



The State of New Hampshire  
**Department of Environmental Services**



**Robert R. Scott, Commissioner**

Morgan Advanced Ceramics, Inc.  
2425 Whipple Road  
Hayward, CA 94544

RE: 4 Park Avenue, Hudson, NH 03051  
EPA ID #NHD986485043

**ADMINISTRATIVE FINE  
BY CONSENT**

**No. AF 19-054**

### I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Morgan Advanced Ceramics, Inc. in accordance with RSA 147-A:17-a. This Administrative Fine by Consent is effective upon signature by the parties.

### II. PARTIES

1. The Department of Environmental Services, Waste Management Division is a duly-constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive in Concord, New Hampshire.
2. Morgan Advanced Ceramics, Inc. ("Morgan Advanced Ceramics") is a foreign corporation registered to do business in New Hampshire having a mailing address of 2425 Whipple Road, Hayward, CA 94544.

### III. BACKGROUND

1. RSA 147-A authorizes the New Hampshire Department of Environmental Services ("DES") to regulate the management and disposal of hazardous waste. The Commissioner of DES has adopted NH CODE ADMIN RULES Env-Hw 100-1200 (the "Hazardous Waste Rules") to implement this program in accordance with RSA 147-A:3.
2. RSA 147-A:17-a authorizes the Commissioner of DES to impose fines of up to \$2,000 per offense for violations of RSA 147-A, or rules adopted in accordance with RSA 147-A:3.
3. Morgan Advanced Ceramics is a New Hampshire Full Quantity Generator of hazardous waste that notified the United States Environmental Protection Agency ("EPA") of its hazardous waste activities through DES on July 18, 2017. EPA assigned Identification No. NHD986485043 to the Morgan Advanced Ceramics site located at 4 Park Avenue in Hudson, New Hampshire (the "Facility").
4. Morgan Advanced Ceramics self-reported possible violations of the Hazardous Waste Rules to DES by telephone and email on November 17, 2017. In a follow-up letter dated January 16, 2018, Morgan Advanced Ceramics disclosed that it may have made an incorrect hazardous waste determination on D007 and D008 hazardous waste silicon carbide filters and dust, and D007

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hazardous waste pyrolytic boron nitride filter wash water. As a result, Morgan Advanced Ceramics estimated that it may have disposed the volume equivalent of ten 55-gallon drums of D007 and D008 hazardous waste silicon carbide filters and dust between 2001 and November 2017. In addition, Morgan Advanced Ceramics estimated that they may have disposed the volume equivalent of 82 55-gallon drums of D007 hazardous waste pyrolytic boron nitride filter wash water over the same time period.

5. Morgan Advanced Ceramics estimated a total economic benefit of \$19,170 for the disposal of the potentially hazardous waste generated at the Facility. DES used an EPA penalty and financial model (BEN) to calculate a total tax-deductible, inflation-adjusted, avoided cost of disposal between 2001 and November 2017 of \$22,082.

6. On March 9, 2018, DES personnel inspected the Facility for compliance with RSA 147-A and the Hazardous Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued Letter of Deficiency No. WMD 18-230 to Morgan Advanced Ceramics on November 2, 2018. Based on the violations observed during the inspection, and the information provided to DES by Morgan Advanced Ceramics, DES believes that administrative fines are appropriate for the Class I violations.

#### IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. Morgan Advanced Ceramics has violated RSA 147-A:4, I, and Env-Hw 304.04, by failing to obtain a limited permit to operate an elementary neutralization unit to treat corrosive hazardous wastewater at the Facility ("Violation 1"). RSA 147-A:17-a authorizes a fine of up to \$2,000 per offense for violations of RSA 147-A or the Hazardous Waste Rules. DES proposes a fine of \$1,750 for this violation.
2. Morgan Advanced Ceramics has violated RSA 147-A:4, I, and Env-Hw 511.01(b), by failing to deliver D007 and D008 hazardous waste silicon carbide filters and dust, and D007 hazardous waste pyrolytic boron nitride filter wash water to a facility authorized to handle the hazardous waste ("Violation 2"). RSA 147-A:17-a authorizes a fine of up to \$2,000 per offense for violations of RSA 147-A or the Hazardous Waste Rules. For settlement purposes only, DES proposes a fine of \$2,000 for 18 of the 92 improper disposal events, each event defined as waste measured at the volume equivalent of one 55-gallon drum, for a total fine of \$36,000 for the violations cited as Violation 2.
3. Morgan Advanced Ceramics has violated Env-Hw 502.01, by failing to make an accurate hazardous waste determination on D007 and D008 hazardous waste silicon carbide filters and dust, and D007 hazardous waste pyrolytic boron nitride filter wash water generated at the Facility ("Violation 3"). RSA 147-A:17-a authorizes a fine of up to \$2,000 per offense for violations of RSA 147-A or the Hazardous Waste Rules. DES proposes a fine of \$2,000 per hazardous waste determination, for a total proposed fine of \$4,000 for these violations.
4. Morgan Advanced Ceramics has violated Env-Hw 509.02(a)(1), by failing to document 27 out of the required 34 weekly inspections of the hazardous waste central accumulation area at the Facility since becoming a New Hampshire Full Quantity Generator on July 18, 2017 ("Violation 4"). For settlement purposes only, DES is not proposing a fine for these violations.
5. Morgan Advanced Ceramics has violated Env-Hw 509.02(a)(2), by failing to maintain documents at the Facility that specify the job title and job description for each position at the facility related to hazardous waste management, the name of the employee filling each job, and the

type and amount of both introductory and continuing training that will be given to each employee with hazardous waste duties at the Facility; and by failing to provide initial hazardous waste training to three employees within six months after the date Morgan Advanced Ceramics became a New Hampshire Full Quantity Generator on July 18, 2017, and became subject to the personnel training requirements of the Hazardous Waste Rules ("Violation 5"). For settlement purposes only, DES is not proposing a fine for these violations.

6. Morgan Advanced Ceramics has violated Env-Hw 509.02(a)(4), and Env-Hw 509.02(k), by failing to equip the central accumulation area at the Facility with a device capable of summoning emergency assistance from local police departments, fire departments, or state and local emergency response teams ("Violation 6"). For settlement purposes only, DES is not proposing a fine for this violation.

7. Morgan Advanced Ceramics has violated Env-Hw 509.02(a)(5), by failing to maintain a complete copy of the contingency plan for the Facility at the Facility ("Violation 7"). For settlement purposes only, DES is not proposing a fine for this violation.

8. Morgan Advanced Ceramics has violated Env-Hw 509.02(b), by failing to include the correct telephone numbers for the state police and emergency response team; and the location of fire extinguishers, spill control equipment, and emergency alarms at the Facility on the emergency posting at the Facility ("Violation 8"). For settlement purposes only, DES is not proposing a fine for these violations.

9. Morgan Advanced Ceramics has violated Env-Hw 509.02(d)(1), (2), (3), and (4), by failing to mark six containers used for the accumulation of hazardous wastes at the Facility with either, any or all of the following information: the beginning accumulation date, the words "hazardous waste," words that identify the contents, and the EPA or state waste number ("Violation 9"). For settlement purposes only, DES is not proposing a fine for these violations.

10. Morgan Advanced Ceramics has violated the training requirements of Env-Hw 509.03(b) by accumulating as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where the wastes initially accumulate, and by failing to provide that the operator of the process generating the hazardous waste has been trained as specified in Env-Hw 509.02(a)(2) ("Violation 10"). For settlement purposes only, DES is not proposing a fine for this violation.

11. Morgan Advanced Ceramics has violated Env-Hw 512.02(c), by failing to return to DES a certified copy of each of two quarterly hazardous waste activity reports ("Violation 11"). For settlement purposes only, DES is not proposing a fine for these violations.

12. Morgan Advanced Ceramics has violated Env-Hw 1102.03(a)(4), and Env-Hw 1112.04, by failing to label or mark one container of universal waste lamps with the words "Universal Waste - Lamp(s)," "Waste Lamp(s)," or "Used Lamp(s)" ("Violation 12"). For settlement purposes only, DES is not proposing a fine for this violation.

13. Morgan Advanced Ceramics has violated Env-Hw 1102.03(c), and Env-Hw 1112.03(a), by failing to store universal waste lamps at the Facility in containers that were closed, except when universal waste is being added to, or removed from, the containers ("Violation 13"). For settlement purposes only, DES is not proposing a fine for this violation.

## V. PAYMENT, WAIVER OF HEARING

1. For settlement purposes only, DES agrees not to pursue fines associated with Violations 4 through 13 because they are not Class I violations.
2. For settlement purposes, the parties agree that the following fines are appropriate for Violations 1, 2, and 3, which are Class 1 violations:
  - a. Violation 1 was not self-reported to DES by Morgan Advanced Ceramics. DES will apply a 20% reduction to the proposed fine based on a good faith effort to comply. Morgan Advanced Ceramics submitted a limited permit application to neutralize the corrosive hazardous wastewater in 2006. DES did not issue the permit because, at that time, Morgan Advanced Ceramics was a Small Quantity Generator and not subject to the requirement for a limited permit. DES will apply an additional 20% reduction to the proposed fine because this was a one-time, unintentional violation. Morgan Advanced Ceramics had no documented violations of the Hazardous Waste Rules previous to the inspection and intended to comply with the requirement as shown by the 2006 limited permit application. DES will apply a further 10% reduction to the proposed fine for other circumstances because this was Morgan Advanced Ceramics's first inspection. DES proposes a fine of \$875 for Violation 1 [ $\$1,750$  base penalty  $\times .50$  (20% reduction for good faith effort, plus 20% reduction for one-time, unintentional violation, plus 10% reduction for other circumstances) = \$875].
  - b. Violation 2 was self-reported to DES by Morgan Advanced Ceramics. Based on the self-report, DES will apply a 75% reduction to the gravity portion of the penalty [ $\$36,000 - \$22,082$  (economic benefit) =  $\$13,918$  (gravity)  $\times .25$  (75% reduction) =  $\$3,479$ ]. DES proposes a fine of \$25,561 for Violation 2 [ $\$22,082$  (economic benefit) +  $\$3,479$  (gravity) =  $\$25,561$ ].
  - c. Violation 3 was self-reported to DES by Morgan Advanced Ceramics. Based on the self-report, DES will apply a 75% reduction to the gravity portion of the penalty [ $\$4,000$  (gravity)  $\times .25$  (75% reduction) =  $\$1,000$ ]. DES proposes a fine of \$1,000 for Violation 3.
3. Morgan Advanced Ceramics agrees to pay, within 60 days of the effective date of this Administrative Fine by Consent ("Agreement") the revised fines in the total amount of \$27,436 upon execution of this Agreement by an authorized representative of Morgan Advanced Ceramics.
4. Payment shall be paid by certified check made payable to *Treasurer, State of New Hampshire* and mailed to: DES Legal Unit, **Attn: Compliance Attorney**, P.O. Box 95, Concord, NH 03302-0095.
5. If any payment is made by check or money order that is returned due to insufficient funds, per 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.
6. The parties have entered into this agreement to avoid the time and cost of litigation. By executing the Agreement, Morgan Advanced Ceramics waives its right to a hearing on or any appeal of the administrative fines identified in this Agreement, and agrees that this Agreement 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 Morgan Advanced Ceramics relative to the allegations contained

herein. In any proceeding to enforce this Agreement, Morgan Advanced Ceramics agrees not to challenge the validity of any provision of this Agreement.

7. In any future proceeding by DES seeking administrative fines based on alleged violations of RSA 147-A and/or the Hazardous Waste Rules, Morgan Advanced Ceramics agrees that it will not seek a reduction in the fine based on Env-C 605.04(c). This Agreement shall not constitute, be construed as, or operate as: (i) an admission or evidence of liability by Morgan Advanced Ceramics; (ii) an admission by Morgan Advanced Ceramics or evidence that it violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense Morgan Advanced Ceramics might raise in any third party proceeding.

8. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Morgan Advanced Ceramics, the Director of the Waste Management Division, and the Commissioner of DES.

9. No failure by DES to enforce any provision of this Agreement 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.

**Morgan Advanced Ceramics, Inc.**

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By: John Righini, President  
Duly Authorized

11/27/2019  
Date

**Department of Environmental Services**

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

12/10/19  
Date

~~COPY~~  
Robert R. Scott, Commissioner

12-11-19  
Date

cc: DES Legal Unit  
RCRA/DB/AF

cc: Public Information Officer, DES PIP Office  
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau  
Hudson Select Board and Inspectional Services Division  
E. Molly Stark, P.G., HWMB/WMD/DES