UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86240 / June 28, 2019

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4056 / June 28, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19225

In the Matter of **S. JEFFREY JONES, CPA,** **Respondent.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 4C OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative proceedings be, and hereby are, instituted against S. Jeffrey Jones, CPA ("Respondent" or "Jones") pursuant to Section 4C[1] of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.[2]

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[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 … (2) … to have engaged in unethical or improper professional conduct….

[2] Rule 102(e)(1)(ii) 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 engaged in unethical or improper professional conduct.

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, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[3] that:

A. SUMMARY

1. These proceedings arise out of Jones's improper professional conduct as the lead engagement partner on the audits of Blue Earth Inc.'s ("Blue Earth") 2013 and 2014 fiscal year financial statements and reviews of the fiscal year 2014 interim financial statements. Blue Earth, a provider of efficient and renewable energy solutions, has since filed for Chapter 11 bankruptcy. Jones had overall responsibility for the conduct of the audits and interim reviews, including supervision of team members and compliance with Public Company Accounting Oversight Board ("PCAOB") standards. Jones caused the issuance of audit reports for those years, signed by Jones on behalf of the audit firm, containing an unqualified opinion that Blue Earth's financial statements were presented fairly, in all material respects, in conformity with generally accepted accounting principles ("GAAP"). The audit reports also stated that the audits were conducted in accordance with PCAOB standards. The financial statements were included in the Forms 10-K for the fiscal years 2013 and 2014. The interim financial statements were included in the Forms 10-Q for the first three quarters of 2014.

2. Jones failed to conduct the audits and interim reviews in accordance with PCAOB standards referenced herein.

B. RESPONDENT

3. S. Jeffrey Jones, CPA, age 52, resides in South Jordan, Utah. Jones has been licensed as a CPA in the State of Utah since November 1997. During and after the relevant period, Jones was a partner at a PCAOB-registered accounting firm.

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[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.

C. RELEVANT ENTITY

4. Blue Earth, Inc. is incorporated in Nevada and, during the relevant period, was headquartered in Henderson, Nevada. During the relevant period, it provided a limited range of renewable and energy efficient solutions for 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 Blue Earth's common stock on March 28, 2016 and 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) 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.

D. FACTS

Failure to Comply with PCAOB Auditing Standards During the Audit of Blue Earth's 2013 Fiscal Year Financial Statements

5. On July 15, 2013, Blue Earth acquired a subsidiary[4] it eventually renamed Blue Earth CHP ("BE CHP"). 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 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 paid by the share price resulting in a value of $44,035,500.

6. 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 the 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.

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

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

8. Instead of complying with ASC 805, Blue Earth erroneously concluded that because BE CHP had no revenues and no customer base, it could not have any goodwill; did not attempt to separately identify intangible assets or obtain a fair market value of any identifiable intangible asset; and concluded that the amount of the purchase price in excess of the tangible assets should be allocated to an asset, which Blue Earth incorrectly classified as a "Construction in Progress" asset.

9. The company recorded the $44 million "Construction in Progress" asset on its books and records during the third quarter of 2013. The asset comprised 56% and 51% of Blue Earth's assets reported on its balance sheet in the financial statements for the quarter ended September 30, 2013 and the fiscal year ended December 31, 2013, respectively.

10. Based on the reported $44 million value of the purported "Construction in Progress" asset relative to all Blue Earth's reported assets, the audit engagement team, led by Jones, identified the asset as possessing a risk of material misstatement during the audit of the company's 2013 fiscal year financial statements, meaning that the auditor was required to design and implement an audit response that addresses the risks of material misstatement. In the course of doing that testing, Jones was put on notice of red flags indicating that the company had improperly applied ASC 805 during the third quarter of 2013 and that almost the entire $44 million purchase price should have been allocated to goodwill.

11. The red flags included the following:

a. For purposes of testing the company's analysis of the $44 million "Construction in Progress" asset for impairment, the audit team obtained from the company a discounted cash flow ("DCF") of future revenues from seven sites. On Jones's asking to see the contracts for the seven sites underlying the DCF, the company told Jones there were no contracts, only non-binding term sheets, and that the company was in the process of negotiating contracts with a potential customer with respect to the seven potential sites.

b. The DCF provided by the company to the audit team reflected a value for the entire enterprise of $42.3 million, whereas the "Construction in Progress" asset was reported on the company's balance sheet as having a $44 million value.

c. In light of information gathered during the audit, Jones advised the company to obtain an independent valuation. The company declined on the grounds that no one was better positioned to value the asset than company insiders.

d. The audit team retained a valuation firm for the limited purpose of assessing the reasonableness of the discount rate used by Blue Earth in its DCF. The valuation firm provided to the audit team a revision of the company's DCF, using the inputs from the company's DCF and after correcting for errors in the company's DCF. The valuation firm's revised DCF arrived at a potential enterprise value of BE CHP at the time of acquisition of $8.1 million -- not the $42 million reflected in Blue Earth's DCF.

e. Jones knew that ASC 805 required the identification of each discrete asset acquired and a fair valuation of each asset. He and the audit team under his supervision, however, did not obtain sufficient information about whether and how the company had performed a fair valuation pursuant to ASC 805 of the $44 million "Construction in Progress" asset that was identified.

12. Jones failed to respond appropriately to these red flags. Further, he took the position that no portion of a purchase price is allocable to goodwill under ASC 805 if the company acquired has no brand name or operations at the time of acquisition, as was the case with BE CHP. As a result, Jones failed to test whether the company had properly applied ASC 805 in recording a $44 million "Construction in Progress" asset on its books and records.

13. Instead of questioning or testing the company's application of ASC 805 at the acquisition date during the 2013 fiscal year audit, Jones focused on whether the company had to take an impairment on the purported $44 million "Construction in Progress" asset as of December 31, 2014. The audit team, under Jones's supervision, initially took the position that it needed to see the executed contracts in order to complete its testing of the asset for impairment. Despite this, and in the face of the foregoing red flags, the audit team, under Jones's supervision, ultimately relented in the face of the company's assurances that the contracts for the seven sites were being negotiated and their execution was imminent. While knowing that the $42.3 million DCF was based on an assumption of seven contracts, the audit team, at Jones's direction, relied on the company's DCF to conclude that no impairment of the purported $44 million "Construction in Progress" asset was warranted.

14. PCAOB Auditing Standard No. 9, Audit Planning ("AS No. 9")[5] required an auditor to establish the overall audit strategy for the engagement and develop an audit plan, which includes, in particular, planned risk assessment procedures and planned responses to the risks of material misstatement. (AS No. 9 at ¶ .05). Jones failed to plan appropriate audit procedures, as required by AS No. 9, in light of the audit team's determination that the $44 million "Construction in Progress" asset posed risks of material misstatement.

15. PCAOB Standard AU Section 230, Due Professional Care in the Performance of

[5] All references to auditing standards in this Order are to PCAOB standards in effect at the time the audit work was performed.

Work ("AU §230") required that an auditor exercise professional skepticism. Professional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence. In exercising professional skepticism, the auditor should not be satisfied with less than persuasive evidence because of a belief that management is honest. (AU §230 at ¶¶ .07, .09). PCAOB Auditing Standard No. 13, The Auditor's Responses to the Risks of Material Misstatement ("AS No. 13") requires the auditor design and implement audit responses that address the risks of material misstatements and, when responding to the assessed risks of material misstatement, to apply professional skepticism in gathering and evaluating audit evidence. (AS No. 13 at ¶¶ .03; .07). PCAOB Auditing Standard No. 15, Audit Evidence ("AS No. 15") states that the auditor must plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for his or her opinion. The auditor should perform additional procedures if audit evidence from one source is inconsistent with that from another. As the risk increases, the amount of evidence that the auditor should obtain also increases. (AS No. 15 at ¶¶ .04; .05; .29). Jones failed to apply professional skepticism in gathering and evaluating audit evidence given the assessed risks of material misstatement, as required by AU §230 and AS Nos. 13 and 15. For example, he accepted the company's representation that lease and power purchase agreements relating to seven sites on which the DCF was based were imminent, without performing additional testing procedures. Further, he also failed to follow up on the valuation expert's revised DCF reflecting an $8.1 million valuation, given that the company's DCF arrived at a valuation of $42 million.

16. PCAOB Standard AU Section 328, Auditing Fair Value Measurements and Disclosures ("AU §328") stated the auditor should obtain sufficient appropriate audit evidence to provide reasonable assurance that fair value measurements and disclosures are in conformity with GAAP. (AU §328 at ¶ .03). Jones failed to obtain sufficient appropriate audit evidence, as required by AS No. 15 and AU §328, to evaluate management's explanations or representations concerning the purchase price allocation for the BE CHP acquisition and the fair value of the $44 million asset. Despite the company's rebuffing his advice that it obtain an independent valuation, and the revised DCF of the independent valuation expert the audit engagement team retained which reflected an $8.1 million valuation, Jones accepted management's assertion as to the fair value.

17. PCAOB Auditing Standard No. 3, Audit Documentation ("AS No. 3") required that an auditor prepare its documentation in sufficient detail as to provide a clear understanding of its purpose, source, and the conclusions reached, including documenting evidence that is inconsistent with or contradicts the audit conclusions. (AS No. 3 at ¶¶ .04; .08). Jones failed to establish that the engagement team prepared its documentation in sufficient detail so as to support its conclusions concerning the purchase price allocation under ASC 805 and documented the inconsistent evidence of the valuation expert's revised DCF reflecting an $8.1 million valuation.

Failure to Comply with PCAOB Auditing Standards During the Reviews of Blue Earth's Interim 2014 Financial Statements and Audit of Blue Earth's 2014 Fiscal Year Financial Statements

Impairment Analysis of $44 Million "Construction in Progress" Asset

18. In October 2014, the meat processing company with which Blue Earth had been negotiating contracts to develop and operate plants at seven sites determined to proceed with only two sites, one of which had been contracted in August 2014 and one that was subsequently contracted in December 2014. JBS would not even consider Blue Earth for other sites unless Blue Earth successfully completed these two. Pursuant to ASC 350-30-35, *Intangibles—Goodwill and Other*, the $44 million "Construction in Progress" asset, which appeared under "Property and Equipment" on the company's balance sheet, but should have been allocated to goodwill if ASC 805 had been properly applied, should have been impaired if the fair value was less than the asset's carrying value on the company's books and records. A 70% reduction in the sites under consideration in late 2014 should have prompted the company to determine whether a reduction in the asset's fair value had occurred and whether the company needed to take an impairment. However, Blue Earth did not perform an impairment analysis with regard to the $44 million BE CHP asset in its financial statements for the fiscal year ended December 31, 2014.

19. In February 2015, Blue Earth informed Jones that contracts still had not been entered into with respect to five of the seven sites. Although Blue Earth insisted that the customer remained committed to pursuing all seven projects, it indicated that the customer had determined to develop just the two contracted sites before proceeding with the remaining five. Blue Earth also referenced the customer's interest in pursuing projects in the alternative or in addition to the five uncontracted sites.

20. These developments should have prompted Jones and the audit team to conduct further testing into the possible underlying causes and whether management's representations were reliable. The audit team, however, under the supervision of Jones, limited the information it sought to the two contracted sites. In obtaining that limited information, a manufacturer of equipment slated for one of two contracted sites informed the audit team that Blue Earth was delinquent in paying, further calling into question Blue Earth's ability to perform under the existing two contracts and to undertake additional projects. Despite these circumstances, the audit team did not perform additional procedures in considering whether an impairment exists.

21. The audit team, under the supervision of Jones, relied on the discounted cash flow figures in the exact same DCF which the company had provided a year earlier and on which the auditor had relied in conducting the audit of the 2013 fiscal year financial statements. Jones and the rest of the audit team did not consider whether an updated impairment analysis was warranted given information available to the audit team that, among other things, the customer had entered into contracts with respect to only two sites and the progress on the remaining sites was held in abeyance pending the completion of the first two sites.

22. Further, the audit team, under Jones's supervision, also relied on the assertions of

management that Blue Earth and the customer were contemplating alternative and additional sites to those reflected in the DCF.

23. The audit team, led by Jones, ultimately did not take issue with the company's failure to undertake an impairment analysis with respect to the $44 million "Construction in Progress" asset.

24. Jones failed to plan and perform appropriate audit procedures, as required by AS No. 9 and AS No. 13, in light of the audit team's determination that the purported $44 million "Construction in Progress" asset posed risks of material misstatement.

25. Jones failed to apply due professional care and professional skepticism in gathering and evaluating audit evidence given the assessed risks of material misstatement for the purported $44 million asset, as required by AU § 230 and AS Nos. 13 and 15. Instead of following up on multiple red flags that the value of the asset needed to be tested for impairment, Jones accepted the representations of management and did not undertake further testing. Jones failed to obtain sufficient appropriate audit evidence to evaluate management's explanations or representations concerning the current status of the plants or to assess the possible impairment of the "Construction in Progress" asset.

Improper Capitalization of Compensation Expense

26. 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 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 compensation expense under ASC 718 *Compensation — Stock Compensation* ("ASC 718"). Instead, Blue Earth improperly recorded the $4.6 million as an asset, capitalized it, and amortized it over three years.

27. The shares were issued to the individual pursuant to a so-called "Sale of Goodwill" agreement under which Blue Earth purported to purchase the individual'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.

28. Under GAAP provision 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 been expensed in the period it was made, instead of being capitalized as an asset and amortized over three years.

29. This accounting error caused Blue Earth to materially understate its expenses by

approximately $4.3 million, constituting a 43% understatement of its net income (loss) before taxes and of its net loss, and overstate its assets by 5% for the quarter ending March 31, 2014. Blue Earth materially understated its expenses by nearly $3.2 million for the year ending December 31, 2014, which constituted a 10% understatement of its net income (loss) before taxes and 9.4% understatement of its net loss. This error also caused Blue Earth to overstate its assets by 3.1% for the year ending December 31, 2014.

30. In February 2016, the company restated its financial statements for the year ending December 31, 2014, after determining that the $4.6 million asset should have been treated as compensation expense, and expensed in the quarter during which the shares were issued.

31. The audit team, under Jones's supervision, conducted interim reviews of Blue Earth's financial statements for the first three quarters of 2014 and the audit of the year ended December 31, 2014.

32. In the first quarter, Jones was aware of the details of this transaction and failed to take the appropriate steps to address the likely misstatement. Jones knew or should have known that the compensation should have been expensed when the shares were issued. For example, he knew that the value derived from the transaction was the individual's contacts within the industry and his potential use of those contacts to raise funds for Blue Earth and that there was no vesting period and no continuing employment obligation in order to receive the stock compensation. Despite these red flags, Jones accepted the company's capitalization of the fair value of the shares as an intangible asset.

33. Further, in connection with the year end audit, Jones did not direct the audit team to request evidence that a fair value assessment was conducted as to the $4.6 million purported asset or collect any additional evidence as to the nature of the asset.

34. Jones failed to exercise due professional care and professional skepticism in his communication with management and in gathering and evaluating audit evidence, as required by AU § 230. Despite understanding that there was no vesting period and no continuing employment obligation in order to receive the stock compensation, Jones did not question Blue Earth's capitalization of the payment, even though he knew or should have known it was contrary to GAAP.

35. Jones failed to obtain sufficient appropriate audit evidence to evaluate management's explanations or representations concerning the treatment of the stock payment, as required by AS No. 13 and AU § 328. Jones did not request or document evidence that the $4.6 million stock payment was a compensation expense. Jones accepted management's conclusion that the $4.6 million payment should be treated as an asset valued at $4.6 million. Insufficient testing was done on the transaction.

36. The audit conclusion that Blue Earth had acquired an asset valued at $4.6 million was not supported by the engagement team's documentation. Accordingly, Jones failed to prepare audit documentation in sufficient detail to support the conclusions, as required by AS No. 3.

37. PCAOB Standard AU 722, Interim Financial Information, provided that the objective of a review of interim financial information is to provide the accountant with a basis for communicating whether he or she is aware of any material modifications that should be made to the interim financial information for it to conform with GAAP, and not to provide a basis for opining that the financial statements are presented fairly in all material respects. Jones failed to properly perform a review of interim financial information in connection with this transaction in the first three quarters of 2014, because Jones was aware of information that should have put him on notice that the interim financials with respect to the transaction did not comply with GAAP. Therefore, Jones was required to make further inquiries or perform further procedures to determine whether those changes should be made, but he failed to do so.

38. **Findings**

Based on the foregoing, the Commission finds that Jones engaged in improper professional conduct pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

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 is denied the privilege of appearing or practicing before the Commission as an accountant.

B. After two years from the date of this order, Jones may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

(1) a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Exchange Act). Such an application must satisfy the Commission that Jones's work in his practice before the Commission as an accountant will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

(2) a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission as a member of an audit committee, as that term is defined in

Section 3(a)(58) of the Exchange Act. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or

(3) an independent accountant.

Such an application must satisfy the Commission that:

a. Jones, or the public accounting firm with which he is associated, is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

b. Jones, or the registered public accounting firm with which he is associated, has been inspected by the PCAOB and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that Jones will not receive appropriate supervision;

c. Jones has resolved all disciplinary issues with the PCAOB, and has complied with all terms and conditions of any sanctions imposed by the PCAOB (other than reinstatement by the Commission); and

d. Jones acknowledges his responsibility, as long as he appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the PCAOB, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Jones to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Jones's character, integrity professional conduct, or qualifications to appear or practice before the Commission as an accountant. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission's process.

By the Commission.

Vanessa A. Countryman
Secretary