



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



April 17, 1996

VIA FACSIMILE AT (505) 892-5515 AND
CERTIFIED MAIL - RETURN RECEIPT REQUESTED Z 698 454 963

Mr. Richard D. Mico
Vice President and General Manager
Sparton Technology, Inc.
4901 Rockaway Boulevard, SE
Rio Rancho, NM 87124-4469

Dear Mr. Mico:

This letter is in response to the Sparton Technology, Inc. (Sparton) letter of April 3, 1996, in which Sparton formally invoked the dispute resolution provisions of Section IV.F. of the Administrative Order on Consent (Order). Per Section IV.F., EPA understands that Sparton has set forth the specific point of dispute as EPA's March 20, 1996, decision that a force majeure event has not occurred which prevents Sparton from timely completing the Corrective Measures Study (CMS) revisions. EPA also understands that the bases for Sparton's dispute are the following: 1) the extent of EPA's comments and the level of effort necessary to respond were not foreseeable; 2) the supporting files for the CMS Report were archived and it was impossible to know what archived material might have to be retrieved; and 3) since employees who had worked on the CMS Report were no longer available, the process for other employees to review the entire record was too time consuming and expensive until the specific areas of concern in the CMS Report had been identified.

The following responses address each of the aforementioned issues raised by Sparton as bases for the dispute. As to the foreseeability issue, this issue was raised in previous correspondence by Sparton, and addressed in EPA's March 20, 1996, letter. In addition, Sparton also contends in the April 3, 1996, letter that it was not foreseeable: 1) that EPA would not modify its position based on Sparton's letter of November 6, 1995; 2) how EPA would evaluate the information presented at the public hearing; and 3) that the written material from the public hearing process would not be available to Sparton until March 7, 1996. Regarding Sparton's letter of November 6, 1995, EPA had previously addressed these issues in our letter of February 20, 1996. Concerning EPA's evaluation of the information presented at the public hearing, Sparton failed to demonstrate how and which evaluation prevented Sparton, with due

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diligence, from timely completion of the CMS revisions. As to the availability of the written material from the public hearing process, Sparton failed to demonstrate what information in addition to that presented at the public hearing could not be overcome by due diligence in the timely completion of the CMS revisions.

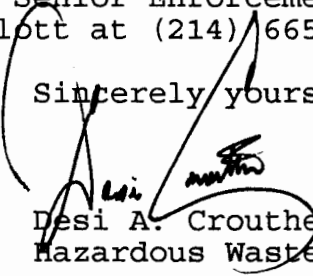
Sparton also contended that the supporting files for the CMS Report were archived and it was impossible to know what archived material might have to be retrieved. However, since Sparton could have retrieved all of the archived material, Sparton's contention that it didn't know what archived material to retrieve fails to demonstrate how any delays could not be overcome by due diligence. Furthermore, Sparton contends that the process for other employees to review the entire record was too time consuming and expensive until the specific areas of concern in the CMS Report have been identified. Sparton again failed to demonstrate how the elements of cost and time of record review prevented the exercise of due diligence by Sparton or its contractors.

Therefore, it is EPA's determination that Sparton has not met its burden of proof to show that a force majeure has occurred. In addition to the reasons set forth in this letter, this determination is also based on EPA's letters of February 20, 1996, March 20, 1996, and March 29, 1996. These letters are attached and incorporated by reference to this determination.

Pursuant to Section IV.F.1 of the Order, this letter represents EPA's final decision on this dispute, unless Sparton notifies EPA in writing of its objections, and requests an opportunity for a conference according to Section IV.F.2 of the Order within 10 days of receipt of this letter.

If you have any questions regarding this Agency decision, please 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

Enclosures

cc (w/o enclosures):

Mr. James Harris, Thompson & Knight
Mr. Jan Appel, Sparton Corporation
Mr. Ron Kern, HRMB, New Mexico Environment Department
Mr. Dennis McQuillan, GWPRB, New Mexico Environment Dept.
Mr. Norman Gaume, Albuquerque Public Works Department
Mr. Kurt Montman, Albuquerque Environmental Health Dept.
Mr. Steve Cary, New Mexico Office of Natural Resource
Trustee