



**INTERIM REPORT OF THE OFFICE OF THE
ATTORNEY GENERAL ON THE INVESTIGATION
CONDUCTED PURSUANT TO SECTION 4-61dd OF
THE CONNECTICUT GENERAL STATUTES**

**ALLEGATIONS OF IMPROPER RELATIONSHIPS
BETWEEN EMPLOYEES OF THE DEPARTMENT OF
ENVIRONMENTAL PROTECTION
AND A DEP CONTRACTOR**

October 6, 2004

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ATTORNEY GENERAL**

EXECUTIVE SUMMARY

This interim report addresses allegations that Benedict Yorke, Jr. and Erik Gothberg, employees of the Department of Environmental Protection's Oil and Chemical Spill Response Division ("OCSR"), accepted free or substantially discounted construction services from DEP contractor Earth Technology Inc. ("ETI"), a company owned and controlled by Frank Ruocco, Jr. ("Ruocco"). Our investigation into these and other related matters continues. The evidence presented on this particular aspect of the investigation, however, is sufficiently compelling to warrant this interim report.

Interim Conclusions

1. ETI provided construction services to Yorke in 1997 and to Gothberg in 1998, when Ruocco and his companies sought to do and did business with DEP, including providing emergency response spill clean-up work. At the time ETI provided these services, ETI and its affiliate, ETI II, LLC ("LLC"), engaged in activities directly regulated by DEP, and held DEP waste transporter and spill clean-up contractor permits.
2. When they accepted the construction services from ETI, Yorke and Gothberg knew or should have known that ETI and its affiliate did business with and were engaged in activities directly regulated by DEP. In fact, Yorke and Gothberg were employed by DEP's OCSR, which is directly responsible for selecting contractors to provide emergency spill clean-up services to DEP.
3. Between May, 1997 and February, 1999, Ruocco's companies received \$1,090,000 in emergency spill clean up work from DEP's OCSR.

4. In April, 1997, ETI constructed at Yorke's personal residence a large retaining wall, over 200 feet long, varying in height up to 12 feet above ground level, consisting of approximately 2,200 interlocking concrete blocks. ETI provided substantial amounts of materials, employee labor and construction equipment over a period of at least two weeks to construct this retaining wall. Yorke claimed that he paid Ruocco \$26,380 in cash for the job.

5. Yorke's claim that he paid Ruocco cash for ETI's constructing the wall cannot be verified by the available evidence.

6. The evidence strongly suggests that the value of labor, materials and equipment provided by ETI to construct Yorke's retaining wall exceeded by tens of thousands of dollars the amount Yorke claimed to have paid.

7. Testimony indicates that ETI employees may have provided \$14,000 to \$17,000 in labor which was not listed on the invoice Ruocco presented to Yorke. Testimony indicates that ETI construction equipment was used on the Yorke project for longer than the three days listed on the invoice Ruocco presented to Yorke and its value may have exceeded the amount paid by Yorke by more than \$10,000. The invoice presented to Yorke by Ruocco does not list a charge for any drainage stone, and appears to understate the amount of backfill that may have been required for the project.

8. In 1998, ETI provided site and foundation preparation services at Gothberg's personal residence, and billed Gothberg over \$49,000. The available evidence indicates that Gothberg did not pay ETI for this work, if at all, until years after ETI completed this work.

Interim Recommendations

1. We are referring this matter to the State Ethics Commission with a recommendation to consider whether Yorke and/or Gothberg violated the Code of Ethics' prohibitions against state employees accepting gifts from persons who are doing or seeking to do business with, or regulated by, the agency that employs them.

2. The General Assembly should enact legislation to prohibit any state employee from privately doing business with anyone contracting with his state agency. A state employee who has the authority to decide who receives state agency business, or has supervisory authority over a contract, should not receive goods or services from that contractor. The appearance of impropriety alone is problematic and justifies this prohibition.

3. We are presenting this information to the Acting Commissioner of the Department of Environmental Protection with a recommendation that she determine whether the evidence warrants disciplinary action against any employees. DEP has explained that its response to allegations made in 2004 that employees had improper relationships with DEP contractors has been to refer the allegations to the Office of the Chief State's Attorney, while refraining from any internal investigation or action. Whether or not this was a reasonable response when these allegations first were made public, it is no longer adequate in view of the information developed by our investigation and reported here. The standards of acceptable ethical behavior that state agencies should require from their employees must demand more than employees not commit crimes that can be prosecuted when they are discovered. State agencies should make reasonable investigation into allegations that their employees have accepted gifts worth thousands of dollars from those doing business with and regulated by the agencies, take appropriate disciplinary action where the facts warrant, and implement appropriate procedures to improve the integrity of

the state contracting process. The fact that some involved employees and supervisors have retired from state service should not deter DEP from making an appropriate investigation.

We further recommend that until the General Assembly enacts the recommended legislation, the Commissioner take all appropriate steps necessary to order all employees and supervisors in the Oil and Chemical Spill Response Division not to obtain goods, services or merchandise from contractors doing business with OCSR, including in their private affairs. Such a rule would help to eliminate the appearance of impropriety that can arise when a contractor performs work at the personal residence of an employee, and avoid allegations about whether the contractor charged a fair price or made the employee pay in a timely manner.

4. We are presenting the information included in this interim report to state and federal prosecutors with a recommendation that they review this information and consider it as they deem appropriate and relevant to their ongoing investigations.

5. We are presenting this information to the Internal Revenue Service and the Commissioner of the Department of Revenue Services to consider as they deem appropriate and relevant to matters within their jurisdictions.

INTERIM REPORT

The Whistleblower Statute, Conn. Gen. Stat. § 4-61dd, directs the Auditors of Public Accounts and the Attorney General to investigate certain information involving “. . . corruption, unethical practices, violation of state laws or regulations, mismanagement . . . occurring in any state department or agency. . .”

The Code of Ethics, Conn. Gen. Stat. § 1-84(m)(1) and (2), provides that, “no public official or state employee shall knowingly accept . . . any gift . . . from any person the official or employee knows or has reason to know: (1) is doing business with or seeking to do business with the department or agency in which the official or employee is employed or (2) is engaged in activities which are directly regulated by such department or agency. No person shall knowingly give, directly or indirectly, any gift or gifts in violation of this provision.” The Code of Ethics and implementing regulations, Conn. Gen. Stat. § 1-79 (e) and Regulations of Conn. State Agencies Sec. 1-92-54 (c), further provide that a public official or state employee has accepted a gift where the employee directly and personally receives something of value, and does not pay consideration of equal or greater value in return within 30 days of receiving it.

This interim report presents evidence produced by our whistleblower investigation following a report from the Auditors of Public Accounts concerning whether Yorke or Gothberg received gifts from a DEP contractor in violation of the Code of Ethics.

This office’s investigation of these and other related matters is continuing. Some relevant witnesses, through their attorneys, have referenced ongoing criminal investigations in declining at this time to make full compliance with our document subpoenas and to be interviewed by our investigators.

Nonetheless, we have assembled a substantial amount of evidence, including testimony under oath from a number of witnesses. We are issuing this interim report at this time because the evidence we have gathered to date should be made available to other agencies.

Interim Findings

- 1. When ETI provided construction services to Yorke in April, 1997, Yorke knew or had reason to know that ETI and its affiliate, LLC, did business with and sought to do business with DEP, and were engaged in activities directly regulated by DEP. Yorke was employed by DEP's OCSR, which is directly responsible for selecting contractors to provide emergency spill clean-up services to DEP.**
- LLC's Bidder's Statement of Qualification for a DAS contract awarded in 2003 represented that ETI is wholly owned by its president, Ruocco. LLC is affiliated with ETI, and owned equally by A&J Environmental, LLC, and F&T, LLC. A&J Environmental, LLC's members are Anthony Richardi, John Ahern and Michele Stevens. F&T, LLC is wholly owned by Ruocco. Yorke stated he knew that Ruocco owned ETI when he agreed with Ruocco that ETI would construct his retaining wall.
- When ETI constructed Yorke's retaining wall in April, 1997, it was a state contractor on a list of companies from which DEP could select a contractor to provide environmental services, including emergency response services. Yorke stated he knew this when he agreed with Ruocco for ETI to construct his retaining wall.
- When ETI constructed Yorke's retaining wall, ETI held waste transporter and spill clean-up contractor permits issued by DEP. ETI appeared on a DEP list revised March 3, 1997 titled "Permitted Spill Clean-Up Contractors List" that was distributed to employees of OCSR.
- Yorke stated he knew in March, 1997 that ETI had been hired to perform emergency spill clean-up work.
- Yorke stated he has known Ruocco and Richardi, professionally and socially, at least a dozen years each, and has known Ahern professionally and as a close personal friend for over 25 years.
- ETI's former project manager and vice-president testified that in 1997, Ruocco began to seek DEP emergency spill clean-up work, stating that if he could secure one-third of this business it could be worth a few million dollars per year. This witness, and ETI's former general field superintendent, both testified Ruocco chose to recruit Richardi and Ahern away from their then employer who was in the spill clean-up business, because they had existing relationships with DEP, including Yorke. They testified Ruocco, Richardi and Ahern formed LLC to pursue DEP spill clean-up work. Yorke stated he knew that in

1997 or 1998, ETI had formed LLC, which became a DEP licensed spill clean-up contractor.

- DEP records show that in May, 1997, OCSRSD hired ETI to provide spill clean-up services. In July, 1997, Ruocco filed the paperwork to create LLC. From May, 8, 1997 to February 25, 1999, Ruocco's companies received \$1,090,000 in emergency spill clean-up work from OCSRSD. This work was contracted to and invoiced by ETI or LLC, and DEP made all the payments to ETI.
- The evidence shows that when ETI constructed Yorke's retaining wall in April, 1997, Yorke knew or had reason to know that ETI was doing business with or seeking to do business with DEP, and engaged in activities which were directly regulated by DEP.

2. Yorke claimed he paid Ruocco \$26,380 cash for constructing his retaining wall. This claim cannot be verified by the available evidence.

- Yorke declined to present testimony under oath, but stated to our investigators that he agreed with Ruocco that ETI would construct a retaining wall of decorative stacked blocks for a "ballpark" amount of \$15,000, and that Yorke could save an undetermined amount of money by providing some of the labor. Yorke sought no other estimates or proposals for the job at the time. A personal friend of Yorke's, and a former ETI employee who worked constructing the wall, testified that he overheard Ruocco quote Yorke \$12,000 initially, and then during construction tell Yorke costs had increased above \$12,000. Yorke stated that in mid-May, 1997, after completion, Ruocco presented him a "verbal" bill of \$26,380.00, stating the retaining wall was larger than he thought it would be. Yorke stated he had expected to receive a bill for around \$12,000, and was surprised by the amount Ruocco asked him to pay. Yorke, however, did not question this amount or seek another estimate of the reasonable cost to construct the wall. He did not ask and Ruocco did not tell Yorke how much money, if any, Yorke saved by providing some labor. Yorke stated he made three payments personally to Ruocco, each in cash: \$5,000 delivered at Yorke's house when construction commenced in April, 1997; \$13,600 delivered in a paper bag at a Shell service station in May, 1997; \$7,780 delivered in a paper bag either during lunch at "Eli's" restaurant, or at ETI's Hamden facility in July, 1997. Yorke stated he did not ask and Ruocco did not say why Ruocco wanted to be paid in cash. Yorke stated he agreed to pay Ruocco in cash because this is what Ruocco requested.
- Yorke produced a typewritten document purportedly on ETI stationary titled "Project Invoice" addressed to Yorke at his residence address in the amount of \$26,380, dated May 15, 1997. Yorke stated that upon receiving the final cash payment in July, 1997, Ruocco provided this invoice and signed his name or initials after the word "PAID," which appears to have been placed on this document with a stamp. Yorke produced a photocopy of this invoice and represented that he does not have the original. Yorke offered no other receipt for payment.

- In response to press inquiries, ETI issued a statement in January, 2004 that read, “Earth Technology performed work at the home of Ben Yorke. Earth Technology invoiced the work; charged a market price and was paid in full.” In response to our subpoena for documents, including invoices and records of payment, ETI represented that it had searched its records and could find no records at all pertaining to the retaining wall ETI constructed at Yorke’s residence. ETI did locate and produced its project file regarding work it performed for Gothberg in 1998, including a detailed invoice listing charges for labor, equipment and materials. Ruocco invoked his right not to testify to our investigation.
- A former ETI employee, who served as project manager and a vice-president, testified that he processed many customer invoices; that the format used in Yorke’s invoice was not familiar to him, and that it included certain language he did not recall ever having been included in an ETI invoice, including the use of a stamp to mark “PAID” on the invoice. He did not rule out the possibility that ETI generated Yorke’s invoice, however, explaining that Ruocco personally could have produced and delivered this invoice without his knowledge.
- Two former ETI employees testified they frequently saw how Ruocco wrote his signature and initials, and could recognize them. One, ETI’s general field superintendent in 1997, testified that he believed he would recognize Ruocco’s signature or initials, and he did not recognize the writing on this invoice to be Ruocco’s. ETI’s former project manager in 1997 testified the letter “F” on Yorke’s invoice appeared the way that Ruocco wrote that letter, but Ruocco always circled the “FR” and he could not see a circle on this invoice. He stated the photocopy of the other writing was not sufficiently clear for him to determine whether it appeared to be Ruocco’s signature.
- The format of ETI’s November, 1998 project billing invoice to Gothberg differs substantially from that of the invoice Yorke stated Ruocco provided him in May, 1997. Gothberg’s invoice includes a detailed day by day itemization of the labor, equipment and materials ETI provided, with a billing code for each category, the hourly or daily rate charged, the number of hours charged, and the total charges per day for each category. Gothberg’s invoice includes ETI’s name, its assigned invoice and project number, and federal tax ID number. This invoice is not printed on ETI letterhead. For certain materials and services purchased from vendors or subcontractors, ETI’s invoice charged Gothberg cost plus 15%, and included receipts from the vendors. By contrast, Yorke’s invoice, which ETI could not locate in its business records, has only 4 line item charges, and does not include an invoice or project number, ETI’s federal tax ID number, or vendor receipts. No charges are itemized on a daily basis, and no billing codes appear. For example, the charges for equipment to “backfill landscape wall” are for “three days,” and not itemized by type of construction equipment used, hours or days each was used, or the daily or hourly rate charged for each piece of equipment. On Yorke’s invoice, ETI charged the same amount for each of the concrete blocks provided. Documents subpoenaed from the company that supplied the blocks shows that the supplier delivered four different types of blocks to Yorke’s job site, and charged ETI a different amount for each type. In addition to the blocks, the supplier charged ETI for 5,070 fiberglass pins

and 3,600 square feet of geogrid fabric. No itemized charges for these materials appear on Yorke's invoice. Yorke's invoice does not include the 15% mark up for materials purchased from vendors that ETI included in Gothberg's invoice.

- Two of Yorke's friends testified that shortly after ETI completed the retaining wall, Yorke told them he had paid Ruocco in cash. One testified that one day he stopped by Yorke's house to find Yorke at a table with several piles of cash. Yorke explained that he needed to make a payment to Ruocco for the retaining wall and asked his friend to help him count the cash. This witness recalled counting out \$13,000 or \$14,000 in stacks of \$1,000.00 each, and Yorke then placing the cash in a brown paper bag which he placed in a safe. This witness testified he overheard Ruocco and Yorke negotiate the agreement for ETI to build the wall, that Ruocco quoted a price of "\$15,000 tops," and the more labor Yorke supplied the less would be his final cost. The other friend, a DEP employee who reported directly to Yorke, testified that shortly after the wall was completed Yorke told him he had paid Ruocco about \$27,000 in cash and commented that he had never seen that amount of money in his life. Another friend of Yorke's testified that after the wall had been completed, Yorke commented to him that he owed ETI a lot of money and was going to have to sell stock to pay ETI. Another testified that within a month after the wall had been constructed, Yorke told him he had spent about \$40,000 on the wall "soup to nuts," and that in 2004 Yorke told him he paid \$27,000 to ETI for the wall, and the rest of the \$40,000 went for landscaping and finish work.
- A close friend of Yorke's and a former ETI employee who worked on the retaining wall testified that Yorke told him in 2004 that he paid Ruocco in full, approximately \$26,000, and had cancelled checks showing payment. Yorke did not claim to this witness that he paid Ruocco in cash.
- ETI's project manager in 1997 testified that, based on statements Ruocco made around the office, he developed at that time the belief that Yorke had paid Ruocco for the job, and had no information about the amount or form of payment. This witness was aware of at least one other job where Ruocco accepted payment in the form of cash, and stated that Ruocco never refused cash.
- This former ETI project manager and vice president testified that in April, 2004, Ruocco told him Yorke paid Ruocco about \$26,000 in cash for constructing the retaining wall, and Ruocco gave half the cash to ETI's 1997 general field superintendent and kept the other half himself. The former general field superintendent denied under oath that Ruocco gave him approximately \$13,000 cash, or gave him any amount of cash identified as payment from Yorke, and testified that Ruocco never told him Yorke had paid for the retaining wall in cash. He testified he believes Ruocco told him Yorke paid, and may have mentioned the figure of \$27,000, but Ruocco never directly stated or confirmed to him that Yorke had paid for the wall. He believes that Yorke received a break on the price, but that Ruocco made Yorke pay something because ETI did not typically build walls, and this particular job was a "pain in our neck" and did not fit into the company's schedule. He also believes that Ruocco made Yorke pay something for the wall because "Frank Ruocco is the cheapest guy I know" and "he's not going to do it for nothing."

- Ruocco exercised his rights not to testify.
 - Yorke presented financial records that he claimed showed the sources of the cash he used to pay Ruocco. These included disbursements Yorke stated he and his wife received from a personal injury lawsuit in 1995 and 1996, his 1996 income tax refund, and July, 1997 withdrawals from money market and investment accounts. These records indicate only that Yorke converted checks, bank and investment accounts into cash at various times between 1995 and July, 1997 in amounts that would be sufficient to cover the payments he claimed he made to Ruocco. They do not show, however, what Yorke did with this cash or that he actually delivered the cash to Ruocco.
 - Yorke's claim that he paid \$26,380 cash to Ruocco cannot be verified by the available evidence. Yorke declined to testify under oath that he paid Ruocco \$26,380 and Ruocco provided the invoice marked "PAID." He was unable to produce the original invoice. In response to our subpoena, ETI produced no invoice, payment or any other records relating to Yorke's wall that might corroborate the authenticity of Yorke's invoice. Ruocco declined to testify. Yorke's personal financial documents do not show that he delivered any cash to Ruocco. No witness testified he observed Yorke pay any money to Ruocco.
- 3. If, as Yorke stated, his invoice is authentic and he paid Ruocco the amounts charged in this invoice, the evidence strongly suggests that the value of labor, materials and equipment provided by ETI to construct Yorke's retaining wall exceeded by tens of thousands of dollars the amounts reflected in Yorke's invoice.**
- The retaining wall is over 200 feet long and varies in height up to 12 feet above ground level. It consists of approximately 2,200 interlocking concrete blocks measuring 18 inches wide, 8 inches high and 24 inches deep. According to testimony of ETI employees who worked on the wall's construction, they used the standard approach for building a retaining wall of this size and material. They first dug a trench the length of the section of the wall being worked on, deep enough to line with drainage stone and install two layers of blocks below ground level. Each block was secured to the one below it by two fiberglass pins inserted into designated holes in each block. Two to three layers of block were then stacked one on top of the other, the length of the section of the wall then under construction. Drainage stone was then poured into the hollow sections of the blocks, and between adjoining blocks, extending to fill a volume several inches behind the block. Dirt fill material was then poured into any space remaining between the drainage stone and the existing slope of the earth. This fill was then compacted down, so that the compacted earth was level with the top of the installed blocks, and extended back to meet the existing slope of the earth. The top layer of blocks were then secured to the earth with a plastic-like geogrid fabric material that was affixed to the top layer of blocks with fiberglass pins, and extended approximately five feet behind the laid blocks and anchored into the earth with dirt fill material. Another two to three layers of blocks were then stacked up, and this process was repeated.

- According to the ETI employees' testimony, construction equipment supplied by ETI and operated exclusively by ETI employees was on site and used continuously during construction. Dirt fill material, drainage stone and the concrete blocks were delivered to the property. Equipment, including excavators, was used to dig most or the entire trench. ETI operators used their equipment to carry the concrete blocks, most of which weighed 95 lbs. each, from where they had been delivered on wood pallets over to the wall, and laid them on the ground near the existing top row of blocks, a distance that varied from 25 to 75 feet. Workers would then slide or lift the blocks onto the existing top row and secure them to fiberglass pins. The ETI operators used the construction equipment to transport and dump behind the wall and then compact the drainage stone and dirt fill material. Some blocks may have been carried short distances by hand when equipment could not maneuver or reach certain places on the "S" or "serpentine" curved portion of the wall.
- The project invoice Yorke stated Ruocco provided him when he made the final payment includes four itemized charges: (1) ETI provided 2,130 interlocking segmental retaining wall blocks at a unit cost of \$8.00 for a total of \$17,040; (2) ETI excavated a 130 linear foot trench for bottom course at \$18.00 per foot for a total of \$2,340; (3) ETI delivered five loads of backfill material at \$350.00 per load for a total of \$1,750; (4) ETI provided equipment to backfill the retaining wall for 3 days at \$1,750 per day for a total of \$5,250. The total invoice amount is \$26,380.
- ETI's former project manager testified that based on his interactions with Ruocco during and after ETI constructed Yorke's wall, he understood Ruocco expected Yorke to pay for materials only and ETI would supply labor and equipment at no charge. He testified that Ruocco was displeased because Yorke expanded the scope of the project at various times, including adding an "S" or "serpentine" curved portion of the wall that he required to be constructed around certain trees without removing the trees. The former project manager testified that from Ruocco's statements and reactions, he believed that building Yorke's wall was costing Ruocco tens of thousands more than he expected. He overheard Ruocco state he was not happy he had charged Yorke only \$26,000, and if he had done the job for someone else he would have charged more. He testified that Ruocco had a file in which Ruocco kept track of costs for Yorke's wall. As the demands for use of Ruocco's employees and equipment continued to increase, Ruocco complained about this, according to testimony, because Ruocco was not going to bill Yorke except for the cost of materials. ETI's general field superintendent in 1997 testified that Yorke changed the plans during construction, and added new sections to the wall. A former ETI employee who worked on the wall, and a close personal friend of Yorke's, testified that Ruocco bragged about what a great job ETI had done on such an extensive undertaking for Yorke.
- Documents subpoenaed from the supplier of the retaining wall blocks show that it charged ETI \$17,634.00 for 2,291 blocks, fiberglass pins and geogrid delivered to Yorke's residence. Yorke's invoice shows ETI charged him \$17,040 for 2,130 retaining wall blocks. Yorke's invoice includes charges of \$7,590 for ETI providing construction equipment and \$1,750 for backfill material. Yorke's invoice did not include the standard

15% markup for materials included in Gothberg's invoice, and included no charge for labor to construct the retaining wall, except to the extent that the charge for construction equipment may have included a charge for the equipment operator's time, which cannot be determined from the invoice.

Value of Labor

- Yorke stated that much of the labor to construct the retaining wall was supplied by Yorke and his friends. He provided a list of people he stated worked on the wall. This list included 10 people Yorke listed as "friends," 6 listed as "ETI", and three principals of ETI and LLC, Ruocco, Richardi and Ahern, who he listed under both headings. We interviewed under oath 8 of the 10 friends and the 6 ETI employees. We interviewed under oath additional ETI employees not included in Yorke's list who worked on the wall. The three ETI and LLC principals invoked their rights not to testify at this time. In recalling events that occurred 7 years ago, the witnesses' recollections of how much time it took to build the wall, who was present during construction and what they did varied and, in some cases, were inconsistent. Some witnesses appeared to have difficulty separating what they remembered from what they had read or heard in recent news reports. For purposes of reporting the labor, equipment and materials ETI contributed to constructing the wall, we have included only what witnesses testified they did themselves, and not what they recalled others having done.
- Three of Yorke's friends testified they contributed no meaningful labor to the project. One testified that his sole contribution to the effort was to cook food for the others. One testified the one day he was at Yorke's house, he spent the entire time inside watching television. Another, noting that the blocks weighed about 100 lbs. each, testified he was not much into physical labor.
- According to the manufacturer and supplier, 73% of the concrete blocks delivered to Yorke's job site weighed 95 lbs. each, and 23% weighed 85 lbs. each. Five of Yorke's friends testified that for hours at a time, they carried these concrete blocks by hand from the pallets to the wall, and then stacked them on the wall. Four of these friends recalled spending between 8 and 18 hours each working on the wall, while one claimed he spent 50 hours. Some claimed to have carried these concrete blocks two at a time, one in each hand over distances of 25 – 50 feet and then lifted them into place. One, believing that the blocks weighed 135 lbs. each, stated that carrying two at a time was "easier." One recalled that dirt used to backfill the wall was moved with wheelbarrows, rakes and shovels. ETI employees testified that construction professionals would never build a wall of this size using manual labor to carry the blocks from the pallets to the wall, or to transport and dump drainage stone and fill material behind the wall. Some stated this was physically impossible to do, and those who said it might be possible stated it would take several months, or longer, to build the wall this way. They questioned why anyone would do this when they had construction equipment available on site to perform these tasks. Most stated that it was not possible to carry these concrete blocks by hand from the pallets to the wall for hours a day and they would not attempt to do this, although one

ETI worker estimated 25% were carried short distances by hand in places where the construction equipment could not maneuver close to the wall.

- Yorke stated it took the combination of ETI workers and his friends 9 – 10 consecutive days to construct the wall. Only one of Yorke’s 5 friends who worked on the wall testified he worked on more than three days. One friend stated that he worked 12 hours over 2 days; another friend, 8 hours on 1 day; another, 8-10 hours over 2 days; and another friend, 18 hours over 3 days. A fifth friend claimed to have worked for approximately 50 hours over 6 days.
- ETI’s general field superintendent in 1997, whose responsibilities included assigning work crews and equipment to various job sites, testified the job took about three weeks to complete and workers were pulled off Yorke’s job as needed elsewhere during this time. ETI’s project manager in 1997 testified that ETI’s employees and equipment were on site 2-3 weeks. An ETI employee, and close personal friend of Yorke, recalled working at the job site each day during construction and testified he worked 10-12 hours per day, six days per week for two weeks.
- Current and former ETI employees testified that they recalled having worked on the wall, that they were assigned to the job site by ETI management, and that they recorded their hours at Yorke’s house on ETI time sheets identifying these hours to Yorke’s project, and were paid by ETI for these hours. ETI’s project manager in 1997 testified that ETI charged customers an hourly rate for labor, and the rate charged private customers often was more than the rates charged under state government contracts. ETI’s general field superintendent in 1997 testified that ETI generally billed a private customer labor on an hourly rate, using the approved rates for ETI’s state contracts. Applying ETI’s contract rates charged the state in 1997 to the amount of time the current and former ETI employees testified they worked on Yorke’s wall yields an amount for labor of \$14,000 to \$17,000. This figure is certainly conservative and probably underestimates the actual labor charges, because it includes only hours employees testified they worked. Several of these employees recalled other employees having worked on the project whose names they did not recall, or who we did not interview. Most of these employees recalled 4 to 8 ETI employees having been present most of the time during construction, although one employee who still works for Ruocco recalled fewer ETI workers at the job site.
- Yorke’s invoice does not include any charges for this labor provided by ETI. The evidence supports a finding that regardless of the amount of labor Yorke and his friends supplied, ETI employees supplied thousands of dollars worth of labor to construct the retaining wall that are not included in Yorke’s invoice.

Value of Construction Equipment

- Yorke’s invoice charged for only 3 days use of equipment “to backfill landscape wall” at \$1750 per day. ETI employees who worked on the project testified that various pieces of construction equipment were on site and used throughout construction, including two

excavators, a “Bobcat” or bucket loader, a box truck, soil compactor and tri-axle dump trucks. ETI employees identified photographs of the work site taken during construction showing two ETI excavators present on site, and testified that these two pieces of equipment were on site and used during the entire period of construction. One ETI employee recalled delivering the equipment to Yorke’s property before construction began, and testified that at least a large loader and an excavator were on site 2-3 weeks before he removed them. One current ETI employee testified he operated equipment, including a Yutani excavator, a rubber tired mini-excavator, and a plate compactor during the 1.5 to 2 weeks he was at the work site. ETI’s former general field supervisor testified that ETI construction equipment was present on site at least 15 days. Testimony established that all construction equipment was provided by ETI, and operated solely by ETI employees. Yorke stated it took 9 – 10 days to complete the job. The evidence shows that ETI provided construction equipment far in excess of the 3 days to “backfill landscape wall” billed on Yorke’s invoice.

- Because Yorke’s invoice is not itemized, it is impossible to tell what equipment was included in the \$1750 per day charge to “backfill landscape wall.” Testimony established that ETI provided equipment to transport blocks from the pallets to the wall, and to backfill the wall, every day during construction and that the same process was followed day after day to construct the wall. The evidence suggests that the same or similar equipment was used to backfill the wall every day. Even assuming the \$1750 per day charges are reasonable, Yorke’s invoice does not include thousands of dollars of construction equipment costs provided by ETI. For example, if, as Yorke stated, the wall was under construction a total of 9 – 10 days, then the 6 - 7 days not charged in the invoice amount to \$10,500 - \$12,250. Testimony shows that ETI provided construction equipment for an even greater number of days.

Value of Drainage Stone

- Testimony established that ¾” drainage stone was used to fill the openings in the laid blocks, and to backfill several inches behind the blocks. Yorke stated that 4 – 6 dump truck loads of drainage stone were used. Yorke’s architect assumed 5 dump truck loads were used, although his estimated cost does not appear to include delivery charges. The manufacturer’s recommendations suggest that several more loads were required. Based on the cost of purchasing the stone from a vendor, and applying ETI’s state contract rates for tri-axle dump trucks and drivers’ labor rates for delivery, this drainage stone would have cost several thousand dollars. Yorke’s invoice includes no charge for any drainage stone.

Value of Backfill Material

- An ETI employee testified that he helped deliver to Yorke’s worksite at least 8 to 10 truck loads of dirt fill. The invoice charges for only 5 loads of backfill material at \$350 per load, or \$950 to \$1750 less than what ETI apparently provided.

Yorke's "Estimates" Do Not Establish the Value of ETI's Labor, Materials and Equipment

- Yorke presented three “estimates” he claimed show the reasonable cost of constructing his retaining wall. These were produced in 2004, after allegations involving Yorke and ETI were made public. Two of these “estimates” were typewritten and unsigned, one for \$29,988 and the other for \$27,200. These estimates do not include sufficient detail to allow us to determine the basis for these estimates or whether they are bona fide. Clearly, they do not attempt to establish the value of what ETI actually contributed to the wall’s construction.
- The third “estimate” is a report produced by a Massachusetts architect that relies upon a host of invalid assumptions in concluding the fair market value of ETI’s contribution to the wall was \$26,208.82. The architect relied on Yorke’s statements that the entire project took 9-10 days, with Yorke and several of his friends “working on the project 5 weekdays, a weekend, and some or most of the next 4 days.” One of Yorke’s friends testified he worked only 1 day, two said they worked only 2 days, and one worked only 3 days. Another testified he worked on 6 days. One ETI employee testified that during the 5 days he worked on the wall Yorke did no work and only brought lunch to the workers. Another ETI employee testified that Yorke frequently was present during construction, but did not work himself. The architect concluded that ETI employees contributed 96 hours of labor, in addition to excavating the trench, and that ETI and Yorke and his friends expended a combined total of 243 hours of labor to construct the wall. Testimony under oath established that the ETI employees we interviewed alone contributed over 325 hours of labor. The architect valued a laborer’s work at \$10 per hour and concluded the fair value of ETI’s supplied labor was \$26.60 per hour. In fact, the ETI employees testified their hourly pay at that time was \$16-18 per hour, and ETI’s 1997 state labor contract rate was not less than \$34 per hour for any of its employees who worked on the wall. Former ETI management testified that ETI billed labor at twice the hourly rate paid employees, in this case \$32-36 per hour, or at the state contract rate, in this case \$34 per hour. The architect concluded that ETI provided equipment to backfill the wall a total of one day. Testimony established that ETI’s construction equipment was on site and in use every day of construction, between two and three weeks, and the wall was continually backfilled as each 2 - 3 courses of block were laid. The architect estimated Yorke’s cost to excavate the trench was \$853.70. Yorke’s invoice billed \$2,340 for this service. The architect computed the cost of a small excavator, its operator and one laborer to dig the trench for one day to be \$853; at ETI’s state contract rates the cost would have been \$1,232 per day. In computing the cost of the concrete blocks, the architect assumed that ETI received a “tier 3 discount.” The actual invoices subpoenaed from the supplier of the block include the statement “no discount allowed.” Based on Yorke’s representations, the architect concluded that no dirt backfill material was brought in off-site. A former ETI employee testified that he participated in bringing at least 8 - 10 tri-axle dump truck loads of fill to the job site.

- The evidence shows that ETI provided tens of thousands of dollars of labor, construction equipment and materials to Yorke's retaining wall for which it did not charge Yorke, even if Yorke's invoice is authentic and Yorke paid Ruocco in cash the \$26,380 amount charged in his invoice.
- 4. When ETI provided construction services to Gothberg in 1998, Gothberg knew or had reason to know that ETI and its affiliate, LLC, did business with and sought to do business with DEP, and were engaged in activities directly regulated by DEP. Gothberg was employed by DEP's OCSRSD, which is directly responsible for selecting contractors to provide emergency spill clean-up services to DEP.**
- When ETI performed construction services at Gothberg's residence in August, 1998, it was a state contractor who DEP could have selected to provide environmental services, including emergency response services.
 - ETI appeared on a DEP list revised March 3, 1997 titled "Permitted Spill Clean-Up Contractors List" that was distributed to OCSRSD employees. Yorke stated that in March, 1997, Gothberg informed Yorke that Gothberg had responded to a spill in which ETI performed emergency clean-up services.
 - ETI held waste transporter and spill clean-up contractor permits issued by DEP on January 16, 1996. In February, 1998, Ruocco signed an application to transfer ETI's permits to LLC. Ruocco listed himself as both the licensee who was transferring the license, and the transferee to whom the license would be transferred. DEP approved this transfer effective July 1, 1998.
 - DEP records show that from May 8, 1997 to February 25, 1999, Ruocco's companies received \$1,090,000 in emergency spill clean-up work from OCSRSD. This work was contracted to and invoiced by ETI or LLC, and DEP made all payments to ETI. Gothberg responded to some of these spills, including a May 8, 1997 spill and one in July, 1998, the month before ETI began work at his house.
 - The evidence shows that when ETI provided home construction services to Gothberg in 1998, Gothberg knew or had reason to know that ETI and its affiliate, LLC, did business with and sought to do business with DEP, and were engaged in activities directly regulated by DEP. Gothberg was employed by DEP's OCSRSD, which is directly responsible for selecting contractors to provide emergency spill clean-up services to DEP.
- 5. The available evidence indicates that Gothberg did not pay ETI for work performed at his residence, if at all, until years after ETI provided this work.**
- Gothberg declined to be interviewed by our investigators. Through his attorney, he represented that he had hired ETI to provide site and foundation preparation services

when he built his house in 1998. Gothberg's attorney stated that Gothberg acted as his own general contractor, and hired and paid his subcontractors, including ETI, when he built his house. His attorney further represented that Gothberg has no receipts, cancelled checks or other documents evidencing that he paid ETI, having discarded any such documents in the past. Gothberg's Certificate of Occupancy for a new single family dwelling was issued by the Town of Southington dated March 12, 1999.

- ETI's records show that on November 27, 1998, ETI entered an itemized invoice in the amount of \$49,565.95, and assigned project and Invoice Number 980175, for work performed at Gothberg's residence between August 8 and October 31, 1998.
- ETI's records include Customer Ledgers for the period January 1, 1998 to December 31, 1998, which include an entry for Customer ID Number 980175, the name "Gothberg," and a transaction date of November 27, 1998. This entry shows a "debit amount" and "balance" of \$49,565.95.
- ETI's records include Customer Ledgers for the period January 1, 1997 to January 31, 2002, which include an entry for Invoice Number 980175, the name "Erik Gothberg," and a transaction date of November 27, 1998. This entry shows a "debit amount" and "balance" of \$49,565.95.
- ETI's records include "Aged Receivables as of January 18, 2002" which includes an entry for Customer ID Number 980175, the name "Erik Gothberg," and an entry of \$49,565.95 beneath a column titled "Over 90 days."
- On February 8, 2002, ETI sent Gothberg a letter stating the "total of \$49,565.95 remains unpaid," and if ETI did not receive payment prior to March 2, 2002, "this very old account will be forwarded to our attorney."
- ETI's collection attorney sent Gothberg a demand letter in the amount of \$49,565.95 dated April 19, 2002. On April 22, 2002, this attorney wrote Gothberg informing him that ETI had instructed the attorney to retract the demand letter without prejudice to the rights of his client.
- ETI's Customer Ledgers for the period January 1, 1998 to April 30, 2003 record an entry that on April 27, 2003, Gothberg's account was credited with a payment by check in the amount of \$49,565.95 and show a "balance" that date of zero.
- ETI's attorney appears to have sent Gothberg another demand letter dated January 9, 2004, stating "we understand there have been extenuating personal circumstances which arose during the pendency of this collection matter which prevented you honoring of this obligation," [sic] and that the attorney was aware "you have taken issue directly with our client as to the nature and extent of the underlying work performed by Earth Technology, Inc. and the related and associated costs of same billed to you..." The attorney offered to compromise the debt by accepting \$21,000.

- ETI's records produced in response to our subpoena include a photocopy of a news article titled "Local Man Honored at State Capitol" with a handwritten notation "Meriden Record Sat. 03-02-02." This article reported that Gothberg was one of 22 DEP employees honored by Governor Rowland at a ceremony at the State Capitol.
- Ruocco and Gothberg declined to be interviewed by our investigators. As a result, we have been unable to determine whether Ruocco demanded that Gothberg pay his 1998 bill before ETI's February 8, 2002 demand letter, why ETI withdrew its attorney's demand letter two days after the attorney sent it in April, 2002, and why ETI's project file on Gothberg includes a March, 2002 news article reporting that Gothberg had been honored by the Governor. We have been unable to determine why ETI's collection attorney apparently wrote to Gothberg in January, 2004, offering to accept payment of \$21,000 on a \$49,565 claim that ETI's records show was paid in full the previous April. Nonetheless, the available evidence indicates that if Gothberg paid ETI for work performed in 1998, he did not do so until several years after ETI completed the work.

Recommendations

1. We are referring this matter to the State Ethics Commission with a recommendation to consider whether Yorke and/or Gothberg violated the Code of Ethics' prohibitions against state employees accepting gifts from persons who are doing or seeking to do business with, or regulated by, the agency that employs them.

2. The General Assembly should enact legislation to prohibit any state employee from privately doing business with anyone contracting with his state agency. A state employee who has the authority to decide who receives state agency business, or has supervisory authority over a contract, should not receive goods or services from that contractor. The appearance of impropriety alone is problematic and justifies this prohibition.

3. We are presenting this information to the Acting Commissioner of the Department of Environmental Protection with a recommendation that she determine whether the evidence warrants disciplinary action against any employees. DEP has explained that its response to allegations made in 2004 that employees had improper relationships with DEP contractors has been to refer the allegations to the Office of the Chief State's Attorney, while refraining from

any internal investigation or action. Whether or not this was a reasonable response when these allegations first were made public, it is no longer adequate in view of the information developed by our investigation and reported here. The standards of acceptable ethical behavior that state agencies should require from their employees must demand more than employees not commit crimes that can be prosecuted when they are discovered. State agencies should make reasonable investigation into allegations that their employees have accepted gifts worth thousands of dollars from those doing business with and regulated by the agencies, take appropriate disciplinary action where the facts warrant, and implement appropriate procedures to improve the integrity of the state contracting process. The fact that some involved employees and supervisors have retired from state service should not deter DEP from making an appropriate investigation. We further recommend that until the General Assembly enacts the recommended legislation, the Acting Commissioner take all appropriate steps necessary to order all employees and supervisors in the Oil and Chemical Spill Response Division not to obtain goods, services or merchandise from contractors doing business with OCSR, including in their private affairs. Such a rule would help to eliminate the appearance of impropriety that can arise when a contractor performs work at the personal residence of an employee, and avoid allegations about whether the contractor charged a fair price or made the employee pay in a timely manner.

4. We are presenting the information included in this interim report to state and federal prosecutors with a recommendation that they review this information and consider it as they deem appropriate and relevant to their ongoing investigations.

5. We are presenting this information to the Internal Revenue Service and the Commissioner of the Department of Revenue Services to consider as they deem appropriate and relevant to matters within their jurisdictions.