

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial 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 # B9-0314-90-01

Osmose, Inc.
Respondent.

Site Code #915143

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. Respondent, Osmose, Inc., a corporation organized and existing under the laws of the State of New York, is doing business in the State of New York in that Respondent owns and has operated a facility at 980 Ellicott Street, in the City of Buffalo, County of Erie, State of New York from approximately 1951 to the present (the "Site"). A map of the Site, attached to this Order as Appendix A, is incorporated as an enforceable part of this Order.
3. The Department has determined that 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 Site Number 915143. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

4. 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. *See, e.g.*, ECL 3-0301.1.i.

5. Respondent's operations at the Site allegedly resulted in contamination of the environment by creosote and other hazardous substances and/or hazardous wastes. As used in this Order, the term hazardous waste shall be defined as indicated in ECL Section 27-1301. Respondent, through its consultant, has conducted a Remedial Investigation/Feasibility Study ("RIFS") to determine the areal and vertical extent of creosote and other contamination in the area of the Site. The Respondent also performed various Interim Remedial Measures ("IRM") including removal of contaminated soils from the Site.

6. The Department alleges that Respondent is the person responsible for the Site and the contamination within the meaning of ECL Section 27-1313(3)(a).
7. Following a period of public comment, the Department selected a final remedial alternative for the Site in a Record of Decision ("ROD"). The ROD, attached to this Order as Appendix "B," is incorporated as an enforceable part of this Order.
8. Respondent has developed and submitted to the Department a Remedial Design ("RD"). The goal of RD the is to remediate the Site consistent with the ROD. The RD has been approved by the Department and is attached to and incorporated as an enforceable part of this Order as Appendix "C".
9. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement, in accordance with the ROD, an inactive hazardous waste disposal site remedial program ("Remedial Program") for the Site that shall include design and implementation, and operation, maintenance and monitoring of the selected remedial alternative; and (ii) reimburse the State's administrative costs.
10. Respondent, having waived Respondent's 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. Nothing contained in this Order shall be construed as or constitute as admission as to liability or as to any finding of fact or conclusion of law by Respondent in any action or proceeding other than an action or proceeding brought solely to enforce this Order.

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

THAT:

I. Remedial Construction

A. Within such period of time as provided in the Remedial Design Respondent shall commence construction of the Department-approved Remedial Design.

B. Respondent shall implement the Remedial Design in accordance with the Department-approved Remedial Design.

C. During implementation of all field construction activities identified in the Remedial Design, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within 90 days after completion of the construction activities identified in the Department-approved Remedial Design, Respondent shall submit to the Department a detailed post-remedial operation and maintenance plan ("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 that the Remedial Design was implemented and that all construction activities were completed in accordance with the Department-approved Remedial Design and were personally witnessed by him or her or by a person under his or her direct supervision. The O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, under the direction of, signed, and sealed by a professional engineer.

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

F. After receipt of the "as-built" drawings, final engineering report, and certification, the Department shall notify Respondent in writing whether the Department is

satisfied that all construction activities have been completed in compliance with the Department-approved Remedial Design.

G. If the Department concludes that any element of the Department-approved Remedial Program fails to achieve its objectives as set forth in the ROD or otherwise fails to protect human health or the environment, Respondent shall take whatever action the Department determines necessary to achieve those objectives or to ensure that the Remedial Program otherwise protects human health and the environment. Should the Department require Respondent to take any such action, Respondent shall be in violation of this Order and the ECL if it fails to take such action unless, within 15 days of receipt of the Department's request or determination, Respondent invokes the dispute resolution proceedings pursuant to Paragraph X of this Order.

II. Progress Reports

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

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

B. include all results of sampling and tests and all other data related to the Site received or generated by Respondent or Respondent's contractors or agents in the previous reporting period, 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 reporting period;

D. describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next reporting period 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 reporting period and those to be undertaken in the next reporting period. Respondent shall submit these progress reports to the Department by the tenth day after the end of each reporting period 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.

III. 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 health and

safety plan. 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 it shall notify Respondent in writing as to the reasons for its disapproval. Respondent shall be in violation of this Order and upon any disapproval of the revised submittal unless Respondent, within 20 days of the receipt of the Department's disapproval of the revised submittal, invokes the dispute resolution proceedings pursuant to Paragraph X of this Order. 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 in order to achieve the objectives of the Remedial Program as set forth in the ROD. Should the Department require Respondent to take such action, Respondent shall be in violation of this Order and the ECL if it fails to take such action unless, within 15 days of receipt of the Department's directions, Respondent invokes the dispute

resolution proceedings pursuant to Paragraph X of this Order.

IV. Penalties

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

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 war, riot, or any condition or event entirely beyond the control of Respondent and which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains 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 IV.B.

V. 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 related to the Remedial Program and to ensure Respondent's compliance with this Order. Any such person shall check in with the Site's Health and Safety Officer or facility manager, if present, and shall comply with the terms of any approved Health and Safety Plan related to the Work Plan. 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.

VI. Payment of State Costs

After the date of the Department's acceptance of the engineer's certification pursuant to Subparagraph I.F and within 30 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money not to exceed \$50,000, which shall represent complete 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 prior to and after 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. 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.

VII. Department Reservation of Rights

A. Except as otherwise provided in this Order nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's civil, criminal, or administrative rights (including, but not limited to, nor exemplified by, the right to recover natural resource damages) 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.

C. Nothing contained in this Order shall be construed to allow the consideration or resolution of any dispute regarding the ROD or any of its provisions.

D. Except as otherwise provided in this Order, Respondent reserves any and all rights, defenses, claims, demands, and causes of actions which it has with respect to any matter concerning the Site. This Order is without prejudice to any and all claims Respondent has or may have against other persons or entities, except the Department, the State of New York, their representatives, employees or agents, for contribution or indemnity for any or all of the amounts of money Respondent has spent with respect to the Site or for any other claims as related to the Site.

VIII. 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. Respondent shall not be required to indemnify and hold the Department, the State of New York, their representatives, employees or agents harmless for claims, suits, actions, damages and costs arising out of or resulting from any grossly negligent, unlawful, willful or malicious acts or omissions of the Department, the State of New York or their representatives and employees.

IX. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file an amendment to the Declaration of Covenants and Restrictions currently on file with the Clerk of the County wherein the Site is located to give all parties who may acquire any interest in the Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

X. Dispute Resolution

A. The Department and Respondent shall attempt to resolve expeditiously and informally any disagreements concerning implementation of this Order.

B. 1. If a dispute arises as provided in Paragraphs I.G or III of this Order Respondent shall be in violation of this Order unless within the time period provided Respondent serves on the Department a request for an appointment of an Administrative Law

Judge ("ALJ"), and a written statement of the issues in dispute with copies to the parties indicated in Subparagraph XI.A.1, containing the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which Respondent relies (hereinafter called "Respondent's Statement of Position"). The Department may send a similar statement of position to Respondent within ten business days of receipt of Respondent's Statement of Position ("Department's Statement of Position"). Respondent shall be given an opportunity to meet with the appointed ALJ and the Department to present its responses to the Department's objections.

2. The Department shall maintain an administrative record of any dispute under this Paragraph. The record shall include the Statement of Position of each party served pursuant to the preceding Subparagraph, and any relevant information. The record shall be available for review of all parties and the public.

3. Upon review of the administrative record as developed pursuant to this Paragraph, the ALJ shall issue a final decision and order resolving the dispute. Respondent shall revise the submittal or undertake the work determined necessary by the Department in accordance with the Department's specific comments, as may be modified by the ALJ and except for those which have been withdrawn by the ALJ, and shall submit a revised submittal. The period of time within which the submittal must be revised as specified by the Department shall control unless the ALJ revises the time frame in the ALJ's final decision and order. After receipt of the conformed revised submittal, the Department shall notify Respondent in writing of its approval or disapproval of the conformed revised submittal. The Department

shall make a reasonable effort to provide the written notification to Respondent within 45 days of submittal to the Department. If the Department disapproves the conformed revised submittal, the Department's notification will state the reasons for the Department's disapproval and Respondent shall be in violation of this Order and the ECL unless within twenty (20) days of receipt of such disapproval, Respondent exercises its rights pursuant to Article 78 of the Civil Practice and Rules ("CPLR") of New York.

4. The invocation of formal dispute resolution procedures under this Paragraph shall not of itself extend, postpone or affect in any way Respondent's obligations under this Order that are not the subject of the dispute resolution procedures set forth in this Paragraph.

XI. 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:

Martin Doster, PE
Division of Environmental Remediation
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203

with copies to:

Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

Mr. Gerald Mikol
Regional Director
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203

Joseph P. Ryan, Esq.
Environmental Enforcement
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203

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

Mr. Michael Rider
Osmose, Inc.
980 Ellicott Street
Buffalo, New York 14209

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

Four copies (one unbound) to Division of Environmental Remediation.

Martin Doster, PE
Division of Environmental Remediation
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203

Two copies to the Director, Bureau of Environmental Exposure Investigation.

Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

One copy to assigned Field Unit Case Attorney.

Joseph P. Ryan, Esq.
Environmental Enforcement
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203

C. Within 30 days of the Department's approval of any report submitted pursuant to this Order, except for progress reports Respondent shall submit to Director, Division of Environmental Remediation, a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

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

XII. Release

If, after review, the Department accepts and approves the engineer's certification that construction of the Remedial Program was completed in accordance with the approved Remedial Design and pursuant to Subparagraph I.E. that the Department is satisfied that all O&M Plan activities have been completed in compliance with the Department approved O&M Plan, then, unless a supplementary remedial program is required pursuant to Subparagraph I.G. or determined to be necessary by the Department pursuant to Subparagraph III.B., and except for the future Operation and Maintenance of the Site, reimbursement of Department expenditures at the Site under Paragraph VI, indemnification under Paragraph VIII, and any Natural Resource Damage claims that may arise, such acceptance shall constitute a release and discharge from each and every claim, demand, remedy or action whatsoever and covenant not to file or institute suit, charge, proceeding or action at law or in equity against Respondent, its directors, officers, employees, agents, successors and assigns, which the Department has or may have pursuant to Article 27, Title 13 of the ECL relative to or arising from the release of or disposal of hazardous wastes at or from the Site; provided, however, that the Department specifically reserves all of its

rights concerning, and any such release and satisfaction shall not extend to, any investigation or remediation the Department deems necessary due to:

1. environmental conditions on-Site or off-Site which are related to the disposal of hazardous wastes at the Site and were unknown to the Department as of the effective date of this Order; or

2. information received, in whole or in part, after the effective date of the Order, and such unknown environmental conditions or information indicates that the Remedial Program is not protective of human health or the environment. The Department shall notify the Respondent of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of human health and the environment.

This release shall inure only to the benefit of the Respondent, its directors, officers, employees, agents, successors and assigns.

Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its directors, officers, employees, agents, successors and assigns.

XIII. Contribution Protection

The Department and Respondent agree that Respondent is entitled to protection from contribution actions to the fullest extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), and/or other applicable federal or state law, for "matters addressed" in this Order. "Matters addressed" in this Order shall mean all response actions and costs incurred by any person or party, in connection with the Site and reimbursement of the State's costs that are

subject of this Order.

XIV. Miscellaneous

A. 1. All activities and submittals required by this Order shall address in a manner consistent with the ROD and this Order, 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 15 days prior to when Respondent must commence work which would involve such contractors. 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. For purposes of this Subparagraph, the Department hereby approves IT Corporation and its wholly owned subsidiary, GT Engineering, P.C.

C. 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 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. The Department shall provide Respondent with an opportunity to obtain samples of all substances and materials sampled by the Department, and provide the results of all sampling and/or tests generated by the Department.

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 obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order.

F. Respondent and Respondent's successors, and assigns shall be bound by this Order. 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. From the effective date of this Order, and as long as the Respondent is in compliance with the Remedial Program and this Order, the Department will not bring any action or proceeding against Respondent to require it to undertake remedial activities that are the subject of this Order in a manner inconsistent with or duplicative of the Remedial Program.

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

K. 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.

L. 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

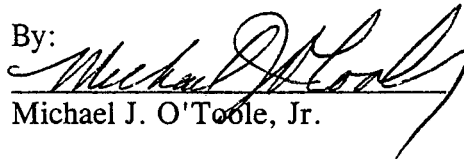
setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Joseph P. Ryan, Esq. and to Martin Doster, P.E. If Respondent desires that any provision of Appendix C to this Order be changed, Respondent shall make timely written application to Martin Doster, P.E.

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

DATED: *March 30, 1999*

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

By:


Michael J. O'Toole, Jr.

CONSENT BY RESPONDENT

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.

OSMOSE, INC.

James R. Spengler, Jr.

By: James R. Spengler, Jr.
(TYPE NAME OF SIGNER)

Title: President

Date: February 26, 1999

STATE OF NEW YORK)
) s.s.:
COUNTY OF ERIE)

On this 26 day of February, 1999, before me personally came James R. Spengler Jr., to me known, who being duly sworn, did depose and say that he resides in Buffalo NY; that he is the President of Osmose, 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.

Jean Krauss
Notary Public

JEAN KRAUSS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 5/1/2000