

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Violations  
of Article 19 of the Environmental Conservation  
Law of the State of New York

**2ND MODIFICATION OF  
ORDER ON CONSENT**

- By -

File No. R4-2007-0105-144M2

Cellect LLC

Respondent

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**WHEREAS:**

**JURISDICTION**

1. The Department of Environmental Conservation ("DEC" or "the Department") is an executive department of the State of New York with jurisdiction over the environmental policy and laws of this state, pursuant to, *inter alia*, ECL § 3-0301. In particular, DEC has jurisdiction over the maintenance and enhancement of the purity of the air of the State pursuant to Article 19 of the New York State Environmental Conservation Law (ECL), and Part 201 of Title 6 of the Official Compilation of Rules and Regulations of the State of New York ("6 NYCRR").
2. Respondent, CELLECT, LLC., of 297 North Street, Hyannis Massachusetts 02601, operates a facility ("the facility") at 12 New Street, St. Johnsville, New York.
3. Respondent is subject to Order on Consent R4-2007-1015-144M (May 1, 2008) ("Order"), and Modification of Order on Consent R4-2007-1015-144 ( March 23, 2009) ("Modification").

Modification Violation

4. Paragraph 3 of the Modification's Schedule of Compliance required the Respondent to submit a permit modification to the Department for the installation of an oxidizer at the facility by no later than April 23, 2009.
5. Respondent has violated the Modification by failing to submit a permit modification to the Department for the installation of an oxidizer at the facility by no later than April 23, 2009.

### Maintenance of Equipment Violation

6. Regulations at 6 NYCRR 200.7 requires that: “Any person who owns or operates an air contamination source which is equipped with an emission control device shall operate such device and keep it in a satisfactory state of maintenance and repair in accordance with ordinary and necessary practices, standards and procedures, inclusive of manufacturer's specifications, required to operate such device effectively.”
7. On July 23, 2009, Department staff inspected the facility and observed that the circle chart recorder used for recording the oxidizer temperature was not operational as required by 6 NYCRR 200.7.
8. Respondent’s failure to have the circle chart recorder operational is a violation of 6 NYCRR 200.7.

### Sample and Monitoring Violation

9. Regulations at 6 NYCRR 212.11(b) and (b)(1) provide that: “Owners and/or operators of any source equipped with the following emissions control equipment must install continuous monitors and data recorders for the required parameter by June 1, 1995. Continuous monitors must be operated at all times when the associated process equipment is operating except during any quality assurance and routine maintenance activities. Each monitor must be operated according to a quality assurance program approved by the department. Alternative monitoring methods may be employed subject to department approval. (1) The exhaust gas temperature must be monitored from thermal or catalytic incinerators.
10. On July 23, 2009, Department inspected the facility and the circle chart recorder was not working at the time and it was apparently not working at the time of the test.
11. Respondent violated 6 NYCRR 212.11(b)(1) by performing its required Method 9 test without measuring the temperature of the oxidizer.

### Test Method Violation

12. Regulations at 6 NYCRR 202-1.3(a) provides that: “Emission testing, sampling and analytical determinations to ascertain compliance with this Subchapter shall be conducted in accordance with test methods acceptable to the commissioner. The Reference Methods contained in 40 CFR part 51, appendix M, 40 CFR part 60, appendix A, 40 CFR part 61, appendix B and 40 CFR part 63, appendix A (see Table 1, section 200.9 of this Title) and all future technical revisions, additions or corrections made thereto shall be considered as acceptable test methods for those sources and contaminants for which they are expressly applicable, except where the commissioner has issued a specific method to be used instead of a Reference Method contained in these Federal regulations or where the commissioner determines that one or more alternate

methods are also acceptable. The person who owns or operates an air contamination source shall submit the emission test report in triplicate to the commissioner within 60 days after the completion of tests. In the event such source owner/operator can demonstrate to the commissioner such time is not sufficient, the source owner/operator may request in writing and be granted an extension. Where an opacity emission standard is applicable to the source tested, the emission test report shall include the opacity observation.”

13. On July 1, 2008, Respondent performed stack testing on the vertical oven and bun department.

14. Respondent failed to submit the emission test report to the Department on a timely basis in violation of 6 NYCRR 202-1.3(a).

#### Civil Penalty

15. ECL Section 71-2103(1) provides that: “Except as provided in section 71-2113, any person who violates any provision of article nineteen or any code, rule or regulation which was promulgated pursuant thereto; or any order except an order directing such person to pay a penalty by a specified date issued by the commissioner pursuant thereto, shall be liable, in the case of a first violation, for a penalty not less than three hundred seventy-five dollars nor more than fifteen thousand dollars for said violation and an additional penalty of not to exceed fifteen thousand dollars for each day during which such violation continues. In the case of a second or any further violation, the liability shall be for a penalty not to exceed twenty-two thousand five hundred dollars for said violation and an additional penalty not to exceed twenty-two thousand five hundred dollars for each day during which such violation continues. In addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.”

#### Waiver of Hearing

16. Respondent hereby consents to the issuance and entry of the foregoing 2<sup>nd</sup> Modification, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

NOW, being duly advised and having considered this matter, **IT IS HEREBY ORDERED THAT:**

I. Respondent shall comply with all provisions, terms and conditions of the 2<sup>nd</sup> Modification and the terms, conditions and provisions of the Order and Modification shall remain in full force and effect except as expressly modified in the 2<sup>nd</sup> Modification.

II. In respect of the aforesaid violations, a civil penalty in the amount of ELEVEN THOUSAND DOLLARS (\$11,000) is assessed against the Respondent for the above violations. The civil penalty is due in accordance with the following payment schedule:

\$2200 with the return of the signed and notarized Order on Consent to the Department;  
\$2200 by November 10, 2009;  
\$2200 by December 10, 2009;  
\$2200 by January 10, 2010; and  
\$2200 by February 10, 2010.

The civil penalty shall be paid by bank or certified check made payable to the Department of Environmental Conservation. The failure to make a timely payment in accordance with the above schedule shall result in the balance of the penalty becoming due within 15 days of the mailing of a notice from the Department.

III. Respondent shall comply with the attached Schedule of Compliance.

IV. The effective date of this 2<sup>nd</sup> Modification shall be the date it is signed by the Department.

DATED: October , 2009  
Rotterdam, NY

ALEXANDER B. GRANNIS  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

BY: \_\_\_\_\_  
Eugene J. Kelly  
Regional Director - Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing 2<sup>nd</sup> Modification waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

\_\_\_\_\_  
CELLECT, LLC

STATE OF NEW YORK    )  
  ) ss.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2009, before me, the undersigned,  
personally appeared \_\_\_\_\_,  
*(Full name)*

personally known to me who, being duly sworn, did depose and say that he/she/they reside at  
\_\_\_\_\_  
*(Full mailing address)*

and that he/she/they is (are ) the \_\_\_\_\_  
*(President or other officer or director or attorney in fact duly appointed)*

of the \_\_\_\_\_  
*(Full legal name of corporation)*

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

\_\_\_\_\_  
Notary Public, State of New York

## Schedule of Compliance

1. Within thirty (30) days of the effective date of this 2<sup>ND</sup> Modification, Respondent shall submit a permit modification to the Department for the installation of the oxidizer.
2. Within thirty (30) days of the effective date of this 2<sup>ND</sup> Modification, Respondent shall install a continuous monitor and data recorder on the oxidizer to monitor the exhaust gas temperature.
3. Within forty five (45) days of the effective date of this 2<sup>ND</sup> Modification, Respondent shall submit a quality assurance program plan to the Department for the operation of the oxidizer and the associated continuous monitor and data recorder.
4. Within thirty (30) days of the effective date of this 2<sup>ND</sup> Modification, Respondent shall perform a Method 9 opacity evaluation on the oxidizer exhaust. The Respondent shall conduct the testing in accordance with all applicable regulations. The Respondent shall notify the Department seven (7) calendar days prior to performing the testing.
5. Within thirty (30) days of completing the Method 9 opacity evaluation required in Paragraph 4, Respondent shall submit a copy of the report to the Department including the oxidizer exhaust gas temperature data for the time period of the testing. The report shall comply with all applicable regulations.
6. Within thirty (30) days of the effective date of this 2<sup>ND</sup> Modification, Respondent shall submit the stack test results for the July 1, 2008 bun department stack testing to the Department.
7. Within ninety (90) days of the effective date of this 2<sup>ND</sup> Modification, Respondent shall perform stack testing of the vertical oven to generate emissions data to support the refined dispersion modeling. The Respondent shall conduct the testing and provide prior notice of the testing in accordance with all applicable regulations.
8. Within sixty (60) days of completing the stack testing required in Paragraph 7, Respondent shall submit a copy of the report to the Department. The report shall comply with all applicable regulations.
9. Within one hundred and twenty (120) days of the effective date of this 2<sup>ND</sup> Modification, Respondent shall submit the results of the refined dispersion modeling for the facility to the Department.