



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

March 20, 1996

VIA FACSIMILE AT (505) 892-5515 AND
CERTIFIED MAIL-RETURN RECEIPT REQUESTED Z 698 454 960

Mr. Richard D. Mico
Sparton Technology, Inc.
Vice President and General Manager
4901 Rockaway Blvd., SE
Rio Rancho, New Mexico 87124

Dear Mr. Mico:

This letter is in response to your March 18, 1996, letter in which Sparton Technology, Inc. (Sparton) alleges the existence of a force majeure event which prevents Sparton from responding to EPA's comments on the draft Corrective Measures Study (CMS) Report within 30 days. Sparton contends that a force majeure event occurred because of the following: (1) Sparton could not foresee the extent of EPA's comments and level of effort necessary to respond; (2) the long period of time between the submission of the draft CMS Report and receipt of EPA's comments; (3) certain personnel who worked on the draft CMS are no longer employed by the contractor; and (4) most of supporting files are archived.

In Section IV.P of the Order, a force majeure is defined as "any event arising from causes not foreseeable and beyond the control of [Sparton], its consultants or its contractors, which could not be overcome by due diligence and which delays or prevents performance by a date required by this Consent Order." Sparton has the burden of proving such a force majeure event occurred.

EPA has determined that a force majeure event has not occurred which prevents Sparton from completing the CMS revisions within 30 days. On October 3, 1995, EPA transmitted a 9 page response with interpretations of existing data and comments on the CMS Report, and asked Sparton to revise the draft CMS Report accordingly. On November 6, 1995, Sparton stated that it would not formally modify the CMS Report until after receipt of final CMS comments from EPA. On February 20, 1996, EPA transmitted a 20 page response to Sparton's letter of November 6, 1995, providing further clarification and information. EPA's final CMS comments of March 1, 1996, raised many of the same issues set

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forth in our correspondence of October 3, 1995, and February 20, 1996. The same or similar issues were also reiterated at the February 1, 1996, public hearing, which Sparton attended. Therefore, the previous correspondence and events demonstrate that the extent of the comments were foreseeable.

Further, Sparton failed to exercise due diligence to mitigate any delays. As noted above, Sparton has received correspondence from EPA on two separate occasions regarding the CMS Report, and was requested to modify the CMS Report prior to the public comment period. Sparton refused to formally modify the CMS Report. Therefore, the issues of archived file material and the absence of previous contractor employees could have been addressed by Sparton prior to the receipt of EPA's March 1, 1996, comments.

Although EPA has determined that a force majeure event has not occurred, EPA is willing to consider an extension of time necessary for completion of the Final CMS Report. While Sparton believes that an additional 60 days is necessary, this would bring the total time for responding to 90 days, an extension equal to the original time for preparation of the draft CMS Report. Revisions to the CMS Report should not require the same level of effort as required in the preparation of the original draft CMS Report. EPA understands from Sparton's letter of March 18, 1996, that the reasons why Sparton believes additional time is necessary for revising the CMS Report are forthcoming. To understand the level of effort expended by Sparton so far in meeting the 30 day deadline for a Final CMS Report, EPA requests that Sparton demonstrate that the contractor has been diligently working since receipt of the CMS comments on March 7, 1996. In order for EPA to consider an extension, Sparton must supply this demonstration no later than close of business on March 25, 1996. This demonstration must include the estimated percentage of progress made in revising the CMS Report to date, the number of hours expended by the contractor to date in revising the CMS Report, and the number of contractor employees working on the CMS Report. Sparton must continue to revise the CMS Report in an expeditious manner to submit the Final CMS Report by April 8, 1996.

While EPA and Sparton first worked together at the site in 1983, EPA has worked extensively with Sparton since October 1988 to investigate and evaluate the most practical remediation approach at the facility. More recently, since submission of the draft CMS Report in November 1992, EPA's efforts have been directed toward evaluating alternatives for remediation of the ground water contaminant plume as well as Sparton's recommended alternative of no additional action. These efforts have been ongoing since 1992 and are listed below.

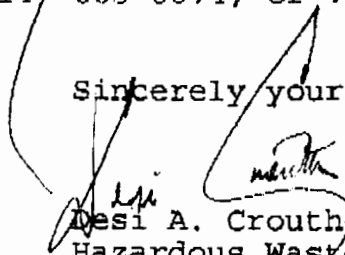
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- EPA receives a draft CMS Report in November 1992 which recommends no additional actions based on the absence of plume migration;
- NMED sample results from July 1993 indicate continued plume migration;
- Sparton sample results from September 1993 indicate continued plume migration;
- Sparton sample results from November 1993 indicate continued plume migration;
- EPA meets with Sparton in February 1994 and after several sampling events confirm continued migration, Sparton continues to recommend no additional actions;
- EPA sample results from October 1994 indicate continued plume migration.

In addition to these efforts to evaluate the alternatives as well as the recommended alternative, EPA also suspended the public participation process at Sparton's request in September 1995. The purpose of the suspension was to provide Sparton additional time for updating the remedial alternatives. However, in a letter dated September 18, 1995, Sparton stated that there was no new information to include in the CMS Report other than the ground water data. Furthermore, in a letter dated February 8, 1996, Sparton stated the original recommendation is still the appropriate remedy (no additional action) for the site. These events demonstrate EPA's willingness to work with Sparton in developing remedial alternatives for the site. As mentioned at our March 13, 1996, meeting, we are prepared to schedule further meetings and conference calls to ensure that Sparton does not conduct any unnecessary work.

Finally, EPA wants to stress the importance of addressing the environmental problems caused by previous activities at the Sparton facility. Prolonged delays in addressing these problems makes an effective remediation more difficult and expensive as the contamination continues to spread. Therefore, EPA is committed to taking the necessary steps to achieve an expeditious determination of the appropriate remedy at the facility. If you need additional clarification regarding this letter or wish to schedule future meetings, you may contact Evan Pearson, Senior Enforcement Counsel, at (214) 665-8074, or Vincent Malott at (214) 665-8313.

Sincerely yours,


Desi A. Crouther, Chief
Hazardous Waste Enforcement Branch

cc: Mr. James Harris, Thompson & Knight
Mr. Jan Appel, Sparton Corporation