

**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**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission make the following allegations:

I. THE RESPONDENTS

1. 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.
2. 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*.

3. At all relevant times, Richard Stern was the Chief Financial Officer (“CFO”) of BEI. Stern was the other member of BEI’s Disclosure Committee.
4. 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.
5. Allan Bulckaert became the President and CEO of BEI on February 18, 2004.

II. FACTS

A. The Phase III Contract is announced

6. 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”.
7. 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.”
8. 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.

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

9. 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.
10. 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.
11. 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 (minus any nominal amounts that had been shipped) as part of its contract “backlog”, which represents contracts that have been signed but have not yet been fully performed.

C. BEI is advised by Severson that the Corps has withdrawn its consent to the Phase III Contract

12. 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.
13. 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)

14. 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.

15. 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.
16. 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.
17. 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.

D. The Corps confirms to BEI that it has withdrawn its consent to the Phase III Contract

18. 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".
19. 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.
20. BEI and the Corps exchanged correspondence throughout the month of September, 2003, in which the Corps reiterated the above facts to BEI.
21. 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.
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 conference call for investors on October 23, 2006.
- E. BEI is notified that it is the low bidder on the 100,000 ton contract**
23. 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.

24. 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").
25. BEI did not disclose that it was the low bidder for the Second Contract.
26. Moreover, BEI continued to include the full 300,000 tons of soil that was originally going 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 a news release dated November 6, 2003.

F. BEI is awarded the Second Contract

27. 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.
28. 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. 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 because it appeared to be for the same scope of work.
29. 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.
30. BEI did not disclose that it had been awarded the Second Contract or that it had executed the purchase order under it.
31. Bulckaert first received a copy of the September 4 correspondence from the Corps on June 9, 2004.

32. 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.
33. 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.
34. 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.

G. BEI discloses the Phase III Contract dispute

35. 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”.
36. 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.
37. After the news release of July 22, 2004, the price of BEI shares fell dramatically – falling almost 50% within the next 10 days.

III. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

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

38. 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.

39. Each of John Bennett, Stern and Griffiths authorized, permitted or acquiesced in BEI's failure to disclose the above material change forthwith, thereby committing an offence pursuant to s. 122(3) of the *Securities Act* and acting contrary to the public interest.

40. By May 13, 2004, Bulckaert was aware that there were concerns about whether the Second Contract was intended to replace the Phase III Contract, although he was not aware of the position taken by the Corps on September 4, 2003 until June 9, 2004. He received confirmation that the Corps was maintaining its position on July 15, 2004. From that date, Bulckaert authorized, permitted or acquiesced in BEI's continuing failure to disclose the material change forthwith and thereby committed an offence pursuant to s. 122(3) of the *Securities Act* and acted contrary to the public interest.

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

41. 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.

42. 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.
43. Each of John Bennett, Stern and Griffiths authorized, permitted or acquiesced in the above misleading or untrue disclosure by BEI, thereby committing an offence pursuant to s. 122(3) of the *Securities Act* and acting contrary to the public interest.

C. Insiders of BEI traded while in possession of material undisclosed information

44. 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.
45. At the material time, Stern was a person in a special relationship with BEI. Between August 28, 2003 and June 7, 2004, Stern sold a total of 72,650 shares of BEI in his own accounts and 8500 shares in accounts in his wife's name, for a total of 81,150 shares, all of which were sold while Stern was 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* resulting in a loss avoided of approximately \$1,208,795.00.
46. At the material time, Griffiths was a person in a special relationship with BEI. Between September 9, 2003 and December 12, 2003, Griffiths 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* resulting in a loss avoided of approximately \$728,685.00

47. Griffiths also failed to report several of the above trades to the Ontario Securities Commission, contrary to s. 107(2) of the *Securities Act*.
48. At the material time, Bulckaert was a person in a special relationship with BEI. Between June 3, 2004 and June 7, 2004, Bulckaert sold a total of 5900 shares of BEI while in possession of some or all of the above material facts that had not been generally disclosed, contrary to s. 76 of the *Securities Act* resulting in a loss avoided of approximately \$64,165.00.

D. John Bennett provided misleading evidence to Staff

49. In the course of Staff's investigation of this matter, John Bennett made statements to Staff that were misleading or untrue by claiming that he did not have full knowledge of the Phase III Contract dispute, including claiming that he had not received the September 4 letter from the Corps and had not been made aware of its contents or the issues it raised regarding the Phase III Contract. In misleading Staff in this manner, John Bennett committed an offence contrary to s. 122(1) of the *Securities Act* and acted contrary to the public interest.
50. Such further and other allegations as Staff may advise and the Ontario Securities Commission may permit.

DATED at Toronto this 31 day of May, 2006.