MOMENTA PHARMACEUTICALS INC
Form SC 13D/A
September 06, 2006

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D
Under the Securities Exchange Act of 1934
(Amendment No. 1)*

Momenta Pharmaceuticals, Inc.
(Name of Issuer)

COMMON STOCK, Par Value $.0001 Per Share
(Title of Class of Securities)

60877T100
(CUSIP Number)

Peter Rupprecht
Novartis Pharma AG
Lichstrasse 35
CH 4058 Basel, Switzerland
+416132445570

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

Copy to:
Philip A. Gelston, Esq.
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000

September 6, 2006
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Sections 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. [ ]

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Section 240.13d-7 for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. 60877T100

1)	Name of Reporting Persons. **Novartis AG** I.R.S. Identification Nos. of Above Persons (entities only). **00-0000000**		
2)	Check the Appropriate Box if a Member of a Group (See Instructions) (a) (b)		
3)	SEC Use Only		
4)	Source of Funds (See Instructions) **AF**		
5)	Check if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)		
6)	Citizenship or Place of Organization **Switzerland**		
Number of Shares Beneficially Owned by Each Reporting Person With		7)	Sole Voting Power
		8)	Shared Voting Power **4,708,679**
		9)	Sole Dispositive Power
		10)	Shared Dispositive Power **4,708,679**
11)	Aggregate Amount Beneficially Owned by Each Reporting Person **4,708,679**		
12)	Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)		
13)	Percent of Class Represented by Amount in Row (11) **13.1%**		
14)	Type of Reporting Person (See Instructions) **CO**		

CUSIP No. 60877T100

1)	Name of Reporting Persons. **Novartis Pharma AG** I.R.S. Identification Nos. of Above Persons (entities only). **00-0000000**		
2)	Check the Appropriate Box if a Member of a Group (See Instructions) (a) (b)		
3)	SEC Use Only		
4)	Source of Funds (See Instructions) **WC**		
5)	Check if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)		
6)	Citizenship or Place of Organization **Switzerland**		
Number of Shares Beneficially Owned by Each Reporting Person With		7)	Sole Voting Power
		8)	Shared Voting Power **4,708,679**
		9)	Sole Dispositive Power
		10)	Shared Dispositive Power **4,708,679**
11)	Aggregate Amount Beneficially Owned by Each Reporting Person **4,708,679**		
12)	Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)		
13)	Percent of Class Represented by Amount in Row (11) **13.1%**		
14)	Type of Reporting Person (See Instructions) **CO**		

This Amendment No. 1 amends and supplements the statement on Schedule 13D filed on August 4, 2006 by Novartis AG ("Novartis") and Novartis Pharma AG (the "Investor") with respect to the common stock, par value $.0001 per share (the "Common Stock"), of Momenta Pharmaceuticals, Inc., a Delaware corporation (the "Issuer") (such statement on Schedule 13D, the "Statement"). All capitalized terms used herein and not otherwise defined herein have the meanings ascribed to such terms in the Statement.

Item 3. Source and Amount of Funds or Other Consideration.

Item 3 of the Statement is amended and restated in its entirety to read as follows:

The aggregate amount of funds used by the Investor to purchase the Securities (as defined in Item 4) was $75,000,000. These funds were obtained from working capital and no part of the purchase price for the Securities consisted of borrowed funds.

Item 4. Purpose of the Transaction.

Item 4 is supplemented as follows:

Pursuant to the Purchase Agreement, on September 6, 2006, Investor acquired the Securities.

Item 5. Interest in Securities of the Issuer.

Item 5 of the Statement is amended and restated in its entirety to read as follows:

(a) - (c) The Investor is the record holder and beneficial owner of 4,708,679 shares of the Issuer's Common Stock. As a result of the Investor's holdings, Novartis is the beneficial owner of the Securities. Based on publicly available information, the Securities represent approximately 13.1% of the Issuer's outstanding Common Stock and the Reporting Persons have shared power to vote or direct the vote and shared power to dispose or to direct the disposition of the Securities.

Except as described in this Statement, neither of the Reporting Persons nor, to the best knowledge of the Reporting Persons, any of the persons identified in Schedule I hereto (i) beneficially owns any additional shares of Common Stock or (ii) has effected any transactions in the shares of Common Stock in the past sixty days.

(d) - (e) Not applicable

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

DATED: September 6, 2006

NOVARTIS AG

by	/s/ Bernhard Hampl	/s/ Lee J. Stoller, Esq.
	Name: Bernhard Hampl	Lee J. Stoller, Esq.
	Title: Attorney-in-Fact	Attorney-in-Fact

NOVARTIS PHARMA AG

by	/s/ Bernhard Hampl	/s/ Lee J. Stoller, Esq.
	Name: Bernhard Hampl	Lee J. Stoller, Esq.
	Title: Attorney-in-Fact	Attorney-in-Fact

SCHEDULE I

Directors and Executive Officers of Novartis AG

The name, function, citizenship and present principal occupation of each of the directors and executive officers of Novartis are set forth below. Unless otherwise indicated below, each occupation set forth opposite an individual's name refers to employment with Novartis. The business address of each individual is Novartis AG, Lichstrasse 35, CH-4002 Basel, Switzerland.

Name and Function	Citizenship	Present Principal Occupation
Daniel Vasella, M.D. Chairman of the Board of Directors, Chief Executive Officer	Switzerland	Chairman of the Board of Directors, Chief Executive Officer
Helmut Sihler, J.D., Ph.D. Vice Chairman of the Board	Austria	Retired
Hans-Joerg Rudloff	Germany	Chairman of Barclays Capital, the Investment Banking Division of Barclays Group, 5 The North Colonnade, Canary Wharf, London, E14 4BB, United Kingdom
Dr. h.c. Birgit Breuel	Germany	Retired
Peter Burckhardt, M.D.	Switzerland	Head of Medical Service at the University Hospital of Lausanne, CH - 1011, Lausanne, Switzerland
Srikant Datar, Ph.D.	U.S.A.	Senior Associate Dean for Executive Education at the Graduate School of Business Administration of Harvard University, Harvard Business School, Executive Education Programs, Soldiers Field, Boston, MA, U.S.A. 02163
William W. George	U.S.A.	Professor of Management Practice at Harvard Business School, Soldiers Field, Boston, MA, U.S.A. 02163

Name and Function	Citizenship	Present Principal Occupation
Alexandre F. Jetzer	Switzerland	Consultant
Pierre Landoldt	Switzerland	President of the Sandoz family foundation, 85, Avenue Général-Guisan, CH-1009 Pully, Switzerland
Ulrich Lehner, Ph.D.	Germany	President and CEO of Henkel KGaA, a manufacturer and vendor of consumer products, Henkelstrasse 67, 40191, Duesseldorf, Germany
Dr. Ing Wendelin Wiedeking	Germany	Chairman of the Executive Board of Dr. Ing. h.c. F. Porsche AG, automobile manufacturer, 70432 Stuttgart, Germany
Rolf M. Zinkernagel, M.D.	Switzerland	Professor and Director of the Institute of Experimental Immunology at the University of Zurich, Sternwartstrasse 2, 8091 Zurich, Switzerland
Urs Baerlocher, J.D.	Switzerland	Head of Legal and General Affairs
Raymund Breu, Ph.D.	Switzerland	Chief Financial Officer
Juergen Brokatzky-Geiger, Ph.D.	German	Head of Human Resources
Paul Choffat, J.D.	Switzerland	Head of Consumer Health Division
Thomas Ebeling	Germany	Head of Pharmaceuticals Division

Name and Function	Citizenship	Present Principal Occupation
Marc C. Fishman, M.D.	U.S.A.	President of the Novartis Institutes for BioMedical Research
Andreas Rummelt, Ph.D.	Germany	Head of Sandoz division

Directors and Executive Officers of Novartis Pharma AG

The name, function, citizenship and present principal occupation of each of the directors and executive officers of the Investor are set forth below. Unless otherwise indicated below, each occupation set forth opposite an individual's name refers to employment with the Investor. The business address of each individual is Novartis AG, Lichstrasse 35, CH-4002 Basel, Switzerland.

Name and Function	**Citizenship**	**Present Principal Occupation**
Daniel Vasella Chairman of the Board of Directors, Chief Executive Officer c/o Novartis AG Lichtstrasse 35 CH-4002 Basel, Switzerland	Switzerland	Chairman of the Board of Directors, Chief Executive Officer
Dr. Raymund Breu c/o Novartis AG Lichtstrasse 35 CH-4002 Basel, Switzerland	Switzerland	Chief Financial Officer
Thomas Ebeling c/o Novartis AG Lichtstrasse 35 CH-4002 Basel, Switzerland	Germany	Head of Pharmaceuticals Division

SCHEDULE II
Novartis AG
Lichtstrasse 35
CH-4058 Basel
Switzerland

POWER OF ATTORNEY

The undersigned, duly authorized signatories of **Novartis AG** (the "Company"), a company incorporated in Basel, Switzerland, do hereby constitute and appoint

Bernhard Hampl
and
Lee J. Stoller, Esq.

to sign jointly any document on behalf of Novartis AG in connection with the purchase of 4’708’679 shares of Momenta Pharmaceuticals, Inc. by Novartis Pharma AG pursuant to the Stock Purchase Agreement between Novartis Pharma AG and Momenta Pharmaceuticals, Inc. made as of July 25, 2006. and to execute and deliver such documents, agreements, letters, deeds or instruments in such form and on such terms as required to effect the said purchase and to sign on behalf of Novartis AG and make or have made any necessary filings with any regulatory authorities related thereto.

This Power of Attorney shall expire on September 30, 2006.

Basel, 6.9.2006

Novartis AG

/s/ Juergen Vierkoetter	/s/ Joerg Walther
Juergen Vierkoetter Authorized Signatory	Joerg Walther Authorized Signatory

POWER OF ATTORNEY

The undersigned, duly authorized signatories of **Novartis Pharma AG** (the "Company"), a company incorporated in Basel, Switzerland, do hereby constitute and appoint

Bernhard Hampl
and
Lee J. Stoller, Esq.

to sign jointly any document on behalf of Novartis Pharma AG in connection with the purchase of 4’708’679 shares of Momenta Pharmaceuticals, Inc. by Novartis Pharma AG pursuant to the Stock Purchase Agreement between Novartis Pharma AG and Momenta Pharmaceuticals, Inc. made as of July 25, 2006, to execute and deliver such documents, agreements, letters, deeds or instruments in such form and on such terms as required to effect the said purchase and to sign on behalf of Novartis Pharma AG and make or have made any necessary filings with any regulatory authorities related thereto

This Power of Attorney shall expire on September 30, 2006.

Basel, 6.9.2006

Novartis Pharma AG

/s/ Juergen Vierkoetter	/s/ Joerg Walther
Juergen Vierkoetter Authorized Signatory	Joerg Walther Authorized Signatory

IGN="bottom"> 2,779 (39,019)

Balances, March 31, 2011, as restated

7,608,154	**$40,136**	**$(85,673)**	**$(45,537)**	**$2,035**	**$(43,502)**

Balances, January 1, 2012 (Restated, see Note 13)

9,996,144 $63,184 $(66,694) $(3,510) $(25,936) $(29,446)

Stock-based compensation

2,235 47 47 47

Issuance of stock to 401(k) plan

3,859 84 84 84

Issuance of stock on exercise of options

1,667 17 17 17

Distributions to non-controlling interest

(106) (106)

Expense of stock issuance and registration

(22) (22) (22)

Net (loss) income (restated)

(2,420) (2,420) 566 (1,854)

Balances, March 31, 2012, as restated	**10,003,905**	**$63,310**	**$(69,114)**	**$(5,804)**	**$(25,476)**	**$(31,280)**

See accompanying notes.

ADA-ES, Inc. and Subsidiaries

Consolidated Statements of Cash Flows

(Amounts in thousands)

(Unaudited)

	For the Quarter Ended March 31, 2012 (Restated, see Note 13)	For the Quarter Ended March 31, 2011 (Restated, see Note 13)
Cash Flows from Operating Activities		
Net loss	$ (2,420)	$ (41,798)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	1,024	185
Expenses paid with stock, restricted stock and stock options	131	506
Net equity in net (income) loss from unconsolidated entities	(36)	1,959
Non-controlling interest in income from subsidiaries	566	2,779
Changes in operating assets and liabilities:		
Receivables, net	(1,643)	421
Prepaid expenses and other assets	(62)	(95)
Accounts payable	(3,427)	(456)
Accrued payroll, expenses and other related liabilities	(1,425)	422
Deposits	(3,000)	
Deferred revenue and other liabilities	1,434	(1,240)
Settlement awards and related accrued liabilities	(300)	39,502
Net cash provided by (used in) operating activities	(9,158)	2,185
Cash Flows from Investing Activities		
Maturity of investment	105	
Principal payments received on notes receivable		571
Capital expenditures for equipment, patents and development projects	(6,033)	(1,060)
Net cash used in investing activities	(5,928)	(489)
Cash Flows from Financing Activities		
Net borrowings under line of credit	3,146	716
Loan to unconsolidated entity	(500)	
Non-controlling interest equity contributions		250
Distributions to non-controlling interest	(106)	(3,029)
Exercise of stock options	17	
Issuance of common stock		20
Stock issuance and registration costs	(22)	(17)
Net cash provided by (used in) financing activities	2,535	(2,060)
Decrease in Cash and Cash Equivalents	(12,551)	(364)
Cash and Cash Equivalents, beginning of period	40,879	9,696
Cash and Cash Equivalents, end of period	**$ 28,328**	**$ 9,332**

Supplemental Schedule of Non-Cash Flow Investing and Financing Activities				
Stock and stock options issued for services	$	131	$	506
Cash paid for interest	$	686	$	
Accrued capital expenditures	$	1,920	$	

See accompanying notes.

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ADA-ES, Inc. and Subsidiaries

Notes to Consolidated Financial Statements (Unaudited)

March 31, 2012

(1) Basis of Presentation

Nature of Operations

ADA-ES, Inc. (ADA), its three wholly-owned subsidiaries, Advanced Emissions Solutions, Inc., a Delaware corporation (ADES) and ADA Intellectual Property, LLC, a Colorado limited liability company (ADA IP), both of which had no operations during the first quarter of 2012, and ADA Environmental Solutions, LLC, a Colorado limited liability company (ADA LLC) and ADA s joint venture interest in Clean Coal Solutions, LLC (Clean Coal) are collectively referred to as the Company . The Company is principally engaged in providing environmental technologies and specialty chemicals to the coal-burning electric power generation industry. The Company generates a substantial part of its revenue from the sale of refined coal (RC), the sale of Activated Carbon Injection (ACI) systems, contracts co-funded by the government and industry and the development and lease of equipment for the RC market. The Company s sales occur principally throughout the United States.

The consolidated balance sheet as of December 31, 2011, which has been derived from restated audited financial statements, and the accompanying unaudited interim consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles for interim financial statements and with the instructions to Form 10-Q and Article 10 of Regulation S-X. They do not include all of the information and footnotes required by U.S. generally accepted accounting principles for complete financial statements. The consolidated financial statements include the financial statements of ADA, ADES, ADA IP, ADA LLC and Clean Coal. All significant intercompany balances and transactions have been eliminated in consolidation.

In the opinion of management, the consolidated financial statements include all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation of the results of operations, financial position and cash flows for the interim periods presented. Operating results for the quarter ended March 31, 2012 are not necessarily indicative of the results that may be expected for the year ending December 31, 2012.

These statements should be read in conjunction with the consolidated financial statements and related notes to the consolidated financial statements included in our Annual Report on Form 10-K/A for the year ended December 31, 2011, as amended and restated. The accounting policies used in preparing these consolidated financial statements are the same as those described in our Form 10-K and its amendments. The financial information included in these Notes relating to the Company s financial position as of March 31, 2012 and December 31, 2011, and results of operations for the quarters ended March 31, 2012 and 2011 have been restated to give effect to the accounting adjustments discussed in Note 13.

The Company prepares its consolidated financial statements in conformity with U.S. generally accepted accounting principles. The preparation of these financial statements requires the Company to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Reclassifications

Certain amounts have been reclassified from the prior periods to conform to the current period financial statement presentation. Such reclassification had no effect on the net loss reported.

New Accounting Standard

In September 2011, the Financial Accounting Standards Board issued Accounting Standards Update (ASU) 2011-08 which provides an entity the option to first assess qualitative factors to determine whether it is necessary to perform the two-step quantitative test for goodwill impairment. If an entity believes, as a result of its qualitative assessment, that it is more-likely-than-not that the fair value of a reporting unit is less than its carrying amount, the quantitative impairment test is required. Otherwise, no further testing is required. The revised standard is effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. The Company performs its annual goodwill impairment test in the fourth quarter and does not expect the adoption of this ASU to significantly impact its consolidated financial statements.

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(2) Investment in Unconsolidated Entity

Clean Coal Solutions Services

On January 20, 2010, the Company, together with NexGen Resources Corporation (NexGen), formed Clean Coal Solutions Services, LLC (CCSS) for the purpose of operating RC facilities leased to third parties. The Company has a 50% ownership interest in CCSS (but does not have management control of it) and the Company s investment in and advances to CCSS which totaled $1.1 million as of March 31, 2012 includes its share of CCSS income since its formation and is accounted for under the equity method of accounting. The following schedule shows unaudited consolidated summarized information as to assets, liabilities and revenues and net income attributed to CCSS before consolidation. CCSS consolidated financial statements include the financial results of the entities that lease RC facilities and its revenues includes sale of RC and its cost of sales include raw coal purchases.

	As of March 31, 2012	As of December 31, 2011
	(in thousands)	
Current assets	$ 35,051	$ 22,609
Property, equipment, and other long-term assets	2,775	3,682
Total Assets	$ 37,826	$ 26,291
Total Liabilities	$ 23,969	$ 15,988

	Quarter Ended March 31	
	2012	2011
	(in thousands)	
Net revenue	$ 38,792	$ 48,585
Net income- attributed to CCSS	$ 73	$ 53

(3) Joint Venture Investment in Clean Coal (restated)

In November 2006, the Company sold a 50% interest in its joint venture called Clean Coal Solutions, LLC, which was formed in 2006 with NexGen, to market RC technology. In May 2011, ADA and NexGen entered into a transaction in which Clean Coal sold an effective 15% interest of the equity in Clean Coal to an affiliate of The Goldman Sachs Group, Inc. (GS) (see Notes 8 and 13 for discussion regarding the classification as temporary equity of GS s interest obtained through this transaction). GS s interest has certain preferences over ADA and NexGen as to liquidation and profit distribution. GS has no further capital call requirements and does not have a voting interest but does have approval rights over certain corporate transactions.

In September 2011, ADA, NexGen, and GS entered into the First Amendment to the Second Amended and Restated Operating Agreement pursuant to which ADA and NexGen each transferred their 2.5% member interests in each of Clean Coal s subsidiaries back to Clean Coal. As a result of these transactions, ADA s interest in Clean Coal s net profits and losses is now 42.5%. This restructuring of ownership interests did not change the financial relationships of the parties and ADA still maintains a 50% governance interest in Clean Coal. Since its inception, ADA has been considered the primary economic beneficiary of this joint venture and has consolidated the accounts of Clean Coal.

Clean Coal s function is to supply technology, equipment and technical services to cyclone-fired and other boiler users, but Clean Coal s primary purpose is to put into operation facilities that produce RC that qualifies for tax credits that are available under Section 45 of the Internal Revenue Code (Section 45 tax credits). Clean Coal qualified two facilities in 2009 for such purposes and leased those facilities to a third party in 2010.

In December 2010, the Tax Relief and Job Creation Act of 2010 extended the placed in service deadline for the Section 45 tax credits to January 1, 2012. In consideration of the extension, Clean Coal built and qualified an additional 26 RC facilities in 2011, which met the extended placed in service date. In November and December 2011, the two leased RC facilities qualified in 2009 were exchanged with newly constructed, redesigned RC facilities. The new leases carry over most of the substantive terms and conditions of the initial leases.

The operating agreement of Clean Coal requires NexGen and ADA to each pay 50% of the costs of operating Clean Coal and specifies certain duties that both parties are obligated to perform. Pursuant to the Second Amended and Restated Operating Agreement and Exclusive Right to Lease Agreement, GS is in the process of exercising its exclusive right (but not the obligation) to lease facilities that will produce up to approximately 12 million tons of RC per year on pre-established lease terms similar to those currently in effect for Clean Coal s first two leased facilities.

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Following is unaudited summarized information as to assets, liabilities and results of operations of Clean Coal:

	As of March 31, 2012	As of December 31, 2011
	(in thousands)	
Primary assets		
Cash and cash equivalents	$ 1,327	$ 8,804
Accounts receivable, net	4,244	3,177
Prepaid expenses and other assets	3,273	3,028
Property, plant and equipment including assets under lease and assets placed in service, net	40,668	36,751
Primary liabilities		
Accounts payable and accrued liabilities	$ 6,286	$ 11,735
Line of credit	17,643	14,497
Deferred revenue, current and deposits	16,495	18,500
Deferred revenue, long term	1,105	

	Quarter Ended March 31, 2012	2011
	(in thousands)	
Net revenue	$ 15,174	$ 6,079
Net revenue excluding RC sales	$ 5,402	$ 6,079
Net income	$ 985	$ 5,264

(4) <u>Deferred Revenue and Deposits</u>

Deferred revenue consists of:

billings in excess of costs and earnings on uncompleted contracts; and

deferred rent revenue related to Clean Coal s lease of its RC facilities.

<u>Clean Coal Deferred Rent Revenue</u>

In June 2010, Clean Coal executed agreements to lease two RC facilities. These agreements provided for, among other things, a prepaid rent payment of $9 million for both facilities that was received before June 30, 2010. In November and December 2011, Clean Coal entered into transactions to exchange the existing facilities. There was no change to the prepaid rent payment or amortization period as a result of the exchange. A third RC facility was leased to GS during the first quarter of 2012. Prepaid rent of $3 million related to this facility will be amortized starting in the third quarter of 2012.

Thus far in 2012, the Company has recognized $5.4 million in total rent revenues related to the RC facilities which includes $900,000 from the initial prepaid rent payment. Current deferred revenues of $4.6 million are included in deferred revenue and other liabilities in the consolidated balances sheets and long-term deferred revenues of $1.1 million are included in deferred revenue in the consolidated balance sheets at March 31, 2012 related to these rent revenues.

<u>Clean Coal Deposits</u>

Clean Coal has deposits of $11.9 million towards RC facilities which may be leased upon attainment of certain milestones that are included in deposits in the consolidated balance sheets at March 31, 2012.

(5) <u>Net Loss Per Share</u>

Basic net loss per share is computed based on the weighted average common shares outstanding in the period. Diluted net loss per share is computed based on the weighted average common shares outstanding in the period and the effect of dilutive securities (stock options and awards) except where the inclusion is anti-dilutive.

All outstanding stock options (see Note 7) to purchase shares of common stock for the quarters ended March 31, 2012 and 2011 were excluded from the calculation of diluted shares, as their effect is anti-dilutive.

(6) Property and Equipment

Property and equipment consisted of the following at the dates indicated:

	Years	As of March 31, 2012	As of December 31, 2011
		(in thousands)	
Machinery and equipment	3-10	$ 4,620	$ 3,937
Leasehold improvements	2-5	1,459	624
Furniture and fixtures	3-7	599	281
RC assets under lease and placed in service	10	41,076	36,929
		47,754	41,771
Less accumulated depreciation and amortization		(5,649)	(4,651)
Total property and equipment, net		$ 42,105	$ 37,120

	Quarter Ended March 31, 2012	2011
	(in thousands)	
Depreciation and amortization	$ 1,024	$ 185

(7) Share Based Compensation

Since 2003, ADA has had several stock and option plans, including the Amended and Restated 2007 Equity Incentive Plan dated as of August 31, 2010 (the 2007 Plan) and the ADA-ES, Inc. Profit Sharing Retirement Plan, which is a plan qualified under Section 401(k) of the Internal Revenue Code (the 401(k) Plan) described below. These plans allow ADA to issue stock or options for shares of common stock to employees, Board of Directors and non-employees.

Following is a table of options activity for the quarter ended March 31, 2012:

	Employee and Director Options	Weighted Average Exercise Price
Options outstanding, January 1, 2012	182,942	$ 9.95
Options granted		
Options expired		
Options exercised	(1,667)	10.18
Options outstanding and exercisable, March 31, 2012	181,275	$ 9.95

Following is a table of aggregate intrinsic value of options exercised and exercisable for the quarter ended March 31, 2012:

	Intrinsic Value	Average Market Price
Exercised, March 31, 2012	$ 21,035	$ 22.80

	Intrinsic Value	Market Price
Exercisable, March 31, 2012	$ 2,603,994	$ 24.31

Stock options outstanding and exercisable at March 31, 2012 are summarized in the table below:

Range of Exercise Prices	Number of Options Outstanding and Exercisable	Weighted Average Exercise Price	Weighted Average Remaining Contractual Lives
$8.60 - $10.20	142,583	$ 8.66	3.6
$13.80 - $15.20	38,692	$ 14.70	3.3
	181,275	$ 9.95	3.6

No options were granted and/or vested during the quarter ended March 31, 2012.

Although ADA adopted the 2007 Plan in 2007, it was further amended and restated as of August 31, 2010 to make non-material changes to assure Internal Revenue Code Section 409A compliance and to increase the non-management director annual grant limit to 15,000 shares of common stock from 10,000 shares. The 2007 Plan authorizes the issuance to employees, directors and non-employees of up to 1 million shares of common stock, either as restricted stock grants or to underlie options to purchase shares of ADA s common stock.

In 2009, the Company revised its 401(k) Plan. The revision permits ADA to issue shares of its common stock to employees to satisfy its obligation to match employee contributions under the terms of the plan in lieu of matching contributions in cash. ADA reserved 300,000 shares of its common stock for this purpose. The value of common stock issued as matching contributions under the plan is determined based on the per share market value of ADA s common stock on the authorization date.

Following is a table summarizing the activity under various stock issuance plans for the quarter ended March 31, 2012:

Stock Issuance Plans	2007 Plan	401(k) Plan	Other Stock Plans
Balance available, January 1, 2012	30,954	156,025	5,065
Evergreen addition	209,628		
Restricted stock issued to new and anniversary employees	(1,371)		
Stock issued based on incentive and matching programs to employees		(3,859)	
Stock issued to executives, directors and non-employees	(864)		
Balance available, March 31, 2012	238,347	152,166	5,065
Expense recognized under the different plans for the quarter ended:			
		(in thousands)	
March 31, 2012	$ 47	$ 84	$
March 31, 2011	$ 308	$ 90	$ 108
Unrecognized expense under the different plans for the quarter ended:			
		(in thousands)	
March 31, 2012	$ 518	$	$
March 31, 2011	$ 336	$	$

A summary of the status of the non-vested shares under the 2007 Plan as of March 31, 2012 is presented below:

	Shares	Weighted Average Grant Date Fair Value
Non-vested at January 1, 2012	107,991	$ 6.98
Granted	1,532	22.59
Vested	(739)	22.59
Forfeited	(161)	12.60
Non-vested at March 31, 2012	108,623	$ 6.99

(8) <u>Temporary Equity (restated)</u>

As described in Note 3, in May 2011, ADA and NexGen entered into a transaction in which Clean Coal sold an effective 15% interest of the equity in Clean Coal to GS. Approximately 15.8 units of non-voting Class B membership interests were issued to GS for $60 million in cash. ADA and NexGen each received $30 million as a result of the sale. In conjunction with the closing of the purchase agreement, ADA, NexGen and GS entered into a Second Amended and Restated Operating Agreement and ADA and NexGen each exchanged 50 units of membership interests for approximately 42.1 voting Class A units in Clean Coal (each of which represents a 50% voting interest). Since the transaction did not result in a change in control of Clean Coal, the amount received from this transaction was originally recorded to stockholders equity (deficit) net of the tax effect of $11 million.

The terms of the Operating Agreement permit GS to require redemption of the unreturned portion of its initial $60 million investment in Clean Coal plus a return of 15% under certain limited circumstances. In June 2012, after completion of a review and evaluation of the applicable agreement and accounting authoritative literature, management determined that GS s interest in Clean Coal is more appropriately classified as temporary equity as a result of the provision in the agreement for possible redemption of the unreturned portion of GS s investment plus the required return under certain limited circumstances. As a result, this transaction has been recorded as temporary equity on the restated consolidated balance sheets as of March 31, 2012 and December 31, 2011. See Notes 9 and 13 for additional discussion.

(9) Stockholders Equity (Deficit) (restated)

Stockholders equity (deficit) has been restated. The restated ADA portion of stockholders equity (deficit) for the period ended March 31, 2012 includes a $30 million reduction attributable to the reclassification of temporary equity as discussed in Note 8 and a $19.6 million reduction attributable to the recognition of a valuation allowance against the Company s deferred tax assets. The restated ADA portion of stockholders equity (deficit) for the fiscal year ended December 31, 2011 includes a $30 million reduction attributable to the reclassification of temporary equity and a $18.6 million reduction attributable to the recognition of a valuation allowance against the Company s deferred tax assets. See Notes 11 and 13 for additional discussion.

Non-Controlling Interest

The non-controlling interest portion of stockholders equity (deficit) includes such interests related to Clean Coal. As discussed in Note 8, the restated non-controlling interest portion of stockholders equity (deficit) for the quarter ended March 31, 2012 and at December 31, 2011 includes a $30 million reduction attributable to the reclassification of temporary equity. See Note 13 for additional discussion.

(10) Commitments and Contingencies

Line of Credit

Clean Coal has available a revolving line of credit with a bank for $15 million that is secured by substantially all the assets of Clean Coal (including its subsidiaries). The line of credit expires in March 2013 and requires four equal quarterly installments of principal (plus all accrued interest at such time) to be paid beginning June 30, 2012. Borrowings under the line of credit bear interest at the higher of the Prime Rate (as defined in the related credit agreement) plus one percent (1%) or 5% per annum (effective rate of 5% at March 31, 2012).

In March 2012, a $3 million increased commitment note was issued in conjunction with the line of credit. This amount was secured by a cash collateral account of $3 million, with interest at 4.4%, was due on or before May 1, 2012 and has been repaid. At March 31, 2012, the outstanding balance on the line of credit and commitment note was $17.6 million. Borrowings under the line of credit are subject to certain financial covenants applicable to Clean Coal.

Retirement Plan

ADA assumed the 401(k) plan covering all eligible employees as of January 1, 2003 which was revised in 2009, and makes matching contributions to the plan in the form of cash and its common stock. Such contributions are as follows:

	Quarter Ended March 31,	
	2012	2011
	(in thousands)	
Matching contributions in stock	$ 84	$ 90

Performance Guarantee on Emission Control Systems

Under certain contracts to supply emission control systems, the Company may guarantee certain aspects of the performance of the associated equipment for a specified period to the owner of the power plant. The Company may also guarantee the achievement of a certain level of mercury removal if certain conditions around injecting the specified quantity of a qualified AC at the specified injection rate and other plant operating conditions are met. In the event the equipment fails to perform as specified, the Company may have an obligation to correct or replace the equipment. In the event the level of mercury removal is not achieved, the Company may have a make right obligation within the contract limits. The Company assesses the risks inherent in each applicable contract and accrues an amount that is based on estimated costs that may be incurred over the performance period of the contract. Such costs are included in the Company s accrued warranty and other liabilities in the accompanying consolidated balance sheets. Any warranty costs paid out in the future will be charged against the accrual. The adequacy of warranty accrual balance is assessed at least quarterly based on the then current facts and circumstances and adjustments are made as needed. The changes in the carrying amount of the Company s performance guaranties are as follows:

	Quarter Ended March 31,	
	2012	2011
	(in thousands)	
Beginning balance	$ 547	$ 612
Performance guaranties accrued	1	22
Expenses paid	(2)	(49)
Ending balance	$ 546	$ 585

In some cases, a performance bond may be purchased and held for the period of the warranty that can be used to satisfy the obligation.

Clean Coal

The Company also has certain obligations in connection with the activities of Clean Coal. The Company, NexGen and two entities affiliated with NexGen have provided the lessee of its RC facilities and GS with joint and several guaranties (the CCS Party Guaranties) guaranteeing all payments and performance due under the related transaction agreements. The Company also entered into a contribution agreement with NexGen under which any party called upon to pay on a CCS Party Guaranty is entitled to receive contribution from the other party equal to 50% of the amount paid.

The parent of the lessee in the RC facilities lease transactions has provided Clean Coal with a guaranty as to the payment only of all the initial term fixed rent payments and the renewal term fixed rent payments under the related leases, which, although terminable at any time, cannot be terminated without the substitution of such guaranty with another guaranty on similar terms from a creditworthy guarantor.

Arbitration Award Liabilities

As previously reported in various filings, ADA had been engaged in litigation with Norit. The Norit lawsuit initially filed in Texas was moved to arbitration, and on April 8, 2011, the arbitration panel issued an interim award holding ADA liable for approximately $37.9 million for a non-solicitation breach of contract claim and held ADA and certain other defendants liable for royalties of 10.5% for the first three years beginning in mid-2010 and 7% for the following five years based on adjusted sales of AC from the Red River plant.

On August 29, 2011, ADA and Norit entered into a settlement agreement whereby the Company paid a lump-sum payment to Norit totaling $33 million on August 30, 2011. In addition, the Company agreed to pay an additional $7.5 million over a three-year period commencing on August 29, 2012, payable in three installments without interest of $2.5 million. Under the terms of the settlement agreement, ADA is also required to pay the royalty noted above and a lesser royalty on certain treated activated carbons. Payments of amounts due under the royalty award for each quarter are payable three months after such quarter ends. On October 18, 2011, the arbitration panel endorsed and confirmed the terms of the settlement agreement.

The Company has accrued a current liability as of March 31, 2012 of $2.8 million which is included in settlement awards and related accrued liabilities and a long-term liability of $5 million which is included in settlement awards and indemnity liability in the consolidated balance sheets related to this agreement.

Indemnity Liability Settlement

As previously reported in various filings, in November 2011, ADA entered into an Indemnity Settlement Agreement whereby ADA agreed to settle certain indemnity obligations asserted against ADA related to the Norit litigation and relinquish all of its interest in ADA Carbon Solutions, LLC (Carbon Solutions). Our net investment in Carbon Solutions was accounted for under the equity method of accounting and our respective share of Carbon Solutions losses of $2 million for the three months ended March 31, 2011 is included in the consolidated statements of operations. Under the terms of the Indemnity Settlement Agreement, ADA paid a $2 million payment on November 28, 2011 and agreed to make 16 additional monthly payments of $100,000 with the first one paid on November 28, 2011, and the remaining 15 payments commencing on December 1, 2011, relinquished all of its equity interest in Carbon Solutions to Carbon Solutions and amended the Intellectual Property License Agreement dated October 1, 2008 between ADA and Carbon Solutions.

The Company has accrued a current liability as of March 31, 2012 of $1.1 million which is included in settlement awards and related accrued liabilities in the consolidated balance sheets related to this agreement.

(11) Income Taxes (restated)

Income taxes are accounted for under the asset and liability approach. Under this method, deferred tax assets and liabilities are recognized for the expected future tax consequences of differences between the carrying amounts of assets and liabilities and their respective tax bases using the enacted tax rates in effect for the year in which the differences are expected to reverse. A valuation allowance is provided if and when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period when the change is enacted. At each reporting date, management reviews existing income tax assessments and, if necessary, revises them to reflect changed circumstances. In a situation where recent losses have been incurred, the accounting standards require convincing evidence that there will be sufficient future taxable income to realize deferred tax assets.

In August 2012, after extensive discussions with the SEC s Division of Corporation Finance and Office of the Chief Accountant and the Company s outside tax experts, independent registered public accounting firm, Audit Committee and Board of Directors, management determined that the objective and verifiable negative evidence represented by historical losses outweighed more subjective positive evidence of anticipated future income. As a result, management determined it necessary to record a full valuation allowance against the Company s net deferred tax assets and is restating the consolidated financial statements with this Amendment for the quarterly periods ended March 31, 2012 and 2011 and as of December 31, 2011. See Note 13 for additional discussion.

The Company has provided a full valuation allowance against the deferred tax assets of $19.6 million and $18.6 million as of March 31, 2012 and December 31, 2011, respectively.

(12) Business Segment Information (restated)

The following information relates to the Company s three reportable segments: Refined coal (RC), Emission control (EC) and CO_2 capture (CC). All assets are located in the U.S. and are not evaluated by management on a segment basis. All significant customers are U.S. companies and the U.S Government.

Quarter Ended March 31,

	2012	2011
	(in thousands)	
Revenue		
RC		
Rental income	$ 5,391	$ 6,086
Coal sales	9,773	
Other revenues	10	
	15,174	6,086
EC		
Systems and equipment	1,412	948
Consulting and development	1,135	646
Chemicals	217	439
	2,764	2,033
CC	282	348
Total	$ 18,220	$ 8,467
Segment profit		
RC	$ 1,786	$ 5,566
EC	75	736
CC	62	14
Total	$ 1,923	$ 6,316

A reconciliation of the reported total segment profit to net loss for the periods shown above is as follows:

	Quarter Ended March 31, 2012 (Restated)	Quarter Ended March 31, 2011 (Restated)
	(in thousands)	
Total segment profit	$ 1,923	$ 6,316
Non-allocated general and administrative expenses	(2,134)	(4,281)
Depreciation and amortization	(1,024)	(185)
Other income including interest	99	592
Interest expense	(470)	
Settlement of litigation and arbitration award, net	(284)	(39,502)
Net equity in net income (loss) of unconsolidated entities	36	(1,959)
Deferred income tax benefit		
Net (income) loss attributable to non-controlling interest	(566)	(2,779)
Net loss attributable to ADA-ES, Inc.	$ (2,420)	$ (41,798)

Non-allocated general and administrative expenses include costs that benefit the business as a whole and are not directly related to any one of our segments. Such costs include but are not limited to accounting and human resources staff, information systems costs, facility costs, legal fees, audit fees and corporate governance expenses.

(13) <u>Restatement of Consolidated Financial Statements</u>

<u>Reclassification of Equity Interest</u>

On its Current Report on Form 8-K dated June 20, 2012, the Company reported management s determination that the Company s consolidated financial statements contained in its Annual Report on Form 10-K for the year ended December 31, 2011 and its Quarterly Reports on Form 10-Q for the quarters ended June 30, 2011, September 30, 2011 and March 31, 2012 should no longer be relied upon and should be restated. Management made this determination following an assessment of the accounting treatment of the equity in Clean Coal that has been held by an affiliate of GS since May 2011.

After completion of a review and evaluation of the operating agreement of Clean Coal and the members rights and obligations thereunder and accounting authoritative literature, management determined that GS s interest in Clean Coal would be more appropriately classified as temporary equity because of a provision in the agreement that permits GS to require redemption of the unreturned portion of its initial investment plus a return of 15% under certain limited circumstances.

As a result, the Company has restated its consolidated financial statements in this Amendment for the quarterly period ended March 31, 2012 and as of December 31, 2011. The effect of the restatement on the Company s consolidated balance sheets as of March 31, 2012 and December 31, 2011 and consolidated statement of changes in stockholders equity (deficit) for the quarter ended March 31, 2012 is that GS s interest in Clean Coal has been reclassified as temporary equity rather than as part of stockholders equity (deficit).

<u>Deferred Tax Assets Valuation Allowance</u>

On its Current Report on Form 8-K dated August 14, 2012, the Company reported management s determination that the Company s consolidated financial statements contained in its Annual Report on Form 10-K for the fiscal years ended December 31, 2010 and December 31, 2011 and its Quarterly Reports on Form 10-Q for the quarters ended March 31, 2011, June 30, 2011, September 30, 2011, March 31, 2012 and June 30, 2012 should no longer be relied upon and should be restated. After extensive discussions with the SEC s Division of Corporation Finance and Office of the Chief Accountant and the Company s outside tax experts, independent registered public accounting firm, Audit Committee and Board of Directors, management determined that a full valuation allowance against the Company s net deferred tax assets should have been recognized as of December 31, 2010 and for each subsequent quarter thereafter. Management determined that it was necessary to record the valuation allowance against the Company s deferred tax assets after reconsidering the weight given in the original assessment to the relevant information used to measure the positive and negative evidence regarding the potential for ultimate realization of the deferred tax assets.

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Realization of the deferred tax assets is dependent upon the Company s ability to generate future taxable income. In its reassessment, management concluded that the objective and verifiable negative evidence represented by historic losses outweighed more subjective positive evidence of anticipated future income. As a result, the Company has restated its consolidated financial statements in this Amendment as of and for the quarterly periods ended March 31, 2012 and 2011 and as of December 31, 2011.

Financial Statement Effect of the Restatement

The tables below show the effect of the above restatement on the Consolidated Balance Sheets as of March 31, 2012 and December 31, 2011, and the Consolidated Statements of Operations, Consolidated Statements of Changes in Stockholders Equity (Deficit) and Consolidated Statements of Cash Flows for the quarters ended March 31, 2012 and 2011. The restatement reflects non-cash adjustments and has no effect on previously reported operating income results or cash flows from operations. The Company also amended its Annual Reports on Form 10-K for the fiscal years ended December 31, 2011 and 2010 and its Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 on October 19, 2012.

Schedule

Effect of Restatement on Financial Statements

Effect on Consolidated Balance Sheets

	As Previously Reported December 31, 2011	Restatement Adjustments Deferred Tax Valuation Allowance	Temporary Equity	As Restated December 31, 2011
	(Amounts in thousands)			
Current Assets				
Cash and cash equivalents	$ 40,879	$	$	$ 40,879
Receivables, net of allowance for doubtful accounts	5,914			5,914
Investment in securities	508			508
Prepaid expenses and other assets	3,924	(2,392)		1,532
Total current assets	51,225	(2,392)		48,833
Property and Equipment, at cost	41,771			41,771
Less accumulated depreciation and amortization	(4,651)			(4,651)
Net property and equipment	37,120			37,120
Investment in unconsolidated entities	590			590
Deferred taxes and other assets	16,233	(16,233)		
Other assets	931			931
Total other assets	17,754	(16,233)		1,521