



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

SEP 28 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jean H. McCreary
Partner
Nixon Peabody LLP
1100 Clinton Square
Rochester, NY 14604

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 SEP 30 A 8:58
REGIONAL HEARING
CLERK

Re: **In the Matter of Advanced Monolythic Ceramics, Inc.**
Docket Number RCRA-02-2010-7106

Dear Ms. McCreary:

Enclosed please find a fully executed Order. This Order is effective upon the date of filing with the Regional Hearing Clerk. Please note that the payment is due within forty-five (45) days of the date the Order was signed by the Regional Administrator.

Sincerely,

Carl R. Howard
Assistant Regional Counsel

cc: Helen S. Ferrara, Regional Judicial Officer
Thomas Killeen, NYSDEC

Enc.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

_____	x	
IN THE MATTER OF:	:	
	:	
Advanced Monolythic Ceramics, Inc.	:	
	:	<u>CONSENT AGREEMENT</u>
	:	AND
Respondent.	:	<u>FINAL ORDER</u>
	:	
Proceeding under Section 3008	:	Docket No. RCRA-02-2010-7106
of the Solid Waste Disposal	:	
Act, 42 U.S.C. § 6928, as amended	:	
_____	x	

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
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HEARING
CLERK

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 *et seq.* (referred to collectively as the "Act" or "RCRA").

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the Administrator to enforce violations of the Act and the regulations promulgated pursuant to it. Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance ("Complainant") of the U.S. Environmental Protection Agency, Region 2 ("EPA"), has been duly delegated the authority to institute this action. Complainant issued a "Complaint and Notice of Opportunity for Hearing" to Respondent on March 31, 2010, bearing the docket number listed above. The Complaint alleged that Respondent had violated requirements of RCRA and regulations concerning the management of hazardous waste.

The parties have reached an amicable resolution of this matter and have agreed to this Consent Agreement and Final Order as a resolution of this proceeding without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).
2. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has given the State of New York prior notice of this action.
3. Respondent is Advanced Monolythic Ceramics, Inc. ("AMC" or "Respondent") which operates a facility located at 3101 Constitution Avenue, Olean, New York 14760 (the "Facility").

4. Respondent is a for-profit corporation organized pursuant to the laws of the State of New York in 1994. Respondent is a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and in Title 6 of the New York Codes, Rules, and Regulations ("6 NYCRR") § 370.2(b).¹
5. The Facility manufactures ceramic capacitors.
6. Respondent has been and remains the "owner" and "operator" of the Facility.
7. Upon information and belief, from at least December 2008, hazardous wastes generated at the Facility have included, without limitation, spent solvents, lead solder waste, and waste that contains regulated levels of silver, cadmium, lead, mercury, and barium.
8. Respondent has been a "generator" of "hazardous waste" within the meaning of 6 NYCRR §§ 370.2(b) and 371.1(d) at the Facility.
9. As of December 2008, the Facility generated on average, more than 1000 kilograms ("kg") of hazardous waste in a calendar month and is considered to have been a "large quantity generator" as that phrase is commonly used (Respondent was not a "Small Quantity Generator" as that term is defined in 6 NYCRR § 370.2(b)).
10. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA, through a notification under the name Advanced Monolythic Ceramics, Inc. and dated January 16, 1998 that it generated hazardous waste including D001, F003, and F005. In response to the Notification, EPA provided Respondent with EPA Identification Number NYR 000 049 106.
11. The Facility is a "new hazardous waste management facility" as that term is defined in 6 NYCRR § 370.2(b).
12. On or about September 8, 2008, Respondent shipped twenty-seven (27) drums (totaling 27,000 lbs) of waste to CWM Chemical Services in Model City, New York as "non regulated material".
13. Subsequent composite sampling by CWM Chemical Services, LLC, of the contents of the containers referred to in Paragraph 12, above, determined that they contained waste that exhibited toxic characteristics for cadmium (D006) and barium (D005) and as a result contained hazardous waste. These results were reported to EPA by Respondent and CWM Chemical Services.

¹ All words or phrases that have been defined in reference to statutory and/or regulatory provisions are used throughout the Complaint as so defined.

14. On or about December 9, 2008, a duly designated representative of EPA ("Inspector") conducted a RCRA Compliance Evaluation Inspection of the Facility ("Inspection").
15. At the time of the Inspection, a container of solvent soaked rags located in the Facility's Mixing Room was not labeled as hazardous waste.
16. At the time of the Inspection, Respondent determined that one drum of waste syringes was hazardous waste for the toxicity characteristic of lead (D008) and it was located in the Facility's outdoor hazardous waste storage area. Respondent determined that one container of waste ethyl acetate contained hazardous waste for the characteristic of ignitability (D001), and the container was located in an enclosed outdoor hazardous waste storage area. Both containers were open and waste was neither being added to nor removed from either container.
17. At the time of the Inspection, the Facility did not have postings of the telephone number of emergency responders next to a telephone located near one of the hazardous waste storage areas.
18. At the time of the Inspection, the Facility did not have postings of emergency equipment next to a telephone located near one of the hazardous waste storage areas.
19. On or about May 4, 2009, EPA issued the Facility a combined Notice of Violation and Information Request Letter ("NOV-IRL").
20. The NOV portion of the NOV-IRL, which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed Respondent that during the inspection EPA had identified at least ten (10) RCRA violations at the Facility and required Respondent to provide a description and documentation of the actions it had taken to correct the violations within thirty (30) calendar days from receipt of the NOV-IRL.
21. The NOV portion of the NOV-IRL cited an additional two (2) violations resulting from the facility's shipment on September 8, 2008, of twenty-seven (27) drums containing barium (D005) and cadmium (D006) hazardous waste as "non-regulated waste".
22. The IRL portion of the NOV-IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought, in part, information and documentation relating to the Respondent's hazardous waste management activities from about January 2006 until about December 2008 so that EPA could verify that Respondent made hazardous waste determinations of each of its solid waste streams, confirm the quantities generated of each waste stream, and review copies of shipping documents to assure all hazardous wastes were properly disposed of.
23. On or about June 4, 2009, Respondent submitted its response to the NOV-IRL ("Response").
24. Pursuant to Section 3005 of the Act, 42 U.S.C. § 6925 and 6 NYCRR Part 373-1.2(c) no

person shall operate a new hazardous waste management facility without a permit. Such a permit is required when a large quantity generator stores hazardous waste on site for greater than 90 days at the facility.

25. At the time of the Inspection, and at times prior thereto, Respondent accumulated and stored hazardous waste for greater than 90 days at the Facility without having obtained a permit.

26. Pursuant to 6 NYCRR § 372.2(a)(8), a generator may accumulate non-acute hazardous waste on-site for ninety (90) days or less without having a permit provided it complies with applicable conditions set forth or cross referenced in 6 NYCRR § 372.2(a)(8)(ii).

27. Pursuant to 6 NYCRR § 372.2(a)(8)(i)(a), a generator may accumulate up to 55 gallons of hazardous waste or 1 quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a hazardous waste permit or interim status provided that the generator marks the containers with the words "Hazardous Waste" and other words that identify the contents of the container.

28. At the time of the inspection, the Facility had failed to label satellite accumulation containers with the words "Hazardous Waste" or with other words identifying the contents of the containers.

29. Pursuant to 6 NYCRR § 373-3.9(d)(1) as cross-referenced in 6 NYCRR § 373-1.1(d)(1)(iii)(c) (1)(i) an owner or operator is required to keep containers of hazardous waste closed during storage except when it is necessary to add or remove waste.

30. At the time of the Inspection, the Facility had failed to keep containers of hazardous waste closed during storage at times when waste was neither being added to nor removed from the containers.

31. Pursuant to 6 NYCRR § 373-3.2(g)(4) as cross-referenced in 6 NYCRR § 373-1.1(d)(1)(iii)(c)(5) an owner or operator must maintain the following documents and records at the facility:

- i. the job title for each position at the facility related to hazardous waste management and the name of the employee filling each job;
- ii. the written job description for each position;
- iii. a written description of the type and amount of both the introductory and continuing training that will be given to each person filling a position listed under subparagraph (i) above; and
- iv. records that document that the required training or job experience has been given to and completed by facility personnel (or the employees' job experience meets the requirements).

32. At the time of the Inspection, and at times prior thereto, the Respondent did not maintain documents regarding such training.

33. Pursuant to 6 NYCRR § 373-3.4(c) and (e) as cross-referenced in 6 NYCRR § 373-1.1(d)(1)(iii)(c)(5) an owner or operator must have a contingency plan that includes specified

emergency-related information and the owner or operator must review and immediately amend whenever there are changes in facility operations, emergency coordinators, or list of emergency equipment.

34. At the time of the Inspection, and at times prior thereto, the Respondent's Contingency Plan did not include a list of emergency responders, list of emergency equipment and their location, or a description or schematic of emergency evacuation routes and, therefore, did not reflect current Facility operations.

35. Pursuant to 6 NYCRR § 373-3.4(d)(2) as cross-referenced in 6 NYCRR § 373-1.1(d)(1)(iii)(c)(5) an owner or operator must submit a copy of the contingency plan to all local police, fire departments, hospitals and emergency response teams, and 6 NYCRR § 373-3.3(g) as cross-referenced in 6 NYCRR § 373-1.1(d)(1)(iii)(c)(5) requires that arrangements be made to familiarize police, fire departments, hospitals and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes.

36. At the time of the Inspection, and at times prior thereto, the Respondent had not submitted copies of the Contingency Plan to all local police and fire departments and emergency response teams.

37. Respondent was subject to the permit requirements of Section 3005 of the Act, 42 U.S.C. § 6925; and 6 NYCRR § 373-1.2(c) at its Facility in Olean, New York.

38. At the time of the Inspection and at times prior thereto, Respondent's operations as described above, reveal that Respondent was storing hazardous waste without the required permit in violation of Section 3005 of the Act, 42 U.S.C. § 6925, and 6 NYCRR § 373-1.2(c).

39. Pursuant to 6 NYCRR § 372.2(a)(2), a person who generates a solid waste must determine if that waste is a hazardous waste using the procedures specified in that provision.

40. Pursuant to 6 NYCRR § 371.1(c), subject to certain inapplicable exclusions, a "solid waste" is any "discarded material" that includes "abandoned," "recycled" or "inherently waste-like materials" as those terms are further defined therein.

41. Pursuant to 6 NYCRR § 371.1(c)(3) materials are "solid wastes" if they are "abandoned" by being "disposed of," "burned or incinerated," or "accumulated, stored or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated."

42. On September 8, 2008, Respondent shipped twenty seven (27) containers, totaling 27,000 lbs, containing hazardous waste which was incorrectly designated by the Respondent, based upon application of process knowledge, as "non-regulated" waste.

43. Respondent's failure to have made a correct hazardous waste determination with respect to the waste contained in this shipment was a violation of 6 NYCRR § 372.2(a)(2).

44. Pursuant to 6 NYCRR § 372.2(b)(5)(i), no generator may offer a shipment of hazardous waste for transport off-site without an accompanying manifest.
45. On September 8, 2008, Respondent offered for transport twenty seven (27) containers, totaling 27,000 lbs, containing hazardous waste as “non-regulated” waste without the use of a hazardous waste manifest.
46. Respondent’s failure to prepare a manifest for its shipment of hazardous waste off-site constitutes a violation of 6 NYCRR § 372.2(b)(5)(i).
47. On June 24 and 25, and on July 6, 2010, Respondent submitted evidence to EPA of its compliance with all of the items identified in the compliance order of the Complaint, with the exception of completing Mr. Russell Huber's RCRA training, which Respondent represents will be completed within thirty (30) days of the effective date of this Final Order.
48. Respondent has informed EPA that it expects in the future to generate at the facility more than 1,000 kilograms of hazardous waste in a calendar month.
49. The parties have agreed to resolve this matter on the basis of the terms specified below.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, Complainant hereby enters into the following Consent Agreement with Respondent.

1. Commencing no later than the effective date of the Final Order issued in this matter, Respondent shall accumulate hazardous waste for a period of no greater than 90 days before shipping these wastes off site (unless otherwise allowed under applicable rules).
2. Respondent shall either:
 - (a) starting no later than thirty (30) calendar days of the effective date of this Final Order, whenever accumulating or storing hazardous waste generated at the Facility, comply with all conditions necessary to be exempt from hazardous waste permitting requirements, including paragraphs “3” and “4” below; or, (b) submit an application to the New York State Department of Environmental Conservation for a hazardous waste permit for its Facility, within thirty (30) calendar days of the effective date of this Compliance Order and comply with all applicable conditions for storage of hazardous waste without a permit, including but not limited to those mentioned in paragraphs “3” and “4” below, until it obtains such permit
3. Commencing no later than ten (10) calendar days of the effective date of this Final Order, Respondent shall ensure satellite accumulation containers that contain hazardous waste are labeled with the words “Hazardous Waste”, and with other words that identify the contents of the containers and ensure that all containers accumulating hazardous waste are closed except when hazardous waste is being removed or put into the containers.

4. Commencing no later than thirty (30) calendar days of the effective date of this Final Order, Respondent shall maintain documents confirming the instruction of each Facility employee related to the management of hazardous waste.
5. Commencing no later than three (3) calendar days of the effective date of this Final Order, Respondent shall prepare a manifest when it offers for off-site transportation hazardous waste.
6. Within thirty (30) calendar days of the effective date of this Final Order, Respondent shall ensure the completion of Mr. Russell Huber's RCRA training and submit to EPA confirmation that Mr. Huber's training has been completed.
7. Respondent shall pay, by cashiers or certified check, a total civil penalty in the amount of Thirty Three Thousand Dollars (\$33,000). The penalty shall be payable to the "Treasurer, United States of America." The check shall be identified with a notation of the name and docket number of this case as follows: In the Matter of Advanced Monolythic Ceramics, Inc., Docket No. RCRA-02-2010-7106. The check shall be mailed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO. 63197-9000

If overnight delivery is preferred, Respondent may mail the check to the following address:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
Attn: USEPA Box #979077
St. Louis, MO. 63101

Respondent shall also send copies of this payment to each of the following

Carl R. Howard
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

Attn: Karen Maples

The payment must be received at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order, which is located at the end of this Final Order (the date by which the first payment must be received shall hereafter be referred to as the “due date”).

- a. Failure to pay the penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection; and
 - b. Further, if any payment is not received on or before the due date interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the unpaid amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each payment for each 30 day period (or any portion thereof) following the deadline for the payment should any balance remain unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the deadline for the payment.
8. For the purposes of this proceeding, Respondent: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the specific factual allegations contained in the Complaint; and (c) neither admits nor denies the above Findings of Fact and Conclusions of Law in this Consent Agreement.
 9. This CA/FO does not waive, extinguish, or otherwise affect Respondent’s obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
 10. This CA/FO is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve upon full payment of the penalty the civil and administrative claims specifically alleged in the Complaint against Respondent. Nothing herein shall be read to preclude EPA, or the United States on behalf of EPA, from pursuing the remedies mentioned in 40 C.F.R. Section 22.18(c) for any violations of law.
 11. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations therein asserted, on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
 12. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
 13. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized corporate representatives and successors or assigns.
 14. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during

discussion with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

15. Each party hereto agrees to bear its own costs and fees in this matter.
16. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

Advanced Monolythic Ceramics, Inc.

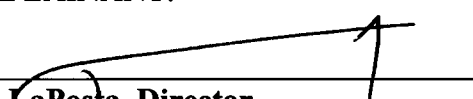
BY: 
(Authorized Signature)

NAME: PHU LUU
(PLEASE PRINT)

TITLE: PRESIDENT

DATE: 9/21/2010

COMPLAINANT:


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007

DATE: SEPTEMBER 22, 2010

Re: Advanced Monolythic Ceramics, Inc.
Docket Number RCRA-02-2010-7106

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement. The Agreement entered into by the parties is hereby ratified, incorporated by reference herein, and issued pursuant to Section 3008 of RCRA and 40 C.F.R. Section 22.18(b)(3), as an Order, effective immediately upon filing with the Regional Hearing Clerk.

BY: *Helen Ferrera*
Helen Ferrera
Regional Judicial Officer
U.S. Environmental Protection Agency -
Region 2
290 Broadway
New York, New York 10007-1866

DATE: *September 28, 2010*

**Re: Advanced Monolythic Ceramics, Inc.
Docket Number RCRA-02-2010-7106**

Certificate of Service

This is to certify that I have this day caused (or am causing) to be sent the foregoing fully executed Consent Agreement and Final Order, bearing Docket Number RCRA-02-2010-7106 in the following manner to the respective addressees below:

Original and One Copy

By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

Copy by Pouch Mail:

Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Copy by Certified Mail,
Return Receipt Requested

Jean H. McCreary, Esq.
Nixon Peabody LLP
Suite 1100 Clinton Square
Rochester, NY 14604

Dated: New York, New York

SEP 28 2010

Snidret N. Bag