

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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IN RE BENNETT ENVIRONMENTAL INC. : NO. 04 CIV. 5852 (LTS)  
SECURITIES LITIGATION :  
X

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**NOTICE OF: (1) PENDENCY OF CLASS ACTION, AND (2) HEARING ON PROPOSED SETTLEMENT  
AND ATTORNEYS' FEE PETITION AND RIGHT TO SHARE IN NET SETTLEMENT FUND**

**NOTICE OF PENDENCY OF CLASS ACTION:** If during the period from June 2, 2003 through and including July 22, 2004 you purchased either (i) the common stock of Bennett Environmental Inc., or (ii) units of Bennett Environmental Inc. securities sold pursuant to a private placement announced on January 12, 2004, please be advised that your rights may be affected by a class action lawsuit pending in this Court (the "Lawsuit").

*A Federal Court authorized this Notice. This is not a solicitation from a lawyer.*

**NOTICE OF SETTLEMENT:** Please also be advised that lead plaintiffs Metropolitan Capital Advisors, L.P. and Metropolitan Capital Partners III, L.P. ("Lead Plaintiffs") have reached a proposed settlement of the Lawsuit that will resolve all claims of Lead Plaintiffs and the Class (as defined in paragraph 1 below) against all defendants (the "Settlement"). This Notice explains important rights you may have including your possible receipt of cash from the Settlement. Your legal rights will be affected whether or not you act. Also enclosed is a Claim Form that you must complete and submit postmarked no later than March 15, 2006 to participate in the Settlement. Please read this Notice carefully!

1. **Statement of Plaintiff Recovery:** This Notice relates to a proposed settlement of a class action lawsuit filed against Bennett Environmental Inc. ("Bennett Environmental" or the "Company") and certain of its present or former officers. The Lawsuit asserts claims on behalf of investors against the Defendants under the federal securities laws of the United States relating to public statements made between June 2, 2003 and July 22, 2004 concerning the Company's subcontract for thermal treatment of contaminated soil from Phase III of the Federal Creosote Project, a federal Superfund site in Manville, New Jersey. Subject to Court approval, Lead Plaintiffs, on behalf of the Class, have agreed to settle all claims that were or could have been asserted in the Lawsuit in exchange for a settlement payment of \$9,750,000 in cash plus interest. Pending final approval of the Settlement, this amount has been contributed to a Settlement Fund to pay claims of investors who, during the period from June 2, 2003 through and including July 22, 2004 (the "Class Period"), purchased either (i) Bennett Environmental common stock, or (ii) units of Bennett Environmental securities ("Units") sold pursuant to a private placement announced on January 12, 2004 (together, the "Class Securities"), and who were damaged thereby (the "Class"). Such investors are referred to in this Notice as "Class Members." The Net Settlement Fund (the Settlement Fund less notice and administration costs and attorneys' fees and litigation expenses awarded to all counsel representing plaintiffs ("Plaintiffs' Counsel")) will be distributed in accordance with a Plan of Allocation (the "Plan of Allocation") that is described in this Notice. Lead Plaintiffs' damages expert estimates that approximately 13.16 million shares may have been affected by the conduct at issue in the Lawsuit. Thus, assuming that the owners of all affected shares elect to participate, the average per share recovery from the Settlement Fund would be approximately \$0.74 per affected share.

2. **Reasons for the Settlement:** In light of the amount of the Settlement and the immediacy of recovery to the Class, Lead Plaintiffs believe that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the Class. Lead Plaintiffs believe that the Settlement provides a substantial benefit, namely \$9,750,000 less the various deductions described in this Notice, as compared to the risk that all or some of the claims in the Action could have been dismissed in response to Defendants' motions to dismiss and anticipated motions for summary judgment, or that a similar, smaller, or no recovery would be achieved after a trial and appeals, possibly years in the future, in which the Defendants would have the opportunity to assert substantial defenses to the claims asserted against them. The Defendants deny the claims asserted against them in the Lawsuit or that they have engaged in any wrongdoing, violation of law or breach of duty, and the Settlement should not be construed as an admission of wrongdoing by any of the Defendants. The Defendants have agreed to the Settlement in order to eliminate the burden and expense of continued litigation.

3. **Statement of Average Amount of Damages Per Share:** The parties do not agree on the average amount of damages per share that would be recoverable if Lead Plaintiffs were to prevail on the claims asserted against the Defendants. Defendants deny that any shares were damaged as Lead Plaintiffs have alleged. In addition, Defendants were prepared to establish that the prices of the Class Securities were not inflated as the result of any allegedly false or misleading public statement by any Defendant, and that the decline in the price of Class Securities alleged in the Lawsuit was not the result of the disclosure of information that allegedly had been wrongfully withheld by any Defendant.

4. **Statement of Attorneys' Fees and Expenses Sought:** Lead Counsel (as defined in paragraph 7) intends to apply for an award of attorneys' fees on behalf of Plaintiffs' Counsel in the amount of 20% of the Settlement Fund, after deduction of expenses. In addition, Lead Counsel intends to apply for reimbursement of litigation expenses paid and incurred in connection with the prosecution and resolution of the claims against the Defendants, in an amount not to exceed \$250,000. If the Court (as defined in paragraph 8) approves Lead Counsel's fee and expense application, the average cost per affected share will be approximately \$0.16.

5. **Identification of Attorneys' Representatives:** Any questions regarding the Settlement should be directed to Lead Counsel: Daniel L. Berger, Bernstein Litowitz Berger & Grossmann LLP, 1285 Avenue of the Americas, New York, NY 10019, 1(800) 380-8496, [www.blbgllaw.com](http://www.blbgllaw.com).

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
<b>SUBMIT A CLAIM FORM POSTMARKED NO LATER THAN MARCH 15, 2006</b>	The only way to get a payment.
<b>EXCLUDE YOURSELF FROM THE CLASS POSTMARKED NO LATER THAN DECEMBER 30, 2005</b>	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against the Defendants with respect to the claims in this case.
<b>OBJECT NO LATER THAN DECEMBER 30, 2005</b>	Write to the Court and explain why you do not like the Settlement.
<b>GO TO THE HEARING ON JANUARY 13, 2006 AND FILE A NOTICE OF INTENTION TO APPEAR NO LATER THAN DECEMBER 30, 2005</b>	Ask to speak in Court about the fairness of the Settlement.
<b>DO NOTHING</b>	Get no payment. Give up your rights.

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**WHY DID I GET THIS NOTICE?**

6. This Notice is being sent to you pursuant to an Order of the United States District Court for the Southern District of New York (the "Court") because you or someone in your family may have purchased the Class Securities during the Class Period. The Court has directed us to send you this Notice because, as a potential Class Member, you have a right to know about your potential options prior to the trial or settlement of this case. Additionally, you have the right to understand how a class action lawsuit may generally affect your legal rights. If the Court approves the Settlement, after any objections and appeals are resolved, a claims administrator selected by Lead Plaintiffs and approved by the Court will make payments pursuant to the Settlement.

7. In a class action lawsuit, the Court selects one or more people, known as class representatives, to sue on behalf of all people with similar claims, commonly known as the Class or the Class Members. By Order dated November 19, 2004, the Court appointed Metropolitan Capital Advisors, L.P. and Metropolitan Capital Partners III, L.P. to serve as "Lead Plaintiffs" under a federal law relating to lawsuits such as this one and approved the selection by Lead Plaintiffs of the law firm of Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz") to serve as lead counsel ("Lead Counsel") in the Lawsuit. A class action is a type of lawsuit in which the claims of a number of individuals are resolved together, thus providing the Class Members with both

consistency and efficiency. Once the Class is certified, the Court must resolve all issues on behalf of the Class Members, except for those, if any, who choose to exclude themselves from the Class. (For more information on excluding yourself from the Class, please read "What If I Do Not Want To Be A Part Of The Settlement? How Do I Exclude Myself?" located further below.)

8. The Court in charge of this case is the United States District Court for the Southern District of New York, and the case is known as *In re Bennett Environmental Inc. Securities Litigation*. The Judge presiding over this case is the Honorable Laura Taylor Swain, United States District Judge. The people who are suing are called the plaintiffs, and those who are being sued are called the defendants. In this case, the plaintiffs are the Lead Plaintiffs, on behalf of themselves and the Class, and the defendants are Bennett Environmental, John Bennett, Allan Bulckaert, Robert Griffiths, Danny Ponn and Richard Stern (the "Individual Defendants").

9. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The purpose of this Notice is to inform you of this case, that it is a class action, how you might be affected and how you can exclude yourself from the Settlement if that is your preference. It is also being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the proposed Settlement and the application by Lead Counsel for attorneys' fees and reimbursement of litigation expenses (the "Final Approval Hearing").

10. The Final Approval Hearing will be held at 2:30 p.m. on January 13, 2006, before the Honorable Laura Taylor Swain, at the United States District Court for the Southern District of New York, 40 Centre Street, Room 1305, New York, New York 10007-1581, to determine:

- (i) whether the proposed Settlement is fair, reasonable and adequate and should be approved by the Court;
- (ii) whether the claims against the Defendants should be dismissed with prejudice as set forth in the Stipulation and Agreement of Settlement dated October 25, 2005 (the "Stipulation");
- (iii) whether the proposed Plan of Allocation is fair and reasonable and should be approved; and
- (iv) whether the application by Lead Counsel for an award of attorneys' fees and reimbursement of litigation expenses should be approved.

11. This Notice does not express any opinion by the Court concerning the merits of any claim in the lawsuit, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, payments will be made after appeals, if any, are resolved and after the completion of all claims processing. Please be patient.

WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?
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12. Bennett Environmental is a Canadian corporation headquartered in Oakville, Ontario. Its primary business involves the transportation, thermal treatment and disposal of contaminated soil. The Company owns and operates remediation facilities located in Saint Ambroise, Québec, Cornwall, Ontario, and Belledune, New Brunswick. The Company markets its remediation services throughout Canada and the United States. Shares of Bennett Environmental common stock are listed and trade on both the American Stock Exchange and the Toronto Stock Exchange.

13. In the Lawsuit, Lead Plaintiffs allege that public statements by the Company or the other Defendants between June 2, 2003 and July 22, 2004 failed to adequately apprise investors of the status and terms of a subcontract that the Company was awarded for the treatment of contaminated soil from Phase III of the Federal Creosote Superfund Site in Manville, New Jersey. Bennett Environmental announced before the market opened on March 29, 2004, that it would temporarily suspend operations at its Saint Ambroise facility due to delays in the shipment of contaminated soil. Before the market opened on July 22, 2004, the Company issued press releases that disclosed that the U.S. Army Corps of Engineers had withdrawn its consent to that contract. Additional information was disclosed during that day. Lead Plaintiffs claim that, as a result of these disclosures, the price of the Company's common stock declined, with the July 22 announcement being followed by a drop of 39%, from \$9.87 per share to \$5.99 per share on July 26.

14. Shortly after the Company's July 22, 2004 disclosures, a number of lawsuits were filed in the Court on behalf of investors. By Order dated November 5, 2004, the Court consolidated all of the lawsuits into one action, appointed Lead Plaintiffs and approved Lead Plaintiffs' selection of Lead Counsel.

15. On December 24, 2004, Lead Plaintiffs filed a consolidated amended class action complaint (the "Complaint"). In the Complaint, Lead Plaintiffs' asserted claims against Bennett Environmental and the Individual Defendants under sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder. The Complaint alleges that the Defendants made false and misleading public statements regarding the status and size of the Phase III subcontract and about the Company's soil backlog throughout the Class Period which, Lead Plaintiffs allege, resulted in the artificial inflation of the price of Class Securities, thereby causing damages to investors who purchased Class Securities between June 2, 2003 and July 22, 2004. The allegations in the Complaint are based upon an investigation conducted by Lead Plaintiffs that included the

review of non-public information and a conversation with a witness, in addition to the review of public information. On February 7, 2005, Bennett Environmental and the Individual Defendants jointly moved to dismiss the Complaint for failure to state a claim upon which relief could be granted. As of the time that the parties agreed to the Settlement, that motion had been fully briefed but argument had not been heard and the motion had not been ruled upon by the Court. If the motion to dismiss had been granted, the Lawsuit would have ended and Defendants could have argued in any future lawsuit by Class Members that their claims were precluded.

16. Before agreeing to the Settlement, Lead Counsel conducted an extensive investigation into the events and transactions underlying the claims alleged in the Complaint. The investigation included the review of public and non-public information and conversations with witnesses familiar with the subject matter of the Complaint. Lead Counsel reviewed confidential documents produced by Defendants, and interviewed a representative of the Company. Lead Counsel analyzed potential claims and researched the applicable law with respect to the claims asserted, and Defendants' potential defenses thereto, and also consulted with experts on economic damages.

17. After the motion to dismiss had been fully briefed but before a hearing on that motion was held by the Court, the parties to the Lawsuit, and the Defendants' insurance carriers, participated in three mediation sessions with the assistance of a professional neutral mediator, Philip Allan Lacovara, who is experienced in mediating complex commercial disputes. Those mediation sessions were conducted over the course of four months. As a result of the mediation, the parties reached agreement on the terms of the Settlement, subject to the approval of the Court after providing this Notice to Class Members. As a term of the proposed Settlement, the Company made available to Lead Counsel non-privileged documents and information responsive to their request for documents.

#### HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?

18. If you are a member of the Class, you are subject to the Settlement whether or not you submit a Proof of Claim unless you timely request to be excluded. The Class consists of all persons and entities who, irrespective of their place of citizenship or residency, during the period from June 2, 2003 through July 22, 2004, inclusive, either (i) purchased Bennett Environmental common stock on any market or exchange including without limitation the American Stock Exchange or the Toronto Stock Exchange, or (ii) purchased "units" of Bennett Environmental securities sold pursuant to a private placement announced on January 12, 2004, 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 Environmental during the Class Period; (iv) any firm, trust, corporation, officer, or other entity in which any Defendant had a controlling interest; (v) Toronto Dominion Bank and its directors, officers and employees; and (vi) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party. Also excluded from the Class is any person or entity who or which timely submits a valid request for exclusion (see "What If I Do Not Want To Participate In The Settlement? How Do I Exclude Myself?" below).

**RECEIPT OF THIS NOTICE DOES NOT NECESSARILY MEAN THAT YOU ARE A CLASS MEMBER OR ARE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENTS. IF YOU WISH TO PARTICIPATE IN THE SETTLEMENTS, YOU MUST SUBMIT THE ENCLOSED CLAIM FORM POSTMARKED NO LATER THAN MARCH 15, 2006.**

#### WHAT RECOVERY DOES THE SETTLEMENT PROVIDE?

19. The Settlements provide for a recovery of \$9,750,000 in cash, which was deposited into an interest-bearing escrow account on September 26, 2005. Attorneys' fees, litigation expenses, notification costs, and administration costs will be deducted from these settlement proceeds, and the balance will be distributed to the Class. The amount of any recovery will depend on a number of factors, including when and for what price Class Members purchased and/or sold their Class Securities and the total number of shares or Units for which timely and valid Claim Forms are submitted by Class Members ("Authorized Claimants") (see "How Much Will My Payment Be?" below).

20. Lead Plaintiff's damages expert estimates that approximately 13.16 million shares of the Company's common stock were traded during the Class Period and may have been affected by the conduct at issue in the Complaint. Thus, assuming that the owners of all affected shares elect to participate, the average per share recovery from the Settlement Fund would be approximately \$0.74 per affected share.

#### WHY IS THERE A SETTLEMENT?

21. Under the proposed Settlement, the Court will not decide in favor of either Lead Plaintiffs or the Defendants. By agreeing to the Settlement, both Lead Plaintiffs and the Defendants avoid the costs of further litigation and the risks of a trial, and the Class Members are compensated.

22. In light of the amount of the Settlement, and the immediacy of recovery to the Class, Lead Plaintiffs and Lead Counsel believe that the proposed Settlement is fair, reasonable and adequate, and in the best interests of Class Members. Lead Plaintiffs believe that the Settlement provides a substantial benefit, namely at least \$9,750,000 in cash, less the various deductions described in this Notice, as compared to the risk that all or some of the claims in the Lawsuit could have been

dismissed in response to Defendants' motion to dismiss, or anticipated motions for summary judgment, or the risk that a similar, smaller, or no recovery would be achieved after a trial and appeals, possibly years in the future, in which the Defendants would have the opportunity to assert substantial defenses to the claims asserted against them. In addition, Lead Plaintiffs and Lead Counsel considered the Company's current and anticipated financial condition, and the extent of its applicable insurance, which, in their view, limited the amount that might have been recovered for the Class after trial.

WHAT MIGHT HAPPEN IF THERE WAS NO SETTLEMENT?

23. If there was no Settlement and Lead Plaintiffs failed to establish any essential legal or factual element of its claims, neither Lead Plaintiffs nor the Class would recover anything from the Defendants. Also, if the Defendants were successful in proving any of their defenses, the Class likely would recover substantially less than the amount provided in the Settlement, or nothing at all.

WHAT PAYMENT ARE THE ATTORNEYS FOR THE CLASS SEEKING?

24. Lead Counsel has not received any payment for their services in pursuing claims against the Defendants on behalf of the Class, nor has it been reimbursed for its out-of-pocket expenses. In connection with the application for Court approval of the Settlement, Lead Counsel intends to apply to the Court for an award of attorneys' fees on behalf of all Plaintiffs' Counsel in the amount of 20% of the Settlement Fund, less litigation expenses approved by the Court. The amount of fees sought by Lead Counsel in the fee application is pursuant to the terms of an agreement negotiated and entered into with Lead Plaintiffs, two sophisticated institutional investors. Lead Plaintiffs have reviewed the fee application and have determined that it is fair and reasonable.

25. In addition, Lead Counsel intends to apply for reimbursement of litigation expenses in an amount not to exceed \$250,000. If the application for attorneys' fees, reimbursement of litigation expenses is approved by the Court, the average cost per affected share would be approximately \$0.16. THE COURT HAS NOT EXPRESSED ANY OPINION ON THE APPLICATION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES (see "How Will the Lawyers Be Paid?," below).

WHY HAVE THE DEFENDANTS AGREED TO THE SETTLEMENT?

26. Defendants deny that they have engaged in any wrongdoing, violated any law or breached any duty and deny that the claims asserted against them in the Complaint have any merit. Defendants believe that they have substantial defenses to all of those claims. However, the Defendants consider it desirable, and in their best interests, that the claims against them be dismissed on the terms set forth in the Stipulation to avoid further expense and protracted litigation, taking into account the uncertainty and risks inherent in any litigation. The Settlement is not evidence of, an admission of, or a concession by any of the Defendants of any fault or liability whatsoever, or any infirmity in any defenses they have asserted or intended to assert in the Action.

WHAT LED UP TO THE SETTLEMENT?

27. The Settlement resulted from over thirteen months of litigation and extensive arm's-length negotiations among Lead Plaintiffs, Lead Counsel and counsel for the Defendants. Several settlement discussions took place, including three formal and additional informal mediation sessions conducted by a professional mediator, Philip Allan Lacovara, which ultimately resulted in an agreement to settle the claims asserted in the Lawsuit.

WHAT ARE THE LEAD PLAINTIFFS' REASONS FOR THE SETTLEMENT?

28. Lead Plaintiffs and Lead Counsel believe that the claims asserted against the Defendants have merit. However, they recognize the expense and length of continued proceedings necessary to pursue their claims against the Defendants through trial and appeals. Lead Plaintiffs and Lead Counsel also have taken into account the possibility that the claims asserted in the Complaint might have been dismissed in response to Defendants' motion to dismiss or anticipated motions for summary judgment and have considered issues that would have been decided by a jury in the event of a trial of the Lawsuit, including whether the Defendants acted with an intent to mislead investors, whether the alleged misrepresentations or omissions were material to investors, whether any loss was caused by the alleged misrepresentations or omissions and the amount of any damages. Lead Plaintiffs and Lead Counsel also have considered the uncertain outcome and trial risk in complex lawsuits like this one. In addition, Lead Plaintiffs and Lead Counsel considered the Company's current and anticipated financial condition, and the extent of its applicable insurance and the likely depletion of that insurance following additional litigation. Lead Plaintiffs believe that a recovery now will provide an immediate benefit to Class Members, which is superior to the risk and delay of proceeding with the Lawsuit. Considering these factors and balancing them against the certain and substantial benefits that the Class will receive as a result of the Settlement, Lead Plaintiffs and Lead Counsel determined that the Settlement described herein is fair, reasonable and adequate, and that it is in the best interests of the Class to settle the claims against the Defendants on the terms set forth in the Stipulation and this Notice.

**THE PROPOSED PLAN OF ALLOCATION: GENERAL PROVISIONS**

29. The Settlement will provide for a Settlement Fund of at least \$9,750,000. Bennett Environmental and its insurers have deposited that amount into the interest-bearing escrow account (the "Settlement Fund").

30. After approval of the Settlement by the Court and upon satisfaction of the other conditions to the Settlement, the Net Settlement Fund (less any taxes and administration costs, and any Court awarded attorneys' fees and expenses) will be distributed to Authorized Claimants in accordance with the Plan of Allocation described below.

31. The Settlement Fund will be distributed as follows:

(i) First, to pay all federal, state and local taxes on any income earned by the Settlement Fund and to pay the reasonable costs incurred in connection with determining the amount of, and paying, taxes owed by the Settlement Fund (including reasonable expenses of tax attorneys and accountants);

(ii) To pay costs and expenses in connection with providing Notice to Class Members and administering the Settlement on behalf of Class Members;

(iii) To reimburse Plaintiffs' Counsel for, and to pay, costs and expenses incurred by Plaintiffs' Counsel in connection with, commencing and prosecuting the Lawsuit, with interest thereon, if and to the extent allowed by the Court;

(iv) To pay Plaintiffs' Counsel attorneys' fees, to the extent allowed by the Court; and

(v) Subject to the Order by the Court granting approval of the Settlement and the Plan of Allocation (or such other allocation plan as the Court may approve) becoming final (meaning that the time for appeal or appellate review of the Order granting final approval has expired, or if the Order is appealed, that appeal is either decided without causing a material change in the Order or upheld on appeal and no longer subject to appellate review by further appeal or writ of certiorari) the balance of the Settlement Fund (the "Net Settlement Fund") shall be distributed to Authorized Claimants in accordance with the Plan of Allocation.

32. There will be no distribution of the Net Settlement Fund until a Plan of Allocation is finally approved and affirmed on appeal or certiorari and the time for any petition for rehearing, appeal or review, whether by certiorari or otherwise, has expired.

33. The Defendants are not entitled to get back any of the settlement consideration once the Court's Order approving the Settlement becomes final. Moreover, the Defendants have no liability, obligation or responsibility for the administration of the Settlement or disbursement of the Net Settlement Fund or the Plan of Allocation.

34. Approval of the Settlement is independent from approval of the Plan of Allocation. Any determination with respect to the Plan of Allocation will not affect the Settlement, if approved.

35. Only those Class Members who purchased Class Securities during the Class Period, held such common stock through March 29, 2004, or, if purchased after March 29, 2004, held through July 22, 2004, **AND WERE DAMAGED** will be eligible to share in the distribution of the Net Settlement Fund. Each person wishing to participate in the distribution must timely submit a valid Claim Form and all required documentation postmarked no later than March 15, 2006, to the address set forth in the Claim Form that accompanies this Notice. Unless otherwise ordered by the Court, any Class Member who fails to submit a Claim Form postmarked no later than March 15, 2006 shall be forever barred from receiving payments pursuant to the Settlement set forth in the Stipulation but will in all other respects be subject to the provisions of the Stipulation, including the terms of any Judgment entered and releases given. This means that each Class Member releases the Released Claims against the Defendants and is enjoined and prohibited from filing, prosecuting, or pursuing any of the Released Claims against any of the Defendants regardless of whether or not such Class Member submits a Claim Form.

36. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Claim of any Class Member. The Court also reserves the right to modify the Plan of Allocation without further notice to Class Members. Payment pursuant to the Plan of Allocation approved by the Court shall be conclusive against all Authorized Claimants. No person shall have any claim against Lead Plaintiffs, Lead Counsel or the Claims Administrator or other agent designated by Lead Counsel based on the distributions made substantially in accordance with the Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the Court.

**THE PROPOSED PLAN OF ALLOCATION: CALCULATION OF LOSS AMOUNT**

37. A "Loss Amount" will be calculated for each purchase of a Class Security that is listed in the Claim Form, and for which adequate documentation is provided. The calculation of the Loss Amount will depend upon several factors, including when the Class

Securities were purchased and whether they were held until the conclusion of the Class Period or sold during the Class Period, and if so, when they were sold.

38. **Information Required on the Claim Form:** Each Claim Form must indicate each Claimant's position in the Class Securities as of the close of trading on June 1, 2003, the day before the first day of the Class Period; and the closing position in the Class Securities as of the close of trading on July 22, 2004, the last day of the Class Period. Each Claim Form also must list *all* transactions in the Class Securities, including all purchases and sales, made during the Class Period.

### **BASIS FOR CALCULATION OF LOSS AMOUNT**

39. Loss Amounts are based on the level of alleged artificial inflation in the price of the Class Securities, as determined by Lead Plaintiffs' damages expert. Those Loss Amounts will be reduced dollar-for-dollar to the extent that: (i) Class Securities were purchased at a price below the lowest reported trading price for the Class Securities on the date during the Class Period on which the purchase or acquisition was made (*e.g.*, at a discounted price); or (ii) the Class Securities were sold at a price above the highest reported trading price for the Class Securities on the date during the Class Period on which the sale was made.

40. Lead Plaintiffs' damages expert calculated the reasonable dollar amount of alleged artificial inflation for the Class Securities for each day in the Class Period that, in its opinion, was attributable to the alleged wrongdoing. Lead Plaintiffs' expert analyzed the market price reaction to public disclosures that revealed or described the alleged misrepresentations or their effects. Further, Lead Plaintiffs' expert measured the dollar price decline associated with each particular disclosure, adjusted that price reaction to eliminate the effects, if any, attributable to general market or industry conditions, and used standard statistical techniques to ensure that the price reaction was statistically significant (*i.e.*, greater than the normal variation in the price). Lead Plaintiffs' expert thus isolated the price effect that it reasonably believed was caused by the alleged fraud. In addition, Lead Plaintiffs' damages expert also analyzed the market price reaction to Bennett Environmental's earnings announcements throughout the Class Period to determine if any were associated with statistically significant stock price increases. Lead Plaintiffs' expert thus isolated the price effect that it reasonably believed was caused by inflationary statements that increased the alleged artificial inflation present in the market price of the Class Securities.

41. By accumulating the total isolated market reaction attributable to each public disclosure of the alleged fraud, Lead Plaintiffs' damages expert determined, in its expert opinion, the reasonable dollar amount of total artificial inflation in the market price of the Class Securities on March 28, 2004, the day before the first partial disclosure of the alleged fraud, and on July 22, 2004, the last day of the Class Period. Based on the isolated market reaction attributable to each allegedly inflationary statement and public disclosure of the alleged fraud, Lead Plaintiffs' damages expert determined, in its expert opinion, the reasonable dollar amount of artificial inflation in the market price of the Class Securities.

### **SPECIFIC LOSS AMOUNTS**

42. Specific Loss Amounts will be calculated as follows:

#### **A. Introductory Provisions:**

To receive a distribution from the Net Settlement Fund, all persons or entities must:

- (i) Establish membership in the Class;
- (ii) Complete a valid Claim Form and supply all required documentation;
- (iii) Submit the completed Claim Form and documentation so that it is postmarked for mailing to the Claims Administrator no later than March 15, 2006.

#### **B. Calculation of Recognized Loss for Claims:**

A "Recognized Loss" will be calculated for each purchase of Class Securities that is listed in the Claim Form, and for which adequate documentation is provided. The calculation of the Recognized Loss will depend upon several factors, including:

- (i) When each share or unit of Class Securities was purchased; and
- (ii) Whether each share or unit of Class Securities was held until July 22, 2004, or whether it was sold during the Class Period, and if so, when it was sold.

### **C. Basis for Calculation of Recognized Loss:**

Recognized Losses are based on the level of alleged artificial inflation in the prices of the Class Securities, as estimated by Lead Plaintiffs' damages expert. Lead Plaintiffs' damages expert measured the price reaction associated with each particular disclosure, then used standard statistical techniques to ensure that the price reaction was statistically significant, and if significant, adjusted that price reaction to eliminate the effects, if any, attributable to general market conditions. Then, Lead Plaintiffs' expert isolated the price effect that the expert reasonably believed was caused by the alleged fraud. This enabled Lead Plaintiffs' damages expert to calculate the reasonable amount of alleged artificial inflation in the prices of the Class Securities during the Class Period that was attributable to the alleged wrongdoing.

For all shares or units of Class Securities that were purchased from June 2, 2003 through and including March 28, 2004, and that were sold on or before March 28, 2004, and for all shares or units of Class Securities that were purchased from March 29, 2004 through and including July 21, 2004, and that were sold on or before July 21, 2004, the Recognized Loss per share is \$0. This determination was made because the purchase and the sale occurred before any allegedly adverse information was publicly disclosed. Thus, any losses that Class Members may have suffered with respect to shares or units of Class Securities that were purchased or acquired from June 2, 2003 through and including March 28, 2004, that were sold on or before March 28, 2004, and any losses that Class Members may have suffered with respect to shares or units of Class Securities that were purchased or acquired from March 29, 2004 through and including July 21, 2004, that were sold on or before July 21, 2004, were not related to the alleged misstatements or omissions and are not compensable through an action for violation of the securities laws.

### **D. Recognized Gains and Losses:**

(i) Class Securities that were purchased during the Class Period and held until the close of trading on July 22, 2004:

1. For each share or unit of Class Securities that was purchased from June 2, 2003 through and including March 28, 2004 that was retained at the close of trading on July 22, 2004, the Recognized Loss per share or unit is \$6.00, which is the dollar amount of inflation at the time of purchase as determined by Lead Plaintiffs' damages expert.
2. For each share or unit of Class Securities that was purchased from March 29, 2004 through and including June 21, 2004 that was retained at the close of trading on July 22, 2004, the Recognized Loss per share or unit is \$3.70, which is the dollar amount of inflation at the time of purchase as determined by Lead Plaintiffs' damages expert.
3. For each share or unit of Class Securities that was purchased on July 22, 2004 that was retained at the close of trading on July 22, 2004, the Recognized Loss per share or unit is the actual price paid less \$5.99, which is the true value of the Class Securities as determined by Lead Plaintiffs' damages expert.

(ii) Class Securities that were purchased on or after June 2, 2003 but before the close of trading on March 28, 2004, and sold before the close of trading on July 22, 2004:

1. For each share or unit of Class Securities that was purchased on or after June 2, 2003 but before the close of trading on March 28, 2004, and sold on or before the close of trading on July 21, 2004, the Recognized Loss per share or unit is the lesser of (a) \$2.30, which is the amount by which the artificial inflation at the time of purchase (\$6.00), as determined by Lead Plaintiffs' damages expert, exceeds the artificial inflation on the date the share was sold (\$3.70) as determined by Lead Plaintiffs' damages expert; or (b) the amount by which the actual purchase price per share or unit exceeds the actual sales price per share or unit.
2. For each share or unit of Class Securities that was purchased on or after June 2, 2003 but before the close of trading on March 28, 2004, and sold on July 22, 2004, the Recognized Loss per share or unit is the lesser of (a) the amount by which the actual purchase price per share or unit exceeds the actual sales price per share or unit, or (b) \$6.00.

(iii) Class Securities that were purchased on or after March 29, 2004 but before July 22, 2004, and sold on July 22, 2004, the Recognized Loss per share or unit is the lesser of (a) the amount by which the actual purchase price per share or unit exceeds the actual sales price per share or unit, or (b) \$3.70.

### **E. General Provisions:**

(i) The Net Settlement Fund will be allocated among all eligible Class Members.

(ii) Each Authorized Claimant shall recover his or her Recognized Loss. However, in the event that the sum total of Recognized Losses of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each such Authorized Claimant shall receive his/her *pro rata* share of the Net Settlement Fund, which shall be his/her Recognized Loss divided by the total of all Recognized Losses to be paid from the Net Settlement Fund, multiplied by the total amount in the Net Settlement Fund. The proration factor applied to the Authorized Claims of Class Members will be based on the amount in the Net Settlement Fund available to satisfy those claims, as set forth in paragraph 31, above.

(iii) If the Net Settlement Fund exceeds the sum total amount of the Recognized Losses of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund, the excess amount in the Net Settlement Fund shall be distributed *pro rata* to all Authorized Claimants entitled to receive payment out of the Net Settlement Fund.

(iv) Each Authorized Claimant will be required to provide proof of his or her ownership position in Class Securities as of the close of trading on June 1, 2003, and the closing position in Class Securities as of the close of trading on July 22, 2004. Each Claim Form also must list *all* transactions in Class Securities, including all purchases and sales, made during the Class Period (June 2, 2003 through and including July 22, 2004).

(v) For Class Members who conducted multiple transactions in Class Securities during the Class Period:

a. The earliest subsequent sale shall be matched first against those shares in the Claimant's opening position on the first day of the Class Period, and then matched chronologically thereafter against each purchase or acquisition made during the Class Period;

b. Aggregate Recognized Losses for each Class Member will then be calculated by accumulating, for each respective transaction, the product of the Recognized Losses per share or unit by the respective number of Class Securities purchased by the Class Member during the Class Period, as set forth above;

c. Aggregate Recognized Gains, which are the amounts by which artificial inflation at the time of a sale exceeds artificial inflation at the time of the related purchase, for each Class Member will be calculated by accumulating, for each respective purchase and sale transaction, the product of the Recognized Gains per share by the respective number of Class Securities purchased by the Class Member during the Class Period and subsequently sold during the Class Period;

d. Aggregate Recognized Gains shall then be deducted from Aggregate Recognized Losses for each Class Member to determine the Aggregate Net Recognized Loss for the Claimant;

e. All market profits, defined as the amount by which the actual sale price of that security is greater than the actual purchase or acquisition price of that security, shall be subtracted from all market losses, defined as the amount by which the actual purchase or acquisition price of that security is greater than the actual sale price of that security, to determine the net market profit/loss of each Class Member; and

f. The Claim of each Class Member shall equal the *lesser* of his, her or its: (i) Aggregate Net Recognized Loss, except if the Class Member has an Aggregate Net Recognized Gain, the value of the Claim shall be zero; and (ii) net market losses, except if the Class Member had a net market profit, the value of the Claim shall be zero.

(vi) If the Authorized Claimant acquired Class Securities during the Class Period by means of a gift, inheritance or operation of law, the Authorized Claimant's Recognized Loss will be computed by using the price of such security on the original date of purchase, and not the date of transfer, unless the transfer resulted in a taxable event or other change in the cost basis of the security. To the extent that Class Securities were originally purchased prior to commencement of the Class Period, and there was no such taxable event or change in cost basis at the time of transfer, the Authorized Claimant's Recognized Loss for that acquisition shall be zero.

(vii) A payment to any Authorized Claimant of less than **\$10** in total will not be included in the calculation and will not be distributed.

WHAT RIGHTS AM I GIVING UP BY AGREEING TO THE SETTLEMENT?

43. If the Settlement is approved, the Court will enter a Final Judgment (the "Judgment"). The Judgment will dismiss the claims against the Defendants with prejudice and provide that Lead Plaintiffs and all other Class Members, except those who validly and timely requested to be excluded from the Class, shall upon the Effective Date of the Settlement, be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, waived, discharged and dismissed any and all Settled Claims against the Released Parties (as defined in the Stipulation).

44. "Settled Claims" means, collectively: all claims, whether known or unknown (including Unknown Claims), and whether arising under federal, state, Canadian federal or provincial, or any other law, against any of the Defendants, and any of the respective families, heirs, executors, trustees, personal representatives, estates or administrators, attorneys, counselors,

financial or investment advisors of any such Defendant who is a natural person, and the affiliates, partners, subsidiaries, related companies, predecessors, successors or assigns, past or present officers, directors, associates, controlling persons, representatives, employees, attorneys, counselors, financial or investment advisors, underwriters, investment bankers (specifically including Toronto Dominion Bank and its directors, officers and employees), commercial bankers, dealer managers, consultants, accountants, engineers, advisors or agents of Bennett Environmental, all in their capacities as such, and American Home Assurance Company and ACE INA Insurance, and any of their respective present or former officers, directors and employees, solely as insurers under certain policies of directors and officers liability insurance purchased by Bennett Environmental held at any point from the beginning of time to the Effective Date, which have been, or could have been, asserted in the Lawsuit or in any court or forum, relating to or arising from the acts, facts, transactions and circumstances that were alleged in the Complaint and that relate to or arise from the purchase or sale of Bennett Environmental common stock between and including June 2, 2003 and July 22, 2004 on any market or exchange including without limitation the American Stock Exchange or the Toronto Stock Exchange or the acquisition or disposition of "units" of Bennett Environmental securities pursuant to the January 2004 private placement.

45. The Judgment also will provide that the Defendants and any of the other Released Parties shall each be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, waived, and discharged all claims, whether known or unknown (including Unknown Claims), and whether arising under federal state or any other law, which have been, or could have been, asserted in the Action or in any court or forum, by the Defendants, or any of them, against any of the Released Plaintiff Parties and which arise out of or relate in any way to the institution, maintenance, or settlement of the Lawsuit, except claims relating to the enforcement of the Settlement.

#### HOW WILL THE LAWYERS BE PAID?

46. At the Settlement Hearing described below, or at such other time as the Court may direct, Lead Counsel intends to apply to the Court for an award of attorneys' fees on behalf of all Plaintiffs' Counsel in the amount of 20% of the Settlement Fund, net of litigation expenses. Lead Counsel is applying pursuant to an agreement negotiated and entered into with Lead Plaintiffs, two sophisticated institutional investors. Lead Plaintiffs have reviewed the fee application and have determined that it is fair and reasonable. In addition, Lead Counsel intends to apply for reimbursement of litigation expenses incurred in connection with the Lawsuit, in an amount not to exceed \$250,000.

47. To date, Lead Counsel has not received any payment for its services in prosecuting this Lawsuit on behalf of the Class, nor has Lead Counsel been reimbursed for its out-of-pocket expenses. The fee requested by Lead Counsel would compensate it for its efforts in achieving the Settlement for the benefit of the Class, and for their risk in undertaking this representation on a contingency basis. The fee requested is within the range of fees awarded under similar circumstances in litigation of this type. The Court will determine the amount of the award.

#### HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?

48. The Court has certified this Action as a Class Action. If you purchased Class Securities during the period from June 2, 2003 through and including July 22, 2004, and you are not excluded by the definition of the Class and do not elect to exclude yourself, then you are a Class Member, and you will be bound by the proposed Settlement provided for in the Stipulation, in the event it is approved by the Court, as well as by any judgment or determination of the Court affecting the Class. Unless otherwise provided by the Court, any Class Member who fails to submit a Claim Form postmarked no later than March 15, 2006 shall be forever barred from receiving any payments pursuant to the Settlement set forth in the Stipulation but will in all other respects be subject to the provisions of the Stipulation, including the terms of any judgments entered and the releases given.

49. If you wish to remain a Class Member, you may be eligible to share in the proceeds of the Settlement, provided that you timely submit an acceptable Claim Form. The Claim Form must be supported by such documents as specified in the Claim Form. The Claim Form is enclosed. Extra copies of the Claim Form may be obtained from the Claims Administrator at the website noted below or downloaded from Lead Counsel's website at [www.blbglaw.com](http://www.blbglaw.com).

50. The Court may disallow or adjust the Claim of any Class Member. The Court also may modify the Plan of Allocation without further notice to the Class. Payments pursuant to the Plan of Allocation, as approved by the Court, will be conclusive against all Authorized Claimants. No person shall have any claim against Lead Plaintiffs, Plaintiffs' Counsel or the Claims Administrator, or any other agent designated by Lead Counsel, based on the distributions made substantially in accordance with the Stipulation and the Settlement, the Plan of Allocation or further orders of the Court. Each Claimant shall be deemed to have submitted to the jurisdiction of the United States District Court for the Southern District of New York with respect to his, her or its Claim Form.

51. As a Class Member, you are represented by Lead Plaintiffs and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file an appearance on your behalf and must serve copies of such appearance on the attorneys listed in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlement?," below.

52. If you do not wish to remain a Class Member, you may exclude yourself from the Class by following the instructions in the section entitled, "What If I Do Not Want To Be A Part Of The Settlement? How Do I Exclude Myself?," below.

53. If you object to the Settlement or any of its terms, the proposed Plan of Allocation, or Lead Counsel's application for attorneys' fees and reimbursement of litigation expenses, and if you do not exclude yourself from the Class, you may present your objections by following the instructions in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlement?," below.

WHAT IF I DO NOT WANT TO BE A PART OF THE SETTLEMENT?  
HOW DO I EXCLUDE MYSELF?

54. Each Class Member will be bound by all determinations and judgments in this lawsuit concerning the Settlement, whether favorable or unfavorable, unless such person mails, by first class mail, a written Request for Exclusion from the Class, addressed to Bennett Environmental Inc. Securities Litigation EXCLUSIONS, c/o The Garden City Group, Inc., P.O. Box 9000 #6366, Merrick, NY 11566-9000, postmarked no later than December 30, 2005. No person may exclude himself from the Class after that date. Each Request for Exclusion must set forth the name and address of the person or entity requesting exclusion; must state that such person or entity "requests exclusion from the Class in *In re Bennett Environmental Inc. Securities Litigation*, No. 04 Civ. 05852 LTS"; be signed by such person or entity; and provide a telephone number, and the date(s), price(s), and number(s) of shares of all purchases and sales of Class Securities during the Class Period. Requests for Exclusion will not be valid if they are not made within the time stated above, unless the Requests for Exclusion are otherwise accepted by the Court.

55. If a Class Member requests to be excluded from the Class, that Class Member will not receive any benefit provided for in the Stipulation.

WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?  
DO I HAVE TO COME TO THE HEARING?  
MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?

**If you do not wish to object to the proposed Settlement, the application for attorneys' fees and reimbursement of litigation expenses, and/or the proposed Plan of Allocation, you need not attend the Final Approval Hearing.**

56. The Final Approval Hearing will be held at 2:30 p.m. on January 13, 2006, before the Honorable Laura Taylor Swain, at the United States District Court for the Southern District of New York, 40 Centre Street, New York, New York 10007-1581.

57. Any Class Member who does not request exclusion by notice postmarked no later than December 30, 2005 may appear at the Final Approval Hearing in person or by counsel, and be heard on any of the matters to be considered at the hearing; provided, however, that no such person shall be heard unless his, her or its objection or opposition is made in writing and is filed, together with copies of all other papers (including proof of all purchases of Class Securities during the Class Period) and briefs to be submitted to the Court at the Final Approval Hearing, with the Clerk's Office at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007-1312, on or before December 30, 2005, and is served so as to be received by December 30, 2005 by:

**Lead Counsel for the Class:**  
BERNSTEIN LITOWITZ BERGER &  
GROSSMANN LLP  
DANIEL L. BERGER  
AVI JOSEFSON  
1285 Avenue of the Americas  
New York, NY 10019

**Counsel for Bennett  
Environmental Inc., Allan  
Bulckaert and Danny Ponn:**  
DLA PIPER RUDNICK  
GRAY CARY US LLP  
JOHN J. CLARKE, JR.  
1251 Avenue of the Americas  
New York, New York 10020

**Counsel for John Bennett:**  
AKIN GUMP STRAUSS  
HAUER & FELD LLP  
DOUGLASS B. MAYNARD  
590 Madison Avenue  
New York, New York 10022

**Counsel for Richard Stern:**  
DECHERT LLP  
BENJAMIN E. ROSENBERG  
30 Rockefeller Plaza  
New York, New York 10112

**Counsel for Robert Griffiths:**  
MORRISON & FOERSTER LLP  
CARL H. LOEWENSON, Jr.  
1290 Avenue of the Americas  
New York, New York 10104

58. The filing must demonstrate your membership in the Class, including the number of shares or units of Class Securities purchased during the Class Period and price(s) paid. Only Class Members who have submitted their position in this manner will be entitled to be heard at the Final Approval Hearing, unless the Court orders otherwise. You may file an objection without having to appear at the Final Approval Hearing. Class Members who approve of the Settlement need not appear at the Final Approval Hearing.

59. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement, the proposed Plan of Allocation and/or the request for attorneys' fees and reimbursement of Litigation Expenses are required to notify the above counsel in advance of the hearing. Persons who intend to object to the Settlement, the proposed Plan of Allocation and/or Lead Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses and desire to present evidence at the Final Approval Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Final Approval Hearing.

60. The Final Approval Hearing may be delayed from time to time by the Court without further written notice to the Class. If you intend to attend the Final Approval Hearing, you should confirm the date and time with Lead Counsel.

**Unless otherwise ordered by the Court, any Class Member who does not object in the manner described herein will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the application for attorneys' fees and reimbursement of litigation expenses and/or the proposed Plan of Allocation. Class Members do not need to appear at the hearing or take any other action to indicate their approval.**

WHAT IF I BOUGHT SHARES ON SOMEONE ELSE'S BEHALF?

61. If you purchased Class Securities during the Class Period for the beneficial interest of a person or organization other than yourself, you are directed to send a copy of this Notice and the Claim Form, to the beneficial owner of the shares postmarked no later than fourteen (14) days from the date of this Notice, or to provide the names and addresses of such persons no later than fourteen (14) days from the date of this Notice to Bennett Environmental, Inc. Securities Litigation, c/o The Garden City Group, Inc., P.O. Box 9000 #6366, Merrick, NY 11566-9000, in which case the beneficial owner will be sent a copy of the Notice. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying herewith by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice and the Claim Form may also be obtained from the Claims Administrator's website [www.gardencitygroup.com](http://www.gardencitygroup.com) or calling toll-free 1(800) 298-5765, or may be downloaded from Lead Counsel's websites at [www.blbqlaw.com](http://www.blbqlaw.com).

CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

62. This Notice contains only a summary of the terms of the proposed Settlement. For a more detailed statement of the matters involved in the Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the Southern District of New York, 40 Centre Street, New York, New York 10007-1581.

63. All inquiries concerning this Notice or the Claim Form should be directed to:

Bennett Environmental Inc. Securities Litigation  
c/o The Garden City Group, Inc.  
Claims Administrator  
P.O. Box 9000 #6366  
Merrick, NY 11566-9000  
1(800) 298-5765

**OR**

Daniel L. Berger  
Avi Josefson  
Bernstein Litowitz Berger & Grossmann LLP  
1285 Avenue of the Americas  
New York, NY 10019  
1(800) 380-8496

**Lead Counsel for Plaintiffs**

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE CLERK OF THE COURT  
REGARDING THIS NOTICE.**

Dated: November 16, 2005

By Order of the Clerk of the Court  
United States District Court  
for the Southern District of New York

QUESTIONS? VISIT [WWW.GARDENCITYGROUP.COM](http://WWW.GARDENCITYGROUP.COM) OR CALL 1(800) 298-5765