

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II  
2007 JUL 24 PM 2:32  
REGIONAL HEARING  
CLERK

-----X  
: In the Matter of : **CONSENT AGREEMENT**  
: : **AND**  
: **CELLECT, LLC** : **FINAL ORDER**  
: :  
: Respondent. : **DOCKET NUMBER**  
: **EPCRA-02-2007-4204**  
: Proceeding under Section 325(c) of :  
: Title III of the Superfund :  
: Amendments and Reauthorization Act :  
-----X

**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. §11001 et seq. [also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter, "EPCRA")]. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc." (40 C.F.R. Part 22 (July 1, 2000)), provide in 40 C.F.R. §22.13(b) that when the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2 ("EPA or Complainant"), alleges that Cellect, LLC located at 12 New Street, Saint Johnsville, New York 13452 violated the requirements of Section 313 of EPCRA (42 U.S.C. §11023) and the regulations promulgated pursuant to that Section, codified at 40 C.F.R. Part 372.

Under Section 313 of EPCRA and 40 C.F.R. §372.22, owners or operators of a facility subject to the requirements of Section 313(b) are required to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form R, EPA Form 9350-1 (hereinafter, "Form R"), for each toxic chemical listed under 40 C.F.R. §372.65 and/or 40 C.F.R. §372.28 that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. The completed and correct Form R is required to be submitted to the Regional Administrator of the EPA and to the State in which the subject facility is located.

As an alternative to the requirements set forth above, pursuant to Section 313(f)(2) of EPCRA (42 U.S.C. §11023(f)(2)), and 40 C.F.R. §372.27, owners or operators of a facility subject to the requirements of Section 313(b), with respect to the manufacture, process or otherwise use of a toxic chemical, may apply an alternate threshold of one million (1,000,000) pounds per year to that chemical if the conditions set forth in 40 C.F.R. §372.27(a) are met. Pursuant to 40 C.F.R. §372.27(b), if the aforementioned alternate threshold for a specific toxic chemical is applicable, such owners or operators, in lieu of filing a Form R therefore, may submit "EPA Toxic Chemical Release Inventory Form A" (EPA Form 9350-2) (formerly the "Certification Statement"; see 59 Fed. Reg. 61488; November 30, 1994). EPA has excluded Persistent Bioaccumulative Toxic Chemicals (PBTs) from eligibility for the "Alternate Threshold for facilities with Low Annual Reportable Amounts." (40 C.F.R. §372.27(e))

EPA and Collect LLC agree that settling this matter by entering into this Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. §22.13(b) and 40 C.F.R. §22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated Findings of Fact or Conclusions of Law have been made. The following constitutes Complainant's Findings of Fact and Conclusions of Law based upon information EPA had obtained through April 18, 2007.

**FINDINGS OF FACT**  
**AND CONCLUSIONS OF LAW**

1. Respondent is Collect LLC (TRI Facility No.: 13452SNTNL12NEW).
2. At all times relevant hereto, Respondent has maintained a facility located at 12 New Street, Saint Johnsville, New York 13452 which is the subject of this Consent Agreement and Final Order (hereinafter, "Respondent's facility").
3. Respondent is a corporation organized pursuant to the laws of the State of Delaware.
4. Respondent is a "person" within the meaning of Section 329(7) of EPCRA (42 U.S.C. §11049).
5. Respondent is an owner of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. §11049(4)) and by 40 C.F.R. §372.3.
6. Respondent is an operator of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. §11049(4)) and by 40 C.F.R. §372.3.
7. Respondent's facility has 10 or more "full time employees" as that term is defined by 40 C.F.R. §372.3.
8. Respondent's facility is in Standard Industrial Classification Code 3086.
9. Respondent's facility is in the American Industry Classification System (NAICS) Code 326150.
10. Respondent's facility is subject to the requirements Section 313(b) of EPCRA (42 U.S.C. §11023(b)) and 40 C.F.R. §372.22.
11. A review of the Toxic Release Inventory Envirofacts Database indicated that Respondent submitted a Form R report to the EPA for processing approximately 33,500 pounds of zinc compounds for calendar year 2004 on August 16, 2006. The Form R was greater than one year late.
12. Zinc compounds are listed under 40 C.F.R. §372.65.
13. The established threshold amount for reporting a chemical processed was 25,000 pounds for the 2004 calendar year [40 C.F.R. §372.25(a)].
14. Respondent was required to submit by July 1, 2005 a complete and correct Form R or Form A for zinc compounds for the calendar year 2004 to the Administrator of EPA and to the State of New York.

15. Respondent failed to submit, in a timely manner, a complete and correct Form R or Form A for zinc compounds for the calendar year 2004 to the Administrator and to the State of New York.

16. Respondent's failure to submit, in a timely manner, a Form R or Form A for zinc compounds for the calendar year 2004 constitutes a failure to comply with Section 313 of EPCRA (42 U.S.C. §11023) and with 40 C.F.R. Part 372.

### TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 325(c) of EPCRA, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc., 40 C.F.R. §22.18 (hereinafter, "Consolidated Rules"), it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees as follows:

1. Respondent certifies herein that any and all EPA Toxic Chemical Release Inventory Forms submitted for the above-described violation comply with the requirements of Section 313 of EPCRA and the regulations set forth at 40 C.F.R. Part 372.

2. For the purpose of this proceeding, Respondent: (a) admits the jurisdictional allegations of this Consent Agreement as applied to the facility; and (b) neither admits nor denies the specific factual allegations contained in the Consent Agreement and the Findings of Fact and Conclusions of Law section above.

3. Respondent shall pay by cashier's or certified check, a civil penalty totaling **NINE HUNDRED AND SIXTY SEVEN DOLLARS (\$967)**, payable to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document.

The check shall be mailed to:

EPA Region 2 (Regional Hearing Clerk)  
P.O. Box 360188M  
Pittsburgh, Pennsylvania 15251

Respondent shall also send a copy of this payment to each of the following:

Ms. Karen Maples, Regional Hearing Clerk  
Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency -Region 2  
290 Broadway, 16th Floor (1631)  
New York, New York 10007-1866

and

Kenneth S. Stoller, P.E., QEP, DEE, Chief  
Pesticides and Toxic Substances Branch  
U.S. Environmental Protection Agency - Region 2  
2890 Woodbridge Avenue, Bldg. 10, MS-105  
Edison, New Jersey 08837

4. Payment must be received at the above address on or before 45 calendar days after the date of signature of the Final Order at the end of this document (the date by which 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 will result in the referral of this matter to the U.S. Department of Justice for collection.

b. Further, if 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 overdue 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 30 day period (or any portion thereof) following the due date in which the balance remains unpaid.

c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

### **Supplemental Environmental Project**

5. Respondent agrees to undertake the following Supplemental Environmental Project ("SEP") which the parties agree is intended to secure significant environmental or public health protection and improvements:

a. Within two months of receiving a copy of this Agreement signed by the Regional Administrator, Respondent shall purchase one RIT/Fast Team Kit, one MS 460 R STIHL Magnum Rescue Chain Saw with a carbide chain and twelve (12) SMC NFPA Locking Carabiners for the

Saint Johnsville Volunteer Fire Department, located at Main Street, Saint Johnsville, New York 13452 as shown in Attachment A.

b. Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

c. The total expenditure for the SEP shall be not less than \$3,591.

d. Whether Respondent has complied with the terms of this Consent Agreement and Final Order through implementation of the SEP project as herein required shall be the sole determination of EPA.

6. a.. Respondent shall submit a SEP Completion Report to EPA on or by six months of receiving a copy of this Agreement signed by the Regional Administrator. The SEP Completion Report shall contain the following information:

- (i) Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
- (ii) Certification that the purchased equipment was received by the Saint Johnsville volunteer Fire Department located on Main street in Saint Johnsville, New York 13452 pursuant to the provisions of this Consent Agreement and Final Order; and

b. Respondent agrees that failure to submit the SEP Completion Report or any Periodic Report required by subsection (a) above shall be deemed a violation of this Consent Agreement and Final Order, and Respondent shall become liable for stipulated penalties pursuant to paragraph 10, below.

7. Respondent agrees that EPA may contact the Saint Johnsville Volunteer Fire Department at any time in order to confirm that the SEP was carried out as agreed above.

8. Respondent shall maintain legible copies of documentation for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and Final Order, and Respondent shall provide the documentation of any such data to EPA within seven days of a request for such information. In all documents or reports, including, without limitation, the SEP Report, submitted to EPA pursuant to this Consent Agreement and Final Order, Respondent shall, by its officer, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

9. a. Following receipt of the SEP Report described in paragraph 6, above, EPA will do one of the following:

- (i) Accept the report;
- (ii) Reject the SEP Report, notify Respondent in writing of deficiencies in the SEP Report and grant Respondent an additional thirty (30) days in which to correct any deficiencies; or
- (iii) Reject the SEP Report and seek stipulated penalties in accordance with paragraph 10 herein.

b. If EPA elects to exercise option (ii) or (iii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period,

EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 10 herein.

10. a. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement and Final Order relating to the performance of the SEP described in paragraph 5, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 5 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to paragraph 9, Respondent shall pay a stipulated penalty to the United States in the amount of **\$2,873**.

(ii) If the SEP is not completed satisfactorily, but Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not pay any stipulated penalty.

(iii) If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount determined as follows:

$$\text{Stipulated penalty} = [1 - \frac{\text{\$amount SEP cost expended}}{\$3,591}] \times \$2,873$$

(iv) If the SEP is satisfactorily completed, and Respondent spent at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not pay any stipulated penalty.



b. The determinations of whether the SEP has been satisfactorily completed, whether Respondent has made a good faith timely effort to implement the SEP and/or whether the reason for submitting a late completion report is acceptable shall be in the sole discretion of EPA.

c. Stipulated penalties for subparagraph (iii) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

d. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 3. Interest and late charges shall be paid as stated in paragraph 3 herein.

11. Complainant at its discretion may waive any stipulated penalties specified above.

12. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 313 of EPCRA, 42 U.S.C. § 11023 and regulations pursuant to that Section, 40 C.F.R. Part 372."

13. a. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Agreement, Respondent shall notify EPA in writing within 10 days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of Respondent's right to request an extension of its obligation under this Agreement based on such incident.

b. If the parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

c. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Agreement has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in completion of the SEP shall not be excused.

d. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

14. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities that might have attached as a result of the allegations contained in the Complaint. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

15. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

16. Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or any of the allegations therein asserted, on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or the accompanying Final Order.

17. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator 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.

18. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect respondent's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder.

19. 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.

20. Each party hereto agrees to bear its own costs and fees in this matter.

21. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

**RESPONDENT:**

Collect LLC

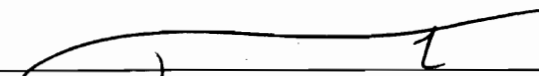
BY: Scott C. Smith  
Authorizing Signature

NAME: Scott C. Smith  
(PLEASE PRINT)

TITLE: President & CEO

DATE: 6/8/2007

**COMPLAINANT:**

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

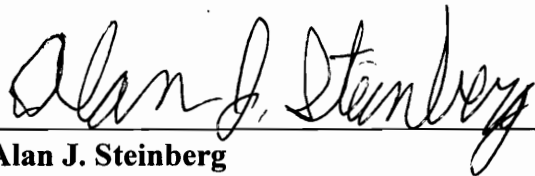
DATE: JUNE 22, 2007

**In the Matter of Collect LLC**  
**Docket Number EPCRA-02-2007-4204**

**FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties in full settlement of EPA's Complaint bearing **Docket No. EPCRA-02-2007-4204, issued In the Matter of Collect LLC** is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

DATE: July 13, 2007



**Alan J. Steinberg**  
Regional Administrator  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007

**CELLECT LLC**

Docket Number: EPCRA-02-2007-4204

**ATTACHMENT 1**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

*Not sold to general public.  
Emergency services only!!!*

**For fire/rescue service only!**  
Optional cutting depth limiter (shown) now available!

**MS 460 R STIHL Magnum™ "Rescue" Chain Saw**  
Professional User



A proven professional chain saw. Redesigned exclusively for fire, rescue, and emergency services work.

[Click here to read testimonial.](#)

**Standard Features**

- Wrap handle (R)
- Special heavy-duty carbide-segmented rescue chain\*
- Extra large starter handle for use with fire/rescue gloves
- Extended chip deflector
- Built-in tool holder
- Special muffler shield
- Toolless fuel and oil caps with retainers
- IntelliCarb™ compensating carburetor
- Adjustable automatic bar and chain oiler
- Side access chain tensioner
- [Click to view the standard features that are common to many STIHL chain saws](#)

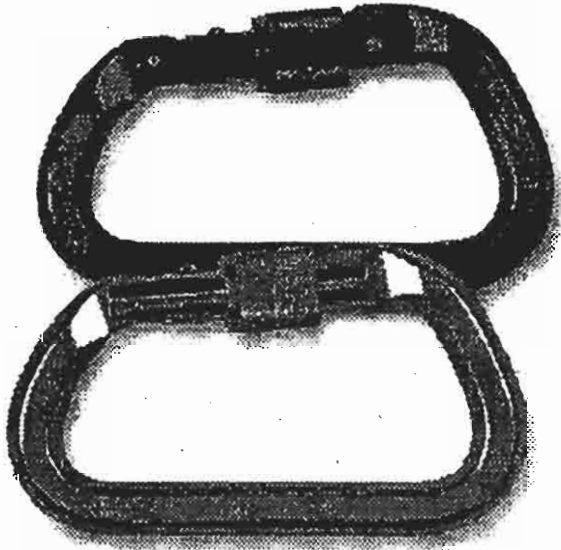
**Optional Feature**

- Cutting depth limiter kit

**Rescue > Carabiners**

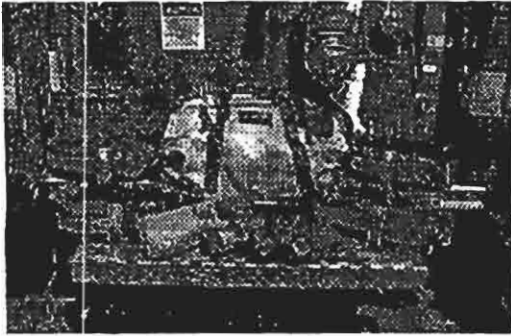
◀ **BROWSE** ▶

**Carabiners**



20 @ 18.95  
379<sup>00</sup>

Identifier	Name	Finish	Price	Qty
AW215	SMC NEPA Locking D Brite Finish	Brite	\$18.95	0
AW216	SMC NEPA Locking Anodized Black	Black	\$18.95	0



**RIT/Fast Team Kit**

Rit/Fast kits are set up for a four-person team. Each member is provided with a self-rescue system and a tag line to the out side. This combination provides the safest combination when rescuing one of our own. Kit contains: (4) FFRED-External Rescue Systems, (1) 200' primary search line with bag, (3) 35' search lines with bags for tag lines, large storage bag and (3) 5' utility straps. Storage bags are made of vinyl coated nylon. Comes with heavy-duty hand and shoulder straps that encircle the entire bag. The hardwood bottom adds durability. These storage bags are large enough for a spare air bottle, buddy breathing system and several small hand tools. Weighs 26 lbs.

Item #	Description	Qty	Price
S0574	RIT/Fast Team Kit	each	\$1,800.00

1800 -  
 379 -  
 1150 -

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4 tra 3329<sup>00</sup>  
 + Saw 300<sup>00</sup>  
 chain.  


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 3629<sup>00</sup>



# Fort Plain True Value Outdoor Power

12 Willett Street  
Fort Plain New York 13339

Phone: 518-993-3834  
Fax: 518-993-3455

Mon. - Fri. 8:00 - 5:00  
Sat. 7:30 - 4:00  
Sun. 9:00 - 1:00

Bill To:

*Estimate*

Date Of Sale 04-09-07

Date Of Delivery \_\_\_\_\_

Name: Collet Inc.

Equipment Information:

Address R New Street

Model# \_\_\_\_\_ Serial# \_\_\_\_\_

St. Johnsville NY 13452

Engine Information:

Tel. No. \_\_\_\_\_

Model# \_\_\_\_\_

Type \_\_\_\_\_ Code/Serial \_\_\_\_\_

**Important-Please Read:** While the manufacturer may warrant the goods sold to the customer, we make no warranties, expressed or implied, including any implied warranties of merchantability or fitness, with respect to such goods.

I also understand that I must read and follow all manufacturers owners manuals, warning labels, warning signs, safety instructions and use the equipment in such a manner that it was intended.

X \_\_\_\_\_ Date: \_\_\_\_\_

Item Number	Description	Unit Price	Total		
MS460 Rescue	Rescue Saw w/kit		\$1,553.95		
36RDR72	Carbide Chain		\$20.00		

Subtotal \$1,563.95  
Tax \_\_\_\_\_  
Trade-In \_\_\_\_\_

Trade-IN	Description	Amount	Total Allowance	Delivery	Total due

**In the Matter of Collect LLC**

Docket No. EPCRA-02-2007-4204

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the Foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced Docket Number, in the following manner to the respective addressees below:

Original and One Copy  
by Interoffice Mail:

Ms. Karen Maples, Regional Hearing Clerk  
Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency -Region 2  
290 Broadway, 16th Floor (1631)  
New York, New York 10007-1866

Copy by Certified Mail,  
Return Receipt Requested:

Scott Smith, President and CEO  
Collect LLC  
12 New Street  
Saint Johnsville, New York 13452

Copy by Mail:

Ms. Suzanne Wither  
Division of Environmental Remediation  
Office of Air and Waste Management  
New York State Department of Environmental Conservation  
625 Broadway - 11<sup>th</sup> Floor  
Albany, New York 12233-7020

Dated: JUL 19 2007



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Mary Ann Kowalski, MS, MPH  
Pesticides and Toxic Substances Branch  
U.S. Environmental Protection Agency - Region 2  
2890 Woodbridge Avenue (MS-105)  
Edison, New Jersey 08837