


UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

**FILED**

SEP 05 2013

  
CLERK

---

UNITED STATES OF AMERICA,

CR 13-40095

Plaintiff,

DEFERRED PROSECUTION  
AGREEMENT

vs.

ADAMS THERMAL SYSTEMS, INC.,

Defendant.

---

**PARTIES**

1. This Deferred Prosecution Agreement (the Agreement) is entered into between the United States of America (the United States), by and through the United States Attorney's Office, for the District of South Dakota, and Adams Thermal Systems, Inc. (Adams Thermal), a South Dakota Corporation, by and through its authorized representatives.

**CRIMINAL INFORMATION AND ACCEPTANCE OF RESPONSIBILITY**

2. Adams Thermal acknowledges that the United States will file the attached Criminal Information (Attachment A) in the United States District Court for the District of South Dakota charging Adams Thermal with the offense of Willful Violation of the Occupational Safety and Health Act Causing Death to Employee in a violation of 29 U.S.C § 666(e). Adams Thermal knowingly waives any right to Preliminary Hearing under Federal Rule of Criminal Procedure 5.1.

3. Adams Thermal knowingly waives its right to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, The Speedy Trial Act (18 U.S.C. § 3161 et. seq.) and Federal Rule of Criminal Procedure 48(b), and consents to the Court entering an Order pursuant to 18 U.S.C. § 3161(h)(2) excluding the deferral period of this Agreement (the Deferral Period) to allow Adams Thermal to demonstrate its good conduct. Adams Thermal further knowingly waives any claim to assert that the prosecution is time barred under the statute of limitations or any other provision.

4. Adams Thermal admits and accepts that it is responsible for the acts of its officers, employees and agents as set forth in the Statement of Facts attached hereto as Attachment B, and incorporated herein by this reference, and that the facts described in Attachment B are true and accurate. Should the United States pursue the prosecution that is deferred by this Agreement, Adams Thermal agrees that it will neither contest the admissibility of, or contradict in any proceeding, the facts contained in the Statement of Facts.

5. Adams Thermal agrees to remediate the conduct described in the Criminal Information and Statement of Facts by entering into this Agreement.

**Fines, Payments, Remedial Measures and Compliance**

6. Adams Thermal shall pay a fine and monetary payments totaling \$1,335,000 to be paid as follows:

- a. Adams Thermal shall pay a fine of \$450,000 to the United States Treasury pursuant to 29 U.S.C. §666(e) and 18 U.S.C. §3571. A payment of \$120,000 shall be made within 5 business days of the

filing of this Agreement with the balance to be paid in monthly installments of \$30,000;

- b. Adams Thermal shall pay civil penalties to the Occupational Safety and Health Administration (OSHA) of \$435,000 pursuant to the following Stipulation and Settlement Agreements resolving pending administrative actions before the Occupational Safety and Health Review Commission: Secretary of Labor v. Adams Thermal Systems, Inc., OSHRC Docket No., 12-1137, attached as Attachment C and Secretary of Labor v. Adams Thermal Systems, Inc., OSHRC Docket Nos., 12-1758 and 12-1759, attached as Attachment D. Payment to be made in 12-monthly installments of \$36,250, with the first monthly payment to be made within 5 business days of the filing of this Agreement;
- c. Adams Thermal shall pay to Gail Kinzer, \$450,000 as victim restitution. Full payment to be made within 13 months of the filing of this Agreement.

7. Adams Thermal shall enter into the Stipulation and Settlement Agreements, referred to above and attached as Attachments C and D, upon execution of this Agreement, and shall comply with the terms set forth in those Stipulation and Settlement Agreements, which are hereby incorporated by reference into this Agreement.

8. Adams Thermal shall not be found by the Occupational Safety and Health Review Commission to have committed a violation of 29 C.F.R.

1910.212 or 29 C.F.R 1910.147 in a manner characterized as willful or repeated.

9. Adams Thermal shall comply with all applicable Federal criminal laws.

10. The United States and Adams Thermal agree that these monetary payments are appropriate given the facts and circumstances of this case. The penalty payments are final and shall not be refunded. Nothing in this Agreement shall be deemed an agreement by the United States that the amounts set forth in paragraph 6(a) are the maximum penalties that may be imposed in any future prosecution in the event of a breach of this Agreement, and the United States is not precluded from arguing in any future prosecution that the Court should impose a higher penalty, although under those circumstances, the United States agrees to recommend to the Court that amounts paid under this Agreement should offset any fine the Court imposes as part of a future judgment.

#### **Deferral of Prosecution**

11. In consideration of Adams Thermal's entry into this Agreement and its commitment to accept and acknowledge responsibility for the conduct detailed in the Criminal Information and Statement of Facts at Attachments A and B, and to comply with the terms of this Agreement and the OSHA Stipulation and Settlement Agreements at Attachments C and D, the Government shall recommend to the Court that prosecution on the Criminal Information be deferred for 36 months from the date this Agreement is filed in

the United States District Court for the District of South Dakota, said period to be considered the Deferral Period for purposes of this Agreement.

12. The Government agrees that if Adams Thermal is in compliance with all of their obligations under this Agreement at the conclusion of the Deferral Period, the Government will not continue the criminal prosecution and this Agreement will expire. Within 10 business days of the expiration of the Agreement, the United States will seek dismissal with prejudice of the Criminal Information.

#### **Breach of Agreement**

13. If during the term of the Agreement, the United States Attorney's Office, for the District of South Dakota, in good faith and in its sole and unreviewable discretion, determines that Adams Thermal has knowingly and willfully breached any material provision of the Agreement, Adams Thermal shall thereafter be subject to prosecution for the criminal violations set forth in the Criminal Information and the Statement of Facts, as well as any other criminal violation of which the Government has knowledge.

14. In the event the United States Attorney's Office, for the District of South Dakota, determines that Adams Thermal is in breach of the Agreement, it agrees to provide written notice to Adams Thermal of the alleged breach before instituting any prosecution resulting from the breach. Adams Thermal shall, within 15 business days from the receipt of such notice, have the opportunity to respond to the Government in writing to explain the nature and circumstances of the alleged breach, demonstrate that the breach was not

material or knowing and willful, or demonstrate that the breach has been cured. The United States Attorney's Office, for the District of South Dakota, will consider such a response in determining whether to institute prosecution; provided, however, nothing in this paragraph in any way restricts or diminishes the United States Attorney's Office, for the District of South Dakota, sole and unreviewable discretion to decide whether to institute prosecution.

15. Adams Thermal understands and agrees that the good faith exercise of the United States Attorney's Office, for the District of South Dakota, discretion under any provision of this Agreement is not subject to further review in any court or other tribunal outside the United States Department of Justice.

**Public Disclosure**

16. Adams Thermal agrees and acknowledges that this Agreement and its Attachments will be filed with the Court and that the matters addressed therein are public and not in any way confidential and restricted from disclosure.

17. Adams Thermal, through its employees, officers, directors, agents, attorneys, representatives, or anyone authorized to speak for it, shall not make any public statement contradicting its acceptance of responsibility as set forth in this Agreement or the Statement of Facts. A violation of this paragraph shall be considered a breach of this Agreement.

18. Should the United States determine that a public statement is in breach of this Agreement, it will notify Adams Thermal. Adams Thermal may avoid

breach of this Agreement by publicly repudiating the statement within five business days after receipt of such notification.

**No Further Prosecution**

19. The United States agrees that if Adams Thermal complies with the terms of this Agreement for the Deferral Period as provided for in paragraphs 11 and 12 that there will be no further criminal prosecution of Adams Thermal or its officers in the District of South Dakota based on the information and evidence now available to the United States for the conduct set forth in the Criminal Information.

**Release**

20. Adams Thermal fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs and expenses of every kind and however denominated) which Adams Thermal has asserted, could have asserted, or may assert in the future related to the investigation and prosecution of the matters described in the Criminal Information and Statement of Facts.

**Parties Bound**

21. It is further understood and agreed that this Agreement is limited to the United States Attorney's Office for the District of South Dakota and that this Agreement cannot and does not bind other federal, state or local prosecuting authorities.



**Scope of Agreement**

22. This Agreement shall include any attachments, exhibits or supplements designated by the parties. It is further understood and agreed that no additional promises, agreements or conditions have been entered into other than those set forth in this Agreement and this Agreement supersedes any earlier understanding or agreement. No modifications or additions of this Agreement shall be valid unless they are in writing and signed by the parties to this Agreement.

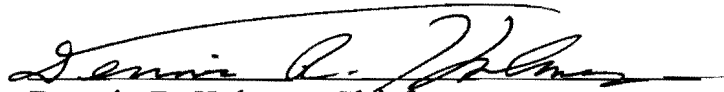
**Sales or Mergers**

23. In the event Adams Thermal sells, mergers or transfers all, or substantially all of its business operations as they exist as of the date of this Agreement, it shall include in any such sales, merger or transfer, a provision binding the purchaser or successor to the terms of this Agreement.

**Authority of Corporate Official**

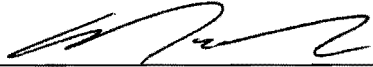
24. Adams Thermal represents and warrants the Chief Executive Officer, Mike Adams, is duly and expressly authorized to execute this Agreement on its behalf.

9-5-13  
Date

  
Dennis R. Holmes, Chief  
Criminal Division  
United States Attorney's Office  
PO Box 2638  
Sioux Falls, SD 57101-2638  
(605)357-2350  
(605)330-4410 (fax)

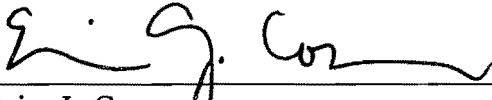


9/5/13  
Date


  
Mike Adams, CEO  
Adams Thermal Systems, Inc.

Counsel for Adams Thermal Systems, Inc.:

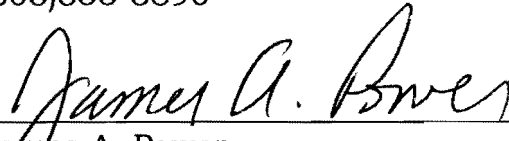
9-5-13  
Date

  
Eric J. Conn  
Epstein Becker & Green, P.C.  
1227 25<sup>th</sup> St., N.W.  
Suite 700  
Washington D.C. 20037-1156  
(202)861-5335  
(202)861-3095 (fax)

9-5-13  
Date

  
Daniel J. Harmelink  
Woods, Fuller, Shultz & Smith, P.C.  
300 South Phillips Avenue, Suite 300  
PO Box 5027  
Sioux Falls, SD 57117-5027  
(605)336-3890

Sept. 5, 2013  
Date

  
James A. Power  
Woods, Fuller, Shultz & Smith, P.C.  
300 South Phillips Avenue, Suite 300  
PO Box 5027  
Sioux Falls, SD 57117-5027  
(605)336-3890