

**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
ROBERT GRIFFITHS**

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, Robert Griffiths, 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 Griffiths in accordance with the terms and conditions set out below. Griffiths 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 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 (“Stern”) was the Chief Financial Officer (“CFO”) of BEI. Stern was the other member of BEI’s Disclosure Committee.
6. At all relevant times, 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 Severson Environmental Services Inc. (“Severson”) 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. 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. “

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;
 - 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 BEI's 2003 correspondence with the Army Corps. 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.
31. 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.
32. BEI did not disclose that it had been awarded the Second Contract or that it had executed the purchase order under it.
33. Bulckaert first received a copy of the September correspondence from the Corps on June 9, 2004.
34. 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.
35. 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.
36. 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

37. 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”.
38. 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.
39. 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

40. 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.
41. 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 also a material fact within the meaning of the *Securities Act* that had not been generally disclosed.

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

42. 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.
43. 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.

K. Conduct of Griffiths

44. Griffiths had primary responsibility for the Phase III Contract. He was aware of the position taken by Severson on August 6, 2003, and the position taken by the Corps on September 4, 2003 and as a result, was aware of 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.
45. Griffiths 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.
46. At the material time, Griffiths was a person in a special relationship with BEI. Between September 9, 2003 and December 12, 2003, Griffiths exercised options to acquire and then sold a total of 45,600 shares of BEI while in possession of some or all of the above material facts and material changes that had not been generally disclosed, contrary to s. 76 of the *Securities Act*.

IV. COOPERATION OF GRIFFITHS

47. When the issues raised in this proceeding were brought to Griffiths' attention by Staff, he agreed to travel to Toronto from his home in Vancouver at his own expense in order to attend for a voluntary interview by Staff.
48. Prior to attending to be interviewed, Griffiths acknowledged his conduct and expressed his willingness to settle the issues raised by Staff.
49. Griffiths has agreed that he will continue to cooperate with Staff in this matter, including acting as a witness for Staff in the proceedings it has brought before the Ontario Securities Commission.
50. Griffiths has also cooperated with the United States Securities and Exchange Commission's ("SEC") parallel investigation of BEI. Contemporaneously with this settlement agreement, Griffiths is entering into an agreement with the SEC, pursuant to which he will pay the SEC \$50,000 in full and final settlement of the SEC's potential claims against Griffiths arising out of BEI's disclosure of the Phase III Contract.

V. MITIGATING FACTS

51. Griffiths was never a member of BEI's Disclosure Committee or board of directors, and was not responsible for BEI's investor relations or regulatory compliance.
52. Griffiths was not responsible for drafting Bennett's press releases and was only occasionally consulted by BEI's Disclosure Committee regarding press releases in connection with the Phase III Contract.
53. Griffiths has no background or training in law or securities. Griffiths was hired by BEI as an intern in March 1999, following completion of his university studies in environmental science. Prior to his involvement with BEI, Griffiths had never been an employee, officer or director of a public company.

54. Griffiths was required to seek the approval of BEI's CFO, Stern, prior to the exercise of the options described above. Griffiths did so, and Stern raised no issue with respect to Griffiths' proposed sales of BEI shares.
55. Griffiths' options were provided to him as part of his remuneration package. It was Griffiths' practice to exercise the options and sell the shares at the earliest available opportunity, in part in order to have funds available to pay the applicable income taxes.
56. Griffiths' loss avoided on the sale of his BEI shares was approximately \$728,685. However, his actual after tax profit on the sale of those shares was substantially less, approximately \$377,825.
57. Griffiths supports three dependents and his current personal financial circumstances are such that he cannot reasonably afford to pay more than the \$150,000 he has agreed to pay to the Ontario Securities Commission as a term of this Settlement Agreement, and the \$50,000 he has agreed to pay the SEC to resolve the SEC's investigation. Griffiths has provided Staff with written particulars of those financial circumstances and Staff is satisfied that the payment of \$150,000 is appropriate. Staff and Griffiths agree that, if required, the written particulars of his financial circumstances will be made available to the panel considering this Settlement Agreement, with the request that those particulars remain confidential, even if this Settlement Agreement is approved.

VI. POSITION OF GRIFFITHS

58. Griffiths' experience prior to the award of the Phase III Contract suggested that BEI would treat the full 300,000 tons of contaminated soil referred to in the June 2, 2003 BEI news release. In the two previous phases of work at the Federal Creosote Superfund Site, BEI had treated 101,000 tons, which was well over the maximum quantities specified in the subcontracts BEI had entered into for that work. Based on Griffiths' experience, he held an honest but mistaken belief that

the Phase III Contract issues were not serious because they would be resolved in favour of BEI.

59. As noted above, BEI's CFO was aware of Griffiths' sale of the shares in issue, and Griffiths understood that the exercise of options and the sale of his shares were in accordance with BEI policies.

VII. TERMS OF SETTLEMENT

60. Griffiths agrees to the following terms of settlement:
- (a) Griffiths will continue to cooperate with Staff in this matter, including acting as a witness for Staff in the proceeding it has brought before the Ontario Securities Commission;
 - (b) Griffiths shall be prohibited from trading in securities for a period of 15 years from the date of an order of the Commission approving this Settlement Agreement, with the exception that Griffiths may trade for the account of his personal registered retirement savings plan (as defined in the *Income Tax Act* (Canada) commencing 2 years from the date of an order of the Commission approving this Settlement Agreement;
 - (c) Griffiths shall be prohibited from acting as a director or officer of any issuer for a period of 15 years from the date of an order of the Commission approving this Settlement Agreement;
 - (d) immediately upon this Settlement Agreement being approved, Griffiths will pay to the Ontario Securities Commission the sum of \$150,000 as an administrative penalty.

VIII. STAFF COMMITMENT

61. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Griffiths in relation to the facts set out in Part III of this Settlement Agreement.

62. If this settlement is approved by the Commission and at any subsequent time, Griffiths fails to honour the terms of settlement contained in Part VII of this Settlement Agreement, Staff reserve the right to bring proceedings against Griffiths based on the facts set out in Part III of this Settlement Agreement, and based on the breach of this Settlement Agreement.

IX. APPROVAL OF SETTLEMENT

63. Approval of the settlement set out in 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 Griffiths (the "Settlement Hearing"). Griffiths will attend at the Settlement Hearing.
64. Counsel for Staff or Griffiths may refer to any part, or all, of this Agreement at the Settlement Hearing. Staff and Griffiths agree that, subject to paragraph 57, above, this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.
65. If this Settlement is approved by the Commission, Griffiths agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.
66. Staff and Griffiths agree that if this settlement is approved by the Commission, he will not make any public statement inconsistent with this Settlement Agreement.
67. 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:
- (a) This settlement Agreement and its terms, including all discussions and negotiations between Staff and Griffiths leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Griffiths;

- (b) Staff and Griffiths 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 Griffiths or as may be required by law; and
- (d) Griffiths 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.

X. DISCLOSURE OF AGREEMENT

- 68. Except as permitted under paragraph 68(c) above, this Settlement Agreement and its terms will be treated as confidential by Staff and Griffiths 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 Griffiths, or as may be required by law.
- 69. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission, with the exception that any details with respect to Griffiths' financial circumstances shall not be disclosed and shall be sealed.

XI. EXECUTION OF SETTLEMENT AGREEMENT

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

DATED this 12th day of October, 2006

Robert Griffiths

Name: Robert Griffiths

DATED this 21st day of November, 2006

**STAFF OF THE ONTARIO SECURITIES
COMMISSION**

By: **Michael Watson**

Name: Michael Watson

Title: Director of Enforcement