

**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

**IN THE MATTER OF
BENNETT ENVIRONMENTAL INC., JOHN BENNETT,
RICHARD STERN, ROBERT GRIFFITHS, and
ALLAN BULCKAERT**

**SETTLEMENT AGREEMENT BETWEEN STAFF OF THE
ONTARIO SECURITIES COMMISSION and
BENNETT ENVIRONMENTAL INC.**

I. INTRODUCTION

1. On June 2, 2006, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to Section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") to consider this Settlement Agreement between Staff of the Ontario Securities Commission and Bennett Environmental Inc. ("BEI").

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff agree to recommend Settlement of the proceeding against BEI in accordance with the terms and conditions set out below. BEI consents to the making of an order against it in the form attached as Schedule "A" based on the facts set out in Part III of this Settlement Agreement.

III. STATEMENT OF FACTS

A. The Respondents in this proceeding

3. Bennett Environmental Inc. (“BEI”) is a Canadian company with its head office in Oakville, Ontario. BEI is a reporting issuer in Ontario, Quebec and British Columbia. Shares of BEI trade on the TSX and the American Stock Exchange in the United States. BEI provides thermal treatment services for the remediation of contaminated soil.
4. At all relevant times, John Bennett was Chairman of the Board of BEI and was the Chief Executive Officer (“CEO”) of BEI until February 18, 2004. John Bennett was the founder of BEI and one of two members of its Disclosure Committee, which was responsible for ensuring that BEI complied with its disclosure obligations under the Ontario *Securities Act*.
5. At all relevant times, Richard Stern was the Chief Financial Officer (“CFO”) of BEI. Stern was the other member of BEI’s Disclosure Committee.
6. At all relevant times, Robert Griffiths headed BEI’s U.S. Sales division, first as Director of Sales, U.S.A. and then, as of approximately June, 2003, as Vice-President, U.S. Sales.
7. Allan Bulckaert became the President and CEO of BEI on February 18, 2004.

B. The Phase III Contract is announced

8. On June 2, 2003, BEI announced that it had been awarded a contract to treat contaminated soil from Phase III of the Federal Creosote Superfund Site in New Jersey (the “Phase III Contract”). The Phase III Contract was with Sevenson Environmental Services Inc. (“Sevenson”) acting as sub-contractor for the United States Army Corps of Engineers (“the Corps”). In its news release, BEI described the Phase III Contract as being for an “estimated 300,000 tons of soil” and “valued at \$200 million Cdn., the largest in the Company’s history”.

9. In the June 2, 2003 news release, BEI emphasized the significance of the Phase III Contract, stating that “[s]hipments from three different locations on the site should start within the next few days, and continue until the completion of Phase III which is anticipated by the end of 2005”. In the news release, John Bennett is quoted as stating that:

[t]his, together with previously announced contracts, ensures that we will have a very successful year in 2003 and beyond in terms of meeting our financial and operational goals....[w]inning this contract...provides a good base load of materials for our proposed new soil treatment facility in Belledune, New Brunswick which is scheduled to be completed by the end of this year.”

10. BEI did not disclose that the Phase III Contract was an “Indefinite Delivery/Indefinite Quantity” (“ID/IQ”) contract, which means that the actual amount of soil to be treated under the contract was uncertain, as was the timing of any shipment of soil.

C. BEI is advised that there has been a protest of the Phase III Contract

11. Just a few days after issuing its news release of June 2, 2003, BEI was advised that a competitor of BEI had protested the awarding of the Phase III Contract to BEI. At the request of Severson, BEI agreed to a 30 day extension of the previous Phase II Contract to treat material that would have been treated under the Phase III Contract. At this point, BEI was sufficiently concerned about the status of the Phase III Contract that it had legal counsel review the matter.
12. BEI did not disclose the fact that a competitor had protested the awarding of the Phase III Contract or the fact that Severson had requested an extension to the previous Phase II Contract.
13. BEI released its Q2 2003 results by news release dated July 24, 2003 and held a conference call for investors on July 25, 2003. In that news release and during that conference call, BEI continued to report the full 300,000 tons of soil to be treated under the Phase III Contract as part of its contract “backlog”, which represents contracts that have been signed but have not yet been fully performed.

D. BEI is advised by Severson that ACE has withdrawn its consent to the Phase III Contract

14. On August 5, 2003, Severson advised BEI that the Request for Proposal (“RFP”) that had given rise to the Phase III Contract was going to be amended such that multiple ID/IQ contracts were being awarded with a maximum shared quantity of 100,000 tons of soil and a minimum quantity of 1000 tons.
15. BEI sent a letter to Severson protesting the amendment to the RFP, noting that Severson was essentially re-bidding the work that had been awarded to BEI under the Phase III Contract. In response, Severson wrote to BEI on August 6, 2003 and advised that,

[t]he amended RFP was issued as a result of the **government’s withdrawal of its consent to the Bennett contract** with direction to Severson to obtain clarifications concerning, and to perform a re-evaluation of, the proposals received in response to the original RFP. Those clarifications and the re-evaluation resulted in the government’s direction to Severson to proceed with the amended RFP. (emphasis added)

16. Moreover, Severson advised BEI that BEI’s characterization of the Phase III Contract (as set out in the June 2, 2003 news release) was incorrect, stating that,

[a]s you well know, the contract guarantees a minimum quantity of 500 tons. A prudent person could not value such contract as having the value you ascribe to it using the maximum quantity. That contract also contains a termination for convenience clause.

17. On August 14, 2003, Severson advised BEI that instead of amending the original RFP, it would proceed by way of an Invitation for Bids (“IFB”) which would be delivered on or about August 27, 2003.
18. Throughout this time, BEI did not disclose that the Corps had withdrawn its consent to the Phase III Contract. It did not disclose that Severson had told BEI that the Phase III Contract was going to be re-bid and that the maximum shared quantity of soil to be treated was going to be reduced to 100,000 tons.

19. In addition, BEI continued to include the full 300,000 tons of soil under the Phase III Contract (minus any nominal amounts that had been shipped) as part of its disclosed contract backlog, including in a news release dated August 8, 2003.

E. The Corps confirms to BEI that it has withdrawn its consent to the Phase III Contract

20. Although it had not yet received the new IFB, BEI was concerned that it appeared to be replacing the Phase III Contract. BEI's legal counsel wrote to the Corps on August 25, 2003 and objected on the grounds that the IFB was "essentially a re-solicitation to submit bids for a contract that Bennett has already been awarded".

21. By letter dated September 4, 2003, the Corps advised BEI of the following facts:

- It had withdrawn its consent to the Phase III Contract;
- The Phase III Contract only guaranteed a minimum of 500 tons of soil;
- The Corps had issued a limited consent for up to 10,000 tons of soil, which would exceed the minimum guarantee under the Phase III Contract; and
- As a result of design revisions to the site in New Jersey, the maximum amount of soil to be treated had been reduced from 300,000 tons of soil to 100,000 tons of soil. The new IFB would be awarding up to three sub-contracts to treat a minimum of 1000 tons of soil and a total maximum of 100,000 tons of soil.

22. BEI and the Corps exchanged correspondence throughout the month of September, 2003, in which the Corps reiterated the above facts to BEI.

23. Throughout this time, BEI still did not disclose that the Corps had withdrawn its consent to the Phase III Contract. It did not disclose that the Phase III Contract

was going to be re-bid and that the maximum shared quantity of soil to be treated had been reduced to 100,000 tons.

24. In addition, BEI continued to include the full 300,000 tons of soil under the Phase III Contract (minus any nominal amounts that had been shipped) as part of its disclosed contract backlog, including in a conference call for investors on October 23, 2003.

F. BEI is notified that it is the low bidder on the 100,000 ton contract

25. Although there were several delays, on or about October 23, 2003, Severson sent BEI an IFB for the treatment of a minimum of 1000 and maximum of 100,000 tons of soil.
26. After some minor amendments to the IFB, BEI submitted a bid in response to it and on December 11, 2003, Severson advised BEI that it was the low bidder in response to the IFB (the “Second Contract”).
27. BEI did not disclose that it was the low bidder for the Second Contract.
28. Moreover, BEI continued to include the full 300,000 tons of soil that was originally going to be treated under the Phase III Contract as part of its disclosed contract backlog, including in a news release dated November 6, 2003.

G. BEI is awarded the Second Contract

29. On March 30, 2004, Severson advised BEI that it had been awarded the Second Contract and Severson would be sending a purchase order to BEI pursuant to that Second Contract.
30. By May 2004, Bulckaert had not been informed about the dispute regarding the Phase III Contract and had not been provided with copies of any of the above-noted correspondence. On May 13, 2004, prior to executing the purchase order under the Second Contract, Bulckaert wrote to Severson requesting clarification of the status of the Phase III Contract and its relationship to the Second Contract

because the two contracts appeared to be for the same scope of work. BEI did not receive a response to its enquiries.

31. On June 3, 2004 BEI signed the purchase order pursuant to the Second Contract, although BEI maintained it was not waiving its rights under the Phase III Contract.
32. BEI did not disclose that it had been awarded the Second Contract or that it had executed the purchase order under it.
33. On June 9, 2004, Bulckaert first received a copy of with the September 4 correspondence from the Corps. That same day BEI, through its legal counsel, wrote directly to the Corps once again requesting clarification of the status of the Phase III Contract and its relationship to the Second Contract.
34. By letter to BEI dated July 15, 2004, which Bulckaert reviewed on July 16, 2004, the Corps reiterated its position which it had previously detailed in its letter of September 4, 2003.
35. Throughout this time, BEI continued to include the full 300,000 tons of soil to be treated under the Phase III Contract (minus any nominal amounts that had been shipped) as part of its disclosed contract backlog, including in news releases dated March 29, 2004 and April 29, 2004, its Management Discussion and Analysis as at April 28, 2004, its Annual Report dated May 13, 2004 and its Annual Information Form filed in May, 2004.

H. BEI discloses the Phase III Contract dispute

36. By news release dated July 22, 2004, BEI finally announced the existence of the Phase III Contract dispute. BEI revealed that a competitor had protested the awarding of the Phase III Contract to BEI and that the Corps had withdrawn its consent to the Phase III Contract. BEI stated that it had been attempting to ascertain the status of the Phase III Contract since August, 2003. BEI disclosed

that it had only treated 7,000 tons of soil under the Phase III Contract and that any future shipments under it were “highly unlikely”.

37. In that news release, BEI also disclosed the Second Contract to treat some of the soil that was originally going to be treated under the Phase III Contract. BEI acknowledged that the Second Contract only guaranteed a minimum shipment of 1000 tons.

38. After the news release of July 22, 2004, the price of BEI shares fell dramatically – falling almost 50% within the next 10 days.

I. The above information about the Phase III Contract was material and should have been disclosed forthwith

39. The existence of the dispute over the Phase III Contract, including whether there would be any further shipments under it and whether it was being replaced by the much smaller Second Contract, was a material change in the affairs of BEI within the meaning of the *Securities Act*. BEI failed to disclose that material change forthwith, contrary to s. 75 of the *Securities Act* and contrary to the public interest.

J. BEI’s inclusion of the Phase III Contract in its disclosed contract backlog was misleading or untrue

40. BEI’s confirmation of the volume to be treated under the Phase III Contract in its public disclosure, including in its press releases of July 24, 2003, August 8, 2003, November 6, 2003, March 29, 2004 and April 29, 2004 and in its Management Discussion and Analysis as at April 28, 2004, its Annual Report dated May 13, 2004 and its Annual Information Form filed in May, 2004 was misleading or untrue contrary to s. 122(1)(b) of the *Securities Act* and/or contrary to the public interest.

41. BEI’s inclusion of the volume to be treated under the Phase III Contract as part of its disclosed contract backlog was also misleading or untrue and contrary to the public interest.

IV. MITIGATING FACTS AND CHANGES IMPLEMENTED BY BEI

A. History of Contractual Relationship with Severson and the Corps

42. BEI has a long-standing relationship with both the Corps and Severson, having served successfully as a key subcontractor on the Federal Creosite Superfund Site since 2001. Prior to the Phase III Contract, Severson and BEI entered into two fixed-price contracts for the management of hazardous waste contaminated soils from the Federal Creosite Superfund Site; under each, BEI treated considerably more soil than originally envisioned by each contract.

B. Cooperation of BEI

43. When Bulckaert learned on July 16, 2004 that the Corps had not changed its position, he brought the matter to the attention of the Board of Directors of BEI, which mandated a disclosure and appointed a Special Committee of Independent Directors to investigate the issues arising out of the Phase III Contract. The Special Committee, through its counsel, conducted a comprehensive inquiry and shared with Staff the evidence it uncovered during that inquiry.

44. Staff notes that BEI, its employees and advisors have been exceptionally cooperative with Staff at every stage and have assisted Staff in gathering the facts that gave rise to this proceeding. BEI's assistance included waiving privilege with respect to communications with its outside counsel concerning certain issues arising out of the Phase III Contract during the material period, which allowed Staff to more fully explore the facts that gave rise to this proceeding. BEI's cooperation has assisted Staff in its review and analysis of the facts and has been instrumental in the expeditious resolution of this matter.

C. Settlement of United States Class Actions

45. On August 31, 2005, BEI settled consolidated securities class actions that had been filed in the United States in 2004 naming as defendants BEI and certain of its present and former officers and directors. Those lawsuits arose out of the operative facts concerning the Phase III Contract and the July 22, 2004 press

release. Following notice to class members, on February 21, 2006, the Court entered an order and final judgment approving the settlement. The settlement order has not been appealed and is now final. Under the settlement, all claims asserted against BEI and the other named defendants were dismissed with prejudice, and an aggregate cash payment was made to class members of US\$9.75 million, which was paid primarily by BEI's insurance carriers with a contribution of US\$750,000 from BEI.

D. Compliance and Operational Initiatives by BEI and the Board

46. As previously noted, on February 18, 2004, Bulckaert became the President and CEO of BEI. When he arrived at the BEI, the company had not had a Toronto-based CEO for approximately eighteen months. After evaluating BEI's operations, Bulckaert developed his near- and long-term strategic and operational priorities. More specifically, he concluded that it was necessary to restructure BEI's finance and sales operations. To that end, in July 2004, he hired as BEI's CFO Andrew Boulanger. Boulanger assumed his duties in September 2004. BEI also hired Wendy Ford as Corporate Controller in January 2005. Under her supervision, the Company has transferred all files from the Vancouver office to a new financial control system in the Oakville office. It has also transferred audit responsibilities from KPMG LLP's Vancouver office to its Toronto office.
47. In October 2004, BEI named Michael McSweeney Vice President – Environmental Affairs and Government Relations.
48. BEI has consolidated all existing sales staff under one experienced professional, and has hired three new U.S. salespersons who have a total of 60 years experience.
49. In addition, the Company retained outside corporate counsel in Toronto, Fogler Rubinoff LLP, to advise BEI on an ongoing basis.
50. In March 2005, after careful consideration by the Board, BEI adopted a new Code of Business Conduct and Ethics that applies to all directors, officers, executives

and employees, and includes an affirmative duty to report violations of the Code of Business Conduct and Ethics to either the CEO or, if the employee wishes to report anonymously, to the Chairman of the Corporate Governance Committee or Audit Committee of the Board. BEI also has adopted a Code of Business Conduct and Ethics Applicable to United States Government Procurement Activities that focuses on transactions with agencies of the United States government. In addition, BEI has promulgated a document retention policy that applies to all personnel.

51. BEI has implemented new financial planning procedures and a new disclosure policy that provides clear examples of potentially material events; each employee is required to acknowledge receipt of the disclosure policy via signature. Furthermore, BEI has expanded the Disclosure Committee to include the CEO, CFO and the Vice President – Environmental Affairs and Government Relations. Among other things, under the new policy financial disclosures are reviewed by BEI’s external auditors, outside corporate counsel, the Audit Committee of the Board and the full Board.

V. ADDITIONAL CONSIDERATIONS

52. In 2002, BEI was advised that Staff were investigating its disclosure practices, including the fact that it had made selective disclosure to an analyst of its contract backlog and concerns relating to shipments under certain material contracts. BEI was aware of the importance of full and accurate disclosure of the status of its material contracts.

VI. TERMS OF SETTLEMENT

53. BEI agrees to settle this matter on the basis of an Order:
 1. approving this settlement;
 2. requiring that within 30 days of this Settlement Agreement being approved, BEI will initiate a review of its disclosure and reporting

practices and procedures by an independent third party, acceptable to both BEI and Staff. The review will be at BEI's expense; and

3. requiring that BEI will implement any recommendations made by the independent third party referred to above that are approved by Staff, within a reasonable period of time as approved by Staff.

VII. STAFF COMMITMENT

54. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against BEI or any of its directors or officers in relation to the facts set out in Part III of this Settlement Agreement.
55. If this settlement is approved by the Commission and at any subsequent time, BEI fails to honour the terms of settlement contained in paragraph 53 of this Settlement Agreement, Staff reserve the right to bring proceedings against BEI based on the facts set out in part III of this Settlement Agreement, and based on the breach of this Settlement Agreement.

VIII. APPROVAL OF SETTLEMENT

56. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for June 20, 2006 at 9:30 a.m. or such other date as may be agreed to by Staff and BEI (the "Settlement Hearing"). Representatives of BEI will attend at the Settlement Hearing.
57. Counsel for Staff or BEI may refer to any part, or all, of this Agreement at the Settlement Hearing. Staff and BEI agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.
58. If this Settlement is approved by the Commission, BEI agrees to waive its rights to a full hearing, judicial review or appeal of the matter under the Act.
59. Staff and BEI agree that if this settlement is approved by the Commission, it will not make any public statement inconsistent with this Settlement Agreement.

60. If, for any reason whatsoever, this settlement is not approved by the Commission, or any order in the form attached as Schedule "A" is not made by the Commission:

- i) This settlement Agreement and its terms, including all discussions and negotiations between Staff and BEI leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and BEI;
- ii) Staff and BEI shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by this Settlement Agreement or the settlement discussions/negotiations;
- iii) The terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of Staff and BEI or as may be required by law; and
- iv) BEI agrees that it will not, in any proceeding, refer to or rely upon this Settlement Agreement, the settlement discussions/negotiations or the process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

IX. APPROVAL OF SETTLEMENT

61. Except as permitted under paragraph 60(iii) above, this Settlement Agreement and its terms will be treated as confidential by Staff and BEI until approved by the Commission, and forever, if for any reason whatsoever this settlement is not approved by the Commission, except with the consent of Staff and BEI, or as may be required by law.

62. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

X. EXECUTION OF SETTLEMENT AGREEMENT

63. This Settlement Agreement may be signed in one or more counterparts that together shall constitute a binding agreement.
64. A facsimile copy of any signature shall be as effective as an original signature.

DATED this 15th day of June, 2006

Bennett Environmental Inc.

By: "David Williams"

Name: David Williams

Title: Chairman of the Board of Directors

DATED this 15th day of June, 2006

**STAFF OF THE ONTARIO SECURITIES
COMMISSION**

By: "Kelley McKinnon"

Name: Kelley McKinnon

Title: Acting Director of Enforcement