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A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

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*3/17/95  
GW Bureau to be  
sending out another  
1-203 (WACC) letter  
responding to this letter.*

March 10, 1995

HAND-DELIVERED

Ms. Marcy Leavitt, Chief Groundwater Protection  
& Remediation Bureau  
New Mexico Environment Department  
Harold Runnels Building  
1190 St. Francis Drive  
Post Office Box 26110  
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Re: Characterization of Contamination at Sparton Technology, Inc.  
("Sparton") Coors Road Facility - Albuquerque

Dear Ms. Leavitt:

This letter responds to your letter dated January 6, 1995, addressed to Mr. Jan Appel. We are providing you with updated information concerning the regulatory activities of Sparton and the United States Environmental Protection Agency ("EPA") related to off-site contamination and plume definition. We first respond to the comments made in your letter and then to each of the specific requests made in your letter.

With respect to your assertions that the plume has not been adequately identified and that the plume has been shown to have expanded due to more recent sampling, we call your attention to the enclosed excerpt from the revision to the Effectiveness Report on the ground water recovery well system submitted to EPA and NMED on February 28, 1995. That report indicates that since the RCRA Facility Investigation ("RFI") was completed there has been a small increase in the TCE total plume areal coverage to the northwest along Irving Boulevard, of approximately 10% for all three flow zones. However, over the same time period, (1991 to 1994) the TCE mass has decreased approximately 30% and the average TCE concentration in the plume has decreased almost 40%. Since the initial RFI sampling was done in 1988-1990, the plume total areal extent has increased approximately 8%, whereas the TCE mass has decreased by 54% and the average TCE concentration has decreased by 58%. These figures are subject to a variation of plus or minus 10% due to the contouring approximations and the limitation in looking at three discrete

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horizontal layers in the ground water system. The mass reduction discussed above indicates that the existing recovery well system is mitigating further migration of contaminants off-site in the upper flow zone.

Your letter asserts that full characterization of the plume has not been accomplished. However, approval by EPA of the RFI Report in July, 1992 indicates that the plume has been characterized, because contamination characterization is the most essential work element of the RFI. Exhibit I to the Administrative Order on Consent between EPA and Sparton dated October 1, 1988 ("Consent Order") is the Corrective Action Plan required by that Order. The RFI is an element of the Corrective Action Plan. Task III of the work plan for the RFI requires plume delineation source characterization and contamination characterization. On July, 1992, EPA approved Sparton's RFI report. Therefore, EPA has accepted the plume delineation as required to be determined under the Consent Order

You cite as authority for the requests made in your letter Section 1-203A.5 of the New Mexico Water Quality Control Commission Regulations. Section 1-203 is inapplicable to the situation at Sparton's Coors Road facility. That section provides procedures to be applied immediately after a discharge occurs or is discovered. The section requires notification of NMED within 24 hours and provides specific time frames thereafter within which corrective action must be initiated. Section 1-203 does not apply to a discharge which occurred many years ago and for which corrective action has been ongoing.

Even if Section 1-203 could be held to apply to this situation, we believe that Sparton is in compliance with Section 1-203A.5, the specific sub-section cited in your letter, because Sparton is taking corrective action "necessary or appropriate to contain and remove or mitigate the damage caused by the discharge", as required by that regulation. We refer you to Section VI of the RFI report and Section III.D. of the draft Corrective Measures Study ("CMS") report currently under review by EPA which conclude that there is no current realistic risk of exposure pathways or potential receptors of the contamination that has occurred.

Moreover, Sparton's efforts and those of the regulatory agencies having authority over this matter have been extensive and ongoing for over a decade. As you know, groundwater monitoring has been conducted at Sparton's Coors Road facility since 1983 and an investigation of the nature and extent of contamination has continued since that time. Sparton's efforts include working closely with NMED and its predecessor, the New Mexico Environmental Improvement Division. Yet the Bureau has not sought to be involved in these extensive and ongoing activities until now. In addition, Sparton has entered into and begun implementation of the Consent Order with EPA after extensive negotiations. Under the provisions of that order, Sparton completed the installation and start up of groundwater recover well system to accomplish removal of contaminants. Sparton has also completed the RFI and conducted a Corrective Measures Study which is currently under review by EPA. In addition, Sparton has filed a preliminary post-closure care permit application with the Hazardous and Radioactive Materials Bureau of NMED.

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Since 1983, the results of the ongoing investigation and corrective action and other regulatory activities conducted by Sparton have been published in a number of reports copies of which have been previously produced to both NMED and EPA. A list of those reports is included in figure 3 of the RFI. Sparton has engaged in substantial regulatory activity pursuant to the Consent Order to address the regulatory matters required to be addressed under the applicable law. Thus, the history and current status of this matter establishes that Sparton would be in compliance with Section 1-203A.5 were that section applicable.

In addition to our legal analysis of the regulation cited in your January 6, 1995 letter, we have conducted a legal analysis of the regulatory framework of this matter. Section 74-6-12B of the New Mexico Water Quality Act states that the Act does not apply to "any activity or condition subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act... except to abate water pollution..." Because the principal focus of the regulatory actions of EPA and the NMED Hazardous Waste Bureau are to abate water pollution, action by the Groundwater Protection and Remediation Bureau are unnecessary; therefore, the New Mexico Water Quality Control Act and the regulations adopted under that Act do not apply. Further, because EPA has entered the Consent Order, which specifies the actions to be taken by Sparton over a period of time in order to comply with RCRA, any state action inconsistent with the EPA action would be pre-empted by action taken pursuant to the Consent Order.

Given the circumstances described above, the Groundwater Protection and Remediation Bureau ("Bureau") must allow the regulatory process to take its course. We nonetheless address each of your specific requests below to provide the Bureau with assurance that the existing regulatory process is sufficient to abate the groundwater pollution that has occurred.

(1) Modify the quarterly sampling program to include selected off-site monitor wells.

Sparton has conducted off-site monitoring in coordination with EPA in the recent past (fall 1993 and fall 1994). In the most recent instance, by letter dated October 17, 1994 addressed to Mr. Ronald A. Kern of the Hazardous and Radioactive Materials Bureau of NMED, Sparton notified NMED of the intended groundwater sampling of off-site wells. The specific wells identified for testing are listed in that letter. That letter and charts comparing 1993 and 1994 split sampling results are enclosed for your information. Sparton believes that the results of this post-RFI sampling confirm the delineation of the plume and establish that its existing off-site monitoring is sufficient.

(2) Install 2-3 monitor wells in the third (deep) flow zone as this zone is effectively unmonitored.

For your information, monitor well number 49 is located in the third flow zone and Sparton does not believe additional monitor wells are necessary to identify the down gradient extent of the

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plume. Results of all monitoring and analysis to date indicate very low probability of significant contamination in the third flow zone. Sparton has installed over sixty wells at this site to define subsurface conditions and regulatory decisions were made to concentrate wells in the upper flow zone. In fall of 1993 a total of 42 wells were sampled 22 of which were off-site.

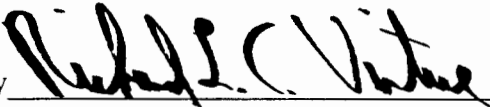
(3) Install additional upper flow zone monitor wells to identify the down gradient extent of the plume.

Over 20 wells in the upper flow zone were monitored as recently as fall 1993 (14 off-site). Sparton has installed four monitor wells in the upper flow zone which are down gradient from the plume; these are wells 50, 52, 57 and 62. These wells have been monitored since the RFI was approved. Sparton also has five wells within the "leading edge" of the plume. Sparton believes its existing monitor wells are sufficient to identify the down gradient extent of the plume. Copies of flow zone maps showing all well locations are enclosed for your information.

If the Bureau desires further information, Sparton representatives are available to meet with you at your request.

Very truly yours,

TAICHERT, WIGGINS, VIRTUE & NAJJAR

By 

Richard L. C. Virtue  
Santa Fe Office

RLCV:mm  
rlv leavitt3.ltr

cc: Jan Appel, Esq.  
Mr. Pierce C. Chandler  
Mr. Gary Richardson