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

- and –

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

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SETTLEMENT HEARING RE: JOHN BENNETT

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Hearing:	November 29, 2006	
Panel:	Paul M. Moore, Q.C., Chair Robert L. Shirriff, Q.C., Commissioner David L. Knight, Commissioner	
Appearances:	Pamela Foy Scott Pilkey	On behalf of Staff of the Commission
	Nigel Campbell	On behalf of John Bennett

ORAL RULING AND REASONS

The following text has been prepared for purposes of publication in the Ontario Securities Commission Bulletin and is based on excerpts of the transcript of the hearing. The excerpts have been edited and supplemented and the text has been approved by the chair of the panel for the purpose of providing a public record of the decision.

Chair:

[1] The panel has considered the settlement agreement between staff of the Ontario Securities Commission and John Bennett. We have listened to submissions of counsel for staff and for Mr. Bennett. We have decided that the settlement agreement should be approved as being in the public interest.

[2] This is the third settlement arising out of the matter. I refer to two previous settlements, approved at hearings held on June 20, 2006. They are reported in the Ontario Securities Commission bulletin at 2006-29-OSC-B-5725 and -5727. One was an agreement between staff of the Commission and Bennett Environmental Inc. The other was between staff of the

Commission and Allan Bulckaert. The reasons given in those settlement hearings are relevant to our approval of this settlement agreement.

[3] I'm not going to go into all of the facts in the present settlement agreement because the facts are set out in the settlement agreement. It will be an exhibit in the bulletin.

[4] Briefly, the matter involved a contract entered into by Bennett Environmental, where all of the facts relating to that contract were not clearly disclosed. There were some subsequent disclosures of a dispute concerning the contract that caused the market price of the company's shares to drop almost 50 per cent within ten days after the disclosure.

[5] At all relevant times, Mr. Bennett was chair of the board of the company and chief executive officer until February 18, 2004.

[6] He is 71 years of age. He was the founder of the company and one of the two members of its disclosure committee which was responsible for the company's disclosure obligations.

[7] As chairman of the board and chief executive officer of the company, he was generally aware of the contract dispute that was material to this matter.

[8] It was Mr. Bennett's position that none of the events that occurred at the material time shook his confidence in the validity of the contract, and he mistakenly believed that the contract dispute would be resolved in favour of the company.

[9] But for our purposes, it's important that he does admit that the existence of the dispute over the contract constituted a material change within the meaning of the Act, and that the company failed to disclose forthwith the material change, contrary to section 75 of the Act and contrary to the public interest.

[10] Mr. Bennett acknowledges that by failing to act on the information available to him, he, in effect, authorized, permitted, or acquiesced in the company's failure to disclose the material change forthwith and thereby committed an offence, contract to section 122(3) of the Act, and acted contrary to the public interest.

[11] He also admits that the company's continued reporting of certain matters in relation to the contract was misleading or untrue, pursuant to section 122(1)(b) of the Act, and contrary to the public interest.

[12] He acknowledges that by failing to act on the information available to him, he authorized, permitted, or acquiesced in the misleading or untrue disclosure regarding the contract, and thereby committed an offence, pursuant to section 122(3) of the Act, and acted contrary to the public interest.

[13] There are mitigating factors. These are set out in Part 4 of the settlement agreement.

[14] By way of settlement, Mr. Bennett has agreed that he will be prohibited from acting as a director or officer of any issuer for a period of ten years, that he shall be reprimanded for his conduct, and that he will voluntarily pay to the Commission a significant administrative penalty in the amount of $250,000, plus $50,000 towards the cost of the investigation of the matters surrounding this issue.

[15] Staff submitted, and Mr. Bennett concurs, that the ten-year prohibition against Mr. Bennett is appropriate on the basis of his age, and the unlikelihood of Mr. Bennett returning to the capital markets in the capacity of a director or officer beyond the ten-year term. In effect, this is equivalent to a lifetime prohibition and, under all the circumstances, is proportionately appropriate.

[16] The role of a Commission panel reviewing a settlement agreement is not to substitute the sanctions it would impose in a contested hearing for what is proposed in the settlement agreement, but rather to make sure the agreed sanctions are within acceptable parameters.

[17] Our jurisdiction is not to punish. The Supreme Court of Canada in the *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission* ([2001] 2 S.C.R. 132) made it quite clear that our jurisdiction is to prevent future harm to the public by removing, restricting, or sanctioning people who trade in the capital markets and registrants who abuse the market by acting contrary to the public interest.

[18] We have to be proportionate. The deterrent value of any decision is that persons in a like situation understand the consequences to them of any violation of the Act.

[19] We have considered the submissions of staff and of counsel for Mr. Bennett with reference to these matters, and we have come to the following conclusions.

[20] First, the failure to disclose material information in a timely way is a serious matter.

[21] Mr. Bennett was CEO and chairman of the board and a member of the disclosure committee. Ultimate responsibility for disclosure rested with him. He was aware of the material facts, notwithstanding an honest but misguided belief in the ultimate effect the dispute with the contract would have. So although he may have held an honest but mistaken belief that issues would be resolved in favour of the company, by virtue of his admissions, he does recognize the seriousness of his misconduct.

[22] Taking all these facts into account, we agree that the proposed sanctions are within the parameters of acceptability.

[23] Now, Mr. Bennett, part of the order is that you be reprimanded, so if you would please stand.

[24] By your acknowledgments, you understand the seriousness of what has gone on, and by your agreeing to the settlement provisions, including the payment of the funds, you understand that what you did was wrong, and you are hereby reprimanded.

Approved by the chair of the panel on November 29, 2006.

“Paul M. Moore”

PAUL M. MOORE