did so. The WHD worker stated that instead, a WHD employee used a WHD front end loader to pile the sand up.

### **Interview of the Highway Department Surveyor**

The Surveyor was interviewed concerning the cold patch allegation and advised that he has known the Contractor since he was first elected as Highway Surveyor. He advised that the Contractor has been plowing snow for the WHD every year since the Surveyor was first elected.

The Surveyor stated that about two or three years ago, the Contractor loaned his bulldozer to the WHD for a couple of days at no charge to the WHD. The WHD used the Contractor's bulldozer to push sand into a large pile. The Surveyor advised that this was the only time this happened and the Contractor has not provided any other free services or equipment to the WHD. The Surveyor advised that the Contractor has been paid by the WHD for his snow plowing work over the years but has done no other work for the WHD.

The Surveyor advised that he gave the Contractor ½ a yard of cold patch a couple of years ago. The Surveyor advised that the Contractor came to him and told him that he needed some cold patch to patch a couple of holes on his private property. The Surveyor advised that he told the Contractor to

come down to the WHD and get some patch on the back of his truck. The Surveyor explained that he does this for other people in Town as well. The Surveyor advised that he told one of his employees to give the Contractor a little bit of patch on the back of his truck. The Surveyor advised that the Contractor told him that he needed a couple of five gallon buckets of patch. The Surveyor advised that he also helps out the citizens of Westport by giving those who need it a bucket of sand or salt at no charge. He stated that the Contractor did not pay for the cold patch he received. The Surveyor advised that giving the Contractor the cold patch was his way of thanking the Contractor for loaning his bulldozer to the WHD at no charge.

At the end of the interview, a Deputy Inspector General questioned the Surveyor's veracity regarding the amount of cold patch he gave to the Contractor. He was informed that the investigation has developed information that he gave away substantially more cold patch to the Contractor than he admitted earlier during questioning. He denied that he had given away more than he had previously admitted to and suggested that some of his employees are mad at him for naming a particular employee as his new Foreman.

### **Interview of the Contractor who Received Cold Patch**

The Contractor from Tiverton, Rhode Island, was interviewed in a State vehicle at a job site in Rehoboth, Massachusetts (MA). The Contractor does business as Westport Excavation Company, Inc., Tiverton, RI. He has owned this business for about 41 years. The Contractor stated that Westport Excavation Company, Inc. does site excavations and installs sewer systems. The Contractor advised he is a one man operation.

He has known the Surveyor, for about the past 18 to 20 years. The Contractor advised that he knew the Surveyor's Dad and first met the Surveyor when he worked at the Westport dump. The Contractor considers the Surveyor to be a good friend.

The Contractor advised that about 3 to 4 years ago, he installed a sewer system at the Surveyor's home along with a number of shrubs. The Contractor stated that he billed the Surveyor for this work which cost approximately \$1,400 to \$1,600.

The Contractor stated that during winter snow storms he is hired by the Westport Highway Department as a subcontractor to plow snow. He has plowed snow off and on for many years for the Westport Highway Department.

About three or four years ago, the Contractor dug a 200 foot trench in front of the home of a Westport citizen for the Westport Highway Department. The Contractor was installing a sewer system and digging a foundation for a garage on the citizen's property which is located on Mouse Mill Road. The citizen told the Contractor he was having a problem with flooding in the front of his property by the Town road. The Contractor called the Highway Department and the Highway Department suggested that a drain be installed to alleviate this problem. The Contractor told the Highway Department that he would dig the trench at no cost to the Town and the Town could provide the stone for the water runoff. The Highway Department agreed and the Contractor worked with a Foreman for the Highway Department. The Contractor stated that he did not bill the Town of Westport for digging the trench.

The Contractor stated that he has in the past taken about 1 yard of cold patch from the Westport Highway Department. The Contractor stated he asked the Surveyor for this cold patch and the Contractor loaded this material on his own truck. He has never had employees of the Highway Department load his truck with cold patch.

The Contractor claimed that in the past he dropped off his bulldozer at the Highway Department to be used by the Highway Department employees to push sand. The Contractor also claimed that he operated his dozer and pushed sand at the Highway Department. The Contractor's dozer was at the Highway Department for about 2 or 3 days and the Contractor never charged the Town.

### **The Chip Seal Stone; Gravel; and Granite Giveaway**

#### **Interview of the Highway Department Foreman**

The Foreman advised that All State performs the road resurfacing work for the WHD. He stated that All State uses three eighth of an inch stone as part of its road resurfacing process. (The OIG has learned through interviews with All State officials that before chip seal stone is brought to a road

resurfacing project it is “treated.” “Treated” stone is heated or cooked and liquid asphalt is sprayed on it during the heating process). During the road resurfacing process, some of the treated stone that is actually laid down on the road, in the resurfacing process is left over. The Foreman described this excess stone as “dirty stone.” He stated that this “dirty stone” is swept up from the road, brought back to the WHD yard by All State and dumped in a big pile in back of the WHD building.

After All State completes a job, there is also unused left over treated three eighth inch stone. He explained that this treated stone is brought to the job location but is not dropped onto the road. The Foreman described this stone as “clean stone.” He advised that the unused “clean stone” was originally left in a separate pile behind the Westport Town Hall by All State. This practice continued until a Westport Police Department cruiser was driven into the pile by mistake. After that, in or around July 2009, to the best of his recollection, the pile of clean stone was moved to the area behind the WHD building. After that there were two piles of stone behind the WHD building, one containing “dirty stone” and the other, “clean stone.”

The Foreman advised that sometime during the warmer weather of 2009 the Surveyor told him that the Contractor<sup>4</sup> would be coming down to the WHD and that the Foreman should give him some three eighth inch stone from up top (i.e. the “clean stone” behind the Town Hall). The Foreman loaded the Contractor’s dump truck with three eighth inch clean stone. The Foreman advised that over the next three days, he loaded the Contractor’s dump truck about 12 times with clean stone. He estimated that each load that he gave the Contractor involved about 15 to 18 yards of clean stone. He advised that this clean stone is provided by All State and is more valuable than the used dirty stone. He advised that the Contractor did not pay for the stone as far as he knows. He advised that another WHD employee may have observed this activity.

The Foreman advised that on several occasions the Contractor arrived at the WHD and left with truck loads of “dirty stone.” The Foreman helped the Contractor by loading the dirty stone into the Contractor’s dump truck. Each load involved between 15 to 18 yards of dirty stone. The Contractor received about six loads of dirty stone in 2008 and 2009. The Foreman

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<sup>4</sup> The Contractor mentioned here is the same person who received the cold patch at the direction of the Highway Surveyor as described earlier in this report.

advised that the Contractor possibly stored some of this material in his yard in Tiverton Rhode Island. The Surveyor instructed the Foreman to give the Contractor the dirty stone when he needed it. As far as the Foreman knew, the Contractor did not pay for the stone he took. The Foreman advised that the dirty stone is not worth as much as the clean stone because it becomes crushed and dirty during the road resurfacing process. The WHD keeps the dirty stone because they can use it for other WHD related jobs.

The Foreman advised that he understood that the Surveyor's decision to give away WHD property to the Contractor involved a "barter" type arrangement between the Surveyor and the Contractor. He explained that the Contractor drove his bull dozer for the Surveyor and performed WHD work in 2007-2008 and the Contractor would be paid by taking WHD property in the manner described above.

The Foreman stated that that in 2007-2008, he gave the Contractor about six truck loads of gravel that belonged to the WHD. Each truck load involved between 15 to 18 yards of gravel. The OIG has calculated that 18 cubic yards of gravel is equal to approximately 24 tons of gravel. The Westport Police Department has determined that the WHD pays approximately \$6.60 cents per ton for gravel. The value of a truck containing 24 tons of gravel is approximately \$158.40. The Foreman stated that he loaded six truckloads of gravel for the Contractor. The approximate value of the gravel given to the Contractor at the direction of the Surveyor is \$950.40.<sup>5</sup>

The Foreman was interviewed by a Westport Police Lieutenant by telephone on May 20, 2011 concerning granite which belonged to the WHD that was given to the Contractor at the direction of the Surveyor. The Foreman advised that he gave the Contractor approximately 30 granite blocks over approximately a five week period during the spring and summer of 2009. He advised that these granite blocks came from a State Highway Department project on Route Six near Sanford Road. The State Highway Department delivered this granite to the WHD and placed it behind the WHD. It was provided to the WHD without charge.

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<sup>5</sup> This calculation is based upon the premise that one cubic yard of gravel weighs approximately 2700 lbs and one ton of gravel weighs approximately 2000 lbs. Eighteen cubic yards of gravel weighs approximately 48,600 lbs. and 24 tons weighs approximately 48,000 lbs. Thus 18 cubic yards is roughly equal to 24 tons. The value of gravel per ton is \$6.60. ( $\$6.60 \times 24 \text{ tons} = \$158.40 \times 6 \text{ truckloads} = \$950.40$ ).

The Foreman advised that the Contractor would come to the WHD, speak with the Surveyor and then come down and have his truck loaded up with granite. The Foreman advised that he placed six or seven granite blocks in the Contractor's truck per load. He explained that he believed that the granite was expensive and he had to be careful so the blocks would not break. He stated that he initially placed sand in the truck and then placed the granite blocks on top of the sand. He described the granite blocks as being approximately, 5-6 inches wide; and 12-14 inches high. Some of the blocks of granite were approximately 6 feet long; some were 8 feet long and others were about 10 feet long. The Foreman recalled giving the Contractor four or five truckloads of granite in a five week period. He stated that the Contractor used the majority of those granite blocks to line his private driveway.

On the same date, the Foreman informed the OIG by telephone that the granite was in good condition when it was given away to the Contractor. He advised that the granite was removed from the ground by the State when they were working on Route Six in Westport possibly in 2008. He stated that it was white and grey in color. He did not know how much it was worth.

### **Interview of other Highway Department Workers**

A Westport Highway Department Worker (Worker One) was interviewed by a Westport Police Lieutenant in October 2009. The Police Lieutenant assisted the OIG in this investigation. Worker One advised that the Contractor mentioned above (in the earlier sections of this report) had been seen by him getting his trucks loaded by the WHD Foreman with chip seal (chip seal stone). Worker One advised that the Contractor lives in Tiverton, Rhode Island and operates older looking green trucks. He advised that the Contractor took from the WHD three loads of chip seal in one day. Worker One advised that the Contractor has been doing this for a couple of years. He advised that last year when All State completed the road work by laying down the chip seal, the leftover chip seal was placed in the parking lot behind the Town Hall. (OIG believes this to be "clean" chip seal stone). Worker One advised that he observed the Foreman loading the Contractor's tractor trailer with chip seal. He advised that the Contractor took quite a bit of chip seal but none of it was taken to any WHD work location.

A second Highway Department worker was interviewed by the OIG regarding chip seal stone. This worker, (Worker Two) advised that there was a large pile of new (believed to be “clean”) chip seal stone that was being stored in the parking lot behind the Town Hall. All of this new chip seal stone was loaded into the Contractor’s 10 wheel truck. Worker Two believed that the Contractor received 12 truckloads of this material in all. The Contractor may have used some of the new chip seal stone at his residence and on private jobs as well. Worker Two observed a WHD employee loading this material with a front end loader into the Contractor’s truck, possibly in 2008. This happened over the course of two days. Worker Two observed the Contractor’s truck which has Westport Excavating written on it. He did not see The Contractor.

Worker Two advised that the Contractor also received a lot of “dirty” chip seal stone at various times. Worker Two explained that the dirty chip seal stone is obtained by the WHD from excess chip seal that is laid down on Town roads and is swept up by the WHD. This dirty stone is brought back to the WHD and placed in a pile. It is later used by the WHD for various jobs. Worker Two advised that he has observed the Contractor driving out from the WHD with a truckload of dirty chip seal. On a couple of other occasions, Worker Two saw the Contractor’s truck with dirty chip seal in it at the WHD. It was either a ten wheeler or a tri-axle truck.

Worker Two advised that another person worked for the WHD until he retired two years ago. Worker Two advised that about two or three years ago, the Surveyor permitted this employee to take a six wheeler truckload of dirty chip seal stone to his home. Worker Two advised that the truck full of dirty chip seal stone was driven to the employee’s home and dumped behind the barn.

Worker Two advised that the Contractor may also have obtained one or two loads of gravel from the WHD gravel pile. Worker Two stated that he may have seen him at the gravel pile. He stated that as far as he knows, the Contractor did not pay for the gravel he took.

### **Interview of the Highway Department Surveyor**

The Surveyor was interviewed on September 22, 2010 and denied ever giving the Contractor any stone used in the chip seal process. He also denied ever giving the Contractor granite or gravel that belonged to the

WHD. He denied ever telling the Contractor to come down to the WHD and obtain chip seal stone. The Surveyor stated that the Contractor made a deal with All State Paving Company regarding chip seal stone. The Surveyor advised that after All State lays down chip seal stone for the Town; it delivers the left over chip seal stone to the Contractor.

The Surveyor elaborated on this matter during a subsequent phone conversation with a Deputy Inspector General on September 27, 2010. He advised that All State gives the Contractor “cooked” chip seal stone that is left over from Town road jobs. He stated that All State delivers the cooked chip seal stone to the Contractor’s property or leaves it for him in front of the WHD facility in the parking lot behind the Town Hall. The Surveyor advised that the WHD has no need for the cooked chip seal stone because it already has so much of it and has no place to store the additional cooked chip seal stone. The Surveyor also stated that All State only bills the WHD for the chip seal stone that they actually put down on the roads. They charge the Town per square yard of chip seal stone actually laid down on the road and not for any chip seal stone left over at the end of a job.

On May3, 2011 the Surveyor advised that before the stone used in the chip seal process is brought by All State to the Town roads, it is “cooked” in a treatment process by All State. He advised that once the cooked stone is dropped upon the ground in the resurfacing process it becomes “dirty.” He stated that some of the “dirty” stone does not bond to the road and must be swept up during the job. The Surveyor advised that All State does not use all of the cooked stone it brings to a job, i.e. cooked stone not dropped on the ground during the resurfacing process.<sup>6</sup> This unused cooked stone remains the property of All State. He advised that the “dirty” stone that is swept up from the ground at the end of a job also remains the property of All State. He advised that All State regularly gives both kinds of cooked excess stone away to people who want it. The Surveyor advised that the WHD does use both types of cooked excess stone for various small jobs. He stated that the WHD has plenty of both types of excess stone in its possession and does not need more of it.

The OIG has reviewed the “Stone Seal” specifications issued by the WHD in connection with the chip seal process followed by All State in the August

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<sup>6</sup> The “cooked” stone that is left over at the end of a job and not dropped on the ground during the chip seal road repair process has been described, *supra*, in this report as “clean” stone.

2009 Town of Westport chip seal road resurfacing project. The specifications disclose that “Surplus aggregate shall be swept off the road surfaces by the Highway Department and shall be property of the awarding authority.” The OIG believes that the specifications quoted here refer to “dirty” chip seal stone that has been laid down on the road during the resurfacing process. Some of this “dirty” stone fails to bond to the road during the process and remains loose upon the road surfaces. It must be cleaned off the road before the job is completed. The specifications make clear that this dirty stone is the property of the WHD.

The “Stone Seal” specifications also make clear that the WHD is only responsible for paying the winning bidder (All State) for “actual quantities (of chip seal stone) applied to streets.” It is therefore reasonable to conclude that the heated (“cooked”) chip seal stone brought to a Town paving site by All State which is leftover and not laid down on the street, i.e. “clean” chip seal, remains the property of All State at the completion of a job.

### **Interview of the Contractor Who Received Chip Seal Stone**

The Contractor was interviewed about the alleged giveaway of chip seal to him from the Surveyor. He advised that he asked The Surveyor for “dirty stone” that was stored at the Westport Highway Department. The Contractor explained that “dirty stone” is excess stone that is taken from the street after the stone has been rolled into the tar that is sprayed on the roadway. The Contractor was told by The Surveyor that the “dirty stone” that was at the Highway Department did not belong to the Town but was the property of the company that was hired by the Town to resurface the roads.

The Surveyor suggested that the Contractor contact the resurfacing company (All State) to ascertain if they wanted the dirty stone. One day the Contractor was at the WHD and he ran into a Representative of the resurfacing company. The Contractor asked him if he could take this “dirty stone”. The Representative said it was alright to take this “dirty stone”. The Contractor stated the “dirty stone” was loaded into his 10 wheel dump truck by employees of the WHD who used the Department’s loader. One of the employees of the WHD who loaded the Contractor’s truck was the Foreman. The Contractor could not recall the name of the other employee who loaded his truck. The Contractor stated he took about 4 to 6 loads of this “dirty stone” in his 10 wheel dump truck. A 10 wheel dump truck holds about 18

yards of material. This material was taken to his yard in Tiverton, Rhode Island, for storage.

The Contractor advised that he has never taken or been given gravel or loam from the WHD.

### **Interview of All State Asphalt, Inc. Personnel**

The All State Sales Representative (Sales Representative) was interviewed in December 2010 and advised that he has been employed at All State Materials Group (All State) since 1995. He advised that his sales territory covers Southeastern Massachusetts from Provincetown to Shrewsbury. He advised that All State seeks business from local Massachusetts municipalities and attempts to obtain contracts to do road repair work involving application of chip seal and cold patch to road surfaces. He advised that he has worked with WHD officials since the mid to late 1990s. He has worked with the present Highway Surveyor for the past six or seven years. He considers himself to be a good friend of the Surveyor and interacts with him both in business and socially.

The Sales Representative advised that All State has participated in the WHD road surface repair bidding process for several years and has been the winning bidder in each of those years. He described the bid process as a sealed bid process for an annual contract that runs from July 1 of one year to June 30 of the following year. He advised that the contract covers the materials and labor for applying to Westport roads, three kinds of applications. The three kinds of applications are asphalt rubber, single chip seal and double chip seal. All State is required to provide a price for each kind of application and the bid award is made to the contractor that provides the lowest total bid for the three combined applications.

The Sales Representative advised that single chip seal involves applying to the road one layer of liquid emulsion and one layer of 3/8" stone. The double chip seal process involves two layers of liquid emulsion and two layers of stone. The stone that is laid down may involve one layer of 3/8" stone on the bottom and a layer of 1/4 " stone on top or 1/2" stone on the bottom and 3/8" stone on top. He advised that All State obtains its stone from LoRusso Corporation in Plainville, MA. Before the stone leaves the LoRusso location, it is treated with asphalt by means of a pug mill machine.

This enables the stone to become more bondable with the liquid laid down on the road surface.

The Sales Representative advised that with respect to Westport, LoRusso is responsible for delivering the treated stone to the WHD. He advised that the treated stone was left by LoRusso in piles in the parking lot behind the Town Hall and also in piles behind the WHD building. LoRusso normally delivers the treated stone to the front or rear of the WHD two weeks before it is to be laid down on Town roads.

The Sales Representative advised that when a job in Westport is ready to begin, All State uses its trucks and loader to bring the treated stone from the WHD to the roads that need repair. The Sales Representative advised that the All State trucks are triaxle trucks that hold between 18 and 20 tons of treated stone. The Sales Representative advised that once the stone is at the road resurfacing location, an All State distributor truck sprays liquid asphalt on the road to be resurfaced. An All State chip spreader follows and spreads treated stone down on top of the liquid asphalt. The chip spreader attaches to the trucks that bring the treated stone to the job site and the stone is funneled from the truck, through the spreader to the street. Two rollers follow the chip spreader and compact the stone with the liquid asphalt. The completed job is left to sit for 2 or 3 days before the excess treated stone is swept up. He advised that in Westport the WHD sweeps up the excess stone by using its own sweeper. When the sweeper becomes full, it is emptied into WHD trucks.

The Sales Representative advised that on almost every chip seal job done by All State, including those in Westport, there is always treated stone left over at the end of the job. He explained that All State always brings more than enough treated stone to perform a given job because they never want to be short at the end. This left over stone is never dropped on the ground and remains in the trucks that hauled it to the job site. The Sales Representative explained that with regard to Westport, when there is unused treated stone remaining at the completion of Westport jobs, the stone will be taken back to the WHD at the end of the job. He advised that if All State has more work to do on Westport roads, they will leave the unused treated stone at the WHD until such time as they begin working on the streets that need repair. He advised that if All State has no work left to do in Westport for the contract year, they would move the unused treated stone to a separate job location or give it to the WHD to use as they wish.

The Sales Representative advised that at times when All State has completed a job for the WHD and there is left over treated stone (there might be two dump truck trailer loads of treated stone left over), he tells the Surveyor to keep the stone. He advised that LoRusso will not take it back and return money to All State for it. He explained that it would cost All State more money to haul it away than it would to give it to the Surveyor. The Sales Representative advised that either he or another All State employee tell the Surveyor that he can keep this stone. The Sales Representative advised that the excess stone that the WHD sweeps up from the ground after a job is completed is the property of the WHD.

The Sales Representative advised that All State delivered two truckloads (he later said one and a half truckloads) of 3/8" left over treated stone to the Contractor in August of 2010. He advised that the stone delivered to the Contractor was stone that was not dropped on the ground during a WHD job and was left over after the WHD job was finished. He described this stone as black in color. This stone was treated at All State's asphalt hot mix plant in Johnstown Rhode Island. The stone turns black after it is coated with asphalt cement and heated at the plant. This stone was used on an asphalt rubber chip seal job in Westport for the WHD. The Sales Representative advised that the Surveyor told him that the Contractor needed some stone. The Sales Representative said okay and instructed an All State driver to deliver it to the Contractor. He advised that it would cost All State more to bring it to a landfill than to give it away.

The Sales Representative advised that he has never given the Contractor any other stone. The Sales Representative advised that the Contractor has never asked him directly for any stone and to the best of his knowledge has never asked any other All State employee for excess stone. The Sales Representative advised that the Surveyor has told him that he (the Surveyor) has given stone to the Contractor in the past.

The Chief Financial Officer for All State, Sunderland, MA, was interviewed in December 2010 at his place of employment and advised that in the chip seal road repair process, before the stone is brought to the job site it is treated (most likely at the All State plant in Johnstown Rhode Island). He explained that treated stone is stone that is heated and during the process liquid asphalt is sprayed on it. This is done with a pug mill machine.

The Chief Financial Officer advised that All State is responsible for insuring that treated stone is brought to the work site. He advised that treated stone that is brought to a job site is not billed to a municipality unless it is laid down on a road surface. Stone that is left over at the conclusion of a municipal job that was not laid down on the street remains the property of All State. He advised that the leftover stone might be used on another job or could be sold to the municipality. The Chief Financial Officer advised that a review of All State records disclosed no sales of leftover treated stone to the WHD by All State.

The Chief Financial Officer advised that untreated 3/8" stone that has not been laid on the road is worth \$10.00 dollars a ton. He stated that transport trucks hold approximately 24 tons of untreated stone. He advised that the transport trucks are triaxle dump trucks and a full truckload of untreated stone would contain approximately \$240.00 to \$250.00 dollars worth of untreated stone. He stated that treated stone is worth more and 24 tons of treated stone in a triaxle dump truck would be worth about \$375.00 to \$400.00 dollars in total. He advised that a hauling cost of approximately \$100.00 dollars would be added for each truckload, bringing the cost per load to a job site to approximately \$500.00 dollars per truck load for treated stone.

The Chief Financial Officer estimated that excess treated stone that is laid down on public roads is worth approximately \$3.00 or \$4.00 dollars per ton. He advised that this stone loses value because it is now contaminated with various road materials. Excess treated stone must be removed from the road surface by small sweepers. He advised that the only use he could think of for treated stone picked up from the ground was for fill. He advised that the cost to remove this kind of fill from a job site amounts to about \$6.00 dollars per ton which is more than the stone is now worth. He stated that if a municipality wants All State to remove excess stone from a job site road surface, All State will charge the municipality for the work. He advised that municipalities will often remove the excess treated stone from the road surfaces themselves.

As mentioned above, the All State Chief Financial Officer advised that 24 tons of treated stone would be worth approximately \$400.00 dollars. The former WHD Foreman informed this Office that at the direction of the Highway Surveyor he loaded the Contractor's dump truck with between 15 and 18 yards of treated "clean" stone 12 times. According to two very

experienced persons in the construction trade and an internet source,<sup>7</sup> one ton of crushed stone equals 2000 lbs. and one cubic yard of crushed stone equals 2700 lbs. (Multiplying 24 Tons x 2000 lbs = 48,000 lbs) (Multiplying 18 cubic yards x 2700 lbs = 48,600 lbs.). This analysis demonstrates that 24 tons of crushed stone (with a value of \$400.00) is roughly the same in total volume as 18 cubic yards of crushed stone. Thus one truck containing 18 cubic yards of treated crushed stone would likewise be valued at approximately \$400.00 per load. (Virtually the same as 24 tons of crushed stone as explained above). Twelve trucks each containing 18 cubic yards of treated crushed stone (“clean” stone) would have a value of approximately \$4800.00 (i.e. 12 x \$400.00).

As mentioned above, the All State Chief Financial officer advised that treated stone laid down on the ground, so called “dirty” stone, has a value of \$3.00 or \$4.00 dollars per ton. Using the same analysis set forth in the preceding paragraph, one truck containing 18 cubic yards of “dirty” stone (the rough equivalent of 24 tons of dirty stone at \$4.00 per ton = \$96.00 per truck) would have a value of approximately \$96.00. The former WHD Foreman advised that he gave the Contractor six truck loads of “dirty” stone, each containing 15-18 yards of dirty stone. Using the 18 yards per truck load amount, this would equal an approximate total value of \$576.00 (i.e. 6 x \$96.00).

### **The Sand Purchase and Delivery Process**

The former Clerk/Dispatcher (Clerk) of the WHD was interviewed and advised that he was employed as a Clerk/Dispatcher for the Westport Highway Department (WHD) from 1993 until he retired in July 2009. He stated that for the past 4 or 5 years he has reported to the current Highway Surveyor. The Surveyor is the head official at the WHD and he is an elected public official. The Clerk advised that his duties included payroll preparation; time and attendance records; storm payroll; maintenance of the WHD daily log etc. The daily log showed who was working on a given day and what type of work they were involved with.

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<sup>7</sup> One of these persons is a retired Construction Project Manager with 30 years professional construction experience. The other is an Associate Professor of Civil Engineering at a well known Massachusetts Institution of higher learning who has a PhD in Civil Engineering. The Internet source is Wiki. Answers.com which deals with the conversion process of crushed stone from yards to tons and vice versa.

The Clerk advised that some of his other duties included preparing invitation for bids regarding WHD contracts and handling vendor invoices. He prepared invitation for bids for paving and salt contracts. He advised that before the current Surveyor was elected, he used to also prepare invitation for bids for the purchase of sand. However, when the Surveyor took over, the bidding process for sand was stopped and the sand contracts went to one vendor. He identified the vendor as G. Lopes Inc. (Lopes). He stated that Lopes supplies the sand but it is brought to the WHD by Estrella Trucking Inc. (Estrella). Estrella hauls the sand to the WHD from Carver and gets paid separately for its work. The Clerk advised that before the Surveyor was elected, the sand contract included both the sand and the hauling of it to the WHD. This was all formerly bid out as a package.

### **Interview of the Highway Department Surveyor**

The Surveyor was interviewed concerning the purchase of sand by the WHD. The Surveyor advised that when he was first elected, his Clerk was responsible for all the WHD bids and contract work. The Surveyor advised that his Clerk had been doing this job for a long time and he relied on him to take care of this part of the operation. The Surveyor in turn focused on and took care of WHD operational matters.

The Surveyor advised that his Clerk took care of the purchase of sand and salt for the WHD and did so until about a year ago when he retired. The Surveyor advised that he took it for granted that his Clerk conducted a bidding process for the purchase of sand. The Surveyor advised that it was his understanding that G. Lopes Company (Lopes) had been supplying sand to the WHD since he took office in 2003. The Surveyor stated that he thought that Lopes had been the cheapest or low bidder in a bidding process.

The Surveyor advised that from July 2009 to July 2010 all of the sand purchased by the WHD was supplied by Lopes. He advised that he does not know Lopes and has never met him in person. He stated that he has never received anything of value from Lopes at any time.

At this time, a Deputy Inspector General informed the Surveyor that no bidding process for the purchase of sand had been conducted for the time period of July 2009 to July 2010. He was further informed that WHD records reflect that between 9/29/09 and 11/17/09, approximately a six week period, the WHD purchased \$19,703.00 dollars worth of sand from G. Lopes

in several small increments. The Surveyor was informed that pursuant to M.G.L. c. 30B, the Uniform Procurement Act, if the estimated cost of a purchase of any good is between \$5000.00 and \$25,000.00 dollars; three quotes for the supply must be sought. Moreover, he was told that if the estimated cost of the supply is expected to exceed \$25,000.00, a sealed advertised bid process must be initiated. The Surveyor was informed that the manner in which the sand was purchased by the WHD in that time frame was an illegal violation of the fundamental requirements of Chapter 30B and may amount to illegal bid splitting.

The Surveyor was next asked to explain how the sand purchased from Lopes was delivered to the WHD. The Surveyor advised that Estrella's Trucking, Inc. (Estrella) from Westport delivered the sand to the WHD in 2009 - 2010 and may have been delivering the sand to the WHD for a long time. He advised that Lopes and not the WHD chose Estrella to deliver the sand to the WHD. He advised that Estrella has plowed snow for the WHD in past years. He described Estrella as an independent hauler. The Surveyor's comment that Lopes chose Estrella to make the sand deliveries instead of the WHD is astounding to this Office. A private contractor has no right under the law to choose another private contractor to perform work for a municipality. The delivery of sand was not part of any legitimate contract awarded to Lopes that could be subcontracted to Estrella. Only a Town procurement officer has the authority pursuant to Chapter 30B, §4 to purchase supplies and services. This abdication of municipal responsibility is simply astonishing.

At this point a Deputy Inspector General informed the Surveyor that a review of WHD records for the time period of 10/6/09 and 11/21/09 reveals that Estrella was paid \$12,960.00 dollars for making numerous deliveries of sand to the WHD in that time frame.<sup>8</sup> He was once again informed that no quote process was conducted for this service even though the amount paid was substantially over the \$5000.00 dollar quote process threshold found in Chapter 30B. He was further told that this practice also may constitute illegal bid splitting. The Surveyor was informed that the sand purchase and its delivery should be combined into a sealed bid process in the future.

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<sup>8</sup> A careful review of WHD records obtained by the OIG reflects that between 10/6/09 and 11/17/09 Estrella billed the WHD a total of \$11,160.00 for multiple sand deliveries. A hand written spread sheet obtained from the WHD shows an additional entry of \$720.00 on 11/21/09 which would bring the total Estrella bill to \$11,880. This WHD spread sheet shows the total bill to be \$12,960.00. The latter figure appears to be in error.

Combining the sand purchase and delivery into one sealed bid competitive process is likely to attract more reliable bidders and bring overall price to the municipality down. It is clear that the combined cost of sand and its delivery brings the price above \$25,000.00 and requires a sealed bid process.

The Surveyor advised that he knew that no bidding process for sand and hauling sand was done by the WHD last year. He claimed that he was not aware that this was necessary until a couple of months ago when he spoke with his new Clerk. The Clerk told the Surveyor that sand should be purchased through a bidding process within the last few months. He stated that at the current time the WHD is involved with a bid process for the purchase of both sand and salt and that delivery of the sand is being included as part of the sand purchase package. The Surveyor emphatically denied ever receiving any gifts or things of value from Lopes or Estrella. He was told that in his position of Highway Surveyor, it was his duty and responsibility to know and properly oversee correct implementation of the bidding laws.

In addition to the Surveyor's failure to follow Chapter 30B, as described above, he has failed to follow the specific requirements of Chapter 30B on other occasions as well. The OIG has issued two separate letters in the past that explain the Surveyor's failure to follow the express bidding requirements of the Uniform Procurement Act. These letters, dated in March and November 2010, disclose that the Surveyor did not follow Chapter 30B regarding the repair of a WHD truck and the disposal of surplus vehicles, equipment and scrap metal. In addition to violating Chapter 30B, it appears that the latter sale violated a Town by-law as well. (See attached letters). This conduct on the part of the Surveyor reveals a disturbing pattern of avoidance with respect to clearly established law and is simply inexcusable.

### **The Removal of Large Boulders from the Private Property of a Former Westport Official**

#### **Interview with WHD Employees**

The (former WHD) Foreman advised the OIG that in or around 2008, the Surveyor instructed him to go to a private residence in Westport and provide assistance to the owners, a former Westport Selectman and a former Westport School Superintendent. The Surveyor told the Foreman to go

down to this private residence and “derock” the property. The Foreman explained that this property had big rocks located on it and the Surveyor wanted him to remove the huge rocks, backfill the land, and bring the big rocks back to the WHD. The Foreman advised that he did as he was told and spent a week and a half working on this assignment. He advised that certain WHD employees helped him on this job.

The Foreman advised that while he was working on this project, a neighbor saw the Town workers performing their work on private property and approached him to complain. The neighbor questioned as to why the Town workers were doing a job on private property. The neighbor asked them to remove a rock from his property and they did so to keep him quiet. The Surveyor told the Foreman to remove the rock from the neighbor’s yard.

The Foreman was reinterviewed telephonically by a Westport Police Lieutenant on May 20, 2011. The Foreman advised that during this job, 12 to 14 loads of boulders and rocks were removed from the former Selectman’s property and brought to the WHD pit. He advised that some of the boulders on her property were so huge that they could not be removed from her property. He stated that these boulders had to be pushed from where they were into larger holes dug by the workers. They were then covered up with dirt so that they could no longer be seen.

The Foreman also informed the Lieutenant that after all the rocks were removed or buried, the WHD workers landscaped the property by filling in the holes and leveling the land. He advised that they used gutter wash from the WHD and loam from the Westport Cemetery Department to do the landscape work.

The OIG interviewed a current WHD employee concerning this matter. The employee advised that possibly three or four years ago three WHD employees went down to a former Town official’s home in Westport to dig out stone from her yard. The employee stated that the former official’s neighbors were told that the stone taken from the yard was going to be used to stop beach erosion. Instead, the stone removed from the yard was brought to the Town’s pit and dumped. The employee advised that WHD employees removed 25 or 30 six wheeler dump truck loads of stone from the person’s lot. The stone removed included big boulders. The job took about a month to complete. After the boulders were removed, the WHD employees filled in the holes with loam and seeded it. The loam used on the private property

belonged to the WHD. The WHD employees hauled the loam over to the private home. He estimated that 30 to 35 six wheel dump truck loads of loam were brought to the property. The Town trucks were used for this job. The employee advised that three additional WHD employees were at the private residence raking and spreading the loam. A total of six WHD employees worked on this job on Town time.

The former WHD Clerk was interviewed and advised that possibly in the spring of 2008, employees from the WHD performed a large job on property that belonged to a Westport citizen. At the time of the work, the citizen was either a current or former Westport Selectman. The Clerk heard from the WHD Foreman that the citizen allegedly obtained a permit from the Town Selectmen which authorized the WHD employees to work on her property and remove large stones from her property. The Clerk does not know if the permit story is really true. He stated that the WHD employees were supposed to dig up the large stones from this property and bring them back to the WHD yard. The stones were supposed to be kept at the WHD yard and be used for whatever the WHD might need them for. The Clerk advised that he is not aware of whether the stones were ever in fact brought back to the WHD yard for storage.

The Clerk advised that he maintained a written log of daily jobs and activities performed by WHD employees. He stated that as the rock removal job was being performed, he made written entries into the WHD log book about the work being performed on the citizen's property. He advised that he recalled three WHD employees by name that performed work for the WHD during normal work hours. He stated that three or four WHD employees worked daily on the job till it was finished. He thought that this job went on for a full week. The Clerk advised that the WHD employees used WHD equipment to do the work at the citizen's residence. He stated that he never saw the stones being brought to the WHD yard even though he was looking for this to happen. He advised that the Surveyor and the citizen are friends. The Clerk advised that during the time the WHD employees were working on her property, a couple of her neighbors called him to complain about public workers doing work on private property.

The OIG reviewed the WHD log book prepared by the Clerk for 2008. The log book disclosed that WHD employees were working at the citizen's property removing large rocks on eleven days between January 10, 2008 and April 24, 2008. The January 10, 2008 entry reads in part, "still on rocks."

This entry would suggest that the work on January 10 was a continuation of work previously done at this location by WHD employees. The hand written entry in the 2008 log book for February 10, 2008 that relates to the rock removal job at the citizen's property states, "Good deal for her."

### **Interview of the Highway Surveyor**

The Surveyor was interviewed and advised that about 5 years ago, a Westport Selectman asked the Surveyor to come to her home and take some huge rocks out of her yard. She asked him if the WHD could use some big rocks. She told the Surveyor that she asked the Town Selectmen for permission to seek the Surveyor's help in removing the rocks from her property and they granted her request. The Surveyor advised that the person that the Selectman lives with is the former Superintendent of Schools for the Town. The Surveyor advised that he sent a work crew down to her property to do the rock removal job. The Surveyor stated that his Foreman (now retired) was in charge of the work when the Surveyor was not present. The WHD workers removed all the big boulders, brought them back to the WHD and used many of them on Town road projects. The Surveyor advised that the work at the former Selectman's property was done on and off over a couple of weeks. A Town backhoe and Town dump truck was used to remove the rocks. The Selectman did not pay for the work performed by WHD workers on her property.

The Surveyor advised that the WHD workers used "gutter wash" and not loam to fill in the holes left in her property by the removal of the rocks. He advised that gutter wash is made of material collected by the WHD by sweeping the sides of Town roads in the spring of each year. The Surveyor stated that most of the time only two of his workers were working at her property.

### **Interview of the Former Westport Selectman**

A former Westport Selectman (The former Selectman) and a former Superintendent of Schools in Westport were interviewed. When asked about the removal of rocks from her property, the former School Superintendent began by stating that there had been a huge number of rocks on it. At that moment, the former Selectman declared that she was the one who was in charge of the rock removal project and wanted to tell the story.

The former Selectman stated that her current work status was retired. She served as a member of the Westport Board of Selectmen (WBOS) approximately five or six years ago. She served one three-year term.

The former Selectman stated that during her last year serving on the WBOS, she attended an official committee meeting for the land at the head of Westport. The WHD Surveyor was also a member of this committee. During the meeting the Surveyor was asked if he could install large boulders at the end of some property in order to prevent people from crossing into the wetland and disturbing it. She stated that she kiddingly told the Surveyor that if he needed rocks to do this, she had lots of rocks on her property that he could have. She advised that the Surveyor said he did not need rocks for the job but did need rocks to replenish his supply at the WHD. He told her that he would be in touch with her.

The former Selectman stated that some time went by before any arrangements were made for the WHD to remove the rocks from her property. She said that she could not remember whether she or the Surveyor made the initial contact. One day someone from the WHD showed up at her residence to remove the rocks. She stated that she stopped him from removing the rocks because she did not believe it was a good idea. She knew that she was going to run for re-election to the WBOS and thought she needed to seek advice from Town Counsel on the matter. She stated that she sought advice from Town Counsel and the Town Administrator. She stated that both advised her that nothing would be wrong with having the WHD remove rocks from her property as long as she filed a disclosure.

The former Selectman stated that after seeking advice from Town Counsel and the Town Administrator, she did nothing because she was busy running her re-election campaign. She lost the election. It was some time later that she called the Surveyor and asked him if he wanted the rocks. She filed a disclosure with the Town Clerk. (See attached disclosure). She stated that the Town Clerk told her that it was okay for the WHD to do the work on her property. She never contacted the State Ethics Commission.

She stated that it was a while before the WHD came to remove the rocks. She provided a copy of the disclosure she filed with the Town Clerk. The disclosure states that the WHD was going to remove rocks from a property she owned adjacent to her address. It also states that the rock was being donated to the WHD to replenish its stockpile. Furthermore, the rocks

would be removed from her property at no cost to her but she would be responsible for any grading or other excavation work done on the property once the rocks were removed.

The former Selectman examined some of her records and stated that her term on WBOS ended in March or April of 2006. The work on her property began after her term ended. Her disclosure is dated September 2006. Based on this information she stated that all of the work performed by the WHD took place in 2007.

The former Selectman stated that the Surveyor never came to her property. His crew did all of the work. The WHD Foreman was the excavator for this project. She stated that the work was never done on weekends. It was performed during the week during work hours. The WHD took two large piles of boulders that were on her property. There were quite a few boulders that were removed. She did not know the total amount of time it took the WHD to remove the rocks from her property. The WHD worked on excavating the rocks sporadically. Once all of the rocks were removed from her property, the WHD brought in fill for the holes left by the excavation. She stated that WHD's excavation of rocks from her property left it with big holes. WHD filled the holes for safety precautions. She advised that WHD did no grading or other work to her property. When asked what material WHD used to fill the holes she responded that she did not know.

The former School Superintendent stated that the rocks were not hauled away until the excavation was completed. Hauling the rocks away was a massive operation. Once all of the rocks were excavated they were hauled away within a week's time.

## **Conclusions and Recommendations**

This investigation has revealed several categories of questionable conduct and decision making on the part of the Westport Highway Department Surveyor. First, the Surveyor instructed his Foreman to give a private contractor several truckloads of WHD cold patch with an approximate value of \$3654.00. Second, he instructed his Foreman to give the same private contractor numerous truckloads of "clean" and "dirty" stone that is used in Westport's chip seal road repair process. The combined approximate value of the "clean" and "dirty" stone given to the private contractor is estimated to be \$5376.00. Third, he instructed the Foreman to give several truckloads

of WHD gravel to this contractor. The estimated value of this gravel is \$950.40. Fourth, he instructed the Foreman to give several truckloads of granite that belonged to the WHD to this private contractor. The value of this granite could not be determined. Fifth, the Surveyor, either through gross negligence or deliberate indifference, failed to follow the Commonwealth's statutory bidding laws pertaining to the purchase of supplies and services and the disposal of surplus property on several occasions. Finally, the Surveyor used extremely poor judgment in authorizing the use of WHD manpower, time and equipment in the removal of large rocks and boulders from a former Selectman's private property.

Equally troubling is the Surveyor's explanation of his conduct and decision making. During interview he admitted giving the private contractor ½ yard of WHD cold patch and later stated that it was only two five gallon buckets of cold patch. His admission vastly understated the actual amount of cold patch that was provided to the Contractor at his instruction. Even the Contractor admitted receiving more cold patch than the Surveyor claimed he gave away. When challenged about the amount of cold patch given away, he continued to stick to his story. The Surveyor's explanation that he gave the Contractor a small amount of cold patch because he permitted the WHD to use his bulldozer for a couple of days without charge is not compelling. Even if true, it does not justify the numerous truck loads of cold patch, chip seal stone, gravel and granite given away to the Contractor. In fact, so called "barter" off the books arrangements are clearly not authorized by M.G.L. c. 30B or any other municipal law or regulation.

During interview, the Surveyor specifically denied giving the Contractor any stone ("clean" and "dirty") used in the Town's chip seal road repair process. Moreover, he denied giving the Contractor any WHD gravel or granite. The Surveyor's story is flatly contradicted by the former WHD Foreman and other current and former WHD workers. The Surveyor also claimed that the "dirty stone" used in the chip seal process remained the property of All State when in fact the WHD bid specifications clearly state otherwise.

The Surveyor informed the OIG that the Contractor had an arrangement with All State in which All State would deliver "clean" stone to the Contractor or leave it for him in front of the WHD at the end of street repair jobs. The problem with this claim, in addition to being flatly contradicted by his own Foreman, was that the Contractor's statement to the OIG is clearly inconsistent with that of the Surveyor. The Contractor claimed that he asked

the Surveyor if he could have “dirty” stone (not “clean” stone). He claimed that the Surveyor told him it belonged to All State (“dirty” stone in fact belonged to the WHD) and suggested that he speak to All State about his request. He claimed that he received permission from All State to take the “dirty” stone from the WHD and that the WHD Foreman loaded his truck with 4 to 6 loads of “dirty” stone.

During interview an All State Representative reported that the Surveyor told him that the Contractor needed some stone. The All State Representative ordered another employee to deliver two truckloads of “clean” stone to the Contractor. This was the only stone he ever gave the Contractor. Given these obviously conflicting statements, it is difficult to determine the actual truth of what happened. The All State Representative stated that the Surveyor told him that he has given stone to the Contractor in the past.

The OIG believes that the so called agreement between the Contractor and All State to obtain left over stone, having a modicum of truth associated with it, was used as a “cover story” by the Surveyor and the Contractor to explain the receipt by the Contractor of numerous truckloads of stone from the WHD. The problem with this is that the Contractor and the Surveyor could not get their stories straight. If anything, the Contractor’s admission that he received 4 to 6 loads of “dirty” stone from the WHD Foreman supports the Foreman’s statement to the OIG on this matter.

The Surveyor also told the OIG that at the end of the chip seal road repair jobs, both “dirty” and “clean” stone that is left over remains the property of All State and is not given to the WHD because they have plenty of both and don’t need it. This statement is contradicted by the All State Representative who stated that at times when All State completes a chip seal job, he tells the Surveyor to keep the left over “clean” stone.

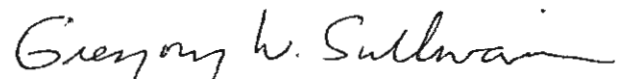
The bottom line here is this. The WHD Surveyor made numerous poor decisions which raise serious questions about his judgment and ability to lead an important government entity. Moreover, his explanation of the rationale supporting those decisions and his denials of misconduct raise serious questions about his honesty and integrity as an elected public official.

Based upon the numerous serious management and leadership problems revealed during this investigation the Inspector General makes the following

recommendations:

- The Board of Selectman should refer the contents of this letter to the Bristol County District Attorney's office for whatever action they may deem appropriate.
- The Board of Selectmen should refer the contents of this letter to the State Ethics Commission for whatever action it may deem appropriate.
- The Board of Selectmen should consider requiring all Town officials who have anything to do with public purchasing to receive appropriate training concerning the legal requirements found in the public bidding laws including, M.G.L. c. 30B, c. 149 and c. 30, §39M. The office of the Inspector General provides appropriate training concerning these laws in its MCPPO certification program. Additional information about this training and certification program can be obtained by calling 617-727-9140 or through our website at [www.mass.gov/ig](http://www.mass.gov/ig).
- The Westport Highway Surveyor is definitely in need of training in the public purchasing laws and regulations and should immediately seek training in this regard.

Sincerely,



Gregory W. Sullivan  
Inspector General

Cc: Michael J. Coughlin,  
Town Administrator

Keith A. Pelletier,  
Chief of Police



The Commonwealth of Massachusetts  
Office of the Inspector General

GREGORY W. SULLIVAN  
INSPECTOR GENERAL

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STATE OFFICE BUILDING  
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March 4, 2010

Steven Ouellette, Chairman  
Board of Selectmen  
Town of Westport  
816 Main Road  
Westport, MA 02790

Dear Mr. Ouellette,

This Office has been asked to opine on whether the procurement of vehicle repairs and the purchase of a dump truck from Henry's Diesel by an employee of the Town of Westport's (Town) highway department complied with M.G.L. c.30B, the Uniform Procurement.

The Town has received a letter demanding payment of \$20,553.75 for repair work and for the purchase of a vehicle from Henry's Diesel. As you may be aware, M.G.L. c. 30B applies to the procurement of supplies and services by the Town. The law provides that the chief procurement officer (CPO) is the person in charge of procuring **all** supplies and services for the Town.<sup>1</sup> A CPO may delegate his or her authority to one or more employees by providing this Office with a written delegation.<sup>2</sup> No employee may conduct a procurement of supplies or services in any amount without written delegated authority. Additionally, by law, contracts for goods and services valued at \$5,000 or more, but less than \$25,000 require the solicitation of three oral or written price quotations.<sup>3</sup> Contracts entered into in violation of M.G.L. c.30B are invalid, and no payment can be made even if the goods have been delivered or the services have been rendered.<sup>4</sup>

Based on our records, the CPO has not delegated purchasing authority to any employee of the highway department. Further, it is this Office's understanding that this employee entered into agreements with Henry's Diesel without any competitive process. For these reasons, this Office is of the opinion that no payment can be made for the vehicle repair or the purchase of the dump truck pursuant to M.G.L. c.30B, §17(b).

<sup>1</sup> M.G.L. c.30B, §2.

<sup>2</sup> M.G.L. c.30B, §19.

<sup>3</sup> M.G.L.c.30B, §4(a).

<sup>4</sup> M.G.L. c.30B, §17(b).

Please do not hesitate to call if the Office can be of further assistance.

Sincerely,

*Kelly L. Whelan*

Kelly L. Whelan  
Assistant General Counsel

cc: Michael Coughlin, Town Administrator



The Commonwealth of Massachusetts  
Office of the Inspector General

GREGORY W. SULLIVAN  
INSPECTOR GENERAL

JOHN W. McCORMACK  
STATE OFFICE BUILDING  
ONE ASHBURTON PLACE  
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November 17, 2010

Michael J. Coughlin, Town Administrator  
Town of Westport  
816 Main Road  
Westport, MA 02790

Dear Mr. Coughlin,

Information has been provided to this Office indicating that the Town of Westport (Town) Highway Department (Highway Department) disposed of surplus vehicles, equipment and scrap metal with an estimated resale or salvage value of \$14,000 to Mid City Scrap without a competitive process. This is a violation of M.G.L. c.30B, §15. In addition to violating M.G.L. c.30B, it appears that the sale violated the Town's by-law.

Under M.G.L. c.30B, §15(b), any contract for the disposition of surplus supplies with a resale or salvage value of \$5,000 more requires an advertised public bid, auction or a sale through an established market. From the information provided to this Office, the Highway Department transported and sold approximately \$14,000 worth of vehicles, equipment and scrap metal to Mid City Scrap over a period of two days, far exceeding the \$5,000 threshold requiring an advertised public bid or auction. While an exemption exists for the disposition of recyclable materials pursuant to M.G.L. c.30B, §1(b)(30), this Office is of the opinion that this exemption only applies to the disposition of scrap metal that has no potential for use outside of reprocessing. It is our understanding that only a small amount of the material disposed of over the two day period would fall under the exemption.

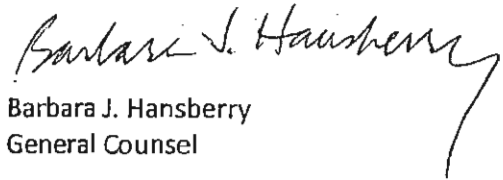
The Town's by-law requires that "No personal property of the Town will be sold by any officer or board unless by vote of the Town, except as herein provided: (a) if the current value is one thousand (\$1,000) dollars or less, it may be sold by the joint authorization of the Board of Selectman and Chairman of the Finance Committee; (b) if five hundred (\$500.00) dollars or less, by authorization of the Board of Selectman."<sup>1</sup> At the very least, the sale to Mid City Scrap violated the requirement for authorization of the Board of Selectman, and at the most, violated the requirement that the sale be approved by town meeting vote. This requirement appears to apply to the recycling of scrap metal, in addition to the disposition of surplus supplies. The Town should seek advice from Town Counsel regarding the interpretation of this by-law and repercussions for any and all violations of law.

<sup>1</sup>Town of Westport, Massachusetts By-Law, Article V, Section 0503.

This Office strongly recommends that all Town officials be made aware of the requirements of M.G.L. c.30B in procuring and disposing of surplus supplies as well as all town by-laws that relate to procurement. Several resources offered by the Inspector General's Office can be found on our website. They include a manual entitled, *Municipal, County, District, and Local Authority Procurement of Supplies, Services, and Real Property*, quarterly Procurement Bulletins, and access to information for no cost, on-line M.G.L. c.30B training. In addition, we have a daily call-in service for answers to M.G.L. c.30B questions. Should Town employees aspire to certification as Massachusetts Public Purchasing Officials (MCPPO), the Office offers procurement courses through the MCPPO Program. Registration information for the MCPPO program as well as the above guidance can be found at [www.ma.gov/ig](http://www.ma.gov/ig).

Please feel free to contact this Office at 617-722-8838 if you have any questions regarding the disposition of surplus supplies under M.G.L. c.30B. I would be glad to answer any questions regarding this letter.

Sincerely,

A handwritten signature in cursive script that reads "Barbara J. Hansberry". The signature is written in black ink and is positioned to the right of the typed name and title.

Barbara J. Hansberry  
General Counsel

**Elizabeth A. Collins**  
27 Kelly Avenue  
Westport, MA 02790

September 7, 2006

Marlene Samson, Town Clerk  
Town of Westport  
Town Hall  
Westport, MA 02790

Dear Ms. Samson:

This is to disclose that the Town of Westport Highway Department will remove rocks from property that I own adjacent to 27 Kelly Avenue. The rock is being donated to the Highway Department to replenish the stockpile they keep available for use on various Town projects. The rocks will be removed at no cost to me but I will be responsible for any grading or other excavation work on the property that has to be done once they have removed the rock that is useful to them.

If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Liz Collins