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February 8, 1996

BY TELEFAX

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Region VI (6EN-HX)
Hazardous Waste Enforcement Branch
1445 Ross Avenue - Suite 1200
Dallas, Texas 75202-2733

Re: RCRA Corrective Action: Sparton Technology Facility

Dear Mr. Malott:

Enclosed is the Statement of the New Mexico Office of the Attorney General, commenting on the EPA Statement of Basis for RCRA corrective action at the Sparton Technology, Inc. Coors Road facility. Please include our Statement in the record for this matter. Thank you.

Sincerely,

Tom Udall
Attorney General

By: Charles de Saillan
Assistant Attorney General
Environmental Enforcement Division

Enclosure

cc: Dr. William M. Turner, ONRT
Steve Cary, ONRT
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Richard Brusuelas, Bernalillo County
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**STATEMENT OF THE NEW MEXICO OFFICE OF THE ATTORNEY GENERAL**
**Regarding**
**EPA Statement of Basis for RCRA Corrective Action**
**Sparton Technology, Inc. Coors Road Facility**

**Charles de Saillan**
**Assistant Attorney General**

**February 8, 1996**

The New Mexico Office of the Attorney General submits for the record the following statement, commenting on EPA's Statement of Basis for corrective action under section 3008(h) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(h), at the Sparton Technology, Inc. ("Sparton") facility located at 9621 Coors Road in Albuquerque, New Mexico. We appreciate the opportunity to submit these comments.

As the record in this matter confirms, the Sparton facility is the source of a large plume of groundwater contamination, comprised primarily of trichloroethylene ("TCE"). In addition to TCE, the plume contains other hazardous wastes and hazardous constituents, including 1,1,1-trichloroethane, methylene chloride, 1,1-dichloroethylene, tetrachloroethylene, benzene, toluene, and chromium. A concentrated source of TCE contamination lies beneath the Sparton facility property; TCE levels exceeding 17,000 micrograms per liter ($\mu$g/L) have been found in on-site groundwater monitering wells.[1] To date, the TCE plume has migrated off-site at least one-half mile west-northwest of the facility, and extends at least 60 feet below the water table. The extent of the plume is not well-defined, however, and it could be considerably larger. TCE concentrations have been detected in off-site monitoring wells at levels exceeding 2,000 $\mu$g/L.[2] The maximum contaminant level ("MCL") set by EPA under the Safe Drinking Water Act is 5 $\mu$g/L.[3] Although no drinking water wells are currently located within the contaminant plume, the groundwater aquifer underlying the Sparton facility is a current and potential source of drinking water. The City has plans to utilize the groundwater in the area as a much-needed source of drinking water for Albuquerque homes and businesses.

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[1] City of Albuquerque Public Works Dep't, *Review of Ground-Water Contamination at Sparton Technology Inc.'s Coors Road Facility* at 1 (Jan. 1996) (prepared by $CH_2M$ Hill).

[2] *Id.*

[3] 40 C.F.R. § 141.61(a) (stated as 0.005 milligrams per liter).

EPA has classified the aquifer as a Class IIA aquifer.[4]

Given these facts, we support the positions taken by the New Mexico Environment Department, the Office of the Natural Resources Trustee, the City of Albuquerque, and Bernalillo County in demanding prompt, active cleanup of the groundwater contamination beneath and emanating from the Sparton facility. Such cleanup is most consistent with the RCRA statute and EPA's regulatory guidance.

Section 3008(h) of RCRA provides for corrective action at "interim status" hazardous waste facilities -- that is, facilities in existence in 1980 that have not received a RCRA permit. It applies where "there is or has been a release of hazardous waste into the environment." EPA interprets this language to include a release of hazardous constituents into the environment.[5] In these circumstances, EPA may issue an order "requiring corrective action or such other response measures as [EPA] deems *necessary to protect human health or the environment*" (emphasis added).

Although RCRA does not define the term "environment," its legislative history is clear that Congress intended the term to include groundwater.[6] When it enacted section 3008(h), Congress expressed a concern that, without the new provision, "no ground-water cleanup will occur" at many facilities.[7] EPA has also interpreted the term "environment," and the corrective action provisions, to apply to groundwater.[8]

TCE is a hazardous constituent, as is each of the other contaminants detected at significant levels in the Sparton plume.[9] These contaminants have migrated into soil and

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[4] See EPA, *Ground-Water Protection Strategy* (Aug. 1984).

[5] Memorandum from J. Winston Porter, EPA Assistant Administrator for Solid Waste and Emergency Response, and Courtney M. Price, EPA Assistant Administrator for Enforcement and Compliance Monitoring, regarding Interpretation of Section 3008(h) of the Solid Waste Disposal Act, at 6 (Jan. 10, 1986) (hereinafter, "Porter-Price Memorandum"); *United States v. Clow Water Sys.*, 701 F. Supp. 1345, 1355 (S.D. Ohio 1988); *United States v. Indiana Woodtreating Corp.*, 686 F. Supp. 218, 223 (S.D. Ind. 1988).

[6] CONF. REP. No. 1133, 98th Cong., 2d Sess. at 110-112 (1984).

[7] *Id.* at 111.

[8] Porter-Price Memorandum at 5.

[9] 40 C.F.R. Part 261, App. VIII (List of Hazardous Constituents) (1,1,1-trichloroethane is listed in Appendix VIII by its synonym, methyl chloroform).

groundwater from hazardous wastes disposed of at the Sparton facility, including spent halogenated solvents (F001 and F002), spent non-halogenated solvents (F003 and F005), wastewater treatment sludge from electroplating operations (F006),[10] and discarded commercial chemical products (U226 and U228).[11]

EPA uses the proposed "Subpart S" corrective action rule as guidance for implementation of the corrective action program at both permitted facilities and "interim status" facilities such as Sparton,[12] although Subpart S is not promulgated as final regulations. Subpart S states that EPA's goal in corrective action is "to clean up contaminated media to a level consistent with reasonably expected, as well as current, uses."[13] The proposed rule generally provides that corrective action is to be performed where the release of a hazardous waste or hazardous constituent exceeds an "action level," such as an MCL.[14] For contaminated groundwater that is a current or potential source of drinking water, the corrective action remedy must attain health-based media cleanup standards, taking into consideration MCL's.[15] The only exception to this requirement is if it is determined to be technically impracticable to remediate the release.[16] Subpart S also requires that corrective action remedies must "control the source(s) of releases."[17]

Thus, to summarize, it is clear that the Sparton facility is the source of a release of TCE, as well as several other contaminants, each of which is a hazardous waste and a hazardous constituent. These contaminants have migrated into groundwater, which is part of the environment. Levels of TCE in the off-site plume exceed -- by more than 400 times -- the action level of 5 $\mu$g/L (the MCL). The affected groundwater is a current and potential source of drinking water. Neither of the State agencies, nor the City, nor the County, believes that it would be

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[10] 40 C.F.R. § 261.31.

[11] 40 C.F.R. § 261.33(f).

[12] EPA Proposed Rule, 55 Fed. Reg. 30798 (July 27, 1990) ("Today's proposal . . . will provide guidelines for corrective action orders imposed through administrative orders under section 3008(h) of RCRA").

[13] *Id.* at 30804.

[14] *Id.* at 30875-76 (proposed 40 C.F.R. §§ 264.520 and 264.521).

[15] *Id.* at 30878 (proposed 40 C.F.R. § 264.524(d)(1)(iv)).

[16] *Id.* (proposed 40 C.F.R. § 264.525(d)(2)(iii)).

[17] *Id.* at 30877 (proposed 40 C.F.R. § 264.525(a)(3)).

technically impracticable to remediate this release. Consequently, the contaminated groundwater must be remediated to health-based standards. In addition, the on-site source of contamination must be controlled.

Only the more aggressive alternatives listed in EPA's Statement of Basis -- Alternatives 3 through 7 -- seem to be fully consistent with EPA's guidance. These alternatives would provide for actual cleanup of the off-site plume to the appropriate health-based standards, as Subpart S requires. Although we assume that EPA intends in Alternatives 3 through 7 to address the on-site source of contamination at the Sparton facility property, we nevertheless have some concern that these alternatives do not expressly provide for adequate control of the on-site source of contamination. Alternative 3 provides only for the installation of additional "off-site" groundwater extraction wells, and this limitation is incorporporated in Alternatives 4 through 7. The existing on-site extraction wells are considered inadequate, however, and need to be supplemented to control adequately the on-site source of contamination. It is not clear, moreover, whether the soil vapor extraction, air sparging, soil flushing, or bioremediation elements of Alternatives 4 through 7 would be applied to the on-site source of contamination, or merely to the off-site plume. We urge EPA more fully to define the source control features of these alternatives.

Alternatives 1 and 2, on the other hand, very clearly are *not* consistent with EPA's guidance. Alternatives 1 and 2 do not adequately control the on-site source of contamination at the Sparton facility. Nor do Alternatives 1 and 2 provide for remediation of the off-site plume to health-based standards. Alternatives 1 and 2 fail to achieve EPA's stated goal of cleaning up contaminated groundwater to a level consistent with current and reasonably expected uses of that groundwater. Alternatives 1 and 2 fail, moreover, to achieve protection of human health and the environment as required by RCRA.

For the foregoing reasons, the New Mexico Office of the Attorney General recommends that EPA select one of the alternatives described as Alternatives 3 through 7, or some combination thereof, for corrective action at the Sparton facility. We further recommend that such corrective action adequately control the on-site source of contamination.