

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations of Environmental Conservation Law,
Article 19

- by -

ORDER ON CONSENT
File No. R4-2008-1117-163

Chris' Coffee Service, Inc.
10 Corporate Circle
Albany, NY 12203

Respondent

WHEREAS:

1. New York State Department of Environmental Conservation ("Department") has administrative jurisdiction to safeguard the air resources of the State pursuant to ECL Article 19.
2. Respondent, Chris' Coffee Service, Inc, operates a facility located at 10 Corporate Circle, Albany, New York, which roasts coffee beans in a commercial roaster ("facility").
3. The facility utilizes a control device ("cyclone") to collect particulate generated during the production process.
4. Department staff inspected the facility on November 12, 2008 ("inspection").
5. The facility emits VOC (Volatile Organic Compounds) and HAP (Hazardous Air Pollutants) through its emission point as part of its production process.
6. Respondent does not have a permit for its emissions.
7. Regulations at 6 NYCRR 201-1.2 (a) require facilities which emit air contaminants to obtain a permit.
8. Respondent violated 6 NYCRR 201-1.2 (a) by failing to have a permit for its non-exempt emissions.
9. 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;... 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.”

10. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agrees to be bound by the terms, provisions and conditions contained herein.

NOW, having considered this matter and being duly advised, it is **ORDERED** that:

I. With respect of the aforesaid violations, a civil penalty in the amount of ONE THOUSAND FOUR HUNDRED AND EIGHTY DOLLARS (\$1,480) is assessed against the Respondent for the above violations which shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

Payment of the above penalties shall not in any way alter Respondent’s obligation to complete performance under the terms of this Order.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

V. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner’s designee.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent’s compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:
For Department:
Regional Air Engineer
New York State Department of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

IX. This Order is deemed effective on the date signed by the Department.

X. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, its agents, its servants, its employees, its successors and its assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

XI. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

DATED: _____, 2008
Rotterdam, New York

Commissioner Alexander B. Grannis
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

Chris' Coffee Service, Inc.

Respondent hereby consents to the issuing and entering of this Order, waives its right to a hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

BY: _____ TITLE: _____

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the ____ day of _____ in the year 200__, 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 45 days of the effective date of this Order, Respondent shall submit to the Department, a complete permit application, pursuant to regulations at 6 NYCRR Part 201, for the emission point.