

**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
JOHN BENNETT**

I. INTRODUCTION

1. By Notice of Hearing dated June 2, 2006, the Ontario Securities Commission (the "Commission") proposed to hold a hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") to consider, among other things, whether it is in the public interest to make certain orders against the Respondent, John Bennett ("Bennett"), by reason of the allegations set out in the Statement of Allegations dated May 31, 2006.

II. JOINT SETTLEMENT RECOMMENDATION

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

III. STATEMENT OF FACTS

A. Acknowledgement

3. For the purposes of this settlement agreement only, Bennett agrees with the facts set out in this Part III.
4. Bennett expressly denies that this settlement agreement is or is intended to be an admission of civil liability by Bennett to any person or company and Bennett expressly denies any such admission of civil liability.

B. The Respondents in this Proceeding

5. 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.
6. At all relevant times, Bennett was Chairman of the Board of BEI and was the Chief Executive Officer ("CEO") of BEI until February 18, 2004. John Bennett is 71 years of age. He 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*.
7. At all relevant times, Richard Stern was the Chief Financial Officer ("CFO") of BEI. Stern was the other member of BEI's Disclosure Committee.
8. At all relevant times, Robert Griffiths ("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.
9. Allan Bulckaert became the President and CEO of BEI on February 18, 2004.

C. The Phase III Contract is Announced

10. 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 Severson Environmental Services Inc. (“Severson”) acting as sub-contractor for the United States Army Corps of Engineers (“the Corps”).

11. 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”.
12. 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.”

13. The Phase III Contract was an “Indefinite Delivery/Indefinite Quantity” (“ID/IQ”) contract. In an ID/IQ contract, the actual amount of soil to be treated under the contract is uncertain, as is the timing of any shipment of soil. The Purchase Order which implemented the Phase III Contract also contained a line item that read: “Variation i[n] Estimated Quantities Clause 15% +/- Applies to [Federal Acquisition Regulations (“FAR”)] 52.211.18.” The FAR 52.211.18 states that an “equitable adjustment in the contract price shall be made upon demand of either party” where “the actual quantity of the unit-priced item varies more or less than the estimated quantity.”

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

14. 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 protest commenced by its competitor that it retained legal counsel initially to investigate the complaint through a freedom of information request.

15. 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.
16. 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.

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

17. 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.
18. Griffiths, on behalf of 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)

19. Moreover, Severson advised in its letter 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.

20. On August 14, 2003, Severson advised Griffiths by email 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.
21. 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.
22. 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.

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

23. 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”.
24. By letter dated September 4, 2003, the Corps advised BEI, through its legal counsel, 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;
 - 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.

25. BEI, through its legal counsel, and the Corps exchanged correspondence throughout the month of September 2003, in which the Corps reiterated the above facts.
26. 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.
27. 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.

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

28. 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.
29. 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").
30. BEI did not disclose that it was the low bidder for the Second Contract.
31. 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.

H. BEI is Awarded the Second Contract

32. 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.
33. By May 2004, Bulckaert had not been completely informed about the dispute regarding the Phase III Contract and had not been provided with copies of any of the above-noted

correspondence. Prior to executing the purchase order under the Second Contract, Bulckaert wrote to Severson on May 13, 2004 requesting clarification of the status of the Phase III Contract and its relationship to the Second Contract.

34. BEI did not receive a response to its enquiries, but 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.
35. BEI did not disclose that it had been awarded the Second Contract or that it had executed the purchase order under it.
36. Bulckaert first received a copy of the September correspondence from the Corps on June 9, 2004.
37. On 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.
38. By letter to BEI dated July 15, 2004, the Corps reiterated its position which it had previously detailed in its letter of September 4, 2003.
39. 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.

I. BEI discloses the Phase III Contract dispute

40. By news release dated July 22, 2004, BEI 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”.

41. 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.

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

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

43. 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.

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

44. BEI's inclusion 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.

45. 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.

L. Conduct of Bennett

46. Bennett, as the Chairman of the Board and the CEO of BEI, was generally aware of the position taken by Severson on August 6, 2003, and of the issues raised in the September 4, 2003 letter at the time.

47. By failing to act on the information available to him, Bennett authorized, permitted or acquiesced in BEI's failure to disclose this material change in the affairs of BEI forthwith and thereby committed an offence pursuant to s. 122(3) of the *Securities Act* and acted contrary to the public interest.
48. By failing to act on the information available to him, Bennett authorized, permitted or acquiesced in the misleading or untrue disclosure as described in paragraphs 44 and 45 above and thereby committed an offence pursuant to s. 122(3) of the *Securities Act* and acted contrary to the public interest.

IV. MITIGATING FACTS

49. Bennett has agreed, at the request of Staff, to appear as a witness for Staff in the proceedings commenced before the Commission.
50. When the issues raised in this proceeding were brought to Bennett's attention by Staff, he agreed to travel to Toronto from his home in Vancouver at his own expense in order to answer Staff's questions.
51. At a Board meeting held on Wednesday July 21, 2004, the Board, including Bennett, then the Chairman, mandated disclosure (which was released on July 22, 2004) and appointed a Special Committee of Independent Directors to investigate the issues arising out of the Phase III Contract. The Special Committee was given the mandate to conduct a comprehensive inquiry into the Phase III Contract.

V. POSITION OF BENNETT

52. In late 2002, Bennett was preparing to resign from management of BEI. However, due to unforeseen circumstances, Bennett was asked to stay on as CEO for a further two years in order to give BEI sufficient opportunity to find a suitable replacement. At this time Bennett was 67 years of age.
53. Bennett agreed to remain as the company's CEO, but he elected not to move to Oakville, where the company had moved most of its personnel. During the period of 2001 to 2004, Bennett continued to work out of BEI's Vancouver office. As a result of this physical

separation, the day to day management of BEI was performed by other members of senior management.

54. Bennett spent much of his working time during the summer and fall of 2003 managing the permit approval process for the company's proposed plant in Belledune, New Brunswick, spending long periods of time in New Brunswick. Bennett first received a copy of the September correspondence from the Corps in June 2004.
55. None of the events that occurred during the summer and fall of 2003 shook Bennett's confidence in the validity of the Phase III Contract. Based on his interpretation of the Phase III Contract, his past history with the Federal Creosote site and the Corps, his knowledge of the Federal Creosote site, BEI's position in the marketplace and assurances by senior staff of Severson, Bennett honestly but mistakenly believed that the Phase III Contract continued to be an enforceable contract for 300,000 tons of soil and that BEI would end up performing the work that was called for at the contract price.
56. In October 2003, Mr. Bennett agreed to receive his upcoming annual bonus in the form of stock options instead of cash. He also refused to monetize portions of his BEI stockholdings during this period against the advice of his financial advisors.

VI. TERMS OF SETTLEMENT

57. Bennett agrees to the following terms of settlement:
 - (a) Bennett shall be prohibited from acting as a director or officer of any issuer for a period of 10 years from the date of an order of the Commission approving this Settlement Agreement;
 - (b) Bennett shall be reprimanded by the Commission;
 - (c) immediately upon this Settlement Agreement being approved, Bennett shall pay to the Commission the sum of \$250,000 as an administrative penalty;
 - (d) immediately upon this Settlement Agreement being approved, Bennett shall pay to the Commission the sum of \$50,000 toward the costs of the investigation of the matters set out herein; and
 - (e) Bennett shall continue to cooperate with Staff in this matter, including acting as a witness for Staff in the proceeding it has brought before the Commission.

VII. POSITION OF STAFF

58. It is Staff's position, and the Respondent concurs, that the 10 year term of the prohibition against Bennett acting as a director or officer of any issuer is only appropriate in the context of the serious circumstances of the facts as set out in Part III on the basis of Bennett's age and the unlikelihood of Bennett returning to the capital markets in the capacity of a director or officer beyond the 10 year term.

VIII. STAFF COMMITMENT

59. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Bennett in relation to the allegations in the Statement of Allegations and the facts set out in Part III of this Settlement Agreement.
60. However, if this Settlement Agreement is approved by the Commission and at any subsequent time Bennett fails to honour the terms of settlement contained in Part VI of this Settlement Agreement, Staff reserve the right to bring proceedings against Bennett based on, but not limited to, the facts set out in Part III of this Settlement Agreement, and based on the breach of this Settlement Agreement.

IX. APPROVAL OF SETTLEMENT

61. Approval of this Settlement Agreement shall be sought at the public hearing of the Commission to be scheduled on a date as agreed to by Staff and Bennett (the "Settlement Hearing"). Bennett will attend at the Settlement Hearing.
62. Counsel for Staff or Bennett may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Bennett agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.
63. If this Settlement Agreement is approved by the Commission, Staff and Bennett agree that Bennett agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.
64. If this Settlement Agreement is approved by the Commission, Staff and Bennett agree that they will not make any public statement inconsistent with this Settlement Agreement.

65. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or an order in the form attached as Schedule "A" is not made by the Commission:
- (a) This Settlement Agreement and its terms, including all discussions and negotiations between Staff and Bennett leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Bennett;
 - (b) Staff and Bennett 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;
 - (c) 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 Bennett or as may be required by law; and
 - (d) Bennett agrees that he 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.

X. DISCLOSURE OF SETTLEMENT AGREEMENT

66. This Settlement Agreement and its terms will be treated as confidential by Staff and Bennett until approved by the Commission, and forever if for any reason whatsoever this Settlement Agreement is not approved by the Commission, except with the written consent of Staff and Bennett, or as may be required by law.
67. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission.

XI. EXECUTION OF SETTLEMENT AGREEMENT

68. This Settlement Agreement may be signed in one or more counterparts that together shall constitute a binding agreement.

69. A facsimile copy of any signature shall be as effective as an original signature.

DATED this day of October, 2006

John Bennett

Name: John Bennett

DATED this 21st day of November, 2006

**STAFF OF THE ONTARIO SECURITIES
COMMISSION**

By: **Michael Watson**

Name: Michael Watson

Title: Director of Enforcement