

**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
RICHARD STERN**

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, Richard Stern (“Stern”), 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 Stern in accordance with the terms and conditions of this agreement (the “Settlement Agreement”). Stern consents to the making of an order against him in the form attached as Schedule “A” hereto on the basis of the facts and terms respectively set out in Parts III and V hereto.

III. AGREED FACTS

A. Acknowledgement

3. For the purposes of this Settlement Agreement, Stern agrees with the facts set out in this Part III.

B. The Respondents in the Commission Proceeding

4. 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 are listed and posted for trading on the TSX and formerly on the American Stock Exchange in the United States. BEI provides thermal treatment services for the remediation of contaminated soil.
5. At all relevant times, Stern was the Chief Financial Officer (“CFO”) of BEI and a member of BEI’s Disclosure Committee which was responsible for ensuring that BEI complied with its disclosure obligations under the Act.
6. At all relevant times until February 18, 2004, John Bennett (“Bennett”) was Chairman of the Board of BEI and the Chief Executive Officer (“CEO”) of BEI. He was the founder of BEI and the second member of its Disclosure Committee.
7. At all relevant times, Robert Griffiths (“Griffiths”) headed BEI’s U.S. Sales division, first as Director of Sales, U.S.A., and subsequently, as of approximately June 2003, as Vice-President, U.S. Sales.
8. Allan Bulckaert became the President and CEO of BEI on February 18, 2004 and became the third member of the Disclosure Committee.

C. The Phase III Contract is Announced

9. 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”).

10. 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”. BEI further 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”.

11. 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.”

12. 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.
13. From the outset, Bennett and Griffiths were the officers within BEI who had primary responsibility for the Phase III Contract. To the extent possible, Bennett and Griffiths maintained the Phase III Contract as their responsibility, to the exclusion of others.

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 Clean Harbors Environmental Services, Inc. (“Clean Harbors”), a competitor of BEI whose bid for the contract had been disqualified, had protested its disqualification from the bidding process as a means of dislodging the Phase III Contract with BEI. At the request of Sevenson, 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.
15. BEI did not disclose the fact that a competitor had protested its disqualification from the bidding process or the fact that Sevenson had requested an extension to the previous Phase II Contract.

16. Stern was aware of the protest by Clean Harbors but was not aware of the granting of the 30 day extension. Stern did not regard the protest by Clean Harbours as a material development since unsuccessful bidders frequently protest contractual disqualification in BEI's industry. In addition, the decision to extend the Phase II contract was not disclosed to Mr. Stern.
17. At this point, however, BEI was sufficiently concerned about the grounds for Clean Harbors' protest and Sevenson's willingness to entertain it that it retained legal counsel to get more details under freedom of information legislation.
18. Stern understood that BEI had retained legal counsel to investigate whether Sevenson was being pressured by the Corps to try to re-open the bids on the contract so that a US-based company could participate.

E. BEI is advised that the Corps has withdrawn its consent to the Phase III Contract

19. On August 5, 2003, Sevenson 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.
20. Griffiths, on behalf of BEI, sent a letter to Sevenson objecting to the amendment to the RFP, noting that Sevenson was essentially re-bidding the work that had been awarded to BEI under the Phase III Contract. In response, Sevenson 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 Sevenson 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 Sevenson to proceed with the amended RFP. (emphasis added)

21. Moreover, Sevenson 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.

22. On August 14, 2003, Sevenson advised BEI that instead of amending the original RFP, it would proceed by way of an Invitation for Bids (“IFB”). Stern was generally aware of Sevenson’s delivery and withdrawal of an amended RFP as well as its stated intention to try to rebid the contract through the delivery of an IFB.

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 Sevenson 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. In a letter dated September 4, 2003, addressed to BEI, copied to Bennett and Griffiths, the Corps advised 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 and the Corps exchanged correspondence throughout the month of September 2003, in which the Corps reiterated the facts set out in its letter dated September 4, 2003.
26. For most of the relevant period, Bennett and/or Griffiths, along with BEI’s counsel, were in regular contact with one another, the corporation and with Sevenson. Neither Bennett nor Griffiths discussed with Stern the import of correspondence received from Sevenson, the Corps or BEI’s lawyers.

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

27. Although there were several delays, on or about October 28, 2003, Sevenson sent BEI an IFB for the treatment of a minimum of 1000 and maximum of 100,000 tons of soil.
28. Stern was apprised of this development by an employee of BEI. Upon receiving this information, Stern sought to determine whether the IFB was in place of the Phase III Contract or in addition to it. To this end, on October 30, 2003, Stern participated in a conference call with the project manager of Sevenson (the “Project Manager”) regarding the nature of the IFB and its impact on the Phase III Contract.
29. In response to his enquiries, the Project Manager indicated in the conference call that any new contract arising out of the IFB would be for additional work beyond the work under the Phase III Contract; that the Phase III Contract was still valid; and that the new contract would be a multiple award contract which was the Corps way of permitting BEI’s competitor, Clean Harbors, to participate in the Federal Creosote Project, while simultaneously locking in BEI’s treatment capacity in the event the Corps needed it.
30. Stern relied on the representations received by the Project Manager, who was BEI’s primary contact for the project.
31. After some minor amendments to the IFB by Sevenson, BEI submitted a bid in response to it on December 5, 2003. On December 11, 2003, Sevenson advised BEI that it was the low bidder in response to the IFB (the “Second Contract”).

H. BEI is Awarded the Second Contract

32. On February 18, 2004, Bulckaert replaced Bennett as CEO of BEI. From that point forward, Stern reported to Bulckaert.
33. On March 30, 2004, Sevenson advised BEI that it had been awarded the Second Contract and Sevenson would be sending a purchase order to BEI pursuant to that Second Contract. The purchase order was received by BEI on May 6, 2004.

34. By May 2004, Bulckaert had not been informed about the dispute regarding he Phase III Contract and had not been provided with copies of BEI's 2003 correspondence with the Corps.
35. The purchase order received from Sevenson on May 6, 2004 was vague as to the description of the quantity and location of the site of the soil to be shipped. From the purchase order, it was unclear whether the Second Contract was in replacement of or incremental to the Phase III Contract. This called into question the assurances that Stern had received from the Project Manager on October 30, 2003. In discussion with Bulckaert regarding these uncertainties, Stern recommended that Bulckaert write to Sevenson to obtain clarification prior to executing the purchase order.
36. On May 13, 2004, Bulckaert wrote to Sevenson requesting clarification of the status of the Phase III Contract and its relationship to the Second Contract.
37. By June 2, 2004, BEI had not received a response to its enquiries. Notwithstanding that Stern was aware that there was an uncertainty about whether the Second Contract was in replacement of or incremental to the Phase III Contract and Bulckaert had not received a response to his enquiries, Stern sold 30,000 shares of BEI between June 2 – 7, 2004. The sales resulted in a loss avoided of approximately \$325,079. Stern reported the sales on SEDI.
38. 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.
39. BEI did not disclose that it had been awarded the Second Contract or that it had executed the purchase order under it.
40. Bulckaert first received a copy of the Corps' September 4, 2003 correspondence on June 9, 2004.
41. 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.

42. 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.
43. Between August 2003 and July 2004, 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) in its public disclosure documents as part of its contract backlog.

I. BEI discloses the Phase III Contract dispute

44. 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 award of the Phase III Contract 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 treated 7,000 tons of soil under the Phase III Contract and that any future shipments under it were “highly unlikely”.
45. 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.
46. After the news release of July 22, 2004 coupled with another news release on July 22, 2004 announcing negative results for the second quarter of 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

47. The existence of the dispute over the Phase III Contract was a material change in the affairs of BEI within the meaning of the Act. BEI failed to disclose that material change forthwith, contrary to s. 75 of the 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

48. BEI's inclusion of the volume to be treated under the Phase III Contract in its public disclosure as part of its disclosed contract backlog was misleading or untrue contrary to the public interest.

IV. THE RESPONDENT'S POSITION

49. Throughout the relevant period, Stern was occasionally updated regarding the Phase III Contract. However, Stern was not included in the vast majority of discussions on the issue and Stern was advised that the matter was being addressed by Bennett and Griffiths, the two officers within BEI who had primary responsibility for the Phase III Contract. When Stern inquired about the status of the Phase III Contract, Bennett and Griffiths repeatedly advised Stern that the Phase III Contract was secure, that its scope was 300,000 tons and that any efforts by BEI's competitor to dislodge the contract were without merit.
50. The secure status of the contract was re-affirmed by the Project Manager at Sevenson who represented to Stern that the IFB was for an incremental contract in response to the protests put in by Clean Harbors against their disqualification from the Phase III Contract. The soil to be treated under the IFB was for an undetermined quantity of a minimum 1000 tons, from an undetermined area, to be received over an undetermined timeframe extending to December 2005 and could be shipped to any one or several potentially successful bidders at Sevensons' discretion. Stern also relied on the Project Manager's representation that this incremental contract should put an end to Clean Harbors protest and potential rebid of the earlier 300,000 ton Phase III Contract.
51. Based on the assurances by those within BEI who had primary responsibility for the Phase III Contract and by the Project Manager at Sevenson, as well as BEI's past history with the Federal Creosote site and the Corps, its unique technology, capacity to process soil and its permits, Stern mistakenly believed that BEI, and no other party, would inevitably end up performing all of the work that was called for at the FCC site by the end of 2005.
52. When Stern was made aware of specific material correspondence between BEI, the Corps and Sevenson on June 9, 2004 by Mr. Bulckaert, Stern immediately ceased trading of his shares.

V. CONDUCT CONTRARY TO THE PUBLIC INTEREST

53. Notwithstanding the previous assurances Stern had received from others in BEI more closely involved with the issues surrounding the Phase III Contract, Stern was aware in May 2004 that BEI had been awarded the Second Contract and that there was an uncertainty about whether the Second Contract was in replacement of or in addition to the Phase III Contract.
54. As an officer of BEI and as a member of its Disclosure Committee, Stern acknowledges that from at least May 2004 he ought to have made further enquiries to make a proper assessment of materiality as it related to BEI's obligation to disclose a material change in the affairs of BEI in accordance with section 75 of the Act and to ensure that BEI's public disclosure documents were not misleading or untrue contrary to section 122 of the Act. By failing to make such enquiries to ensure BEI's compliance with the Act, Stern acted in a manner contrary to the public interest.
55. With respect to his trading, Stern acknowledges that Bulckaert had not received a response to his enquiries by June 2004 and that he ought to have made further enquiries to determine the significance of the Phase III Contract issues before trading in June 2004. Stern's failure to exercise proper due diligence and to make the appropriate enquiries to ensure compliance with the Act was contrary to the public interest.

VI. TERMS OF SETTLEMENT

56. Stern agrees to the following terms of settlement:

- (a) Stern shall be prohibited from acting as a director or officer of any issuer for a period of 5 years from the date of an order of the Commission approving this Settlement Agreement;
- (b) immediately upon this Settlement Agreement being approved, Stern shall pay to the Commission the sum of \$490,000 as an administrative penalty; and
- (c) immediately upon this Settlement Agreement being approved, Stern shall pay to the Commission the sum of \$60,000 toward the costs of the investigation of the matters set out herein.

VII. STAFF COMMITMENT

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

VIII. APPROVAL OF SETTLEMENT

59. 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 Stern (the “Settlement Hearing”). Stern will attend at the Settlement Hearing.
60. Counsel for Staff or Stern may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Stern agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.
61. If this Settlement Agreement is approved by the Commission, Stern agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.
62. If this Settlement Agreement is approved by the Commission, Staff and Stern agree that they will not make any public statement inconsistent with this Settlement Agreement.
63. 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 Stern leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Stern;
 - (b) Staff and Stern 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 Stern or as may be required by law; and
- (d) Stern 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.

IX. DISCLOSURE OF SETTLEMENT AGREEMENT

- 64. This Settlement Agreement and its terms will be treated as confidential by Staff and Stern 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 Stern, or as may be required by law.
- 65. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission.

X. EXECUTION OF SETTLEMENT AGREEMENT

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

DATED this 4th day of April, 2008

“Richard Stern”

Name: Richard Stern

DATED this 4th day of April, 2008

**STAFF OF THE ONTARIO SECURITIES
COMMISSION**

By: *“Michael Watson”*

Name: Michael Watson

Title: Director of Enforcement

Schedule “A”

**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 BETWEEN STAFF OF THE
ONTARIO SECURITIES COMMISSION and
RICHARD STERN**

**O R D E R
(Section 127)**

WHEREAS on June 2, 2006 the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing (the “Notice of Hearing”) pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the “Act”), in respect of Richard Stern (“Stern”);

AND WHEREAS Stern entered into a settlement agreement with Staff of the Commission, dated April 4, 2008 (the “Settlement Agreement”), in which the parties have proposed a settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from the counsel for Stern and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

1. the Settlement Agreement is hereby approved;
2. Stern shall be prohibited from acting as a director or officer of any issuer for a period of 5 years from the date of an order of the Commission approving this Settlement Agreement;
3. Stern shall immediately pay to the Commission the sum of \$490,000 as an administrative penalty designated for the allocation to or benefit of third parties in accordance with subsection 3.4(2) of the Act; and
4. Stern shall immediately pay to the Commission the sum of \$60,000 toward the costs of the investigation of the matters set out herein.

DATED at Toronto this day of April, 2008.
