UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re BENNETT ENVIRONMENTAL INC., SECURITIES LITIGATION	No. 04-CV-05852-LTS Judge Laura Taylor Swain Jury Trial Demanded

CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

Lead Plaintiffs, Metropolitan Capital Advisors, L.P. ("Metropolitan Capital Advisors") and Metropolitan Capital Partners III, L.P. ("Metropolitan Capital Partners") (collectively, "Metropolitan Capital"), on behalf of themselves and all others similarly situated, by and through their undersigned attorneys, allege the following upon knowledge, with respect to their own acts, and upon facts obtained through an investigation conducted by their counsel.

I. NATURE OF THE ACTION

1. Defendants in this action perpetrated what can only be described as a simple fraud. In press releases, conference calls with industry analysts and other public statements, Defendants stated that Bennett Environmental, Inc. ("Bennett" or the "Company") had been awarded a contract from the U.S. Army Corps of Engineers (the "Army Corps") to remediate 300,000 tons of contaminated soil from the Federal Creosote Superfund Site in New Jersey (the "Creosote Contract" or the "Contract"). This was the largest contract in the Company's history, and was necessary to justify the expansion of the Company's soil processing facilities. Unfortunately, it was not true. In fact, this was not a contract to treat 300,000 tons of soil, but, rather, to treat an indefinite quantity of soil, and only guaranteed that would Bennett treat 500 tons.

2. Moreover, less than a month after Bennett publicly announced the award of the Creosote Contract, the U.S. Army Corps of Engineers (the "Army Corps"), which oversees the clean-up efforts at the Federal Creosote Site and whose consent was required for Bennett to be awarded the Contract, ***withdrew its consent*** to the awarding of the Contract. Defendants never disclosed that the Creosote Contract had been withdrawn, or that new proposals were being sought to select the contractor to treat contaminated soil from the Site. Instead, Defendants continued to flaunt Bennett's Creosote Contract, and the 300,000 tons of soil it would supposedly treat, purportedly for (CAD) $200 million.

3. Bennett is a Canadian environmental services company that, among other things, treats contaminated soil. Soil treatment is the Company's lifeblood, and its revenues are based largely on the amount of soil it transports and treats. Consequently, Bennett's operational and financial health (and future revenues) can be gauged by the volume of soil it has contracted to treat, a metric referred to in the industry as the Company's "soil backlog." During the Class Period (June 2, 2003 to July 22, 2004, inclusive), Bennett and its senior officers hyped the importance of the Creosote Contract by repeatedly reporting a soil backlog that included 300,000 tons of soil and (CAD) $200 million in revenue attributable to that Contract. During the Class Period, Bennett's reported soil backlog traceable to the Creosote Contract represented approximately 75% of the Company's total soil backlog.

4. In addition to touting the size and importance of the Creosote Contract, Defendants also represented to investors that the award of that Contract and the Company's resultant large soil backlog would enable Bennett's primary soil treatment facility, at Saint Ambroise, Quebec, to operate at high capacity, and warranted the construction of a new treatment facility at Belledune, New Brunswick. The representation that the Company could operate the Saint Ambroise facility at a high capacity was significant because, due to the high fixed costs associated with the operation of Bennett's soil treatment facilities, operating capacity is an important measure of the Company's profitability.

5. Fueled by Defendants' touting of the Creosote Contract, the purported enormous soil backlog and the claimed strong overall outlook, Bennett's stock price steadily rose, reaching a high of more than $21 per share in January 2004 – an increase of more than 105% from the price at which the stock was trading at the start of the Class Period.

6. In truth, Bennett lacked sufficient soil to operate the Saint Ambroise facility profitably, and the facility was in fact shut down during a portion of the Class Period. Similarly, because it lacked sufficient quantities of contaminated soil, the Company has never operated its new Belledune facility, which was constructed during the Class Period for tens of millions of dollars.

7. The eventual revelation that the Creosote Contract had been withdrawn shortly after Bennett announced its award, and that the Contract was never for 300,000 tons of soil, devastated the Company's stock price, which lost over 70% of its value from a Class Period-high of U.S. $21.85 per share, and wiped out hundreds of millions of dollars of shareholder equity.

8. As described herein, Lead Plaintiffs conducted an extensive investigation into the facts underlying this Action, including the awarding and withdrawal of the Creosote Contract and the solicitation for new proposals to treat contaminated soil at the Federal Creosote Site. This investigation included the review of documents obtained from the Army Corps detailing the original solicitation for bids, Bennett's proposal in response thereto, the withdrawal of the Contract and the re-solicitation for new bids. Those documents, identified below, make clear that the Creosote Contract was for the treatment of an ***indefinite quantity*** of contaminated soil, with a guarantee that Bennett would treat a minimum of just 500 tons of soil. The documents reviewed by Lead Plaintiffs include contemporaneous correspondence to and from the Company regarding the withdrawal of the Creosote Contract and the new solicitation for bids. The documents reviewed by Lead Plaintiffs establish that Defendants knew or recklessly disregarded the facts that the Creosote Contract was not a contract for the treatment of 300,000 tons of soil, did not have a value to the Company of (CAD) $200 million, and had in any event been withdrawn shortly after it was awarded. Defendants' misrepresentations of the facts relating to

the Creosote Contract, notwithstanding their knowledge or reckless disregard thereof, form the basis for Lead Plaintiffs' allegations, set forth more fully below.

II. JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this action under Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78aa, and 28 U.S.C. §§ 1331 and 1337. The claims alleged herein arise under Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and the rules and regulations the SEC promulgated thereunder, including Rule 10b-5, 17 C.F.R. § 240.10b-5.

10. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C. § 1391(c). Many of the acts and transactions that give rise to the violations of law alleged herein, including the dissemination to the public of materially false and misleading press releases and filings with the SEC, occurred in this District. In addition, Bennett's common stock trades on the New York-based American Stock Exchange.

11. Pursuant to the "effect test" of extraterritorial jurisdiction, this Court may properly exercise subject matter jurisdiction over the claims of (a) all investors who purchased or acquired Bennett common stock on the American Stock Exchange; (b) investors based in the United States who purchased or acquired Bennett common stock regardless of where those securities traded; and (c) investors based in the United States who purchased or acquired "units" of Bennett securities pursuant to the January 2004 private placement.

12. This Court may also properly exercise subject matter jurisdiction over the claims of foreign class members who acquired Bennett common stock on the Toronto Stock Exchange, or who purchased or acquired "units" of Bennett securities pursuant to the January 2004 private placement, under the "conduct test," which provides that a federal court has subject matter jurisdiction if (a) the Defendants' activities in the United States were more than "merely

preparatory" to a securities fraud conducted elsewhere, and (b) these activities or culpable failures to act within the United States caused the claimed losses.

13. Defendants engaged in extensive fraud-related conduct in the United States, which misrepresented the Company's financial and operational condition by, *inter alia*, (i) failing to disclose that the Company's Creosote Contract, for the treatment of contaminated soil in New Jersey, was for an indefinite quantity of soil, (ii) failing to disclose that consent for the Creosote Contract had been withdrawn by the U.S. Army Corps of Engineers, (iii) conducting earnings conference calls with Wall Street research analysts located in the United States in which Defendants made false and misleading statements, and (iv) filing false and misleading financial statements with the SEC.

14. As set forth in detail below, the fundamental fraud at issue here concerns the Company's contract to transport and treat contaminated soil from the Federal Creosote Superfund Site in New Jersey. The Company's announcement that it was awarded that contract on June 2, 2003, marks the beginning of the Class Period. Bennett issued false and misleading statements leading the investing public to believe that its work on that New Jersey site would provide it with 300,000 tons of contaminated soil to transport from New Jersey and treat at its facilities, for which it would received (CAD) $200 million. The Company's contract to transport and treat soil from the Federal Creosote Site in New Jersey under the Creosote Contract represented approximately 75% of its reported soil backlog during the Class Period. This meant that 75% of the Company's soil backlog was traceable to a contract for work on a Superfund site in the United States, overseen by Sevenson, a domestic prime contractor, acting on behalf of the U.S. Army Corps of Engineers. The (CAD) $200 million Bennett claimed it would receive from the Creosote Contract represented funds payable by the United States government.

15. Moreover, the Company's common stock trades on the American Stock Exchange, and as of November 30, 2004, at least 40% of the shares of Bennett common stock were owned by holders of record located in the United States.

16. Finally, a significant portion of Defendants' false and misleading statements were initially made in the United States, and are contained in Bennett's SEC filings. Bennett's press releases and SEC filings were broadly disseminated within the United States through the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone and electronic communications, and the facilities of national securities exchanges. Bennett also conducted investor conferences and conference calls with financial analysts that took place, in large measure, in the United States.

17. The foregoing facts clearly demonstrate that Bennett's conduct in the United States was not "merely preparatory" to Defendants' scheme to defraud. Instead, Defendants' United States conduct directly caused the staggering losses suffered by investors.

18. In connection with the wrongful acts and conduct alleged herein, Defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including the United States mail and the facilities of a national securities market.

III. THE PARTIES

Lead Plaintiffs

19. Lead Plaintiff Metropolitan Capital Advisors, L.P., is a Delaware limited partnership. As set forth in the certification attached as Exhibit A, Metropolitan Capital Advisors purchased Bennett common stock on the American Stock Exchange and the Toronto Stock Exchange, and purchased "units" of Bennett securities pursuant to the January 2004 private placement during the Class Period, and suffered damages as a result of the violations of law alleged herein. By Order dated November 19, 2004, the Court appointed Metropolitan

Capital Advisors to serve as Lead Plaintiff for the Class, pursuant to Section 21D of the Exchange Act, 15 U.S.C. § 78u-4. (*See* Docket No. 40.)

20. Lead Plaintiff Metropolitan Capital Partners III, L.P., is a Delaware limited partnership. As set forth in the certification attached as Exhibit B, Metropolitan Capital Partners purchased Bennett common stock on the American Stock Exchange and the Toronto Stock Exchange, and purchased "units" of Bennett securities pursuant to the January 2004 private placement during the Class Period, and suffered damages as a result of the violations of law alleged herein. By Order dated November 19, 2004, the Court appointed Metropolitan Capital Partners to serve as Lead Plaintiff for the Class, pursuant to Section 21D of the Exchange Act, 15 U.S.C. § 78u-4. (*See* Docket No. 40.)

Other Plaintiffs

21. Prior to Metropolitan Capital's appointment as Lead Plaintiff, the following plaintiffs filed complaints against some or all of the Defendants in this Action, and alleged that they suffered damages as a result of Defendants' violations of the federal securities laws: Valeri C. Stefani, Bruce Yuelson, Leonard Drexler, Lee Weiner, Denise V. Courtner, Dean F. Russell, Jerry Tringone, Sanford E. Snyder, William C. Rand, Josephine L. Erickson, Charles N. Partlan and Pleun J. Troost. Pursuant to the Court's November 19, 2004 Order, those actions were consolidated herewith. (*See* Docket No. 40.)

Defendants

22. Defendant Bennett Environmental Inc. is a corporation organized under the laws of Canada. It maintains its principal place of business at 1540 Cornwall Road, Suite 208, Oakville, Ontario L6J 7W5, Canada. Bennett's common stock trades on the Toronto Stock Exchange and the American Stock Exchange. Bennett is engaged in the business of using

thermal oxidation technology to remediate contaminated soil, contaminated construction debris and mercaptan contaminated gas distribution equipment.

23. Defendant John Bennett founded Bennett Environmental in 1992 and served as the Chairman of its Board until he resigned from that post on August 26, 2004. John Bennett also served as the Company's Chief Executive Officer until February 18, 2004.

24. Defendant Allan Bulckaert is Bennett's Chief Executive Officer, having assumed that position on February 18, 2004, following the resignation of John Bennett.

25. Defendant Danny Ponn is Chief Operating Officer of the Company, as well as its Vice President of Engineering.

26. Defendant Richard Stern served as the Company's Chief Financial Officer and Secretary from April 2001 until he left the Company on July 20, 2004 "to pursue other interests."

27. Defendant Robert Griffiths became the Company's Vice President of Sales and Marketing for the United States on June 12, 2003. Griffiths was employed by the Company for four years before being promoted to that position, and was credited by the Company with securing the Creosote Contract for the Company.

28. Defendants John Bennett, Bulckaert, Ponn, Stern and Griffiths are referred to collectively herein as the "Individual Defendants."

IV. LEAD PLAINTIFFS' CLASS ACTION ALLEGATIONS

29. Lead Plaintiffs bring this action as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class (the "Class") consisting of all persons or entities who, during the period June 2, 2003 through July 22, 2004, inclusive, (i) purchased or otherwise acquired Bennett common stock or (ii) purchased or otherwise acquired "units" of Bennett securities sold pursuant to a private placement announced on January 12,

2004,[1] and were damaged thereby. Excluded from the Class are (i) Defendants; (ii) members of the family of each Individual Defendant; (iii) any person who was an officer or director of Bennett during the Class Period; (iv) any firm, trust, corporation, officer, or other entity in which any Defendant had a controlling interest; and (v) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party.

30. The Class is so numerous that joinder of all of the Class members is impracticable. Throughout the Class Period, shares of Bennett common stock were actively traded on the American Stock Exchange and the Toronto Stock Exchange, both of which are efficient markets. While the exact number of Class members can only be determined by appropriate discovery, Lead Plaintiffs believe that Class members number in the thousands. As of May 19, 2004, there were over 17.14 million shares of Bennett common stock issued and outstanding. Bennett shares were followed by securities analysts employed by major brokerage firms who wrote reports that were disseminated to the sales force and to certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

31. Lead Plaintiffs' claims are typical of the claims of other Class members. Lead Plaintiffs and all Class members sustained damages as a result of Defendants' wrongful conduct complained of herein in violation of the federal securities laws.

32. Lead Plaintiffs will fairly and adequately protect the interests of the Class members and have retained counsel competent and experienced in class action and securities litigation. Lead Plaintiffs have no interests that are contrary to or in conflict with those of the Class members that Lead Plaintiffs seek to represent.

[1] As set forth in greater detail below, each "unit" consisted of one share of Bennett common stock and a warrant for one half share of Bennett common stock.

33. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members individually to seek redress for the wrongful conduct alleged herein.

34. Common questions of law and fact exist as to all Class members and predominate over any questions solely affecting individual Class members. Among the questions of law and fact common to the Class are:

a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

b) whether documents, press releases and public statements made by Defendants during the Class Period concerning the Company's financial and operational position, including statements concerning the Creosote Contract and the Company's soil backlog, contained misstatements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

c) whether the Defendants acted with the requisite state of mind in omitting and/or misrepresenting material facts in the documents filed with the SEC, press releases and public statements;

d) whether the market prices of Bennett's common stock during the Class Period were artificially inflated due to the material misrepresentations complained of herein;

e) whether the price of the "units" of Bennett securities sold pursuant to the January 2004 private placement was artificially inflated due to the material misrepresentations complained of herein; and

f) whether the Class members have sustained damages and, if so, the appropriate measure thereof.

35. Lead Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

36. The names and addresses of record owners of Bennett common stock purchased during the Class Period, and of investors who purchased "units" of Bennett securities sold pursuant to the January 2004 private placement, are available from records maintained by Bennett or its transfer agent. Notice may be provided to such record owners via first class mail, using techniques and a form of notice similar to that customarily used in securities class actions.

37. In bringing these claims, Lead Plaintiffs and the members of the Class are entitled to the presumption of reliance established by the fraud-on-the-market doctrine. At all times relevant to this Complaint, the market for Bennett common stock was an efficient market for the following reasons, among others:

a. Bennett common stock trade on the American Stock Exchange and the Toronto Stock Exchange, both of which are highly efficient markets. The average weekly trading volume throughout the Class Period was 636,609 shares on the American Stock Exchange and 406,670 shares on the Toronto Stock Exchange;

b. As a regulated issuer, Bennett filed periodic public reports with the SEC;

c. Bennett common stock was followed by numerous securities analysts employed by firms including Craig-Hallum Capital Group LLC, Canaccord Capital, Westminster Securities Corporation, RBC Capital Markets and Orion Securities, Inc., among others, who wrote reports about the Company and the value of its common stock that were publicly available and entered the public marketplace;

d. Bennett regularly issued press releases, which were carried by national and international news wires. Each of these releases was publicly available and entered into the public marketplace; and

e. The market price of Bennett common stock reflected the effect of news disseminated in the market.

38. Investors who purchased "units" of Bennett securities pursuant to the January 2004 private placement are similarly entitled to the presumption of reliance established by the fraud-on-the-market doctrine. The "U.S. Purchaser's Letter" through which investors subscribed to purchase those "units" provides, in relevant part:

> By executing this Purchaser's Letter, the undersigned represents, warrants and covenants to the Corporation, the Underwriter and the U.S. Broker-Dealer (and acknowledges that the Corporation, the Underwriter and the U.S. Broker-Dealer are relying thereon) as follows:
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> * * * * *
>
> (d) it has not received or been provided with, nor has it requested, nor does it have any need to receive, any offering memorandum, or any other document describing the business and affairs of the Corporation, nor has any document been prepared for delivery to, or review by, prospective purchasers in order to assist them in making an investment decision in respect of the Units;
>
> (e) it has relied solely upon the publicly available information relating to, and issued by, the Corporation and not upon any verbal or written representation as to fact or otherwise made by or on behalf of the Corporation or the Underwriter or any employees, agents or affiliates thereof, and prior to the time of purchase of any Units, it has had access to such information (all of which has been publicly filed by the Corporation) concerning the Corporation as it has considered necessary in connection with its investment decision to acquire the Units, such information having been made available to the undersigned without independent investigation or verification by the Underwriter and agrees that the Underwriter and its counsel assume no responsibility or liability of any nature whatsoever for the accuracy, adequacy or completeness of the publicly available information and acknowledges that the Underwriter's counsel is acting as counsel to the Underwriter and not as counsel to the undersigned;

As provided for by the U.S. Purchaser's Letter, all investors that purchased "units" of Bennett securities relied upon publicly available information regarding the Company, its operations and financial condition, including the price of the Company's common stock, which partially comprised the "units." The price of that common stock was established by the efficient markets described above.

39. As a direct and proximate result of the wrongful conduct by Defendants, Lead Plaintiffs and the other members of the Class suffered damages in connection with their purchases of Bennett common stock and purchases of "units" of Bennett securities pursuant to the January 2004 private placement. Had Lead Plaintiffs and the other members of the Class

known of the material adverse information not disclosed by Defendants, or been aware of the truth behind Defendants' material misstatements, they would not have purchased Bennett common stock or "units" of Bennett securities at artificially inflated prices.

40. The claims asserted herein were brought within two years after the discovery of this fraud and within five years of the making of the statements alleged herein to be materially false and misleading.

V. SUBSTANTIVE ALLEGATIONS

41. Lead Plaintiffs' allegations are based upon the investigation of Lead Counsel, including but not limited to its review of the following documents:

- March 11, 2003 Request for Proposals issued by Sevenson;
- March 11, 2003 letter from Sevenson to potential subcontractors regarding the Request for Proposals for the Creosote Contract;
- April 11, 2003 proposal from Bennett to Sevenson for the Creosote Contract;
- May 22, 2003 letter from Sevenson to Bennett regarding the Creosote Contract, addressed to Defendant Griffiths and copied to Defendant John Bennett;
- May 22, 2003 letter from Bennett to Sevenson regarding the Creosote Contract, signed by Defendant Griffiths and copied to Defendant John Bennett;
- May 29, 2003 Purchase Order for the Creosote Contract;
- June 4, 2003 letter from Clean Harbors to Sevenson protesting the award of the Creosote Contract to Bennett;
- June 4, 2003 letter from Clean Harbors to the Army Corps protesting the award of the Creosote Contract to Bennett;
- June 26, 2003 e-mail from the Army Corps to Clean Harbors regarding the withdrawal of its consent for the award of the Creosote Contract to Bennett;
- June 27, 2003 letter from the Army Corps to Sevenson withdrawing its consent to award the Creosote Contract to Bennett;
- July 28, 2003, e-mail from Clean Harbors the Army Corps regarding Bennett's July 24, 2003 press release and conference call;

- July 30, 2003 letter from Bennett to Sevenson regarding the Army Corps' withdrawal of consent for the Creosote Contract, signed by Defendant Griffiths and copied to Defendant John Bennett;

- July 7, 2003 e-mail from Ed Otto at Sevenson to Sevenson and the Army Corps regarding the clarification questions sent to Bennett and Clean Harbors;

- August 5, 2003 Amended Request for Proposals issued by Sevenson;

- August 6, 2003 letter from Bennett to Sevenson regarding Sevenson's issuance of the Amended Request for Proposals for the Creosote Contract, signed by Defendant Griffiths and copied to Defendant John Bennett and the Army Corps;

- August 6, 2003 letter from Sevenson to Bennett regarding the Amended Request for Proposals, addressed to Defendant Griffiths and copied to Defendant John Bennett;

- August 6, 2003 e-mail from Bennett to Sevenson, authored by Defendant Griffiths and copied to Defendant John Bennett and the Army Corps;

- August 12, 2003 internal Army Corps e-mail concerning the decision to grant Sevenson a limited consent to permit Bennett to treat a maximum of 10,000 tons of soil at the Federal Creosote Site;

- August 14, 2003 internal Army Corps e-mail regarding Clean Harbors' protest to Sevenson's decision to award the Creosote Contract to Bennett;

- August 25, 2003 letter from Appleton & Associates to the Army Corps regarding Sevenson's Amended Request for Proposals, copied to, among others, Sevenson and Defendants John Bennett and Griffiths;

- August 28, 2003 internal Army Corps e-mail describing the timeline of key historical events concerning the award and withdrawal of the Creosote Contract;

- August 28, 2003 e-mail from Defendant Griffiths at Bennett to the Army Corps regarding Bennett's decision to initiate legal action against Clean Harbors;

- September 4, 2003 letter from the Army Corps to Barry Appleton, copied to, among others, Defendants Griffiths and John Bennett;

- October 6, 2003 letter from Bennett to Sevenson regarding Sevenson's and the Army Corps' withdrawal and re-solicitation of the Creosote Contract, authored by Defendant Griffiths and copied to Defendant John Bennett and the Army Corps;

- U.S. Purchaser's Letter, dated January 28, 2004, pursuant to which Lead Plaintiff Metropolitan Capital Advisors subscribed to purchase 45,400 "units" of Bennett securities pursuant to the January 2004 private placement;

- June 9, 2004 letter from Piper Rudnick to the Army Corps regarding the Creosote Contract, copied to Sevenson and Defendants Bulckaert, John Bennett and Griffiths;
- July 15, 2004 letter from the Army Corps to Piper Rudnick.

A. Bennett's Business and Operations

42. Bennett is a public corporation headquartered in Oakville, Ontario. The Company's primary business involves the transportation, treatment and disposal of contaminated soil. Specifically, Bennett uses thermal oxidation technology to remediate contaminated soil, contaminated construction debris and mercaptan contaminated gas distribution equipment. The Company owns and operates remediation facilities located in Saint Ambroise, Québec and Cornwall, Ontario, and also owns a newly constructed facility in Belledune, New Brunswick that it has never operated. The Company markets its remediation services throughout Canada and the United States.

43. Bennett's thermal oxidation technology heats contaminated soil to a high temperature in a rotary kiln. The majority of Bennett's soil burning activities are conducted at its Saint Ambroise facility. Approximately 98% of the Company's revenues in 2002 were generated from soil remediated at the Saint Ambroise facility.

44. In 1999, the Saint Ambroise facility treated approximately 40,000 metric tons of contaminated soil, representing approximately 70% of its treatment capacity. In late 2001, the Company upgraded the capacity of the treatment facility to 80,000 metric tons per year, and during 2001 the facility treated 46,000 metric tons, or 57.5% of its capacity. In mid 2002, the Company again upgraded the capacity of the treatment facility to approximately 100,000 metric tons per year. During 2002 the Saint Ambroise facility treated 55,000 metric tons of contaminated soil, or 55.7% of its capacity. This decreasing level of operating capacity at

Bennett's primary soil treatment facility did not justify the Company's construction of a new treatment facility at Belledune.

45. Increased utilization of the capacity of the Company's facilities improves the profitability of Bennett's business, because many of the Company's costs are fixed, rather than variable. Conversely, if Bennett's facilities lack an adequate volume of soil to process, the Company incurs substantial losses due to those same fixed costs. The volume of soil Bennett processes each quarter, and its contractual "soil backlog" to be processed in the future, are therefore key metrics of Bennett's operations that are routinely disclosed by the Company and closely followed by investors. "Soil backlog" is an industry term that refers to the amount of soil the Company is under contract to treat.

46. On January 23, 2003, Bennett received permission from the Department of Environment and Local Government of New Brunswick to begin construction of its new facility in Belledune, New Brunswick. The Belledune plant would add 100,000 tons and double the Company's annual soil processing capacity, at a projected cost of (CAD) $20 million. In a February 6, 2003 press release, Bennett stated that the Company was proceeding with the Belledune plant and another proposed facility "in order to meet demand."

47. Bennett's common stock is dual-listed on the Toronto Stock Exchange under the symbol "BEV" and on the American Stock Exchange under the symbol "BEL," and trades interchangeably on those exchanges.

B. <u>The Federal Creosote Contract</u>

48. The Rustic Mall in Manville, New Jersey, is the location of the Federal Creosote Superfund Site. The cleanup of the Site is funded and overseen by the Army Corps. The Army Corps retained Sevenson Environmental Services, Inc. ("Sevenson") as the primary contractor to

manage the Federal Creosote Site. Federal regulations require that Army Corps consent to any subcontract Sevenson enters into for the performance of work at the Federal Creosote Site.

49. Cleanup efforts at the Federal Creosote Site have been ongoing since at least 2001, and have proceeded in various stages. Sevenson solicited bids from subcontractors to provide soil transportation and treatment services for Phase I and Phase II of the cleanup efforts. Bennett received contracts to provide those services, and treated 85,000 tons of soil from the Federal Creosote Site in Phase I and Phase II.

50. On or about March 11, 2003, Sevenson issued a request for proposals from subcontractors for the transportation and thermal treatment of contaminated soil from the Federal Creosote Site, a component of Phase III cleanup work (the "Request for Proposals"). The Request for Proposals issued by Sevenson requested bids for treatment of an indefinite quantity of soil, and provided that bidders would only be required to treat a maximum of 300,000 tons, and would not be asked to treat less than ***a minimum quantity of just 500 tons***. Responsive proposals, including bids for the pricing of the contract on a per ton basis, were due to Sevenson on April 11, 2003.

51. Sevenson's letter distributing the Request for Proposals identified the contract as an "Indefinite Delivery / Indefinite Quantity Contract," and a specific section of the Request for Proposals addressed the indeterminate nature of the contract. That section, entitled "Special Provisions, Indefinite Delivery / Indefinite Quantity," stated that "[t]he resultant purchase order issued from this competition will be an Indefinite Delivery / Indefinite Quantity subcontract." The Special Provisions section included the language of provision "52.216-22 Indefinite Quantity" of the contract, which states in relevant part:

> (a) This is an indefinite – quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The

quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

52. Also included in the "Special Provisions, Indefinite Delivery / Indefinite Quantity" section of the Request for Proposals is a page entitled "Pricing" which states:

Item No.	Minimum Order	Maximum Order	Description	Unit Price	Total Not To Exceed (NTE)
1	500 Tons	75,000 Tons	Transportation & Disposal via Thermal Treatment		300,000 Tons

53. On April 11, 2003, Bennett submitted its proposal to perform the treatment services at the Federal Creosote Site in response to the Request for Proposals for a price of $482.50 per ton. In its proposal, signed by Defendant Griffiths, Bennett stated that "Bennett acknowledges a comprehensive understanding of and adherence to the established Scope of Work and ID/IQ Subcontract Requirements." The reference to "ID/IQ" was to the fact that the Creosote Contract was an "Indefinite Delivery / Indefinite Quantity" contract.

54. Bennett discussed the Creosote Contract and its proposal in an April 25, 2003 press release, and a conference call with securities analysts that same day. An April 25, 2003 report by Canaccord Capital summarized the Company's statements in that press release and conference call:

> Bennett said that it has submitted its bid for the next phase of the Federal Creosote job in New Jersey. Management suggested that the company has bid on 300,000 tonnes that would be treated through 2006. This is a competitive bid and the company expects to know the results over the next few weeks. Clearly, this is a critical job for the company – far more so than any contract from GE – as it could keep either St. Ambroise or a New Brunswick plant operating at a healthy capacity over the next few years. Arguably, ***this one contract could justify the construction of New Brunswick***, provided there is sufficient other work out there to keep St. Ambroise running at a reasonable capacity (better than 50% being reasonable).

(Emphasis added.) The Canaccord Capital report also stated that "Bennett noted during its

conference call that its 'backlog' continues to hover around the $60 million mark."

55. According to an internal Army Corps e-mail, on or about May 7, 2003, Sevenson sought the consent of the Army Corps to award a contract to treat soil from the Federal Creosote Site to Bennett. On or about May 29, 2003, the Army Corps granted its consent.

56. On May 22, 2003, Sevenson sent Bennett a letter, addressed to the attention of Defendant Griffiths regarding the Creosote Contract. The "Re" line of that letter states "Federal Creosote Superfund Site ID/IQ Transportation and Disposal Bidders." The reference to "ID/IQ" was yet another reminder to Bennett that the Creosote Contract was an "Indefinite Delivery / Indefinite Quantity" contract. Defendant Griffiths responded to Sevenson in a letter that same day, in which Griffiths similarly referred to the Creosote Contract as an "ID/IQ contract."

1. Bennett Is Awarded A Contract To Treat An Indefinite Quantity Of Soil

57. On May 29, 2003, Sevenson issued a Purchase Order to Bennett for the Creosote Contract. That Purchase Order explicitly states: "This order is an Indefinite Delivery / Indefinite Quantity purchase." Appended to the Purchase Order were a number of contractual provisions, including the above-quoted provision "52.216-22 Indefinite Quantity." Defendant Griffiths executed that purchase order on May 30 behalf of the Company.

58. On June 2, 2004, the first day of the Class Period, Bennett announced that "it has been awarded a contract to treat an estimated 300,000 tons of soil contaminated with wood treatment chemicals from Phase III of the Federal Creosote Superfund Site in New Jersey. This contract, valued at $200 Cdn., the largest in the Company's history, is scheduled to be completed by December 31, 2005 and may be increased with the addition of subsequent phases.... Shipments from three different locations on the site should start within the next few says, and continue until completion of Phase III which is anticipated by the end of 2005."

59. The Company's June 2 press release quoted Defendant Griffiths as stating "This, 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. . . Winning this contract provides a good base load of material for our proposed new soil treatment facility in Belledune."

60. Market analysts covering Bennett recognized the importance of the Creosote Contract to the Company. In a June 3, 2003 report, an analyst at Canaccord Capital observed that the 300,000 ton, (CAD) $200 million contract announced by Bennett "is a great win for Bennett since it all but guarantees that it can keep one 100,000 tonne per year plant at or near full capacity through [fiscal year 2005]". The same report stated that "we expect the company to end [fiscal year 2003] with a healthy backlog of soil in storage." A report issued that day by Craig-Hallum Capital Group LLC stated that "This contract is instrumental in management deciding to move forward with a second facility in New Brunswick." The Craig-Hallum report observed that Bennett operated at 55% capacity in 2002 but that, as of June 2, 2003, "has a backlog of soil that should enable the St. Ambroise, Quebec facility to run at 75%-80% capacity for 2003, and near full capacity in the back half of the year."

61. In announcing the award of the Creosote Contract, Bennett failed to disclose that the Creosote Contract was, in fact, for the treatment of ***an indefinite quantity*** of contaminated soil. As demonstrated below in greater detail, throughout the Class Period, Defendants repeatedly referred to the Creosote Contract as an agreement to treat 300,000 tons of contaminated soil.

2. <u>The Creosote Contract Is Challenged And Withdrawn</u>

62. Clean Harbors Environmental Services, Inc. ("Clean Harbors"), based in

Braintree, Massachusetts, had submitted a competing proposal to treat the contaminated soil at the Federal Creosote Site. On June 2, 2003, when Bennett announced that it had been awarded the Creosote Contract, Clean Harbors received notification that its competing bid was lower than Bennett's, yet it had not been awarded the contract. On June 4, 2003, Clean Harbors formally protested the award of the Creosote Contract to Bennett in separate letters to Sevenson and the Army Corps. In its letter to the Army Corps, Clean Harbors averred that Bennett's bid was $45 million higher than the bid it had submitted and that the relationship between Sevenson and Bennett, which had developed from Bennett's work on Phase I and II at the Federal Creosote Site, resulted in a bias in Bennett's favor in the awarding of the contract for the Phase III work covered by the Creosote Contract.

63. According to internal Army Corps e-mails, in response to Clean Harbors' protest, the Army Corps requested documentation from Sevenson relating to the awarding of the Creosote Contract. Based on its review of those materials, the Army Corps determined that Sevenson's May 7 request for consent to award the Creosote Contract to Bennett had not been properly submitted. In a June 26, 2003 e-mail, the Army Corps informed Clean Harbors that it would withdraw its consent for the award of the Creosote Contract to Bennett. Specifically, that e-mail stated that:

> the Corps has determined to take corrective action as to the issues you raised in your protest. Specifically, the contracting officer is going to withdraw consent to the subcontract with Bennett and direct Sevenson to re-evaluate the proposals received after seeking appropriate clarification from Clean Harbors as to several ambiguities in its proposal... In order to avoid shutting the project down during this process, Sevenson will be directed to extend the nearly expired subcontract with Bennett for 30 days.

The reference to the "nearly expired subcontract" was to Bennett's subcontract to perform work on Phase II of the Federal Creosote Site.

64. The next day, June 27, 2003, less than a month after Bennett announced the award of the Creosote Contract, the Army Corps withdrew its consent for the award of the contract to Bennett. In a June 27 letter to Sevenson, the Army Corps' Contracting Officer, Pamela L. Wittler-Stichwech, stated

> I withdraw my "Consent" for Sevenson Environmental Services, Inc. to enter into a subcontract with Bennett Environmental Services, Inc. at this time. No material shall be shipped to Bennett under this withdrawn consent package. I request that you do a complete re-evaluation of all proposals received and submit a defensible Subcontract Request for Consent no later than July 15, 2003... In addition, to protect the project from delay, your company should negotiate an extension of the existing subcontract for transportation and disposal of thermal material for additional volume to adequately cover the re-evaluation period.

65. According to a June 30 letter from Bennett to Sevenson, that day Sevenson requested that Bennett perform work on the Federal Creosote Site for the next 30 days. Bennett, in its letter, described Sevenson's request as "disconcerting and rather alarming," and insisted that it perform work at the Federal Creosote Site for 45 days, until August 15, 2004, at its bid price of $482.50 per ton. Bennett's June 30 letter to Sevenson was sent on behalf of Defendant Griffiths by Bennett Vice President Shannon Wright, and copied to Defendant John Bennett.

66. According to a July 7, 2003 e-mail from Sevenson, on July 2, 2003, Sevenson submitted a series of written "PROPOSAL EVALUATION, CLARIFICATION QUESTIONS" to Bennett and Clean Harbors relating to the Creosote Contract, and confirmed Bennett's receipt of those questions as of July 4. The questions sought to clarify the two companies' prior submissions in response to the Request for Proposals. Sevenson requested responses to these questions by July 9, 2003.

67. On August 1, 2003, Sevenson informed Bennett via electronic mail that it intended to issue an amended Request for Proposals to identify a subcontractor to complete the

treatment of contaminated soil at the Federal Creosote Site. This e-mail is described in a subsequent letter from Sevenson to Bennett on August 6, which was addressed to Defendant Griffiths and copied to Defendant John Bennett. The amended Request for Proposals would seek to identify a subcontractor to perform the services covered by the Creosote Contract, which had been withdrawn.

68. According to an internal Army Corps e-mail, on or about July 25, 2003, Sevenson had proposed to the Army Corps that, in place of the Creosote Contract, which provided for a single subcontractor to perform all of the soil treatment necessary for Phase III of the cleanup of the Federal Creosote Site, it would issue multiple subcontract awards for the work originally covered by the Creosote Contract. On August 4, 2003, the Army Corps approved the use of multiple awards, as recommended by Sevenson.

69. On or about August 5, 2003, Sevenson issued an amendment to its March 11, 2003 Request for Proposals (the "Amended Request for Proposals"). The Amended Request for Proposals stated that "Multiple ID/IQ Subcontracts will be awarded" and requested the submission of new proposals for the treatment of contaminated soil from the Federal Creosote Site by August 9, 2003.

70. On August 6, 2003, Bennett, in a letter from Defendant Griffiths to Sevenson, on which Defendant John Bennett and the Army Corps were copied, questioned the issuance of the Amended Request for Proposals. Specifically, Bennett requested an explanation as to why the Amended Request for Proposals was issued, in light of the Creosote Contract that had previously been awarded to Bennett, which Bennett described in its letter as having a total price of "up to US $144,750,000." The Company claimed that the bids submitted in response to the Amended

Request for Proposals would be tainted by the prior disclosure of the bid price Bennett submitted in response to the original Request for Proposals. In the August 6 letter Bennett stated:

> As you know, Bennett is a publicly traded company and was obligated by Canadian Securities law to issue a press release announcing ***its material contract*** with [Sevenson]. As a result, our competitors are now aware of the pricing of our contract and any new bidding process would be compromised... [W]e believe that the decision to re-open the RFP process can only be explained by third party interference. [Sevenson] is well aware that ***the loss of this contract will cause Bennett to sustain substantial damages***.

(Emphasis added.) In closing, Bennett asked that the Amended Request for Proposals be cancelled and the Company given an opportunity to discuss the Creosote Contract with Sevenson. In the alternative, Bennett asked that the Amended Request for Proposals deadline be extended.

71. Sevenson responded to Bennett's August 6 letter in a letter sent that same day to Defendant Griffiths, copying Defendant John Bennett and the Army Corps. Sevenson rejected Bennett's request for an extension of the August 9 deadline, and noted that the Company had received notice of the issuance of the Amended Request for Proposals on August 1. The Sevenson letter further stated that the Amended Request for Proposals "was issued as a result of the government's withdrawal of its consent to the Bennett contract."

72. Sevenson's letter also responded to the Company's description of the Creosote Contract. Specifically, the letter stated that, among other things: "Sevenson disagrees with your characterization of the import of the Bennett contract. As you well know, that contract guarantees a minimum quantity of 500 tons. ***A prudent person could not value such a contract as having the value you ascribe to it using the maximum quantity***. That contract also contains a termination for convenience clause. Again, a prudent person would note this clause in evaluating and placing reliance on the contract." (Emphasis added.)

73. In response to Sevenson's August 6 letter, on August 6 Defendant Griffiths sent an electronic mail to Sevenson, copying Defendant John Bennett and the Army Corps, in which he stated that "At this time, we must **decline** to bid and pass this matter over to our attorneys, who will be contacting you shortly." (Emphasis in original.)

74. The Army Corps then determined that, rather than proceeding with the Amended Request for Proposals, the issuance of a new multi-award solicitation, in place of the single-award solicitation that resulted in the original award of the Creosote Contract to Bennett, would be "the cleanest way to get this resolved." Through an e-mail sent on August 7, 2003, Sevenson informed the recipients of the Amended Request for Proposals – including Defendant Griffiths – that it had been cancelled, that responsive proposals would not be accepted, and that Sevenson intended to "issue a new solicitation in the near future." Through an e-mail sent on August 14, 2003, Sevenson informed potential subcontractors, including Defendant Griffiths at Bennett, that "on or about August 27, 2003, [Sevenson] intends to issue an Invitation For Bids (IFB) for the Transportation and Disposal (via High Temperature Incineration) of contaminated soil from the Federal Creosote Superfund Site in Manville, New Jersey."

75. On August 7, 2003, in keeping with its instruction to Sevenson that work on the Federal Creosote Site should not be interrupted, the Army Corps granted Sevenson a limited consent to permit Bennett to continue to treat contaminated soil from the Site until the new multi-award solicitation was issued and awarded. The limited consent granted by the Army Corps provided that Bennett could treat a ***maximum*** of 10,000 tons of contaminated soil from the Federal Creosote Site. An internal Army Corps e-mail on August 12, 2003 noted that the work performed pursuant to this limited consent "will satisfy the guaranteed minimum quantity on the contract" – 500 tons.

76. True to its threat to Sevenson, Bennett, rather than participating in the Amended Request for Proposals by submitting a new bid, turned the matter over to its attorneys, who went on the offensive in an attempt to derail the issuance of a new solicitation to replace the Creosote Contract. On August 7, 2003, Bennett's attorneys, Appleton & Associates, submitted a Freedom of Information Action ("FOIA") request to the Army Corps seeking all documents and records relating to the Creosote Contract. That FOIA request did not disclose that the request was being made on behalf of Bennett. The FOIA request is described in a letter sent by the law firm of Piper Rudnick to the Army Corps on June 9, 2004 on behalf of Bennett.

77. On August 25, 2003, Barry Appleton of the law firm of Appleton & Associates sent a letter to the Army Corps, copying, among others, Defendants Griffiths and Bennett, Sevenson, the U.S. Environmental Protection Agency and the Canadian Ambassador to the United States.

78. Mr. Appleton's August 25 letter questioned the new Invitation for Bids that Sevenson announced it intended to issue on or about August 27. Specifically, Mr. Appleton questioned the basis for the solicitation of bids to perform services covered by the Creosote Contract, stating that "The [Invitation for Bids] is essentially a re-solicitation to submit bids for a contract that Bennett has already been awarded." Mr. Appleton's letter asserted the value of the Creosote Contract to be $144.75 million, the equivalent in U.S. dollars of the (CAD) $200 million value Bennett ascribed to the Contract. The letter averred that Clean Harbors had been in direct contact with the Army Corps regarding the Creosote Contract – as opposed to dealing exclusively with Sevenson, the primary contractor – and asserted that the Army Corps had interfered with the award of the Creosote Contract to benefit a United States competitor of

Bennett. Mr. Appleton asserted that this interference violated a host of provisions of the North American Free Trade Act.

79. Bennett's attack on the Invitation for Bids – and its attempt to prevent the awarding of any work at the Federal Creosote Site to Clean Harbors – was multi-pronged. In addition to the August 25 letter sent by its counsel to the Army Corps, Bennett went after Clean Harbors directly. On August 27, 2003, Bennett initiated legal action in British Columbia to force payment of $1.1 million it claimed to be owed by Clean Harbors for work performed in June 2003 on a project unrelated to the Federal Creosote Site.

80. The true purpose of Bennett's suit against Clean Harbors was to create the impression with the Army Corps that Clean Harbors was financially unstable and therefore an inappropriate candidate to be awarded a contract to treat contaminated soil from the Federal Creosote Site. This was also made evident by Bennett's conduct immediately upon filing its action against Clean Harbors.

81. On August 28, 2003, Defendant Griffiths sent an e-mail to the Army Corps informing them of its legal action against Clean Harbors. In that e-mail, the subject of which is "Clean Harbors Financial Stability," Griffiths states that the action filed by Bennett will trigger similar actions by Clean Harbors' other creditors, "which will ultimately lead to a Chapter 11 filing, likely within three weeks." Griffiths noted in that e-mail that he felt it appropriate to contact the Army Corps directly as "Clean Harbors seems to have a direct line into your senior management."

82. Appended to Griffiths' August 28 e-mail was an August 27, 2003 e-mail to Griffiths from Defendant Stern. Stern's e-mail described Clean Harbors as being in dire financial straits, and also suggested that Clean Harbors faced imminent bankruptcy. The Stern

e-mail appears to have been forwarded to the Army Corps for the sole purpose of tarnishing Clean Harbors' reputation, and, indeed, may have been drafted for that purpose alone.

83. On August 29, 2003, Bennett submitted another FOIA request to the Army Corps seeking documents concerning the Creosote Contract. That FOIA request is described in Piper Rudnick's June 9, 2004 letter to the Army Corps.

84. On September 4, 2003, the Army Corps sent a letter to Barry Appleton in response to his August 25 letter. The Army Corps' letter, which was copied to Defendants Griffiths and John Bennett, stated:

> As a preliminary matter, you stated that the value of the disputed subcontract is $144,750,000.00. This subcontract is an indefinite delivery/indefinite quantity (ID/IQ) subcontract. The state minimum guarantee on this subcontract is 500 tons. ***At the price Bennett proposed, that would amount to $241,000.00.*** That guaranteed minimum will be met. Furthermore, as explained below, this subcontract is contingent upon consent of the Corps.

(Emphasis added.) The Army Corps' September 4 letter also summarized the history of the Creosote Contract, stating in relevant part:

> On June 4, 2003, Clean Harbors filed a bid protest with the Corps. The Corps then requested from Sevenson all of its records concerning this procurement process. After review of the subcontract process, the Corps determined that corrective action was necessary and withdrew Consent to Subcontract with Bennett on June 27. Sevenson was requested to re-evaluate the proposals and its subcontract procurement process. As a result, Sevenson recommended to the Corps that a multiple award contract was in order. Initially, Sevenson planned to amend the existing solicitation of March 11, 2003 with this change. However, Bennett objected, and after review, Sevenson abandoned this approach and decided to issue a new solicitation.
>
> During this review period, Sevenson was granted limited consent to utilize Bennett's existing ID/IQ subcontract for up to 10,000 tons. This amount exceeds the guaranteed minimum of 500 tons under its current subcontract.
>
> On August 14, 2003, Sevenson notified all interested parties, including

> Bennett, of its intent to issue a new Invitation for Bid (IFB) solicitation with a guaranteed minimum quantity of 1,000 tons and a maximum quantity of 100,000 tons. This multiple award solicitation may result in up to three subcontracts that will share in the 100,000 ton maximum. The latest design revision at the site has resulted in this substantially reduced potential maximum quantity (from 300,000 tons to 100,000 tons).

85. On October 6, 2003, Defendant Griffiths wrote to Sevenson, copying Defendant John Bennett and the Army Corps. In that letter Griffiths again questioned the basis for Sevenson's and the Army Corps' withdrawal and re-solicitation of the Creosote Contract.

86. On October 24, 2003, Sevenson issued an Invitation for Bids to transport and treat an indefinite quantity of contaminated soil from the Federal Creosote Superfund Site, with a minimum of 1,000 tons and a maximum of 100,000 tons. The Invitation for Bids was for a multiple award contract, meaning that the total volume of soil to be treated could be divided between several subcontractors. The Invitation for Bids included a bonding requirement. No bids were received in response to the October 24 Invitation for Bids.

87. On November 20, 2004, Sevenson issued a new Invitation for Bids. This Invitation for Bids sought proposals to perform the same services covered by the October 24 Invitation for Bids, but did not include a bonding requirement.

88. On or about December 5, 2003, Bennett and Clean Harbors submitted bids in response to the Invitation for Bids. Bennett's bid was lower than Clean Harbors, and, on or about January 30, 2004, Sevenson requested consent from the Army Corps to award a contract to Bennett to treat an indefinite quantity of contaminated soil from the Federal Creosote Site, with a minimum of 1,000 tons and a maximum of 100,000 tons.

89. On or about March 4, 2004, the Army Corps granted consent to Sevenson to award contracts to both Bennett and Clean Harbors. Bennett was awarded the majority of the

work under the new contract. Clean Harbors was awarded a contract to treat 1,000 tons – the minimum provided for by the Invitation for Bids.

90. On or about June 6, 2004, Bennett signed a contract with Sevenson to treat soil at the Federal Creosote Site pursuant to the terms of the bid submitted in response to the November 20 Invitation for Bids.

91. On July 15, 2004, the Army Corps sent a letter to Piper Rudnick in response to a June 9, 2004 letter Piper Rudnick sent to the Army Corps behalf of Bennett. The Army Corps' July 15 letter stated:

> As to the tonnage in question: the maximum tonnage on the RFP subcontract was 300,000 tons; the minimum guarantee was 500 tons. The minimum guarantee has been satisfied. The maximum tonnage represents the most that Bennett could have been required to accept. By the time the IFB was to issue, better information the site indicated that a maximum tonnage of 100,000 was adequate. There has never been any confusion between Sevenson and the Corps that the IFB was a reprocurement, not an additional procurement[6], and that the anticipated tonnage was reduced from 300,000 tons to 100,000 tons. Again, 100,000 tons is the most that Bennett (or Clean Harbors) could be required to accept under the IFB contract. There is no guarantee that as much as 100,000 tons is in the ground, just as there was never any guarantee that there was as much as 300,000 tons in the ground. That is the nature of underground contamination – it is impossible to know exactly how much there is.
>
> [6] In fact, eleven months ago Bennett's other counsel complained that "The IFB is essentially a resolicitation to submit bids for a contract that Bennett has already been awarded." (see your letter, page 5).

92. Between June 2, 2003 and July 22, 2004, Defendants never disclosed that the Army Corps had withdrawn its consent to the awarding of the Creosote Contract to Bennett.

C. The January 2004 Private Placement

93. In early 2004, the Company took advantage of the artificially inflated price of Bennett stock by conducting a private placement of Bennett securities. Specifically, the Company sold 1 million "units," each of which consisted of one share of Bennett stock and a warrant to purchase one half share of Bennett stock. Each "unit" was sold for (CAD) $26. At the time Bennett announced the private placement, the Company's stock price was at an all time high, with shares trading between (CAD) $25.58 per share and (CAD) $27.13 per share.

94. On January 12, 2004, Bennett issued a press release on *Business Wire* announcing that it had entered into a bought deal financing agreement with TD Securities, Inc. ("TD") for gross proceeds of (CAD) $15,600,000. Pursuant to that agreement, TD agreed to purchase 600,000 "units," each consisting of one common share and one-half common share purchase warrant at a price of (CAD) $26.00 per unit. Bennett also reported that TD would have an option, exercisable until one day prior to the closing date, to purchase up to an additional 400,000 units, which, if exercised, would bring the total gross proceeds to (CAD) $26,000,000.

95. On or about January 28, 2004, Lead Plaintiffs subscribed to purchase 77,500 "units" at a price of (CAD) $26 each, for a total purchase price of (CAD) $2,015,000.

96. On February 3, 2004, Bennett issued a press release on *Business Wire* announcing that it closed the bought deal financing agreement with TD as the underwriter for 600,000 units. In addition, the Company reported that TD exercised its option to purchase an additional 400,000 units, bringing the gross proceeds of the total deal to (CAD) $26,000,000. According to the Company, the proceeds from the deal "will be used for general corporate purposes, including contributing to the construction of the Corporation's new facility in Belledune, New Brunswick."

VI. DEFENDANTS' MATERIALLY FALSE AND MISLEADING STATEMENTS DURING THE CLASS PERIOD

97. On June 2, 2003, the first day of the Class Period, Bennett issued a press release on *Business Wire* announcing that it had been awarded the Creosote Contract. The press release stated that Bennett "has been awarded a contract to treat an estimated 300,000 tons of soil contaminated with wood treatment chemicals from Phase III of the Federal Creosote Superfund Site in New Jersey. This contract, valued at $200 Cdn., the largest in the Company's history, is scheduled to be completed by December 31, 2005 and may be increased with the addition of subsequent phases."

98. The Company's June 2 press release quoted Defendant Griffiths stating:

> This is the third phase of this project that the Company has won, and is testimony to the high level of professionalism, service and competitiveness that Bennett has provided on this site over the past two years. Shipments from three different locations on the site should start within the next few says, and continue until completion of Phase III which is anticipated by the end of 2005. Subsequent phases may be added depending on the results of soil sampling of additional areas.

99. The press release also quoted Defendant John Bennett commenting favorably on how the Creosote Contract would benefit the Company in fiscal year 2003 and beyond:

> Since 2001, our Company has played a key role in the cost effective clean-up of the Federal Creosote Superfund site and I am pleased that we will continue our involvement for the next several years. ***This, 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.***
>
> Winning this contract provides a good base load of material for our proposed new soil treatment facility in Belledune, New Brunswick which is scheduled to be completed by the end of this year. In the interim, construction on our 30,000 tonne storage building at the Saint Ambroise treatment facility will be completed by the middle of June. This will give us the required storage and the capability to dry and optimally blend the soil in order to maximize the throughput.

(Emphasis added.)

100. On June 6, 2003, Bennett filed a Form 6-K with the SEC, signed by Defendant John Bennett, reporting and attaching the Company's June 2, 2003 press release as an exhibit.

101. The Company's June 2 press release and June 6 SEC filing were materially false and misleading. The Creosote Contract was for an indefinite quantity, with only a guaranteed minimum of 500 tons of contaminated soil. Indeed, the Request for Proposals issued by Sevenson on March 11, 2003, specified that the Contract was for an indefinite quantity, and would be for a minimum of only 500 tons. Both the Request for Proposals and the proposal Bennett submitted in response thereto described the Creosote Contract as an indefinite quantity and indefinite delivery contract. Similarly, correspondence between Sevenson and Bennett prior to June 2, including the correspondence exchanged on May 22 regarding the posting of a bond for the Creosote Contract, refer to the Contract as an indefinite quantity and indefinite delivery contract. Further, the Purchase Order for the Creosote Contract issued by Sevenson on May 29, 2003, and executed by Defendant Griffiths on behalf of Bennett on May 30, 2003, specifies that the Creosote Contract is for an indefinite quantity.

102. On June 12, 2003, Bennett issued a press release on *Business Wire* announcing that it received two new contracts valued at (CAD) $12 million, which would "increase the Company's contracted backlog to a record (CDN) $272 million." The Company also reiterated the significance of the Creosote Contract, stating "The Company recently announced a 300,000 ton, $200 million Cdn. Contract. This is the largest in the Company's history and was received for Phase III of the Federal Creosote Superfund site in New Jersey. Shipments from the project will be received this week and this project will extend until 2005 and is subject to further extensions."

103. The Company's June 12 press release was materially false and misleading. The Creosote Contract was for an indefinite quantity, with a guaranteed minimum of only 500 tons of contaminated soil. The representation in the June 12 press release that the Company's backlog was (CAD) $272 million was materially false and misleading because it improperly included 300,000 tons of soil from the Federal Creosote Site, which the Company improperly valued at (CAD) $200 million.

104. On July 24, 2003, Bennett issued a press release on *Business Wire* announcing the Company's financial results for the second quarter ended June 30, 2003. Specifically, the Company reported a second quarter profit of (CAD) $3,083,870, or (CAD) $0.18 per fully diluted share, on revenues of (CAD) $13,369,587. The press release also stated that:

> The Company currently has $272 million of contracts in backlog representing approximately 400,000 tonnes of soil. These contracts include soil from Phase II and Phase III of the Federal Creosote Superfund Project in New Jersey, clean-ups from DEW (distant early warning) sites in the Canadian north, scheduled shipments from the recently announced 5-year agreement with a major electrical manufacturer, Canadian Government contracts in Eastern Canada, US Government TERC contracts (Total Environmental Restoration Contracts) and several additional projects throughout Canada and the United States.

The press release further stated that "The Company's current backlog of contracts is expected to keep both its existing and new plants full for the next several years and for the foreseeable future."

105. The July 24, 2003 press release also provided specific information concerning the Company's production at Saint Ambroise. In particular, the Company stated that "[t]he new storage facility at [Saint Ambroise] was completed in mid-June and is now accepting shipments. This additional storage will give the Company the ability to store the growing backlog of orders . . . . ***We expect to have 40,000 tonnes in storage by the end of this year.***" (Emphasis added.)

106. The July 24 press release quoted Defendant John Bennett remarking that the Creosote Contract (and certain smaller contracts) would have a positive impact on Saint Ambroise's soil supply:

> With shipments from Resolution Island and Saglek Labrador in the Canadian North, Phase II and Phase III from the Federal Creosote Project in New Jersey, shipments from a large electrical manufacturer in Canada, along with this contract and several other smaller projects, our treatment facility already has 10,000 tonnes housed in our new Saint Ambroise Quebec storage facility. ***This volume is growing steadily and, in addition to operating the plant at full capacity starting in Q3 this year, we expect to have 40,000 tonnes in storage by the end of the year,*** and enough to carry us through the traditionally weather-sensitive winter months and spring shipping seasons.

(Emphasis added.)

107. The Company's July 24 press release was materially false and misleading. By July 24, 2003, the Army Corps had withdrawn its consent to the Creosote Contract. As set forth above, documents demonstrate that, by July 24, Sevenson had sent questions to Bennett seeking clarification of Bennett's proposal, and the Company and Sevenson had discussed that Bennett would perform work for only 45 days to prevent the interruption of work at the Federal Creosote Site. In addition, the Creosote Contract, even prior to its withdrawal by the Army Corps, was for an indefinite quantity, and guaranteed a minimum of just 500 tons. With regard to its soil backlog, as Defendant Stern explained in an October 23, 2003 conference call, "the way these things work is that, although we have verbal commitments and also another commitments [sic] in writing... unless we have a firm purchase order or a firm contract for a firm dollar amount, we don't include it in backlog." The references in the July 24 press release to the Company's reported backlog of (CAD) $272 million, representing 400,000 tons, were therefore materially false and misleading because they improperly included 300,000 tons of contaminated soil from the Creosote Contract that the Company valued at (CAD) $200 million. Further, the statements

regarding the Saint Ambroise facility were materially false and misleading because Defendants knew or recklessly disregarded the fact that the Company would not receive a sufficient quantity of contaminated soil from the Creosote Contract to operate Saint Ambroise at full capacity, or to supply the 40,000 tons of soil the Company claimed it would have in storage at that facility.

108. The falsity of Bennett's statements in its July 24 press release was apparent to those with knowledge that the Army Corps had withdrawn its approval for the award of the Creosote Contract. In response to Bennett's July 24 press release, and a contemporaneous conference call with stock analysts to discuss the Company's financial results for the second quarter, on July 28, 2003, Clean Harbors sent an e-mail to the Army Corps regarding Bennett's statements in that press release and conference call. In that e-mail, Clean Harbors questioned why Bennett continued to report on its success in obtaining the Creosote Contract, and the benefits from that Contract that would accrue to the Company, following the Army Corps' withdrawal of its consent. Clean Harbors' e-mail stated:

> The release and a related earnings call makes no mention of the Army Corps' withdrawal of approval of Bennett's selection as subcontractor for Phase III work at Federal Creosote. In fact, it specifically identifies this project as an integral part of their upcoming work. I trust that you understand that this release raises serious questions. Either Bennett somehow knows that they will receive Phase III work, ***or they are supplying materially false information to its shareholders and the public***.

(Emphasis added.)

109. On August 8, 2003, Bennett issued a press release on *Business Wire* announcing that it received a (CAD) $20 million contract to treat contaminated soil for an unnamed customer in the United States. Defendant John Bennett stated that "Shipments are expected to commence within the month of August and brings the Company's contracted backlog to over $280M Cdn. With shipments from Resolution Island and Saglek Labrador in the Canadian North, Phase II and

Phase III from Federal Creosote Project in New Jersey, shipments from a large electrical manufacturer in Canada, along with this contract and several other smaller projects, our treatment facility already has 14,000 tonnes house in our new Saint Ambroise Quebec storage facility. This volume is growing steadily and, in addition to operating this plant at full capacity starting in Q3 this year, we expect to have 40,000 tonnes in storage by the end of the year, and enough to carry us through the traditionally weather-sensitive winter months and spring shipping seasons."

110. On August 12, 2003, Bennett filed a Form 6-K with the SEC, signed by Defendant John Bennett, reporting and attaching the Company's August 8, 2003 press release as an exhibit.

111. The Company's August 8 press release and August 12 SEC filing were materially false and misleading. The Company's reported backlog of (CAD) $280 million improperly included 300,000 tons of contaminated soil from the Creosote Contract, which the Company valued at (CAD) $200 million. That Contract had been withdrawn, and Bennett had agreed to perform work at the Federal Creosote Site for just 45 days pursuant to a limited consent from the Army Corps. By August 1, 2003, Sevenson had informed the Company that an Amended Request for Proposals would be issued to select subcontractors to treat contaminated soil at the Federal Creosote Site. In addition, the Creosote Contract, even prior to its withdrawal, was for an indefinite quantity, with a guaranteed minimum of only 500 tons of soil. Indeed, on August 6, 2003, Bennett received a letter from Sevenson stating that the Company had overstated the importance of the Creosote Contract. As set forth above, that letter stated that "As you well know, that contract guarantees a minimum quantity of 500 tons. A prudent person could not value such a contract as having the value you ascribe to it using the maximum quantity." In light

of these facts, the statements regarding the Saint Ambroise facility were also materially false and misleading because the Company would not receive a sufficient quantity of contaminated soil from the Creosote Contract to supply the 40,000 tons of soil that Defendant John Bennett claimed the Company would have in storage at that facility by the end of 2003, or to operate that facility at full capacity.

112. On September 9, 2003, Bennett issued a press release to announce that it had received approval for the construction of its new soil treatment facility at Belledune, New Brunswick. The press release quotes Defendant Ponn as stating that "The proposed facility will be capable of treating up to 100,000 tonnes annually of hydrocarbon and creosote impacted soils."

113. The Company's September 9, 2003 press release was materially false and misleading. The release failed to disclose that the Company did not need to construct the Belledune facility because it lacked sufficient soil backlog to operate that facility at a profitable capacity. The release similarly failed to disclose that the Creosote Contract, which the Company had previously described as a contract to treat 300,000 tons, was in fact a contract for an indefinite quantity, with a guaranteed minimum of only 500 tons of soil, and that the Contract had been withdrawn by the Army Corps.

114. On October 23, 2003, Bennett issued a press release on *Business Wire* announcing its financial results for the third quarter ended September 30, 2003. Bennett reported third quarter revenues of (CAD) $22,402,772 and net after tax profits of (CAD) $6,796,616, or (CAD) $0.39 per fully diluted share (U.S. $0.28). The release stated that "Compared to the same quarter last year, the Company more than doubled its revenues and nearly tripled its profits from $9,057,125 and $2,306,240 respectively as the Company's treatment facilities continue to

increase capacity utilization." Further, the press release stated that "[d]emand for the Company's services remains high with good visibility on shipments well into next year. Construction on the new plant in Belledune, New Brunswick is underway and on schedule with full production expected by mid-year 2004." The press release quoted Defendant Ponn as stating that "[t]he plant at Saint Ambroise, Quebec continues to operate well . . . and set a new record in the quarter by treating approximately 23,000 tonnes." The release also stated that the Company had received authorization to proceed with the construction of its new soil treatment facility in Belledune, which would have the capacity to treat 100,000 tons of soil annually.

115. That same press release quoted Defendant John Bennett as commenting that:

> I am pleased with the results of the quarter. Our business is continuing to grow and our Q3 revenues and profits were equal to those of the first two quarters of this year combined. Demand for soil remediation services remains high. We have soil from 11 projects in storage awaiting treatment. Sizable shipments from at least six projects are expected by the end of the year. This is the first quarter that we are operating using the newly constructed storage facility. Currently there are nearly 25,000 tonnes in storage, which should ensure high plant utilization in Q4. Given expectations for customer shipments for the balance of this year, we should be utilizing our full storage capacity of 40,000 tonnes by the end of the year. This should mitigate any seasonal issues of delayed shipments over the weather sensitive first half of 2004.

116. On October 24, 2003, Bennett filed a Form 6-K with the SEC, signed by Defendant John Bennett, reporting and attaching the Company's October 23, 2003 press release as an exhibit.

117. The Company's October 23 press release and October 24 Form 6-K were materially false and misleading. Specifically, the discussions of the Company's operations failed to disclose the withdrawal of the Creosote Contract on the demand for the Company's services, the shipments of contaminated soil the Company expected to receive, and the operations at the Saint Ambroise facility. The press release specifically failed to disclose that the Creosote

Contract had been a contract for an indefinite quantity, with a guaranteed minimum of only 500 tons of soil, and that the Contract had been withdrawn by the Army Corps. In light of those facts, the statements regarding the Saint Ambroise facility were also materially false and misleading because the Company would not receive a sufficient quantity of contaminated soil from the Creosote Contract to supply the 40,000 tons of soil that Defendant John Bennett claimed the Company would have in storage at that facility by the end of 2003. The press release similarly failed to disclose that the Company did not need to construct the Belledune facility because it lacked sufficient soil backlog to operate that facility at a profitable capacity.

118. Also on October 23, 2003, the Company held a conference call with securities analysts to discuss Bennett's financial results for the third quarter ended September 30, 2003. Defendants John Bennett and Stern were the primary speakers on the call. In response to an analyst's question concerning the Company's soil backlog, Defendant Stern responded that "currently we'd be sitting on around $270 million in contracts, either contracts or from purchase orders currently, that represent still, close to four years of work for one plant, or 400,000 tons of soil." Importantly, Defendant Stern explained that "the way these things work is that, although we have verbal commitments and also another commitments [sic] in writing... ***unless we have a firm purchase order or a firm contract for a firm dollar amount, we don't include it in backlog***." (Emphasis added.)

119. During that same conference call, one securities analyst inquired whether there was a single contract that was responsible for the majority of the Company's backlog. In response, Defendant Stern stated that Bennett "will have quite a sizable amount of soil from the Saglek, Labrador project . . . [and] ***will also have a sizable quantity of soil from [its] Creosote site in New Jersey, and that's always an ongoing one with shipments***." (Emphasis added.)

120. The Company's October 23 conference call was materially false and misleading. By October 23, 2003, the Army Corps had withdrawn its consent to the Creosote Contract. That Contract was for an indefinite quantity, with a guaranteed minimum of only 500 tons of soil – not for 300,000 tons of soil as Bennett represented. Defendant Stern's description of the Company's soil backlog was, therefore, materially false and misleading because it included 300,000 tons of soil from the Creosote Contract, which Bennett valued at (CAD) $200 million.

121. On November 3 and 5, 2003, an analyst at First Associates Investments issued reports discussing local opposition to construction of the Company's Belledune facility, citing the possibility that the facility might not become operational during 2005. Thereafter, the Company's share price declined briefly, falling nearly $2 per share On November 6, 2003, after the close of trading, Bennett issued a press release on *Business Wire*, reporting a backlog of (CAD) $260 million (U.S. $195 million) from contracts that it expected to ship to its facilities by the end of 2005. In response to a recent share price decline, and in an effort to stop that decline, the press release stated that "The Company believes that the recent share price decline is unwarranted and is ***not aware of any factors or circumstances that may have changed in the Company's current operations or future prospects that would account for this change in valuation***." (Emphasis added.) After closing at U.S. $16.57 per share on November 6, 2003, the price of Bennett stock rebounded to close at U.S. $17.3 per share the next day, eventually closing at U.S. $17.99 by the end of the month.

122. The Company's November 6 press release was materially false and misleading. By November 6, 2003, the Army Corps had withdrawn the Creosote Contract, the Company had informed Sevenson that it would not participate in the Amended Request for Proposal process, and Sevenson determined to issue a new solicitation in place of the Creosote Contract. The

Company, therefore, had a drastically lower soil backlog than previously reported, and vastly insufficient soil backlog to continue to operate its Saint Ambroise facility at a profitable capacity, or to justify the construction of its new Belledune facility.

123. On February 12, 2004, Bennett issued a press release over *Business Wire* announcing its financial results for the fourth quarter and year ended December 31, 2003. Specifically, Bennett stated that it received fourth quarter revenues of (CAD) $21,984,054 and profits of (CAD) $6,397,087, or (CAD) $0.36 per fully diluted share (U.S. $0.27), and full year revenues of (CAD) $69,806,526 and profits of (CAD) $19,372,261, or (CAD) $1.11 per fully diluted share (U.S. $0.83). The press release quoted Defendant John Bennett stating that "We received new contracts and are currently executing on many large soil remediation contracts that will be continuing throughout 2004... Demand for our treatment services remains high and to meet this demand, our plans are to continue to maximize production at our Saint Ambroise facility and to open our new treatment plant in Belledune, New Brunswick. Construction on the Belledune plant is progressing on schedule and is more than 65% complete. Following successful source testing and an operational permit, full production is anticipated by mid-year 2004."

124. On February 17, 2004, Bennett filed a Form 6-K with the SEC, signed by Defendant John Bennett, reporting and attaching the Company's February 12, 2004 press release as an exhibit.

125. On February 12, 2004, Bennett held a conference call with securities analysts to discuss the Company's financial results for the fourth quarter and year ended December 31, 2003. In response to a securities analyst's question about Bennett's current soil backlog, Defendant Stern responded that "the current backlog in signed [purchased orders] is kind of

consistent with what we have said before, it is backing off kind of our last quarter production. And so that would kind of make it somewhere in the neighborhood of about 100, and let's say $160 million, Canadian. But, you know, it'll, the backlog will go up and down, depending upon the production, depending upon the new contracts that we're in." Both Defendant Stern and John Bennett suggested that, at the request of certain clients who are "very sensitive to us announcing backlog," they could "only speak generally about backlog."

126. In response to a follow-up question from an analyst who pointed out that that Bennett had previously claimed a backlog of (CAD) $272 million in 2003 after announcing the (CAD) $200 million Creosote Contract, Defendant Stern remarked that "***the backlog number, it's always moving and always changing, and sometimes, we work off contracts and sometimes the contracts change in the value, and sometimes we add new contracts***." (Emphasis added.) Defendant Stern further explained that, when the Company previously stated that Bennett's backlog was (CAD) $272 million, the backlog was "very heavily weighted toward Federal Creosote."

127. During the February 12 conference call, Defendant John Bennett offered his own explanation of the value of the Company's "true" backlog. Specifically, John Bennett stated that

> You know, as I said earlier, we have some long-term contracts, where we're given a series of small purchase orders... And so we're counting the purchase orders. But the size of the total contract, nobody, even the owners, won't tell us what that is and, I mean, we know what [the backlog] is because we see [the soil] physically in the ground, but no one wants to report that at all. And so we have to be very guarded in what we say about this, and so ***we're giving you what we consider conservative numbers***.

(Emphasis added.) When, in response to Defendant John Bennett's statement, an analyst at BI Research sought to confirm that "160 are signed [purchase orders], and the actual backlog is something bigger than that, probably?" Defendant John Bennett said "We can say yes."

128. The Company's February 12 press release and conference call, and the Company's February 17 Form 6-K, were materially false and misleading. Specifically, the reference in the press release to the Company's "many large soil remediation contracts that will be continuing throughout 2004" was materially false and misleading because the Defendants failed to disclose that the Army Corps had withdrawn the Creosote Contract, or that the Contract was for an indefinite quantity, and not the 300,000 tons the Company claimed. For the same reasons, the representation regarding the size of the Company's soil backlog was materially false and misleading, because it continued to include at least a portion of the Creosote Contract. In light of the true terms of that Contract, and the fact of its withdrawal, the references to Bennett's Saint Ambroise and Belledune facilities were similarly materially false and misleading. Without the Creosote Contract, the Company had vastly insufficient soil backlog to continue to operate its Saint Ambroise facility at a profitable capacity, or to justify the construction of its new Belledune facility.

129. Defendant Stern's statement on the February 12 conference call that the Company's soil backlog "is kind of consistent with what we have said before" was materially false and misleading because the Company had, on repeated occasions during the Class Period, represented its soil backlog to be in excess of (CAD) $260 million. Stern's explanation for this contradiction was also materially false and misleading, in that he contradicted his previous statement, during the Company's October 23 conference call with analysts, that "unless we have a firm purchase order or a firm contract for a firm dollar amount, we don't include it in backlog."

130. Defendant John Bennett's statements on the February 12 conference call were similarly materially false and misleading in that they contradicted Stern's October 23 statement. In addition, John Bennett's statement that "nobody, even the owners" can tell the true size of a

soil treatment contract, was materially false and misleading because it contradicts each of the Defendants' prior statements regarding the size, value and importance of the Creosote Contract. Further, John Bennett's statement that the Company's soil backlog was "conservative," and could in fact be larger than reported, was materially false and misleading because it suggested that the Company was under contract to treat additional contaminated soil when, in fact, the soil backlog as reported during the February 12 conference call was overstated due to the inclusion of at least a portion of the Creosote Contract.

VII. THE TRUTH BEGINS TO EMERGE

131. On March 29, 2004, Bennett surprised the market when it issued a press release, carried over *Business Wire*, announcing that that it would be forced to temporarily shut down its Saint Ambroise facility due to "significant delays" in shipments of soil from two unnamed customers. According to Bennett, "[t]he Company still expects to receive the same volume of contaminated soil from these sites, however shipments will now commence at a later date than was originally expected." In relevant part, the press release states:

> The Company has just been advised by two of its larger customers of the likelihood of significant delays in shipments of soil from their sites. The delays are due to site preparation activities on the customers' sites that are not yet completed and are holding up excavation and shipment of contaminated soil. These delays were unforseen by the customers and were expected to be completed in late March and early April. As a result, the Company will incur an unscheduled shutdown that could last for several weeks, possibly until May or until shipments resume from these or other sites. Depending on the duration of the shutdown, this is expected to negatively impact the achievability of the full year earnings estimates. The Company still expects to receive the same volume of contaminated soil from these sites, however shipments will now commence at a later date than was originally expected.
>
> * * *
>
> Last year, the Company treated 75,000 tonnes of soil at [its] Saint Ambroise treatment facility achieving an overall capacity utilization of

> 75%. We still expect capacity utilization to be comparable to this level in 2004 despite this unplanned shutdown.

132. The Company's March 29 press release disclosed to the market for the first time that Bennett lacked a sufficient supply of contaminated soil to operate the Saint Ambroise facility at a profitable capacity. The shortage of soil that necessitated the closure of the Saint Ambroise facility resulted from the low volume of soil being shipped to that facility from the Federal Creosote Site. In response to the Company's March 29 press release, the price of Bennett stock fell by 27%, from $16.70 per share to $12.10 per share ((CAD) $21.98 to $16). Despite this partial disclosure of the Company's true condition, the March 29 press release was materially false and misleading because it failed to disclose that the Army Corps had withdrawn its consent for the Creosote Contract, or the fact that that Contract was for the treatment of an indefinite quantity of contaminated soil. The press release was similarly materially false and misleading in suggesting that the resumption of shipments from the work sites in question would permit the re-opening of the Saint Ambroise facility, because, without the Creosote Contract, the Company had insufficient soil backlog to operate that facility at a profitable capacity.

133. On April 29, 2004, Bennett issued a press release, carried over *Business Wire*, announcing its financial results for the first quarter ended March 31, 2004. Specifically, the Company reported a (CAD) $400,000 loss, or (CAD) $0.02 per diluted share, compared with earnings of (CAD) $3.1 million, or (CAD) $0.17 per diluted share, for the same quarter a year earlier. The press release further stated that "Current contract backlog stands at $218-million."

134. Bennett's April 29 press release also quoted Defendant Bulckaert concerning Bennett's upcoming projects. Specifically, Bulckaert stated that "[w]e are confident that we will have adequate volumes for the start-up of Belledune in the third quarter as well as for its continued operation. There is no lack of opportunities out there. We are increasing sales staffing

and improving our ability to win new business." Indeed, Defendant Bulckaert stated that "The company's fundamentals remain sound and while there are clear areas for process and business improvements, I see the current period as more of an anomaly in Bennett's long-term progress."

135. On that same day, the Company held a conference call with securities analysts to discuss Bennett's financial results for the first quarter ended March 31, 2004. During that conference call, in response to a question from a securities analyst concerning the value of the Company's soil backlog, Defendant Bulckaert stated "I'll give you the exact number, we had the backlog, and it's contract backlog, okay? ***It's $218 million, Canadian, or $163 million, U.S.*** ... ***That's 400,000 tons.***" (Emphasis added.) The backlog reported by Bulckaert included 300,000 tons from the Creosote Contract (less the negligible amount that the Company had treated under the limited consent granted by the Army Corps – less than 10,000 tons).

136. On April 30, 2004, Bennett filed a Form 6-K with the SEC, signed by defendant John Bennett, reporting and attaching the Company's April 29, 2004 press release as an exhibit.

137. The Company's April 29 press release and conference call, and its April 30 Form 6-K, were materially false and misleading. Specifically, the representation that the Company's soil backlog was (CAD) $218 million, representing 400,000 tons, was materially false and misleading because it included contaminated soil from the Creosote Contract. Defendant Bulckaert's statements regarding the Company's operations were similarly materially false and misleading because Bulckaert failed to disclose that the Army Corps had withdrawn the Creosote Contract, and that the Creosote Contract was for an indefinite quantity. In addition, Defendant Bulckaert's statements in response to specific questions regarding the Creosote Contract and the work being performed at the Federal Creosote Site were materially false and misleading because

they gave the impression that the Company was continuing to perform work at that site under the Creosote Contract.

138. On May 20, 2004, Bennett filed its annual report for the year ended December 31, 2003 with the SEC on a Form 40-F. The Form 40-F was signed and certified by Defendants Stern and Bulckaert. With respect to the Creosote Contract, the Company stated that:

> In June 2003, [Bennett] was awarded a US $150 million contract to treat an estimated 300,000 metric tones from phase 3 of the [Federal Creosote] project. The total amount to be treated by the [Company] and the timing of the deliveries under phase 3 is unknown as the contract is for an indefinite quantity and indefinite delivery. The [Company] anticipates that this phase will be completed by December, 2005.

The annual report also stated that, as of April 28, 2004, the Company's "backlog of contracts stood at ***$218 million, [which] represents approximately 350,000 tonnes of soil*** or about three years of work for one plant." (Emphasis added.)

139. The Company's May 20 SEC filing was materially false and misleading. Although disclosing for the first time that the Creosote Contract was for an indefinite quantity, the Company hid the importance of that disclosure by describing the Contract as a "US $150 million contract to treat an estimated 300,000 tons." This statement was materially false and misleading because the Creosote Contract did not guarantee the Company 300,000 tons, making its value far less than $150 million, and because the Creosote Contract had been withdrawn. The Company further obscured the importance of the disclosure that the Creosote Contract was for an indefinite quantity by stating that Bennett's soil backlog was (CAD) $218 million, representing 350,000 tons. That statement was materially false and misleading because it included soil from the Creosote Contract in excess of the 1,000 ton minimum provided for by the November 20, 2003 Invitation for Bids, and even in excess of the 10,000 ton maximum for which the Army Corps had granted limited consent.

140. On May 25, 2004, Bennett issued a press release, carried over *Business Wir*e, reporting that, because soil shipments had been arriving in "sufficient quantities," Saint Ambroise would resume its soil treatment processing on May 28, 2004. Although Bennett reported that the Saint Ambroise shut-down would cause "a small loss" in earnings for the second quarter of 2004, it "feels confident of achieving the analysts' consensus this year of between $70 million to $85 million Can. in sales revenue and earnings per share of between $0.70 – $0.85 Can."

141. The Company's May 25 press release was materially false and misleading because it failed to disclose the withdrawal of the Creosote Contract, or that the loss of that Contract would mean that the Company would have insufficient soil to operate the Saint Ambroise facility at a profitable capacity, or to justify the construction of the Belledune facility. The press release was similarly materially false and misleading because it failed to disclose that the Company's bid submitted in response to the November 20, 2003 Invitation for Bids proposed to treat contaminated soil from the Federal Creosote Site at a lower price than provided for in the Creosote Contract.

142. On July 20, 2004, Bennett issued a press release, carried over *Business Wire*, announcing the replacement of Defendant Stern, Bennett's Chief Financial Officer, who purportedly left the Company "to pursue other interests." The Company appointed Andrew Boulanger as Bennett's new Chief Financial Officer. The Company failed to disclose that Defendant Griffiths also left the Company that same day.

VIII. THE TRUTH IS REVEALED

143. On July 22, 2004, just two days after announcing the replacement of Defendant Stern, Bennett shocked the market by issuing a press release, carried over *Business Wire*, announcing to the public for the first time that the Army Corps had withdrawn its consent to the

Creosote Contract over one year earlier – shortly after Bennett had first announced the Contract. The July 22 press release also reported that the Creosote Contract was of "indefinite quantity/indefinite delivery," and did not, in fact, guarantee that Bennett would receive profits from the treatment of 300,000 tons of contaminated soil. In fact, the Company revealed that it has only received about 7,000 tons of contaminated soil from the Phase III work at the Federal Creosote Site, and that "future deliveries under it are highly unlikely to resume."

144. Specifically, the Company's July 22 press release stated:

> Bennett has treated contaminated material derived from three phases of work at the FC Site. Bennett has always performed work in relation to the FC Site pursuant to contracts awarded by prime contractor on the site, Sevenson Environmental Services, Inc. ("Sevenson"). ***The Phase III Contract took the form of an "indefinite quantity/indefinite delivery" standard form purchase order signed by Bennett and Sevenson which was stated to be for the delivery of 300,000 tons plus or minus 15%. The actual amount ultimately to be treated by the Corporation and the timing of deliveries under the contract could not precisely be ascertained in advance.*** Bennett's experience over the two year period leading to the award of the Phase III Contract suggested it would treat the full 300,000 tons. In the two previous phases of FC Site work, Bennett received and treated 101,000 tons, which is well over the maximum quantity specified in the subcontracts it entered into for that work.
>
> Shortly after the award of the contract in May 2003, an unsuccessful bidder protested the award to the United States Army Corps of Engineers ("Corps") which supervises the contractors on the FC Site responsible for the remediation process and consents to the award of subcontracts under U.S. government procurement regulations.
>
> ***The Corps purported to withdraw its consent to the Phase III Contract but consented to ship up to 10,000 tons for treatment under the Phase III Contract.*** Sevenson did not take any action to cancel the original purchase order for approximately 3000,000 tons.
>
> ***Since August, 2003 Bennett has attempted through U.S. Freedom of Information Act requests and numerous interventions by its counsel to ascertain the precise status of the Phase III Contract.*** Throughout this period Bennett has been actively performing and receiving payment for services at the FC Site. It has accepted about 7,000 tons under the Phase III Contract. Bennett's best information, based on July, 2004

> correspondence from the Corps, is that the Phase III Contract remains in effect but that ***future deliveries under it are highly unlikely to resume.*** Shipments will continue under another contract as described below.
>
> After the protest of the Phase III Contract and the purported withdrawal by the Corps of its consent to that contract, Sevenson purported in May, 2004 to award further new subcontracts for the same type of services at the FC Site as were covered by the Phase III Contract. Bennett has repeatedly asked Sevenson to state whether the 2004 contracts supplement or purport to supersede the Phase III Contract. Sevenson has never responded formally to these queries. To benefit deliveries from the FC site, Bennett elected to participate in the contract process. Without waiving any of its rights under the Phase III Contract, Bennett entered on June 3, 2004 into an indefinite quantity/indefinite delivery subcontract with a guaranteed minimum of 1,000 tons and a maximum of 100,000 tons for the same type of services as were covered by the Phase III Contract. ***The new subcontract is on less favourable economic terms than the Phase III Contract*** but consistent with pricing under contracts concluded before the Phase III Contract. ***Assuming only 100,000 tons rather than 300,000 tons is shipped under this contract, it will remove $90 million from the contract backlog.*** On July 21, Bennett received the first shipment of 220 tons under the 2004 subcontract.

(Emphasis added.)

145. In a second press release issued by the Company on July 22, 2004, Bennett reported its financial results for the second quarter ended June 30, 2004. Specifically, the Company announced that it had a loss of (CAD) $2,150,420 for the second quarter of 2004, or (CAD) $0.12 per fully diluted share, compared with earnings of (CAD) $2,162,184, or (CAD) $0.13 per fully diluted share, for the same period one year earlier. Importantly, Bennett remarked that ***"the Company is dependent on the soil delivery schedule from the [Creosote Contract] to begin production at Belledune. Only when it is clear that sufficient volumes of shipments will be received for processing at Belledune, will the facility begin operations."***

(Emphasis added.)

146. On that same day, Bennett held a conference call with securities analysts to discuss the Company's financial results for the second quarter ended June 30, 2004. Predictably,

much of the conference call was devoted towards the Company's stunning announcement concerning the status of the Creosote Contract. During that conference call, one analyst requested that the Company clarify its previously reported soil backlog in light of the 300,000 tons of contaminated soil that comprised the Creosote Contract. In relevant part, Defendant Bulckaert responded that "really, what's happened is the 300,000 ton contract, we preserved the rights to it."

147. In response to Bennett's July 22, 2004 statements, the Company's stock price collapsed, falling 39%, from $9.87 per share to $5.99 per share on July 26 ((CAD $13 per share to $7.97 per share), on heavy trading volume.

148. Securities analysts expressed outrage at the Company's disclosures. A July 23, 2004 report by Cannaccord Capital stated that "[i]n our opinion, the company had a clear fiduciary duty to tell investors that there was uncertainty around this key contract a year ago (at $200 million of a reported backlog of $270 million!)." A July 23, 2004 report by RBC Capital Markets stated that "[i]n the context of how shocking and disturbing the much belated disclosure of material information was, the series of insider and corporate activities during the last nine months may suggest improper conduct."

149. On July 26, 2004, Bennett filed a Form 6-K with the SEC, signed by Defendant Bulckaert, reporting and attaching the Company's July 20, 2004 and July 22, 2004 press releases as exhibits.

150. On July 29, 2004, *Dow Jones Newswires* carried an article entitled "Bennett's Original Phase III NJ Pact Had 500-Ton Minimum." The news article revealed for the first time that the Creosote Contract "had a 500-ton minimum guarantee, ***meaning only 500 tons of contaminated soil had to be delivered to Bennett*** to satisfy the terms of the contract. This

information was included in a letter dated July 15, 2004 to Bennett from the U.S. Army Corps of Engineers." (Emphasis added.) The article also revealed that, in the July 15 letter to Bennett, the Army Corps stated that it "required Sevenson to rebid the [Creosote Contract]," and that, when the project was rebid, "better information on the site indicated that . . . . [t]here [was] no guarantee that as much as 100,000 tons [was] in the ground, just as there was never any guarantee that there was 300,000 tons in the ground."

151. On July 30, 2004, the Company issued a press release carried over *Business Wire* announcing that "a Special Committee of independent Directors has been formed to oversee the Company's review of the [Creosote Contract], together with the process by which Bennett monitors contractual arrangements for existing and future work from the site." Defendant Bulckaert noted that the Special Committee "intend[s] to ensure that the best possible processes are in place so that awards and shipments under 'indefinite quantity/indefinite delivery' contracts are reported appropriately to investors."

152. On August 26, 2004, Bennett issued a press release announcing that Defendant John Bennett had resigned as Chairman of the Board, but would retain his role as a Director.

COUNT I

AGAINST ALL DEFENDANTS FOR VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT

153. Lead Plaintiffs repeat and reallege each and every allegation above, as if fully set forth herein. This Count is brought pursuant to Section 10(b) of the Exchange Act, 15 U.S.C. § 78(j), and Rule 10b-5 promulgated thereunder, 17 C.F.R. 240.10b-5, on behalf of all members of the Class against all Defendants.

154. Throughout the Class Period, Defendants directly and indirectly, by use of the means and instrumentalities of interstate commerce, the United States mails and a national

securities exchange, employed devices, schemes and artifices to defraud, made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in acts, practices and a course of business which operated as a fraud upon Lead Plaintiffs and the members of the Class.

155. Defendant Bennett, and Individual Defendants John Bennett, Stern, Ponn, Griffiths and Bulckaert, as the top executive officers of Bennett, are liable as direct participants in the wrongs complained of herein. Through their positions of control and authority as officers and/or directors of Bennett, the Individual Defendants were able to control and did control the content of the public statements contained herein and in reckless disregard of the true nature and status of the Creosote Contract, they caused the above complained of public statements to contain misstatements and omissions of material facts as alleged herein.

156. Defendant Bennett is liable for each of the materially false and misleading statements set forth herein, including each of the statements of the Individual Defendants, under the principles of *respondeat superior*.

157. In addition, the false and misleading statements made in the Company's published documents (including its press releases and SEC filings) constitute "group published information," which Defendants John Bennett, Stern, Ponn and Bulckaert were responsible for creating. During their respective terms of employment Bennett, Defendants John Bennett, Stern, Ponn and Bulckaert had direct involvement in the daily business of the Company and participated in the preparation and dissemination of Bennett's "group published" documents.

158. More particularly, Defendants John Bennett, Stern and Ponn are liable for the following materially false and misleading statements that were contained within "group published information" during the Class Period:

a. The false and misleading statements in Bennett's June 2, 2003 press release;

b. The false and misleading statements in Bennett's Form 6-K, filed with the SEC on June 6, 2003;

c. The false and misleading statements in Bennett's June 12, 2003 press release;

d. The false and misleading statements in Bennett's July 24, 2003 press release;

e. The false and misleading statements in Bennett's August 8, 2003 press release;

f. The false and misleading statements in Bennett's Form 6-K, filed with the SEC on August 12, 2003;

g. The false and misleading statements in Bennett's September 9, 2003 press release;

h. The false and misleading statements in Bennett's October 23, 2003 press release;

i. The false and misleading statements in Bennett's Form 6-K, filed with the SEC on October 24, 2003;

j. The false and misleading statements in Bennett's November 6, 2003 press release;

k. The false and misleading statements in Bennett's February 12, 2004 press release;

l. The false and misleading statements in Bennett's Form 6-K, filed with the SEC on February 17, 2004;

m. The false and misleading statements in Bennett's March 29, 2004 press release;

n. The false and misleading statements in Bennett's April 29, 2004 press release;

o. The false and misleading statements in Bennett's Form 6-K, filed with the SEC on April 30, 2004;

p. The false and misleading statements in Bennett's Form 40-F, filed with the SEC on May 20, 2004; and

q. The false and misleading statements in Bennett's May 25, 2004 press release.

159. Defendant Bulckaert, who began his tenure as Bennett's Chief Executive Officer on February 18, 2004, is liable for the following materially false and misleading statements that were contained within "group published information" during the Class Period:

a. The false and misleading statements in Bennett's March 29, 2004 press release;

b. The false and misleading statements in Bennett's April 29, 2004 press release;

c. The false and misleading statements in Bennett's Form 6-K, filed with the SEC on April 30, 2004;

d. The false and misleading statements in Bennett's Form 40-F, filed with the SEC on May 20, 2004; and

e. The false and misleading statements in Bennett's May 25, 2004 press release.

160. In addition to his liability for the materially false and misleading statements that were contained within "group published information," Defendant John Bennett is also liable for the following materially false and misleading statements that he personally made during the Class Period:

a. His false and misleading statements in Bennett's June 2, 2003 press release;

b. His false and misleading statements in Bennett's Form 6-K, filed with the SEC on June 6, 2003;

c. His false and misleading statements in Bennett's July 24, 2003 press release;

d. His false and misleading statements in Bennett's August 8, 2003 press

release;

e. His false and misleading statements in Bennett's Form 6-K, filed with the SEC on August 12, 2003;

f. His false and misleading statements in Bennett's October 23, 2003 press release;

g. His false and misleading statements in Bennett's Form 6-K, filed with the SEC on October 24, 2003;

h. His false and misleading statements in Bennett's February 12, 2004 press release;

i. His false and misleading statements in Bennett's February 12, 2004 conference call with securities analysts;

j. His false and misleading statements in Bennett's Form 6-K, filed with the SEC on February 17, 2004; and

k. His false and misleading statements in Bennett's Form 6-K, filed with the SEC on April 30, 2004.

161. In addition to his liability for the materially false and misleading statements that were contained within "group published information," Defendant Stern is also liable for the materially false and misleading statements that he personally made during the Class Period:

a. His false and misleading statements in Bennett's October 23, 2003 conference call with securities analysts;

b. His false and misleading statements in Bennett's September 30, 2003 conference call with securities analysts;

c. His false and misleading statements in Bennett's February 12, 2004 conference call; and

d. His false and misleading statements in Bennett's Form 40-F, filed with the SEC on May 20, 2004.

162. In addition to his liability for the materially false and misleading statements that were contained within "group published information," Defendant Ponn is also liable for the following materially false and misleading statements that he personally made during the Class Period:

a. His false and misleading statements in Bennett's September 9, 2003 press release; and

b. His false and misleading statements in Bennett's October 23, 2003 press release.

163. In addition to his liability for the materially false and misleading statements that were contained within "group published information," Defendant Bulckaert is liable for the following materially false and misleading statements that he personally made during the Class Period:

a. His false and misleading statements in Bennett's March 31, 2004 conference call with securities analysts; and

b. His false and misleading statements in Bennett's Form 40-F, filed with the SEC on May 20, 2004.

164. Defendant Griffiths is liable for the false and misleading statements that he personally made in Bennett's June 2, 2003 press release.

DEFENDANTS ACTED WITH SCIENTER

1. Facts Giving Rise To A Strong Inference Of Scienter

165. The above allegations establish a strong inference that each of the Defendants acted with scienter in misrepresenting the size, value, importance and continued existence of the Creosote Contract. The purported importance of that Contract to Bennett makes clear why they did so. Defendants repeatedly described the Creosote Contract as the largest in the Company's history. Indeed, in its August 6, 2003 letter to Sevenson, Bennett itself describes the Creosote Contract as "material." During the Class Period, the 300,000 tons of contaminated soil that Bennett claimed it was contracted to treat under the Creosote Contract, and which the Company valued at (CAD) $200 million, represented the majority of its claimed soil backlog of between 350,000 and 400,000 tons and (CAD) $218-280 million. Further, the soil Bennett claimed it would receive under the Creosote Contract was necessary to operate the Company's Saint

Ambroise facility at a profitable capacity, and was necessary to justify the construction and operation of the Belledune facility.

166. Throughout the Class Period, Defendants overstated the importance of the Creosote Contract and continued to represent that Bennett was performing work pursuant to that Contract, despite the fact that the Army Corps had withdrawn the Contract. Defendants engaged in this misconduct, and made or caused to be made the materially false and misleading statements, knowing them to be false and misleading or with reckless disregard for the truth of those statements.

167. That Bennett acted with scienter in overstating the size, value and importance of the Creosote Contract is demonstrated by, among other things:

a. The March 11, 2003 Request for Proposals issued by Sevenson requested bids for the treatment of an indefinite quantity of contaminated soil, with a maximum of 300,000 tons, but ***a minimum quantity of just 500 tons***.

b. Sevenson's letter distributing the Request for Proposals identified the contract as an "Indefinite Delivery / Indefinite Quantity Contract."

c. The Request for Proposals section entitled "Special Provisions, Indefinite Delivery / Indefinite Quantity," stated that "[t]he resultant purchase order issued from this competition will be an Indefinite Delivery / Indefinite Quantity subcontract."

d. The Special Provisions section included provision "52.216-22 Indefinite Quantity" of the contract, which states in relevant part that "This is an indefinite – quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract."

e. The Special Provisions section specified that the contract was for a minimum of 500 tons.

f. Bennett's April 11, 2003 response to the Request for Proposals, signed by Defendant Griffiths, referred to the "ID/IQ Subcontract Requirements," a reference to the fact that the Creosote Contract was an "Indefinite Delivery / Indefinite Quantity" contract.

g. The May 22, 2003 correspondence between Sevenson and Defendant Griffiths on behalf of Bennett, which referred to "ID/IQ Transportation and Disposal Bidders," a reference to the fact that the Creosote Contract was an "Indefinite Delivery / Indefinite Quantity" contract.

h. The May 29, 2003, Purchase Order, executed by Defendant Griffiths, which states explicitly that "This order is an Indefinite Delivery / Indefinite Quantity purchase."

i. The contractual provisions appended to the Purchase Order, which included provision "52.216-22 Indefinite Quantity."

j. The Company's May 20, 2004 Form 40-F, which stated that, under the Creosote Contract, "The total amount to be treated by the [Company] and the timing of the deliveries under phase 3 is unknown as the contract is for an indefinite quantity."

k. Sevenson's August 6, 2003 letter to Bennett, addressed to Defendant Griffiths and copied to Defendant John Bennett, stating that Bennett previously mischaracterized the size, value and importance of the Creosote Contract in its August 6 letter to Sevenson.

l. The September 4, 2003 letter from the Army Corps to Appleton & Associates regarding Sevenson's Amended Request for Proposals.

168. As a result of these facts, Bennett knew or, but for its reckless disregard of these facts, should have known, that the statements, set forth above, regarding the size, value and importance of the Creosote Contract, including the inclusion of that Contract in the Company's soil backlog, were materially false and misleading.

169. That Bennett acted with scienter in misrepresenting that Bennett was performing work pursuant to that Contract, despite the fact that the Army Corps had withdrawn the Contract, is demonstrated by, among other things:

a. The Army Corps' June 26, 2003 determination to withdraw consent for the award of the Creosote Contract.

b. The Army Corps' June 27, 2003 determination that no contaminated soil be shipped to Bennett under the Creosote Contract.

c. Sevenson's June 30, 2003 request that Bennett transport and treat soil from the Federal Creosote Site for only 30 days.

d. Bennett's June 30 letter to Sevenson, sent on behalf of Defendant Griffiths and copied to Defendant John Bennett, insisting that it transport and treat soil from the Federal Creosote Site for 45 days.

e. The "PROPOSAL EVALUATION, CLARIFICATION QUESTIONS" Sevenson sent Bennett on July 2, 2003.

f. Sevenson's August 1, 2003 e-mail informing Bennett that it intended to issue the Amended Request for Proposals.

g. Sevenson's issuance of the Amended Request for Proposals on August 5, 2003.

h. Bennett's August 6, 2003 letter to Sevenson, sent by Defendant Griffiths and copied to Defendant John Bennett, regarding the Amended Request for Proposals.

i. Sevenson's August 6 letter to Bennett, addressed to Defendant Griffiths and copied to Defendant John Bennett, regarding the Amended Request for Proposals.

j. Sevenson's August 7, 2003 decision, transmitted to Bennett, that the Amended Request for Proposals had been cancelled and that a new solicitation to perform the work covered by the Creosote Contract would be issued.

k. Sevenson's August 14, 2003 announcement that it would issue an Invitation for Bids for the work covered by the Creosote Contract on or about August 27.

l. The August 25, 2003 letter from Bennett's attorneys to the Army Corps, which was copied to Defendants Bennett and Griffiths.

m. The September 4, 2003 letter from the Army Corps to Appleton & Associates regarding Sevenson's Amended Request for Proposals.

n. The October 6, 2003 letter to Sevenson from Defendant Griffiths on behalf of Bennett, questioning the withdrawal of the Creosote Contract and the issuance of the new Invitation for Bids.

o. The June 9, 2004 letter from Piper Rudnick to the Army Corps regarding the Creosote Contract.

170. As a result of these facts, Bennett knew that the statements, set forth above, regarding the award of the Creosote Contract to Bennett, including statements regarding Bennett's continued performance of work under that Contract and the inclusion of that Contract

in the Company's soil backlog, were materially false and misleading, or else recklessly disregarded the truth of those statements.

171. The following ***additional*** facts further support a strong inference that Defendant John Bennett acted with scienter:

a. He served as the Company's Chairman throughout the Class Period, and served as its Chief Executive Officer until February 18, 2004;

b. He oversaw Bennett's business and operations and, upon information and belief, received regular reports concerning the Creosote Contract from the Company's most senior officers, including Defendants Stern, Ponn and Griffiths;

c. He was copied on the May 22, 2003 letter from Sevenson to Bennett regarding the Creosote Contract;

d. He was copied on the May 22, 2003 letter from Bennett to Sevenson regarding the Creosote Contract;

e. He was copied on the July 30, 2003 letter from Bennett to Sevenson regarding the Army Corps' withdrawal of consent for the Creosote Contract;

f. He was copied on the August 6, 2003 letter from Bennett to Sevenson regarding Sevenson's issuance of the Amended Request for Proposals for the Creosote Contract;

g. He was copied on the August 6, 2003 letter from Sevenson to Bennett regarding Sevenson's issuance of the Amended Request for Proposals for the Creosote Contract;

h. He was copied on the August 6, 2003 e-mail from Bennett to Sevenson regarding Sevenson's issuance of the Amended Request for Proposals for the Creosote Contract;

i. He was copied on the August 25, 2003 letter from Appleton & Associates to the Army Corps regarding Sevenson's Amended Request for Proposals;

j. He was copied on the September 4, 2003 letter from the Army Corps to Appleton & Associates regarding Sevenson's Amended Request for Proposals;

k. He was copied on the October 6, 2003 letter from Bennett to Sevenson regarding the Army Corps' withdrawal and re-solicitation of the Creosote Contract;

l. He was copied on the June 9, 2004 letter from Piper Rudnick to the Army Corps regarding the Creosote Contract; and

m. He made numerous public statements concerning the size of the Company's backlog, yet had actual knowledge of, or recklessly disregarded, facts concerning the Creosote Contract which made those statements materially false and misleading.

172. The following ***additional*** facts further support a strong inference that Defendant Stern acted with scienter:

a. He served as the Company's Chief Financial Officer from April 2001 until July 20, 2004, and was therefore familiar with Bennett's financials, including, but not limited to, the size of Bennett's contracted soil backlog;

b. He explained how Bennett calculates it soil backlog during the Company's October 23, 2003 conference call, stating that "the way these things work is that, although we have verbal commitments and also another commitments [sic] in writing . . . unless we have a firm purchase order or a firm contract for a firm dollar amount, we don't include it in backlog";

c. He signed and certified the Company's Annual Report for the year-ended December 31, 2003, which the Company filed with the SEC on Form 40-F on May 20, 2004. That Annual Report stated that, as of April 28, 2004, the Company's "backlog of contracts stood at $218 million, [which] represents approximately 350,000 tonnes of soil or about three years of work for one plant"; and

d. He made numerous public statements concerning the size of the Company's backlog, yet had actual knowledge, or recklessly disregarded, facts concerning the Creosote Contract which made those statements materially false and misleading.

173. The following ***additional*** facts further support a strong inference that Defendant Griffiths acted with scienter:

a. He served as the Company's Vice President of North American Sales from June 12, 2003 until July 20, 2004, and was credited by the Company for securing the Creosote Contract.

b. He signed the Company's April 11, 2003 proposal for the Creosote Contract, which states that "Bennett acknowledges a comprehensive understanding of and adherence to the established Scope of Work and ID/IQ Subcontract Requirements";

c. He executed Sevenson's May 29, 2003 Purchase Order to Bennett for the Creosote Contract, which states that "This order is an Indefinite Delivery / Indefinite Quantity purchase";

d. He was the addressee on the May 22, 2003 letter from Sevenson to Bennett regarding the Creosote Contract;

e. He signed the May 22, 2003 letter from Bennett to Sevenson regarding the Creosote Contract;

f. He signed the July 30, 2003 letter from Bennett to Sevenson regarding the Army Corps' withdrawal of consent for the Creosote Contract;

g. He signed the August 6, 2003 letter from Bennett to Sevenson regarding Sevenson's issuance of the Amended Request for Proposals for the Creosote Contract;

h. He was the addressee on the August 6, 2003 letter from Sevenson to Bennett regarding Sevenson's issuance of the Amended Request for Proposals for the Creosote Contract;

i. He authored the August 6, 2003 e-mail from Bennett to Sevenson regarding Sevenson's issuance of the Amended Request for Proposals for the Creosote Contract;

j. He was copied on the August 25, 2003 letter from Appleton & Associates to the Army Corps regarding Sevenson's Amended Request for Proposals;

k. He authored the August 28, 2003 e-mail from Bennett to the Army Corps regarding Bennett's decision to initiate legal action against Clean Harbors;

l. He was copied on the September 4, 2003 letter from the Army Corps to Appleton & Associates regarding Sevenson's Amended Request for Proposals;

m. He signed the October 6, 2003 letter from Bennett to Sevenson regarding the Army Corps' withdrawal and re-solicitation of the Creosote Contract; and

n. He was copied on the June 9, 2004 letter from Piper Rudnick to the Army Corps regarding the Creosote Contract.

174. The following ***additional*** facts further support a strong inference that Defendant Ponn acted with scienter:

a. He served as the Company's Chief Operating Officer throughout the Class Period, and was familiar with the Company's business and operations, including, but not limited to, the Creosote Contract, Bennett's contracted soil backlog and the operation of the Company's Saint Ambroise facility; and

b. He made public statements during the Class Period concerning the Creosote Contract and Bennett's operations at Saint Ambroise, yet had actual knowledge of, or recklessly disregarded, facts concerning the Creosote Contract which made those statements materially false and misleading.

175. The following ***additional*** facts further support a strong inference that Defendant Bulckaert acted with scienter:

a. He has served as the Company's President and Chief Executive Officer from February 18, 2004 through present, and had access to information concerning the Company's operations and finances. During that time, Defendant Bulckaert also oversaw Bennett's business and operations, including but not limited to the Creosote Contract, the Company's contracted soil backlog and the operation of the Company's Saint Ambroise facility;

b. He made public statements during the Class Period concerning the size of the Company's backlog, yet had actual knowledge of, or recklessly disregarded, facts concerning the Creosote Contract which made those statements materially false and misleading;

c. He signed and certified the Company's Annual Report for the year-ended December 31, 2003, which the Company filed with the SEC on Form 40-F on May 20, 2004. The Annual Report stated that, as of April 28, 2004, the Company's "backlog of contracts stood at $218 million, [which] represents approximately 350,000 tonnes of soil or about three years of work for one plant"; and

d. He signed Bennett's Forms 6-K from May 18, 2004 through the end of the Class Period. The Company's Forms 6-K were publicly filed with the SEC, and regularly reported the size of the Company's backlog.

2. <u>Facts Demonstrating Defendants' Motive and Opportunity</u>

176. Defendants Ponn, Stern, Griffiths and Bulckaert also had the motive and opportunity to commit fraud. By misrepresenting the size, value and status of the Creosote Contract, and by overstating the true value of Bennett's backlog, these defendants were able to reap over (CAD) $7.5 million through their Class Period sales of Bennett common stock. Those sales represented significant portions of each of their holdings of Bennett common stock.

177. These stock sales, which were unusual in both timing and amount, are reflected in the following tables which summarize each Defendant's sales in Bennett common stock during the Class Period:

DEFENDANT PONN[2]

Date of Sale	Shares Sold	Price Per Share (CAD)	Proceeds from Sales (CAD)	% of Shares Sold
12/12/2003	50,000	$25.5799	$1,278,995.00	
12/18/2003	25,000	$26.6660	$666,650.00	
12/19/2003	50,000	$26.7896	$1,339,480.00	
12/29/2003	27,200	$27.1331	$738,020.32	
12/30/2003	12,800	$27.0265	$345,939.20	
1/09/2004	15,200	$27.0000	$410,400.00	
TOTALS:	**180,200**		**$4,779,484.52**	**76.91%**

DEFENDANT GRIFFITHS

Date of Sale	Shares Sold	Price Per Share (CAD)	Proceeds from Sale (CAD)	% of Shares Sold
10/27/2003	6,300	$24.5030	$154,368.90	
10/27/2003	11,400	$24.5890	$280,314.60	
10/27/2003	1,400	$24.5480	$34,367.20	
12/12/2003	900	$25.6000	$23,040.00	
TOTALS:	**20,000**		**$492,090.70**	**100.00%**

DEFENDANT BULCKAERT

Date of Sale	Shares Sold	Price Per Share (CAD)	Proceeds from Sales (CAD)	% of Shares Sold
6/03/2004	3,900	$13.350	$52,065.00	
6/07/2004	1,000	$18.000	$18,000.00	
6/07/2004	1,000	$18.010	$18,010.00	
TOTALS:	**5,900**		**$88,075.00**	**100.00%**

[2] Ponn's shares were sold indirectly through Ponn & Ponn Inc.

DEFENDANT STERN

Date of Sale	Shares Sold	Price Per Share (CAD)	Proceeds from Sales (CAD)	% of Shares Sold
08/29/2003	3,000	$19.740	$59,220.00	
09/30/2003	5,000	$22.950	$114,750.00	
10/07/2003	5,000	$23.300	$116,500.00	
10/08/2003	3,000	$25.000	$75,000.00	
10/10/2003	4,000	$25.000	$100,000.00	
10/28/2003	12,000	$25.000	$300,000.00	
12/15/2003	4,500	$25.000	$112,500.00	
12/15/2003	9,150	$26.000	$237,900.00	
12/18/2003	5,500	$27.000	$148,500.00	
06/02/2004	6,000	$17.750	$106,500.00	
06/02/2004	2,000	$17.770	$35,540.00	
06/02/2004	2,000	$17.800	$35,600.00	
06/03/2004	3,900	$18.000	$70,200.00	
06/03/2004	100	$18.010	$1,801.00	
06/03/2004	4,000	$18.050	$72,200.00	
06/03/2004	2,000	$18.060	$36,120.00	
06/04/2004	2,000	$18.000	$36,000.00	
06/04/2004	2,000	$18.050	$36,100.00	
06/04/2004	1,200	$18.140	$21,768.00	
06/04/2004	800	$18.110	$14,488.00	
06/04/2004	100	$16.160	$1,816.00	
06/07/2004	1,900	$18.140	$34,466.00	
06/07/2004	1,000	$18.310	$18,310.00	
06/07/2004	1,000	$18.370	$18,370.00	
TOTALS:	**81,150**		**$1,803,649.00**	**93.06%**

178. These stock sales were unusual and suspicious, with respect to timing and amount, because:

a. Prior to the Class Period, Defendant Ponn had not sold a single share of Bennett stock since July 9, 2002. During the Class Period, however, Ponn unloaded 180,200 shares of Bennett stock, representing over 76.91% of his holdings, reaping proceeds of nearly (CAD) $5 million. Specifically, Ponn's sales occurred during December 2003 and January 2004, well after the Company was informed that the Creosote Contract had been withdrawn, and just months prior to Bennett's announcement regarding the shutdown of the Saint Ambroise facility.

b. Prior to the Class period, Defendant Stern had not sold a single share of

Bennett stock since April 30, 2002. Yet, during the Class period, Stern sold 81,150 shares of Bennett stock – representing over 93% of his holdings – for total proceeds exceeding (CAD) $1.8 million. The timing of Stern's sales was also suspicious. Specifically, a large portion of Stern's sales occurred during December 2003 and June 2004, just weeks prior to Bennett's two major announcements concerning Saint Ambroise's shutdown, and the Army Corps' withdrawal of the Creosote Contract. The timing of Stern's June 2004 sales were also suspicious considering that, on June 3, 2004, Bennett signed a new sub-contract with Sevenson for less favorable economic terms than the Creosote Contract. Further, the timing of Stern's June 2004 sales was suspicious given that he unexpectedly resigned from the Company on July 20, 2004.

c. Prior to the Class Period, Defendant Griffiths did not sell a single share of Bennett stock. During the Class Period, however, Griffiths sold 100% of his Bennett stock, generating total proceeds of nearly (CAD) $500,000. In addition, the timing of Griffith's sales – during October 2003 and December 2003 – occurred well after Defendants were informed that the Creosote Contract had been withdrawn.

d. Defendant Bulckaert, who was appointed as Bennett's Chief Executive Officer in February, 2004, also sold his entire holdings of Bennett stock under peculiar circumstances. Specifically, in June 2004, just weeks prior to Bennett's July 22 announcement concerning the true status of the Creosote Contract, and within days of Bennett signing a new sub-contract with Sevenson for less favorable economic terms than the Creosote Contract, Bulckaert sold 100% of his holdings for total proceeds of over (CAD) $88,000. In addition, Bulckaert's sales occurred just two weeks after he signed and certified the Company's Annual Report on Form 40-F, which reported that Bennett's "backlog of contracts stood at $218 million, [which] represents approximately 350,000 tonnes," and affirmed that Bennett was awarded the Creosote Contract in June 2003.

179. Notwithstanding their duty to refrain from trading Bennett stock under these circumstances, or to disclose their insider information prior to selling such stock, Defendants Ponn, Stern, Griffiths and Bulckaert sold, prior to the disclosure of the material adverse facts described above, shares of Bennett stock that had been artificially inflated as a result of Defendants' misrepresentations. Accordingly, these insider sales further support the finding of a strong inference of scienter against Defendants.

180. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder and are liable to Lead Plaintiffs and the members of the Class, each of whom has been damaged as a result of such violations.

COUNT II

AGAINST DEFENDANTS JOHN BENNETT, STERN, PONN AND BULCKAERT FOR VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE ACT

181. Lead Plaintiffs repeat and reallege each of the allegations set forth in the foregoing paragraphs. This Count is brought pursuant to Section 20(a) of the Exchange Act on behalf of the Class against Defendants John Bennett, Stern, Ponn and Bulckaert.

182. Defendants John Bennett, Stern, Ponn and Bulckaert acted as controlling persons of Bennett during the Class Period and within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions with the Company, stock holdings, participation in and/or awareness of the Company's operations and/or intimate knowledge of the Company's actual performance, Defendants John Bennett, Stern, Ponn and Bulckaert had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Lead Plaintiffs contend are false and misleading. Defendants John Bennett, Stern, Ponn and Bulckaert were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Lead Plaintiffs to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

183. In addition, Defendants John Bennett, Stern, Ponn and Bulckaert had direct involvement in the day-to-day operations of the Company and, therefore, are presumed to have

had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

184. Bennett's Form 40-F, filed with the SEC on May 20, 2004, further recognizes that Defendants John Bennett, Stern, Ponn and Bulckaert are "key management employees," each of whom the Company is dependent upon.

Defendant John Bennett

185. Defendant John Bennett is a control person of the Company by virtue of his position as Bennett's Chief Executive Officer from July 1992 until February 18, 2004, and his position as Chairman from July 1992 until August 26, 2004. Further, John Bennett is the Company's founder, and had beneficial control over nearly 10% of the Company's common stock during the Class Period. In addition, John Bennett also signed the Company's Forms 6-K throughout a majority of the Class Period, regularly participated in Bennett's public conference calls with securities analysts, and spoke on behalf of the Company in numerous press releases. By virtue of his position with the Company, John Bennett exercised actual power or control over the improprieties alleged herein and was in a position to control or influence the contents of, or otherwise cause corrective disclosures to have been made in the Company's SEC filings, press releases and other public statements.

Defendant Richard Stern

186. Defendant Richard Stern is a control person of the Company by virtue of his position as Bennett's Chief Financial Officer and Secretary from April 2001 until July 20, 2004. During the Class Period, Stern held as much as 52,700 shares of the Company's stock, in addition to substantial options to purchase Bennett common stock. Stern also signed and certified the Company's Form 40-F for the year-ended December 31, 2003, which was filed with the SEC on May 20, 2004. By virtue of his position with the Company, Stern was in a position

to control or influence the contents of, or otherwise cause corrective disclosures to have been made in the Company's SEC filings, press releases, and other public statements. Until July 20, 2004, Stern also participated in the day-to-day management of the Company, and made numerous public statements on behalf of the Company.

Defendant Danny Ponn

187. Defendant Danny Ponn is a control person of the Company by virtue of his position as Bennett's Chief Operating Officer and Vice President Engineering throughout the Class Period. In addition, Ponn has been with the Company since its inception, having joined a predecessor company to Bennett in 1991. During the Class Period, Ponn held (both directly and indirectly) as much as 177,000 shares of the Company's stock. By virtue of his position with the Company, Ponn was in a position to control or influence the contents of, or otherwise cause corrective disclosures to have been made in the Company's SEC filings, press releases, and other public statements. Throughout the Class Period, Ponn also participated in the day-to-day management of the Company, and made several public statements on behalf of the Company.

Defendant Allan Bulckaert

188. Defendant Allan Bulckaert is a control person of the Company by virtue of his position as Bennett's President and Chief Executive Officer from February 18, 2004 through present. Bulckaert signed and certified the Company's Form 40-F for the year-ended December 31, 2003, which was filed with the SEC on May 20, 2004. In addition, Bulckaert signed numerous Forms 6-K that were filed publicly with the SEC during the Class Period. By virtue of his position with the Company, Bulckaert was in a position to control or influence the contents of, or otherwise cause corrective disclosures to have been made in the Company's SEC filings, press releases, and other public statements. Beginning on February 18, 2004, Bulckaert also

participated in the day-to-day management of the Company, and made numerous public statements on behalf of the Company.

PRAYER FOR RELIEF

WHEREFORE, Lead Plaintiffs pray for relief and judgment, as follows:

1. Declaring this action to be a proper class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Class defined herein;

2. Awarding Lead Plaintiffs and the Class compensatory damages;

3. Awarding Lead Plaintiffs and the Class pre-judgment and post-judgment interest, as well as reasonable attorneys' fees, expert witness fees and other costs; and

4. Awarding such other relief as this Court may deem just and proper.

JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Lead Plaintiffs hereby demand a trial by jury in this action of all issues so triable.

Dated: December 23, 2004

/s/ Gerald H. Silk

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