



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

Aavid Thermalloy, LLC
67 Primrose Drive
Laconia, NH 03247

Re: EPA ID No. NHD002576817

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 08-003

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Aavid Thermalloy, LLC pursuant to RSA 147-A:17-a. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES") is a duly-constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord, New Hampshire.
2. Aavid Thermalloy, LLC ("Aavid") is a Delaware limited liability company registered to do business in New Hampshire, having a principal office located at 70 Commercial Street, Suite #200 in Concord, New Hampshire. Aavid's facility in Laconia, New Hampshire has a mailing address of 67 Primrose Drive, Laconia, NH 03247.

III. BACKGROUND

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 147-A:17-a, the Commissioner of DES is authorized to impose fines of up to \$2,000 per offense for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted NH CODE ADMIN. RULES Env-C 612 to establish the schedule of fines for such violations.
3. Aavid is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities through DES on March 23, 1990. Aavid manufactures thermal management products for electronics for a wide variety of markets. EPA Identification Number NHD002576817 was assigned to Aavid's site located at 67 Primrose Drive in Laconia, New Hampshire (the "Facility").
4. On October 10, 2006, DES personnel inspected the Facility for compliance relative to the

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964

Application for Renewal to Limited Permit #DES-HW-99-007, pursuant to RSA 147-A and Env-Wm 353. Based on the violations observed during the inspection listed above, DES believes that an administrative fine is appropriate in this case for the Class I violations.

IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. Aavid failed to obtain a permit, as required by RSA 147-A:4, I, for the disposal of an F006 hazardous waste sludge (*i.e.*, CPS wastewater treatment sludge) at the Turnkey Landfill in Rochester, New Hampshire ("Violation 1"). The wastewater treatment sludge in question is an F006 listed hazardous waste resulting from chemical etching of copper parts at the Aavid Facility. Aavid regularly tested this sludge for hazardous waste characteristics using the Toxicity Characteristic Leaching Procedure, and the sludge was determined not to exhibit toxicity characteristics. For this violation Env-C 612.03(b) authorizes a fine of \$2,000 per disposal event. Aavid shipped the F006 hazardous waste sludge from 1999 through 2006 for a total of 157 shipments. For settlement purposes, DES will seek a fine for only 27 shipments for a potential fine of \$54,000.
2. Aavid failed to obtain a permit, as required by RSA 147-A:4, I, and Env-Wm 353.04, for the operation of a wastewater treatment unit (*i.e.*, CPS system/ Laser S process wastewaters) ("Violation 2"). Aavid's Limited Permit No. DES-HW-99-007 expired on May 26, 2004. Aavid did send in an application for renewal; however, the commingled waste streams from the CPS system that generated the F006 sludge were not included. For this violation Env-C 612.03(a) authorizes a fine of \$2,000 per treatment or storage unit.
3. Aavid failed to maintain an inspection log as required by Env-Wm 353.04(g) for the wastewater treatment unit that documented the time of the inspection, and the date and nature of the repairs or remedial actions ("Violation 3"). Due to the fact that Aavid was conducting inspections of the wastewater treatment unit, DES is not seeking a fine for this violation.
4. Aavid failed to conduct an adequate hazardous waste determination at the Facility as required by Env-Wm 502.01 on the CPS wastewater treatment sludge ("Violation 4"). For this violation, Env-C 612.05(a) authorizes a fine of \$1,500 per determination not made.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. DES agrees to waive the authorized fine for Violation 3, because it is not a Class I violation.
2. Aavid agrees to pay \$49,040 as itemized below for Violations 1, 2, and 4, which are Class I violations.
 - a) Violation 1 is a Class I violation. DES has determined due to Aavid's high level of cooperation in providing information and good faith effort to comply that a 20% reduction, 10% for cooperation and 10% for good faith effort, should be applied to the gravity portion of the authorized fine [*i.e.*, \$42,303 (gravity) X .80 + \$11,697 (economic benefit) = \$45,540]. DES is thus seeking a payment of \$45,540.
 - b) Violation 2 is a Class I violation. No authorized fine reduction is recommended. DES is

thus seeking a payment of \$2,000.

- c) Violation 4 is a Class I violation. No authorized fine reduction is recommended. DES is thus seeking a payment of \$1,500.

3. Payment under Section V. Paragraph 2 shall be paid by certified or corporate check made payable to "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attn: Legal Assistant
PO Box 95
Concord, NH 03302-0095

4. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

5. The parties have entered into this agreement to avoid the time and cost of litigation. By executing this Administrative Fine by Consent, Aavid waives its right to a hearing on or any appeal of the administrative fines identified in this agreement, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction. Other than this enforcement action or any action that may be necessary to enforce this agreement, DES shall pursue no further administrative action against Aavid relative to the allegations contained herein. In any proceeding to enforce this agreement, Aavid agrees not to challenge the validity of any provision of this Administrative Fine by Consent.

6. In any future proceeding by DES seeking administrative fines based on alleged violations of RSA 147-A and/or Env-Wm 100-1100 or successor rules in subtitle Env-Hw, Aavid agrees that it will not seek a reduction in the fine based on Env-C 601.10(c). This Administrative Fine by Consent shall not constitute, be construed as, or operate as: (i) an admission or evidence of liability by Aavid; (ii) an admission by Aavid or evidence that it violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense Aavid might raise in any third party proceeding.

7. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of Aavid, the Director of the Waste Management Division, and the Commissioner of DES.

8. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.

WHEREFORE, the parties voluntarily accept the terms of this agreement.

Aavid Thermalloy, LLC

COPY

By: Norman L. Soucy
Vice President Global Manufacturing
Duly Authorized

Date

7/29/08

Department of Environmental Services

COPY

Michael J. Wimsatt, P.G., Director
Waste Management Division

Date

8/5/08

COPY

Thomas S. Durack, Commissioner

Date

8/5/08

cc: Public Information Officer, DES PIP Office
John J. Duclos, Administrator, HWMB-WMD
Linda R. Birmingham, HWMB-WMD
Richard Head, Associate Attorney General

cc: DB/RCRA/AF
DES Legal Unit
George Dana Bisbee, Esq., Pierce Atwood