

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86239 / June 28, 2019

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4055 / June 28, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19224

In the Matter of

R. GORDON JONES, CPA,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-DESIST
PROCEEDINGS PURSUANT TO SECTIONS 4C
AND 21C OF THE SECURITIES EXCHANGE
ACT OF 1934 AND RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against R. Gordon Jones, CPA ("Respondent" or "Jones") pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.²

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

² Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found...to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purposes of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds³ that:

Summary

1. These proceedings arise out of Jones’s improper application of generally accepted accounting principles (“GAAP”) and participation in the preparation of materially misstated financial statements included in Blue Earth, Inc.’s (“Blue Earth”) periodic reports filed with the Commission for at least the reporting periods ended September 30, 2013 through December 31, 2014. Blue Earth used Jones, an accounting consultant, to make GAAP determinations and assist in preparing the company’s financial statements.

2. Jones failed to comply with GAAP in determining the accounting treatment of the company’s most significant transactions. His actions resulted in the company improperly recording on its books and records and reporting in its financial statements a purported \$44 million “Construction in Progress” asset, instead of allocating almost the entirety of that amount to goodwill. The asset comprised 56% and 51% of the company’s reported assets in the financial statements included in the company’s Form 10-Q for the third quarter of 2013, filed in November 2013, and its 2013 Form 10-K, filed in March 2014, respectively.

3. Jones further compounded the improper application of GAAP when he recharacterized the improperly classified “Construction in Progress” to “Property and Equipment” on the company’s balance sheets included in the company’s Forms 10-Q for the first and second quarters of 2014, filed in May and August 2014, respectively.

4. Lastly, Jones failed to comply with GAAP in determining that a fully vested share-based payment award issued pursuant to an employment contract, the cost of which, in this instance,

³ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

should have been immediately expensed, could be recorded as an asset and amortized over three years. This resulted in the company improperly recording on its books and records and reporting in its financial statements a purported \$4.6 million asset that should have been expensed. The improper accounting resulted in Blue Earth understating its expenses by approximately \$4.3 million, which constituted a 43% understatement of its net income (loss) before taxes and of its net loss, in its financial statements included in the Form 10-Q for the first quarter of 2014, and a 10% understatement of its net income (loss) before taxes, a 9.4% understatement of its net loss and 3.4% overstatements of assets in the financial statements included in the company's Form 10-K for the year ending December 31, 2014.

5. As a result, Jones knowingly generated misstated books, records and accounts for Blue Earth. Jones also aided and abetted and caused Blue Earth's failure to make and keep books, records, and accounts which fairly and accurately reflected the company's transactions, to maintain a system of internal accounting controls, and to file accurate periodic reports with the Commission.

Respondent

6. **R. Gordon Jones**, age 64, resides in Farmington, Utah. Jones has been licensed as a Certified Public Accountant ("CPA") in the State of Utah since June 1980. He was licensed as a CPA in Oklahoma from December 1995 until June 2001, at which time his license was cancelled at his request. During the relevant period, he provided accounting services to public and private companies, including making accounting determinations and preparing financial statements in accordance with GAAP.

On May 4, 2001, the Commission issued a consent order against Jones pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice which denied him the privilege of appearing or practicing before the Commission as an accountant based on his failure to perform an independent audit according to the Generally Accepted Auditing Standards, with a right to apply for reinstatement after three years. *In the Matter of R. Gordon Jones, CPA and Mark F. Jensen*, Ex. Act Rel. No. 44265 (May 4, 2001) ("2001 SEC Order"). In 2015, the U.S. District Court for the District of Utah found in a contempt proceeding that Jones had violated the 2001 SEC Order and ordered him to comply with the 2001 SEC Order and disgorge \$600,000 in fees associated with prohibited work he engaged in after entry of the Order, including fees earned from Blue Earth through mid-2012.

Relevant Entity

7. **Blue Earth, Inc.**, a company incorporated in Nevada and headquartered in Henderson, Nevada during the relevant period, purported to be a comprehensive provider of renewable and energy efficient services for small and medium-sized commercial and industrial facilities. During the relevant period up to August 28, 2014, the company had a class of common stock registered with the Commission pursuant to Exchange Act Section 12(g) which was quoted on the OTC Bulletin Board. Effective August 28, 2014, the company registered its common stock with the Commission pursuant to Section 12(b) of the Exchange Act, and the stock was listed on the NASDAQ Capital Market. On March 21, 2016, Blue Earth filed for Chapter 11 bankruptcy.

The NASDAQ suspended trading in Blue Earth's common stock on March 28, 2016 and then delisted the stock effective April 18, 2016. Blue Earth filed with the Commission a Form 15 terminating the registration of its common stock under Section 12(g) of the Exchange Act on August 1, 2016 and a Form 15 suspending its periodic reporting obligations under Section 15(d) of the Exchange Act on January 4, 2017.

\$44 Million "Construction in Progress" Asset

8. Since 2010, Jones, a contract accountant, had prepared Blue Earth's financial statements and made all GAAP determinations for the company, with limited substantive review by others in the company. During the relevant period, Jones assisted the company in devising and maintaining the company's internal accounting controls.

9. On July 15, 2013, Blue Earth acquired a subsidiary it eventually renamed Blue Earth CHP ("BE CHP").⁴ Through BE CHP, Blue Earth intended to enter into agreements with customers pursuant to which Blue Earth would develop, build, own, and operate combined heat and power ("CHP") plants on land leased from the customer. The plants would generate steam and electricity for the customer at below market rates, and Blue Earth would sell the excess electricity to the local utility. Blue Earth paid for BE CHP with 15,500,000 shares of restricted company stock. To determine the purchase price, the company multiplied the number of shares transferred by the share price resulting in \$44,035,500.

10. Shortly after the acquisition, BE CHP entered into seven non-binding term sheets with a major meat processing company. At the insistence of the meat processing company, the term sheets expressly stated that they were non-binding. The meat processing company would be bound only when the parties signed a "definitive agreement" for each facility, meaning: (i) a ground lease allowing Blue Earth access to the premises for purposes of constructing and operating the plant and (ii) a power purchase agreement obligating BE CHP to sell, and meat processing company to buy, steam and electricity at a set price. No such contract was signed until August 2014, when Blue Earth and the meat processing company executed a definitive agreement for one plant. Blue Earth and the customer signed a definitive agreement for a second, smaller plant in December 2014. Definitive agreements were not executed for any other plants.

11. The GAAP provision governing accounting for business combinations, Accounting Standards Codification ("ASC") 805, *Business Combinations* ("ASC 805"), generally requires the accounting acquirer to: (a) determine the purchase price which, in the case of a stock-for-stock acquisition is the fair market value of the shares transferred by the acquirer (unless the acquiree's share price is more reliably measured); (b) identify all assets acquired, including intangible assets, and liabilities assumed; (c) determine the fair value of each such asset and liability; (d) allocate the purchase price to each identified asset and liability; and (e) allocate the residual to goodwill.

⁴ Blue Earth initially acquired and combined two affiliated private entities to form BE CHP. BE CHP is used herein to refer to the pre-merger entities and the single post-merger subsidiary into which they were combined.

12. Applying ASC 805 to its acquisition of BE CHP, Blue Earth should have identified all the assets acquired, including any intangible assets; determined the fair value of those assets; and then allocated the purchase price to the acquired assets, liabilities, and, if there was any residual, to goodwill.

13. Jones knew the explicitly set forth requirements of ASC 805, but he deviated from them in several respects in accounting for the acquisition during the third quarter of 2013. First, Jones took the position that, because BE CHP had no customer base or revenues at the time Blue Earth acquired it, it could have no goodwill. Accordingly, Jones concluded that no portion of the \$44 million could be allocated to goodwill. Second, he had the entire purchase price recorded as an asset he named “Construction in Progress”, with no portion of the purchase price allocated to the immaterial tangible assets and liabilities. Third, Jones did not determine whether Blue Earth obtained any identifiable intangible assets in the acquisition. Fourth, Jones did not obtain a fair value of any identifiable intangible asset prior to his having the entire \$44 million recorded on Blue Earth’s books as “Construction in Progress.”

14. After the asset was booked in the company’s internal records, Jones sought from the company’s Chief Financial Officer (“CFO”) support for the \$44 million “Construction in Progress” asset in connection with the year-end audit.

15. In October 2013, the CFO provided to Jones a discounted cash flow (the “October 2013 DCF”) the CFO had prepared which purportedly supported the \$44 million “Construction in Progress” asset valuation. It purported to be a DCF of the cash flows anticipated from constructing and operating non-existent and speculative CHP plants at seven of the meat processing company’s sites and from the sale of steam and electricity to the facilities and local utility companies over a more than 10-year period. The DCF was based on two assumptions: (a) that definitive agreements existed in relation to all seven sites; and (b) that full financing was available to BE CHP to construct and operate the seven plants. Neither assumption was based in fact.

16. Jones knew that the October 2013 DCF purported to value the equity cash flows of the BE CHP enterprise, and not any discrete asset or assets of the acquired business. He knew from the face of the October 2013 DCF that it was based on cash flows from CHP plants at seven sites for which definitive agreements had not been signed. Nonetheless, the company provided the October 2013 DCF to the auditor in connection with the year-end audit. Jones made additional inquiries about the status of the contracts prior to Blue Earth’s filing of its 2013 Form 10-K with the Commission in March 2014, and he learned that definitive agreements still were not signed for any site.

17. Despite knowing all of this, Jones proceeded to assist in the preparation of financial statements included in the third quarter Form 10-Q filed with the Commission in November 2013 and fiscal year 2013 Form 10-K filed in March 2014 that listed the \$44 million “Construction in Progress” asset under “Other Assets” on the balance sheet and allocated nothing to goodwill. The \$44 million “Construction in Progress” asset represented 56% and 51% of Blue Earth’s total assets on its balance sheet for the reporting period ended September 30, 2013 and December 31, 2013,

respectively.

18. In the first and second quarters of 2014, Jones improperly recharacterized the \$44 million “Construction in Progress” asset originally under “Other Assets” as “Construction in Progress” under “Property and Equipment” on the company’s books and records and on the balance sheet of the company’s financial statements reported with the Forms 10-Q filed in May and August 2014.

Improper Capitalization of Compensation Expense

19. In February 2014, Blue Earth hired an individual to run its capital formation subsidiary pursuant to a three-year employment agreement for a salary of \$120,000 per year. At the same time, Blue Earth separately issued to the individual 1,725,000 shares of Blue Earth restricted common stock, with no vesting schedule, valued at approximately \$4.6 million. The value of the shares should have been expensed in the quarter they were issued as a compensation expense under ASC 718 *Compensation — Stock Compensation* (“ASC 718”). Instead, Blue Earth recorded the \$4.6 million as an asset, capitalized it, and amortized it over three years.

20. The shares were issued to the individual pursuant to a so-called “Sale of Goodwill” agreement under which Blue Earth purported to purchase the executive’s “Seller’s Goodwill” which included, among other things, an agreement that the individual share information about certain of his relationships, recommend Blue Earth to his contacts in the energy efficiency and clean tech industry, and enter into an employment agreement with Blue Earth. Under the “Sale of Goodwill” agreement, Blue Earth issued the shares to the individual upon the execution of the agreement. There were no conditions to the individual receiving the shares, nor was there any vesting period.

21. Although it was characterized as a purchase of “Seller’s Goodwill,” the purpose of the transaction was to secure the services of the individual. The value Blue Earth derived from the transaction was the individual’s services, namely the executive’s contacts within the industry and his potential use of that information to raise funds for Blue Earth.

22. Under ASC 718, the \$4.6 million fair value of the shares issued should have been treated as stock compensation. As stock compensation, without a vesting period, the \$4.6 million share payment from Blue Earth to the individual should have expensed in the period it was made, instead of being capitalized as an asset and amortized over three years.

23. Jones, who was charged with determining the appropriate accounting treatment under GAAP, knew the facts set forth in Paragraph 21. However, instead of recognizing the \$4.6 million expense in the year incurred, Jones improperly had it recorded as an asset which Jones determined should be amortized over three years.

24. Jones also proceeded to assist in the preparation of financial statements included in the Forms 10-Q filed with the Commission in May, August, and November 2014 and in the 2014 Form 10-K filed in March 2015 that listed the asset, reduced to nearly \$3.2 million through

amortization. In the financial statements included in the Form 10-Q for the first quarter of 2014, this accounting error resulted in Blue Earth understating its expenses by approximately \$4.3 million, which constituted a 43% understatement of its net income (loss) before taxes and of its net loss. In the financial statements included in the 2014 Form 10-K, this resulted in a Blue Earth understating its expenses by nearly \$3.2 million, which constituted a 10% understatement of its net income (loss) before taxes and 9.4% understatement of its net loss, and overstatement of its assets by 3.1%.

25. In February 2016, the company restated its financial statements for the year ending December 31, 2014, after concluding that the \$4.6 million originally recorded as an asset should have been expensed in the quarter during which it was paid.

Violations

26. Section 13(b)(5) of the Exchange Act provides that no person shall knowingly falsify any book, record, or account subject to Section 13(b)(2)(A). Rule 13b2-1 under the Exchange Act provides that no person shall, directly or indirectly, falsify or cause to be falsified any book, record or account subject to Section 13(b)(2)(A).

27. As a result of Jones's conduct described above, certain assets and expenses were misrecorded on Blue Earth's books, records, and accounts. Jones willfully violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder by, directly or indirectly, knowingly falsifying Blue Earth's books, records, and accounts.

28. Section 13(b)(2)(A) of the Exchange Act requires issuers with a class of securities registered under Exchange Act Section 12 to make and keep books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of their assets. Section 13(b)(2)(B) of the Exchange Act requires issuers with a class of securities registered under Exchange Act Section 12 to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP.

29. Blue Earth violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act by failing to keep books, records and accounts that accurately and fairly reflected the above-described transactions and failed to maintain a system of internal accounting controls. Jones improperly applied GAAP to the above-described transactions, as a result of which assets and expenses were misrecorded on Blue Earth's books, records, and accounts. Jones knew, or was reckless in not knowing, that by engaging in the conduct described above, he provided substantial assistance to Blue Earth in its violation of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. As a result, Jones willfully aided and abetted and caused Blue Earth's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

30. Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder require issuers with a class of securities registered under Section 12 of the Exchange Act to file quarterly and annual reports with the Commission and to keep this information current. The

obligation to file such reports embodies the requirement that they be true and correct. *See, e.g., SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978).

31. Blue Earth included materially misstated financial statements in its quarterly and annual reports for periods ended September 30, 2013 through December 31, 2014 in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder. The materially misstated financials resulted from Jones improperly applying GAAP to the above-described transactions. Jones knew, or was reckless in not knowing, that by engaging in the conduct described above, he provided substantial assistance to Blue Earth in its violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder. As a result, Jones willfully aided and abetted and caused Blue Earth's violations of Section 13(a) and Rules 12b-20, 13a-1 and 13a-13 thereunder.

Findings

Based on the foregoing, the Commission finds that Jones: (a) willfully violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder; and (b) willfully aided and abetted and caused Blue Earth's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, 13a-1, and 13a-13 promulgated thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Jones's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Jones shall cease and desist from committing or causing any violations of and any future violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act and Rules 12b-20, 13a-1, 13a-13, and 13b2-1 promulgated thereunder.

B. Jones be, and hereby is, denied the privilege of appearing or practicing before the Commission as an accountant.

C. Jones shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$70,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying R. Gordon Jones as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Carolyn M. Welshhans, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree

or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary