



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

April 4, 2022

ECW-15J

VIA E-MAIL

Amy Shaw  
Deep Blu, LLC  
306 Jay Street, Suite 1  
Saint Clair, Michigan 48079  
Email: [amy@deepblulogistics.com](mailto:amy@deepblulogistics.com)

Dear Amy Shaw:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) regarding docket number SDWA-05-2022-0002. As indicated by the filing stamp on the first page of the CAFO, the CAFO was filed with the Regional Hearing Clerk on January 14, 2022.

Pursuant to the CAFO, Deep Blu, LLC must pay the civil penalty within 30 days of the effective date, April 4, 2022. The check with which you pay the civil penalty must display the case name: In the Matter of Deep Blu, LLC and the docket number SDWA-05-2022-0002.

Please direct any questions regarding this matter to Christine Shonnard of my staff at 312-886-1487 or [Shonnard.Christine@epa.gov](mailto:Shonnard.Christine@epa.gov), or your Counsel can contact Tom Williams, Associate Regional Counsel, at 312-886-0814 or [Williams.Tom@epa.gov](mailto:Williams.Tom@epa.gov).

Sincerely,

Elizabeth  
Murphy

Digitally signed by  
Elizabeth Murphy  
Date: 2022.02.25  
11:07:29 -06'00'

Elizabeth W. Murphy, MPH  
Supervisor, Section 3  
Water Enforcement and Compliance, Assurance Branch

Enclosure

cc: Ann Coyle, Regional Judicial Officer  
Jason Mailloux, Michigan EGLE, [maillouxj@michigan.gov](mailto:maillouxj@michigan.gov)  
Tom Williams, Associate Regional Counsel, [Williams.Tom@epa.gov](mailto:Williams.Tom@epa.gov)  
Christine Shonnard, EPA, [Shonnard.Christine@epa.gov](mailto:Shonnard.Christine@epa.gov)  
Elizabeth Murphy, EPA, [Murphy.Elizabeth@epa.gov](mailto:Murphy.Elizabeth@epa.gov)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In The Matter Of:</b>	)	<b>Docket No. SDWA-05-2022-0002</b>
	)	
<b>Deep Blu, LLC</b>	)	<b>Proceeding under Section 1423(c) of the</b>
<b>Saint Clair, Michigan</b>	)	<b>Safe Drinking Water Act,</b>
<b>Respondent.</b>	)	<b>42 U.S.C. § 300h-2(c)</b>
	)	

**Consent Agreement and Final Order**

**Statutory Authority**

1. This is an administrative action commenced and concluded under Section 1423(c)(2) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. §300h-2(c)(2), and Sections 22.1(a)(9), 22.13(b), 22.18(b)(2) and (3), and 22.45 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“Consolidated Rules”), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Deep Blu, LLC, a Michigan corporation doing business in Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Judicial Review and Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its rights to notice of EPA's proposal to issue this CAFO, its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 1423(c)(3) of SDWA, 42 U.S.C. § 300h-2(c)(3), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. Section 1421 of SDWA, 42 U.S.C. § 300h, requires that the Administrator of EPA promulgate regulations, which shall include permitting requirements as well as inspection, monitoring, recordkeeping and reporting requirements, for state underground injection control (UIC) programs to prevent underground injection which endangers drinking water sources.

10. Section 1421(d)(1) of SDWA, 42 U.S.C. § 300h(d)(1), defines "underground injection" as the subsurface emplacement of fluids by well injection and excludes the underground injection of natural gas for purposes of storage and the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

11. Section 1421(d)(2) of the SDWA, 42 U.S.C. § 300h(d)(2), provides that underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and of the presence of such contaminant may result in such system not complying with a national primary drinking water regulation or may otherwise adversely affect the health of persons.

12. Pursuant to Section 1422(b) of the SDWA, 42 U.S.C. § 300h-1(b), designated states shall apply to obtain primary enforcement responsibility of their UIC programs (a concept called "primacy").



13. Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), provides that the Administrator for EPA shall by regulation prescribe UIC programs applicable to those states that have not obtained primacy for their UIC programs or do not have primacy for all types of wells.

14. Pursuant to Sections 1421 and 1422 of SDWA, 42 U.S.C. §§ 300h and 300h-1, respectively, EPA has promulgated UIC regulations at 40 C.F.R. Parts 124 and 144 through 148.

15. The SDWA and its regulations prohibit all underground injections unless authorized by a permit or a rule. 42 U.S.C. § 300h(b)(1)(A); 40 C.F.R. § 144.11.

16. EPA administers and has primary enforcement responsibility for the UIC program in the State of Michigan. The UIC program for the State of Michigan is set forth at 40 C.F.R. Part 147, Subpart X, and consists of the UIC program requirements of 40 C.F.R. Parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of Subpart 147.

17. Pursuant to 40 C.F.R. § 144.1(g), the UIC programs regulate underground injection by six classes of wells and all owners or operators of these injection wells must be authorized either by permit or rule. Class II wells inject fluids which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection. 40 C.F.R. § 144.6(b)(1).

18. In accordance with 40 C.F.R. § 144.51(a), any UIC permittee must comply with all conditions of its permit which include the requirements set forth in 40 C.F.R. §§ 144.11 – 144.19. Any permit noncompliance constitutes a violation of the SDWA, except that the permittee need not comply with the provisions of its permit to the extent and for the duration such noncompliance is authorized in an emergency permit under 40 C.F.R. § 144.34.

19. Section 1423(a)(2) of SDWA, 42 U.S.C. § 300h-2(a)(2), provides that any person found to be in violation of any requirement of an applicable UIC program in a state that does not



have primacy may be assessed a civil penalty and/or be subject to an order requiring compliance pursuant to Section 1423(c)(2) of SDWA, 42 U.S.C. § 300h-2(c)(2).

20. Under Section 1423(c)(2) of SDWA, 42 U.S.C. § 300h-2(c)(2), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$7,500 for each day of violation, up to a maximum administrative penalty of \$187,500 for SDWA violations occurring after December 6, 2013 through November 2, 2015, and not more than \$11,665 for each day of violation, up to a maximum administrative penalty of \$291,641 for SDWA violations occurring after November 2, 2015; and/or issue an order requiring compliance.

### **Factual Allegations and Alleged Violations**

21. Respondent is a corporation, and as such, Respondent is a “person” as that term is defined at Section 1401(12) of SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

22. At all times relevant to this CAFO, Respondent was authorized to drill, construct, and operate a commercial Class II well known as the Deep Blu #2-2 BDW well located in Saint Clair County, Michigan, T6N, R16E, Section 2, ¼ Section SW (42.9798, -82.532778), pursuant to EPA UIC permit No. MI-147-2D-0023 (“the Permit”). The Permit became effective on December 10, 2014.

23. EPA modified the Permit on September 16, 2016, to add a source to the list of approved sources in Part III Attachment D of the Permit.

24. The Permit authorizes the underground injection for commercial disposal of fluids brought to the surface in connection with natural gas storage or conventional oil or natural gas production (also commonly referred to as brine), as approved by the Director, into the Deep Blu #2-2 BDW well, subject to the terms and conditions set forth in the Permit.

25. Fluids brought to the surface in connection with natural gas storage or conventional oil or natural gas production, or “brine,” are “fluids” under 40 C.F.R. § 144.3 because they are

materials or substances that move or flow whether in a semisolid, sludge, liquid, gas or any other form or state.

26. The Permit authorizes use of the Deep Blu #2-2 BDW well for underground injection into the Lucas, Bass Island, Bois Blanc, and Amherstburg Formations at depths between 933 and 1,639 feet below ground surface.

27. At all times relevant to this CAFO, Respondent owned and operated the Deep Blu #2-2 BDW well, a Class II underground injection well in the State of Michigan and was subject to the UIC program requirements set forth at 40 C.F.R. Parts 124, 144, 146, 147 (Subpart X), and 148.

28. At no time relevant to this CAFO did the Respondent apply for and obtain an emergency permit pursuant 40 C.F.R. § 144.34.

29. Part I (E)(1) of the Permit and 40 C.F.R. § 144.51(a) require Respondent to comply with the Permit's requirements.

30. Part I (E)(18) of the Permit authorizes Respondent to inject oil field brines or those fluids used in the enhancement of oil and gas production as specified in 40 C.F.R. § 146.5(b).

31. The Permit requires, among other things, that the annulus between the tubing and the long string casing of Respondent's well be filled with a liquid designed to inhibit corrosion ("annulus liquid"), and that Respondent monitor annulus liquid volume and report volume changes on a quarterly basis in accordance with Parts II (B)(1)(d), II (B)(2)(d), II (B)(3)(b), and III (A) of the Permit.

32. Part II (B)(2)(d) of the Permit states annulus liquid loss shall be recorded at least quarterly and shall be reported in accordance with the provisions of Part II (B)(3)(b), as the volume of liquid added to the annulus to keep it filled. Requirements for annulus monitoring and reporting frequencies are also contained in Part III (A) of the Permit.

33. Part II (B)(3)(b)(i) of the Permit, "Quarterly Reports," restates that monitoring results

obtained each quarter shall include the measurement of annulus liquid loss as required in Parts II(B)(2) (d) and III (A) of the Permit.

34. The Permit requires, among other things, that Respondent retain records of well monitoring information for at least three years.

35. Part I (E)(11) of the Permit, "Signatory Requirements," states that all reports required by the Permit and other information requested by the Director shall be signed and certified according to 40 C.F.R. § 144.32.

36. 40 C.F.R. § 144.32(d) states that any person signing a document under paragraph (a) or (b) of 40 C.F.R. § 144.32 shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

37. All quarterly reports of annulus liquid loss monitoring submitted by the Respondent to EPA in 2015 and 2016 for the Deep Blu #2-2 BDW well reported zero gallons of annulus liquid lost or gained.

38. All quarterly reports of annulus liquid loss monitoring submitted by Deep Blu, LLC for 2015 through 2016 for the Deep Blu #2-2 BDW well are signed and certified according to 40 C.F.R. § 144.32(d) by Respondent.

39. On August 30, 2016, pursuant to EPA's authority under Section 1445(b) of SDWA, 42 U.S.C. § 300j-4(b) and Part I (E)(7) of the Permit, EPA employees inspected the Deep Blu #2-2 BDW well facility and interviewed Respondent's representatives and operators of Deep Blu, LLC



and the Deep Blu #2-2 BDW well.

40. During EPA's August 30, 2016 interview, Respondent's representative stated that Respondent had submitted quarterly reports of annulus liquid loss monitoring, but Respondent indicated that he had only maintained a positive pressure on the annulus system and monitored this positive pressure continuously, and had not physically monitored the volume changes of the annulus fluid in Deep Blu #2-2 BDW in accordance with the Permit.

41. On September 25, 2018, Complainant issued Information Request No. V-UIC-18-1445-004 ("EPA's Information Request") to Respondent pursuant to Section 1445(a) of SDWA, 42 U.S.C. § 300j-4(a), 40 C.F.R. §§ 144.17 and 144.51(h), and Part I (E)(6) of the Permit, to gather information related to the historic operations and maintenance of the Deep Blu #2-2 BDW well and the Permit.

42. Complainant issued a noncompliance notification letter to the Respondent on November 28, 2018 for failing to respond to EPA's Information Request within 30 calendar days.

43. Complainant received Respondent's response to its EPA's Information Request with the requested information on December 4, 2018 ("Respondent's Response").

44. Respondent's Response stated that Respondent used "the pressure method" to monitor annulus liquid loss, rather than measure the volume of liquid added to the annulus to keep it filled in accordance with the Permit. Respondent also provided monthly monitoring reports showing that annulus pressure monitoring took place on a daily basis at least from April, 2015 through October, 2018. Respondent provided documentation showing the installation of the annulus tank system and sight glass on September 22<sup>nd</sup>, 2016.

#### **Count I – Failure to Monitor Annulus Liquid Loss Consistent with the EPA Permit**

45. The statements in Paragraphs 1 through 44 of this CAFO are hereby incorporated by reference as if set forth in full.

46. Prior to August 30, 2016, Respondent failed to record measurements of quarterly annulus liquid loss from the Deep Blu #2-2 BDW well in accordance with the Permit.

47. Each quarter that Respondent failed to measure and record annulus liquid loss of the Deep Blu #2-2 BDW well and instead recorded and reported that no annulus fluid was added to the sealed annulus system is a violation of the Permit, the UIC regulation at 40 C.F.R. § 144.51, and SDWA.

### **Count II – Failure to Submit Accurate Reports**

48. The statements in Paragraphs 1 through 47 of the CAFO are hereby incorporated by reference as if set forth in full.

49. From April 1, 2015 to August 30, 2016, Respondent failed to measure and record the volume of liquid loss that occurred in the annulus of the Deep Blu #2-2 BDW well in accordance with the Permit's requirement that it be kept filled with a liquid designed to inhibit corrosion.

50. By so failing to record measurements of annulus liquid loss as required by the Permit, Respondent inaccurately reported and certified that zero gallons of annulus liquid had been lost or gained.

51. Each quarterly annulus liquid loss report Respondent submitted to EPA prior to August 30, 2016 which stated zero gallons of annulus liquid had been lost or gained at Deep Blu #2-2 BDW was submitted and certified without accurate data as required by the Permit.

52. Each quarter Respondent failed to report accurate and complete measurements of annulus liquid loss to EPA in accordance with the Permit for the Deep Blu #2-2 BDW well, is a violation of the Permit, the UIC regulation at 40 C.F.R. § 144.51, and SDWA.

### **Civil Penalty**

53. Based upon the facts alleged in this CAFO, the factors listed in Section 1423(c)(4)(B) of SDWA, 42 U.S.C. 300h-2(c)(4)(B), as well as EPA's UIC Program Judicial and

Administrative Order Settlement Penalty Policy (September 1993), and Respondent's good faith and cooperation in resolving this matter, EPA has determined that an appropriate civil penalty to settle this action is \$5,034.

54. Within 30 days of the effective date of this CAFO, Respondent must pay the civil penalty specified in Paragraph 53 of this Agreement by sending a cashier's or certified check by express mail, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must note Respondent's name and the docket number of this CAFO.

55. When Respondent pays the penalty or any portion thereof, Respondent must also send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA electronically. Electronic submissions must be sent to the following addresses:

[Shonnard.Christine@epa.gov](mailto:Shonnard.Christine@epa.gov), [R5WECA@epa.gov](mailto:R5WECA@epa.gov), and [Williams.Tom@epa.gov](mailto:Williams.Tom@epa.gov). If electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested) and mailed to the following addresses:

Christine Shonnard (ECW-15J)  
Water Enforcement and Compliance Assurance Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Thomas Williams (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard



Chicago, Illinois 60604

Regional Hearing Clerk (ECA-18J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

56. This civil penalty is not deductible for federal tax purposes.

57. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, Respondent must pay the following on any amount overdue under this CAFO: interest accrued on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings; a handling charge fee each month that any portion of the penalty is more than 30 days past due; and a penalty of up to 6% per year on any principal amount 90 days past due.

58. If Respondent does not pay timely the civil penalty or any stipulated penalty pursuant to paragraph 73 below, EPA may request the United States Department of Justice bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action under Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

59. This CAFO resolves Respondent's liability for federal civil penalties for only the violations alleged in this CAFO.

### **Compliance Requirements**

60. As provided by Section 1423(c)(2) of SDWA, 42 U.S.C. § 300h-2(c)(2), Complainant and Respondent agree, and it is ordered that from the effective date of this CAFO, Respondent shall:

- (i) Keep the annulus between the tubing and the long string casing filled with a liquid designed to inhibit corrosion in accordance with Part II (B)(1)(d) of the Permit until the completion of plugging and abandonment in accordance with the plugging and abandonment plan contained in Part III (B) of the Permit.
- (ii) Continue to monitor Respondent's annulus tank level on a frequency of not less than once per calendar quarter for volume changes and report the liquid level volume changes in accordance with Parts II (B)(2)(d), II (B)(3)(b), and III (A) of the Permit until the completion of plugging and abandonment in accordance with the plugging and abandonment plan contained in Part III (B) of the Permit.
- (iii) Continue to record measurements of the volume of annulus liquid added or removed to keep the well annulus full to the surface and a liquid level visible in the annulus tank sight glass. Specific requirements will be outlined in the SOP, as required in Paragraph (vi) until the completion of plugging and abandonment in accordance with the plugging and abandonment plan contained in Part III (B) of the Permit.
- (iv) Retain all monitoring information in accordance with the Part I (E)(8) of the Permit and 40 C.F.R. § 144.51(j), including the date, exact place, and time of sample or measurements, the individual(s) who performed the measurements, the methods used, and the results until three years after the completion of plugging and abandonment in accordance with the plugging and abandonment plan contained in Part III (B) of the Permit.
- (v) Submit to EPA enforcement officer copies of all monitoring records of measurements of liquid level readings and annulus system fluid addition or removal as documentation of annulus liquid loss information with its quarterly reports, for 12 months from the effective date of this CAFO.
- (vi) Within 90 days of the effective date of this CAFO, submit to EPA enforcement officer for approval a standard operating procedure ("SOP") for use in providing adequate direction to all staff or contractors in monitoring, recording, and reporting measurements of annulus liquid loss required by Part II (B)(2)(d), Part II (B)(3)(b), and Part III (A) the Permit. The SOP must be implemented after approval by EPA, and must address procedures for accurately recording measurements of annulus liquid loss. The SOP must also address how all monitoring information, especially that required for quarterly monitoring reports, will be maintained in accordance with the Permits and 40 C.F.R. § 144.51(j).

61. To the extent possible, Respondent must electronically submit all reports, notifications, documentation, submissions, and other correspondence required to be submitted by Paragraph 60 to EPA enforcement officer. If electronic submittal is not possible, the submissions



must be made by certified mail (return receipt requested) to the enforcement officer and EPA attorney whose name and addresses are identified in Paragraph 55, above.

62. Respondent must provide all electronic documents submitted pursuant to Paragraph 60 in unsecured, accessible, searchable, format as a Portable Document Format (PDF) or electronic spreadsheet. Respondent must create a document index that clearly identifies any single electronic document that has been separated into multiple electronic files (because of size limitation or otherwise) and each component file that comprises the full document.

63. Reports, notifications, documentation, and submissions must be signed by a duly authorized representative of Respondent and shall include the following statement consistent with 40 C.F.R. § 144.32(d):

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

64. Respondent may not withhold information based on a claim that it is confidential. However, pursuant to 40 C.F.R. Part 2, Subpart B, Respondent may assert a claim of business confidentiality regarding any portion of the information submitted in response to Paragraph 60, as provided in 40 C.F.R. § 2.203 by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as trade secret, proprietary, or company confidential. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the business, and may be submitted separately to facilitate identification and handling by EPA. If the business desires



confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state. The failure to furnish a confidentiality claim with your response may result in the information being made available to the public without further notice to you. EPA's confidential business information (CBI) regulations are at 40 C.F.R. Part 2, Subpart B.

65. Respondent should segregate any personnel, medical, and similar files from their responses and include that information on a separate sheet(s) marked as "Personal Privacy Information." Disclosure of such information to the general public may constitute an invasion of privacy.

66. If Respondent finds at any time after submitting information that any portion of that information is false or incorrect, the signatory must notify EPA immediately. Knowingly submitting false information to EPA in response to this Order may subject Respondent to criminal prosecution under Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), as well as 18 U.S.C. §§ 1001 and 1341.

67. Submissions required by Paragraph 60 shall be deemed submitted on the date they are sent electronically or on the date postmarked if sent by U.S. mail.

68. The information required to be submitted pursuant to Paragraph 60 is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq., because it seeks the collection of information by an agency from specific individuals or entities as part of an administrative action.

69. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of Paragraph 60 and the amount paid pursuant to Paragraph 53 are restitution, remediation, or required to come into compliance with the law.

70. EPA may use any information submitted in accordance with Paragraph 60 in support of an administrative, civil, or criminal action against Respondent.

71. EPA may terminate this Order at any time by written notice to Respondent.

72. Absent the notice described in Paragraph 71, Respondent may request in writing that EPA terminate this CAFO. With this request for termination, Respondent must submit to the EPA enforcement officer a written final report and certification of completion describing all actions taken to comply with all requirements of the compliance program in Paragraph 60. Respondent must include the certification language required under Paragraph 63. In response to the request for termination and written final report, EPA may require additional information, actions, or evidence from Respondent to show completion of the compliance requirements; EPA may pursue appropriate administrative or judicial action to require compliance with this Order; or EPA may accept the request for termination. This Order shall terminate on the date that EPA notifies Respondent in writing that EPA agrees with Respondent's request for termination.

#### **Stipulated Penalties**

73. If Respondent violates any requirement of Paragraph 60, Respondent must pay stipulated penalties to the United States in the following amounts per day for each day of violation of each requirement of Paragraph 60:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$500	1 <sup>st</sup> through 14 <sup>th</sup> day
\$ 750	15 through 30 <sup>th</sup> day
\$ 1250	31 <sup>st</sup> day and beyond

74. EPA's determinations of whether Respondent violated Paragraph 60 will bind Respondent, unless the delay in complying with the subject requirement is determined to be caused by a force majeure event in accordance with Paragraph 75.

75. If an event occurs which causes or may cause a delay in complying with the requirements of Paragraph 60:

- a. Respondent must notify U.S. EPA in writing within ten days after learning of an event which caused or may cause a delay in completing the subject requirement. The notice must describe the anticipated length of the delay, its

cause(s), Respondent's past, current and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the subject requirement.

- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the requirement, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the subject requirement, U.S. EPA will notify Respondent in writing of its decision and any delay in completing the requirement will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the subject requirement. Increased costs for completing the subject requirement will not be a basis for an extension of time under subparagraph b, above.

#### **General Provisions**

76. Pursuant to 40 C.F.R. § 22.5, the parties consent to service of this CAFO by email at the following email addresses: [Williams.Tom@epa.gov](mailto:Williams.Tom@epa.gov) (for Complainant) and [amy@deepriverenergy.com](mailto:amy@deepriverenergy.com) (for Respondent).

77. Violation of this CAFO shall be deemed a violation of SDWA for purposes of Section 1423(b) of SDWA, 42 U.S.C. § 300h-2(b).

78. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law not alleged in this CAFO.

79. This CAFO does not affect Respondent's responsibility to comply with SDWA and other applicable federal, state, or local laws and permits.

80. Respondent certifies that it is complying with Section 1423 of SDWA, 42 U.S.C. § 300h-2, and its Permit.



81. The violations recited in this CAFO constitute “previous violations” as that term is used in EPA’s UIC Program Judicial and Administrative Order Settlement Penalty Policy to determine Respondent’s “history of such violations” under Section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B).

82. The terms of this CAFO bind Respondent and its successors and assigns.

83. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

84. This CAFO constitutes the entire agreement between the parties.

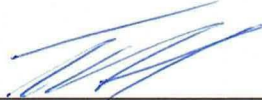
85. The parties acknowledge and agree that final approval by EPA of this CAFO is subject to 40 C.F.R. § 22.45(c)(4) which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

86. Unless an appeal for judicial review is filed in accordance with Section 1423(c)(6) of the SDWA, 42 U.S.C. § 300h-2(c)(6) or 40 C.F.R. § 22.45, this CAFO shall be effective 30 days after the date of issuance, which is the date that the Final Order contained in this CAFO is signed by the Regional Judicial Officer or Regional Administrator.

**Consent Agreement and Final Order  
In the Matter of: Deep Blu, LLC  
Docket No. SDWA-05-2022-0002**

**Deep Blu, LLC, Respondent**

12-6-2021  
Date

  
\_\_\_\_\_  
Terry Blake  
Deep Blu, LLC

**Consent Agreement and Final Order  
In the Matter of: Deep Blu, LLC  
Docket No. SDWA-05-2022-0002**

**United States Environmental Protection Agency, Complainant**

**MICHAEL  
HARRIS**

Digitally signed by  
MICHAEL HARRIS  
Date: 2022.01.13  
10:14:19 -06'00'

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Date

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Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 5



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**In the Matter of: Deep Blu, LLC**  
**Docket No. SDWA-05-2022-0002**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective 30 days after issuance, unless an appeal for judicial review is timely filed in accordance with Section 1423(c)(6) of the SDWA, 42 U.S.C. § 300h-2(c)(6) or 40 C.F.R. § 22.45(c)(4)(viii). This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

By: ANN COYLE Digitally signed by ANN  
COYLE  
Date: 2022.03.01  
15:01:30 -06'00' Date: \_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5



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In the Matter of: Deep Blu, LLC  
Docket Number. SDWA-05-2022-0002**

**Certificate of Service**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number SDWA-05-2022-0002, which was filed on **April 4, 2022**, in the following manner to the following addresses:

Copy by e-mail to Respondent: Amy Shaw  
[amy@deepblulogistics.com](mailto:amy@deepblulogistics.com)

Copy by e-mail to Respondent: Terry L. Blake  
[terry@deepriverenergy.com](mailto:terry@deepriverenergy.com)

Copy by e-mail to Attorney for Complainant: Tom M. Williams  
[Williams.Tom@epa.gov](mailto:Williams.Tom@epa.gov)

Copy by e-mail to Regional Judicial Officer: Ann L. Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: \_\_\_\_\_

Isidra Martinez  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5