

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Development  
and Implementation of a Remedial  
Investigation/Feasibility Study and  
Interim Remedial Measure Program  
for an Inactive Hazardous Waste  
Disposal Site Under Article 27, Title 13  
and Article 71, Title 27 of the  
Environmental Conservation Law  
of the State of New York by

ORDER  
ON  
CONSENT

INDEX # W1-0707-94-08

**Genesco Inc.**

Respondent

Site Code # 130073

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WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is issued pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13 and ECL 3-0301.
2. The subject property is located at 150 Fulton Avenue, Garden City Park, Nassau County, New York (hereinafter referred to as the "Site"). A Site Location Map is attached as Appendix "A" to this Order. The Site is owned by Gordon Atlantic Corporation, a New York corporation with offices at One Jericho Turnpike, New Hyde Park, Nassau County, New York.
3. Genesco Inc. ("Respondent ") is a Tennessee corporation which has offices at Genesco Park, 1415 Murfreesboro Road, P.O. Box 731, Nashville, Tennessee 37217.
4. Flagg-Utica Corporation (hereinafter "Flagg") signed a lease (hereinafter the "Site Lease") with Gordon Atlantic Corporation on October 29, 1964 for the Site, the term of which lease ran from January 1, 1965 until December 31, 1974. On January 2, 1965, Respondent became the successor-in-interest to the Site Lease via a merger with Flagg. The occupant of the property from January 1, 1965 until August 26, 1969 was KnitFabs, an unincorporated division of Respondent after the merger with Flagg. During that time, KnitFabs owned a Permac model 120 dry cleaning machine, which machine uses tetrachloroethylene (hereinafter "PCE") as a cleaner. A subsequent investigation by Nassau County Health Department of Health found on-Site soil and groundwater to be contaminated with PCE. Groundwater contamination has also been detected in seventeen (17) public supply wells.

5. The occupant and operator on the Site from August 26, 1969 through December 31, 1974 was Halperin Knitting Mills, Inc., pursuant to an Assignment of Lease dated August 26, 1969. Halperin Knitting Mills, Inc. continued to occupy the Site thereafter. The Site is currently vacant.

6. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, and presents a significant threat to the public health or environment. The Site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Fulton Avenue (Garden City Park Industrial Area) with Site Number 130073. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

7. A. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

8. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement a Remedial Investigation/Feasibility Study ("RI/FS") for the Site; and (ii) reimburse the State's administrative costs pursuant to Paragraph XI. of this Order.

9. Respondent neither admits nor denies liability for any contamination emanating from the Site and enters into this Order solely to avoid further litigation at this time. Nonetheless, Respondent, having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

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

I. Initial Submittal

Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within Respondent's possession or control regarding environmental conditions on-Site and off-Site, and other information described below, unless the Department informs Respondent that such data have previously been provided to the Department. The data and other information shall include:

A. A brief history and description of the Site, including the types, quantities, physical state, location, and dates of disposal of hazardous waste including methods of disposal and spillage of such wastes;

B. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to all persons responsible for such disposal of hazardous wastes, including but not limited to names, addresses, dates of disposal and any proof linking each such person responsible with hazardous wastes identified pursuant to Subparagraph I.A.; and

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and areas in the vicinity of the Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs.

D. With respect to any documents for which a privilege may be claimed, Respondent will disclose such data or documents but need not disclose (a) the privileged mental impressions, conclusions, opinions or legal theories that are Respondent's respective counsel's work product, or (b) Respondent's respective staff's privileged communications to Respondent's respective counsel seeking legal counsel.

II. RI/FS Work Plan Contents and Submittals

A. Within 60 days after the effective date of this Order, Respondent shall submit to the Department a detailed work plan describing the methods and procedures to be implemented in performing an RI/FS for the Site ("RI/FS Work Plan").

B. 1. The RI/FS Work Plan shall include, but not be limited to, the following:

a. A chronological description of the anticipated RI/FS activities together with a schedule for the performance of these activities.

b. A Sampling and Analysis Plan that shall include:

(i) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience.

(ii) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Field Methods Compendium," OSWER Directive 9285.2-11 (draft June 1993), as supplemented by the Department.

c. A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the RI/FS which shall be prepared in accordance with 29 CFR 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.

d. A citizen participation plan that is, at a minimum, consistent with the Department's publication, "New York State Inactive Hazardous Waste Site Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto, and 6 NYCRR Part 375.

2. The RI/FS Work Plan shall incorporate all elements of a RI/FS as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 USC 9601 *et seq.*], as amended, the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents.

### III. Performance and Reporting of Remedial Investigation

A. Respondent shall commence the Remedial Investigation in accordance with the schedule contained in the Department-approved RI/FS Work Plan.

B. Respondent shall perform the Remedial Investigation in accordance with the Department-approved RI/FS Work Plan.

C. During the field work associated with any aspect of the Remedial Investigation, Respondent shall have at the work location a full-time representative who is qualified to supervise the work done.

D. Within the time frame set forth in the Department-approved RI/FS Work Plan, Respondent shall prepare a Remedial Investigation Report that shall:

1. include all data generated and all other information obtained during the Remedial Investigation:
2. provide all of the assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph II.B.2;
3. identify any additional data that must be collected; and
4. include a certification by the individual or firm with primary responsibility for the day to day performance of the Remedial Investigation that all activities that comprised the Remedial Investigation were performed in full accordance with the Department-approved RI/FS Work Plan.

#### IV. Feasibility Study

A. In accordance with the schedule contained in the Department-approved RI/FS Work Plan, Respondent shall submit a complete Feasibility Study evaluating on-Site and off-Site remedial alternatives, including the no-action alternative, to eliminate or mitigate all significant threats to the public health and to the environment presented by hazardous waste disposal at the Site. The Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Feasibility Study was prepared in accordance with this Order.

B. Respondent shall perform and prepare the Feasibility Study in accordance with the Department-approved RI/FS Work Plan and in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph II.B.2.

C. After the Department's approval of the Feasibility Study, Respondent shall cooperate and assist the Department in soliciting public comment on the RI/FS and on the proposed remedial action plan, in accordance with CERCLA, the NCP, the guidance documents identified in Subparagraph II.B.2, and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the

close of the public comment period, the Department shall select a final remedial alternative for the site in a Record of Decision ("ROD"). This Order does not cover the implementation of the ROD.

V. Interim Remedial Measures

A. 1. Respondent may propose one or more IRMs for the Site.

2. In proposing each IRM, Respondent shall submit to the Department a work plan that includes a chronological description of the anticipated IRM activities together with a schedule for performance of those activities (an "IRM Work Plan" for that Site).

3. Upon the Department's determination that the proposal is an appropriate IRM and upon the Department's approval of such work plan, the IRM Work Plan shall be incorporated into and become an enforceable part of this Order; and Respondent shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved IRM Work Plan, detailed documents and specifications prepared, signed, and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan, contingency plan, and (if the Department requires such) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto, and 6 NYCRR Part 375. Respondent shall then carry out such IRM in accordance with the requirements of the approved IRM Work Plan, detailed documents and specifications, and this Order. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, detailed documents, or specifications and shall not modify any obligation unless first approved by the Department.

4. During implementation of all construction activities identified in the Department-approved IRM Work Plan, Respondent shall have at the work location a full-time representative who is qualified to supervise the work done.

5. Within the schedule contained in the Department-approved IRM Work Plan, Respondent shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by that individual that all activities that comprised the Department-approved IRM were completed in accordance with the Department-approved IRM Work Plan and this Order.

a. If the performance of the Department-approved IRM encompassed construction activities, the final engineering report also shall include a detailed post-remedial operation and maintenance plan ("IRM O&M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification by a professional engineer that the IRM was implemented and all construction activities were completed in accordance with the Department-approved detailed documents and specifications for the IRM and all such activities were personally witnessed by him or her or by a person under his or her direct supervision. The IRM O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

b. Upon the Department's approval of the IRM O&M Plan, Respondent shall implement the IRM O&M Plan in accordance with the requirements of the Department-approved IRM O&M Plan.

6. After receipt of the final engineering report and certification, the Department shall notify Respondent in writing whether the Department is satisfied that the IRM was completed in compliance with the Department-approved IRM Work Plan and design.

#### VI. Progress Reports

Respondent shall submit to the parties identified in Subparagraph XIV.B in the numbers specified therein copies of written monthly progress reports that:

A. describe the actions which have been taken toward achieving compliance with this Order during the previous month;

B. include all validated results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent;

C. identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;

D. describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site;

E. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of

Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays;

F. include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and

G. describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

Respondent also shall allow the Department to attend, and shall provide the Department at least seven days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

## VII. Review of Submittals

A. 1. The Department shall review each of the submittals Respondent makes pursuant to this Order 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 generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the submittals discussed in Subparagraph II.B.1.c. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, unless Respondent requests an opportunity to respond to the Department's objections pursuant to the Dispute Resolution Paragraph (Paragraph VIII), *infra*, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.



B. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

#### VIII. Dispute Resolution

A. If the Department disapproves a revised submittal, Respondent shall be in violation of this Order, unless, within 10 days of receipt of the Department's notice of disapproval, Respondent requests to meet with the Director of the Division of Environmental Remediation ("the Director") in order to discuss the Department's objections and Respondent is available to meet immediately thereafter. At this meeting, Respondent shall be given an opportunity to present its responses to the Department's objections, and the Director shall have the authority to modify and/or withdraw such objections. Respondent shall revise the submittal in accordance with the Department's specific comments, as may be modified by the Director and except for those which have been withdrawn by the Director, shall submit a revised submittal. The period of time within which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless the Director revises the time frame during or after the meeting.

B. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval of the revised submittal. If the revised submittal fails to address the Department's specific comments, as modified, and the Department disapproves the revised submittal for this reason, Respondent shall be in violation of this Order and the ECL.

C. The invocation of formal dispute resolution procedures under this Paragraph shall not of itself extend, postpone or affect in any way any of Respondent's obligations under this Order, except that payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute pursuant to this Paragraph. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Order. In the event Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Paragraph IX (Penalties Paragraph).

D. The invocation of the procedures stated in this Paragraph shall constitute an election of remedies by Respondent, and such election of this remedy shall constitute a waiver of any and all other remedies which may otherwise be available to Respondent regarding the issue in dispute. Respondent's statutory rights, including rights granted pursuant to Article 78 of the Civil Practice Law and Rules (CPLR) of New York, are unaffected by the provisions of this Paragraph.

## IX. Penalties

A. 1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

2. Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that Respondent is in violation of the terms of this Order. All penalties begin to accrue on the first day of receipt by Respondent of written notice from the Department that Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation; provided, however, that no penalty shall be assessed in the event that Respondent cures any violation within 15 days of receipt of the notice of violation. Such sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. If such payment is not received within 15 days after Respondent receives such notification from the Department, interest shall be payable at the annual rate of nine per centum on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by certified check or money order, made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable under Subparagraph IX.A.2 pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$ 2,500
16th through 30th day	\$ 5,000
31st day and thereafter	\$ 7,500

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of weather, war, riot, strike, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when they obtain knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to Subparagraph IX.B.

C. The penalty provisions of Subparagraph IX.A.2. shall not apply to the written monthly progress reports required pursuant to Paragraph VI of this Order.

X. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. During Remedial Construction, Respondent shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Order and job meetings. With respect to any record for which a privilege may be claimed, Respondent will disclose such data or documents but need not disclose (a) the privileged mental impressions, conclusions, opinions or legal theories that are Respondent's respective counsel's work product, or (b) Respondent's respective staff's privileged communications to Respondent's respective counsel seeking legal counsel.

XI. Payment of State Costs

A. Within 30 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work related to the Site to the effective date of this Order, as well as for reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order; provided, however, that nothing contained herein shall be construed to require Respondent to pay any costs incurred by or to be incurred by the Department or the State of New York in connection with any remedial activities at any public well. Such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
50 Wolf Road  
Albany, NY 12233-7010.

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports.

B. Reimbursement by Respondent of future State costs which are incurred by the New York State Departments of Environmental Conservation and Health subsequent to the effective date of this Order, as defined in Subparagraph XV.L. of this Order, is capped at Fifty Thousand (\$50,000.00) Dollars per year. The Department may, however, aggregate its billing of these future State costs for more than one year. This cap is inapplicable with regard to future State costs incurred in connection with Interim Remedial Measures (IRMs).

## **XII. Reservation of Rights**

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or Respondent's civil, criminal, or administrative rights or authorities.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

## **XIII. Indemnification**

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless 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 this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns.

## **XIV. Communications**

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

1. Communication from Respondent shall be sent to:

John Swartwout, P.E.  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
Central Office, Room 252  
50 Wolf Road  
Albany, New York 12233-7010

with copies to:

G. Anders Carlson, Ph.D.  
Director, Bureau of Environmental Exposure Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203

Robert Becherer, P.E.  
Regional Remediation Engineer  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
Region 1 Office  
Loop Road, Building 40  
Stony Brook, New York 11790-2356

John F. Byrne, Esq.  
Senior Attorney  
Division of Environmental Enforcement  
New York State Department of Environmental Conservation  
Eastern Field Unit  
200 White Plains Road, 5th. Floor  
Tarrytown, New York 10591-5805

2. Communication to be made from the Department to Respondent shall be sent to:

Roger G. Sisson, Esq.  
Secretary and General Counsel  
Genesco Inc.  
Genesco Park, Suite 490  
1415 Murfreesboro Road  
Nashville, Tennessee 37217

Paul A. Alexis, Esq.  
Boult, Cummings, Conners & Berry PLC  
414 Union Street  
Suite 1600  
P.O. Box 198062  
Nashville, Tennessee 37219

B. Copies of work plans and reports shall be submitted as follows:

Four copies (one unbound) to:

John Swartwout, P.E.  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
Central Office, Room 252  
50 Wolf Road  
Albany, New York 12233-7010

Two copies to:

G. Anders Carlson, Ph.D.  
Director, Bureau of Environmental Exposure Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203

One copy to:

Robert Becherer, P.E.  
Regional Remediation Engineer  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
Region 1 Office  
SUNY Campus  
Loop Road, Building 40  
Stony Brook, New York 11790-2356

One copy to:

John F. Byrne, Esq.  
Senior Attorney  
New York State Department of Environmental Conservation  
Division of Environmental Enforcement  
Eastern Field Unit  
200 White Plains Road, 5th. Floor  
Tarrytown, New York 10591-5805

C. 1. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to Director, Division of Environmental Remediation, New York State Department of Environmental Conservation, Central Office, 50 Wolf Road, Albany, New York 12233-7010, a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

2. Within 30 days after the Department's approval of the RI/FS, Respondent shall submit one microfilm copy of the RI/FS to Director, Division of Environmental Remediation.

D. The Department and Respondent reserve the right to designate additional or different addressees for communication or written notice to the other.

#### XV. Miscellaneous

A. 1. All activities and submittals required by this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous wastes at the Site.

2. All activities Respondent is required to undertake under this Order are ordinary and necessary expenses for the continued operation of Respondent.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within 10 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. 1. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the validated results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

2. Respondent, at its sole cost and expense, shall have the right to split samples, duplicate samples, or both, of all substances and materials sampled by the Department. The Department shall make available to the Respondent the results of all sampling and/or tests or other data generated by the Department with respect to implementation of this Order.

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

E. Respondent shall use best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order. For purposes of this Subparagraph, "best efforts" includes the payment of reasonable sums of money in consideration. If any access required to perform this Order is not obtained despite best efforts within 45 days of approval by the Department of the RI/FS Work Plan, or within 45 days of the date the Department notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. The Department may, as it deems appropriate, assist Respondent in obtaining access. Respondent shall reimburse the Department, in accordance with the procedures in Paragraph XI. (Payment of State Costs), for all costs incurred by the Department in obtaining access, including, but not limited to, attorneys fees.

F. Respondent, its successors and assigns shall be bound by this Order and shall cause its officers, directors, agents, servants, employees, successors and assigns to comply with the relevant portions hereof in performance of their designated duties. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this



Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

I. All references to "days" in this Order are to calendar days unless otherwise specified.

J. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

K. 1. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

2. If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to:

John F. Byrne, Esq.  
Senior Attorney  
Division of Environmental Enforcement  
New York State Department of Environmental Conservation  
Eastern Field Unit  
200 White Plains Road  
5th. Floor  
Tarrytown, New York 10591-5805

and

Hayden Brewster, P.E.  
Project Manager  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
Central Office, Room 252  
50 Wolf Road  
Albany, New York 12233-7010


However, nothing in this Order shall be deemed to prohibit the Project Manager from authorizing Respondent to make minor modifications to the work called for by the Work Plan (including, but not limited to changes in sample locations and well specifications), without Respondent's first having received permission to do so from the Commissioner under this Subparagraph XV.K.2. Further, nothing in this Order shall be deemed to prohibit Respondent from taking any actions in addition to those set forth in the Work Plan upon submission to, and receiving approval from, the Department of an amendment to the Work Plan for the additional work.

L. The effective date of this Order is the date the Commissioner or his designee signs it.

DATED: 9/18/97

JOHN P. CAHILL  
Commissioner  
New York State Department  
of Environmental Conservation

By:

  
Michael J. O'Toole, Jr.

CONSENT BY RESPONDENT

Genesco Inc.

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: R. G. Sisson  
Roger G. Sisson

Title: \_\_\_\_\_  
Secretary and General Counsel

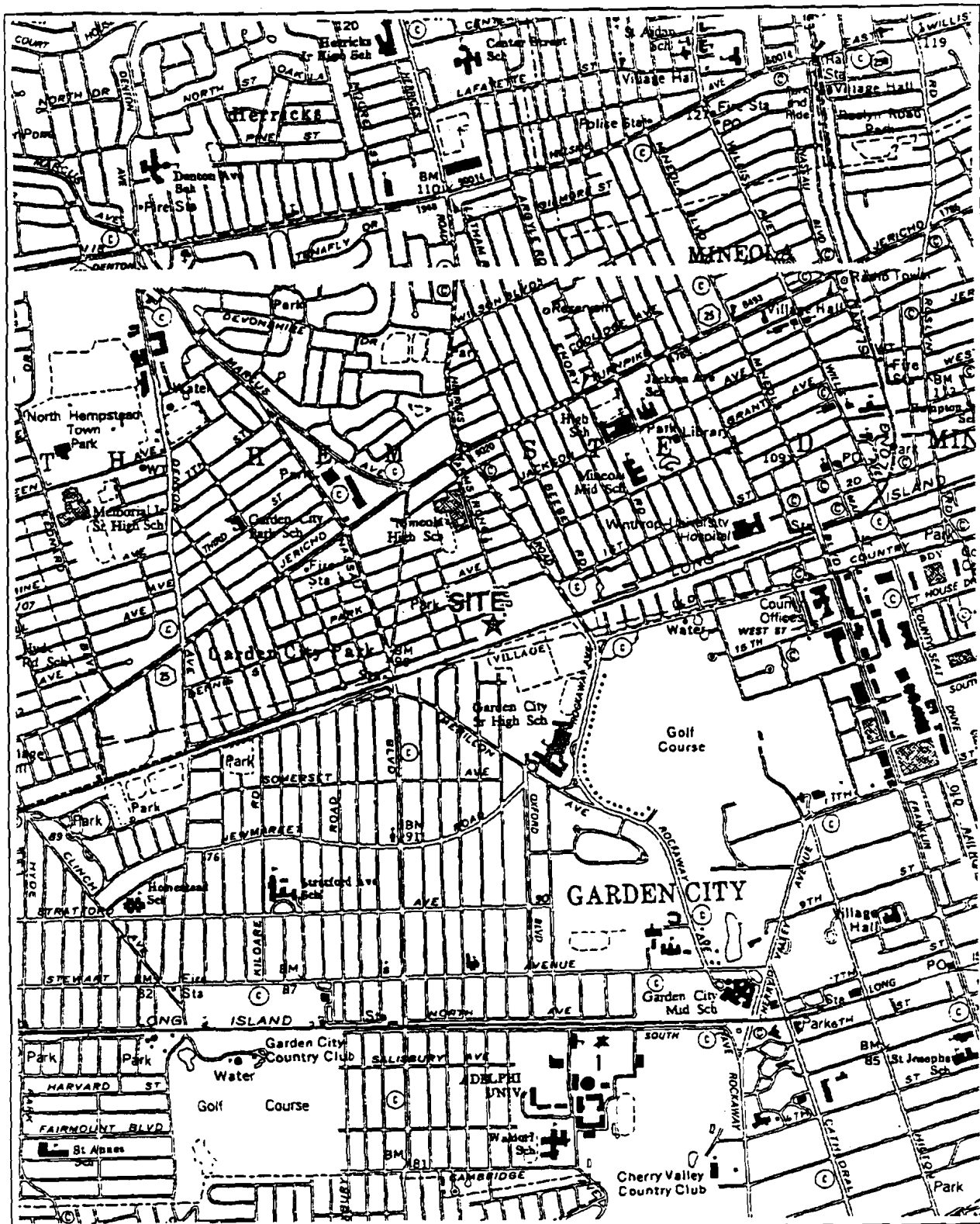
Date: 8/25/97

STATE OF \_\_\_\_\_ )  
 ) s.s.:  
COUNTY OF \_\_\_\_\_ )

On this 25<sup>th</sup> day of August, 1997, before me personally came Roger G. Sisson, to me known, who being duly sworn, did depose and say that he resides in Davidson County; that he is the Secretary and General Counsel of Genesco Inc., the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Carol S. Pratt  
Notary Public

**APPENDIX A.**



## Site Location Map

130073 Fulton Avenue (Garden City Park Indust.)

NYSDOT Planimetric Quadrangle(s):  
SEA CLIFF, LYNBROOK



0 500 1000 1500 2000



FEET

Scale 1:24,000