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April 24, 1996

Mr. Evan Pearson
U. S. Environmental Protection Agency
1445 Ross Avenue, suite 1200
Dallas, Texas 75202-2733



RE: NMED Comments on EPA's Proposed Administrative Order On Consent (the "Order").

Dear Evan:

This letter serves to provide the Environmental Protection Agency ("EPA") with New Mexico Environment Department's ("NMED") written comments on its draft Order. It is NMED's understanding that after the changes are incorporated and other matter added, such as the findings of fact and conclusions of law, NMED will have another opportunity to review the draft Order.

With respect to the Order NMED recommends the changes as follows:

1) Throughout the Order EPA and NMED are mentioned. At times the Order provides that Sparton Technologies, Inc. ("Sparton") is required to provide notice to EPA with respect to certain matters. In some instances the Order provides that Sparton will also notify NMED of certain matters. NMED needs to be provided with notice, as provided under the Order to EPA by Sparton, for additional matters as set forth in the following sections of the Order:

- a) Section III. Parties Bound, paragraph 6, needs to include NMED as an entity to be provided with notice by Sparton if any transfer of ownership and/or operations of the facility occurs.
- b) Section VI. Project Manager, needs to include NMED as an entity that is to be notified of designated project managers by Sparton and EPA.
- c) Section IX. Facility Access and Record Retention, paragraph 5, needs to include NMED as well as EPA.
- d) Section X. Sampling and Data/Documentation Availability, paragraph 1, needs to include NMED as an entity that receives results of all sampling and tests or other data, whether provided under this Order or not.

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e) Section XII., Notices, needs to include Ed Kelley, Director Water & Waste Management Division, P. O. Box 26110, Santa Fe, New Mexico 87502-6110.

2) Section XVI. Reservation of Rights, needs to include a paragraph specifically reserving NMED's rights. Suggested language should read "Nothing in this Order is intended to release or waive any legal requirement, claim, cause of action, demand, or defense, in law or in equity, administrative or judicial, that any party to this Order may have against any person or entity not a party to this Order, or that any person or entity not a party to this Order may have against any party to this Order."

3) NMED needs to be identified as the New Mexico Environment Department before it first appears as the acronym of NMED. The NMED acronym first appears in Section IX paragraph 3 of the Order.

4) Sometimes the Order is referred to as Agreement, AOC or Order; whatever word is used it should be consistent throughout the Order.

5) There should be a provision in the Order that provides that all sampling and data results shall be provided to EPA and NMED regardless if required under the Order, if done in connection with any investigation of the facility.

With respect to the scope of work portion of the Order NMED recommends the following:

1) Remediation standards need to be specified and consistent with the New Mexico Water Quality Control Commission Regulations 20 NMAC 6.2 for the following:

a) 4103.A vadose zone;

b) 4103.B ground-water standards; and

c) 4103.D 8 consecutive quarters of sampling to determine compliance.

d) The 4107.B and C notification and approval requirements for well plugging, abandonment or destruction should also be included.

NMED includes a copy of the above referenced standards for your information.

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The Scope of Work, page 1, Performance Standards should also address final site characterization because it has not been adequately addressed in previous documents or in the Order.

The last paragraph in the Scope of Work, Page 11, Site Investigation Report section, does not seem to have been adequately introduced. Specifically, the last paragraph addresses a "Draft Gound Water Monitoring System Report in a section discussing requirements for a Draft Site Investigation Report.

Sometimes Respondent is cited in its plural form and other times in its singular form in the Order. The singular form throughout the Order is appropriate.

Thank you for permitting NMED to comment on your draft Order and we look forward to reviewing the final draft order.

Sincerely,



Ana Marie Ortiz
Assistant General Counsel

Enclosure(s)

Ed Kelley, Director, Water & Waste Management Division
Dennis McQuillan, Program Manager Protection & Remediation Bureau
Ron Kern, Program Manager, Hazardous & Radioactive Material Bureau

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SUBPART IV - PREVENTION AND ABATEMENT OF WATER POLLUTION.**4101. PURPOSE.**

A. The purposes of this Subpart are to:

1. Abate pollution of subsurface water so that all ground water of the State of New Mexico which has a background concentration of 10,000 mg/L or less TDS, is either remediated or protected for use as domestic and agricultural water supply, and to remediate or protect those segments of surface waters which are gaining because of subsurface-water inflow, for uses designated in the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1); and [12-1-95]

2. Abate surface-water pollution so that all surface waters of the State of New Mexico are remediated or protected for designated or attainable uses as defined in the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1). [12-1-95]

B. If the background concentration of any water contaminant exceeds the standard or requirement of Sections 4103.A, 4103.B or 4103.C of this Part, pollution shall be abated by the responsible person to the background concentration. [12-1-95]

C. The standards and requirements set forth in Section 4103 of this Part are not intended as maximum ranges and concentrations for use, and nothing herein contained shall be construed as limiting the use of waters containing higher ranges and concentrations. [12-1-95]

[4102] Reserved

4103. ABATEMENT STANDARDS AND REQUIREMENTS.

A. The vadose zone shall be abated so that water contaminants in the vadose zone shall not be capable of contaminating ground water or surface water, in excess of the standards in Subsections B and C below, through leaching, percolation or as the water table elevation fluctuates. [12-1-95]

B. Ground-water pollution at any place of withdrawal for present or reasonably foreseeable future use, where the TDS concentration is 10,000 mg/L or less, shall be abated to conform to the following standards: [12-1-95]

1. toxic pollutant(s) as defined in Section 1101 of this Part shall not be present; and [12-1-95]

2. the standards of Section 3103 of this Part shall

20 NMAC 6.2

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be met. [12-1-95]

C. Surface-water pollution shall be abated to conform to the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1). [12-1-95]

D. Subsurface-water and surface-water abatement shall not be considered complete until a minimum of eight (8) consecutive quarterly samples from all compliance sampling stations approved by the secretary meet the abatement standards of Subsections A, B and C above. Abatement of water contaminants measured in solid-matrix samples of the vadose zone shall be considered complete after one-time sampling from compliance stations approved by the secretary. [12-1-95]

E. Technical Infeasibility.

1. If any responsible person is unable to fully meet the abatement standards set forth in Subsections A and B above using commercially accepted abatement technology pursuant to an approved abatement plan, he may propose that abatement standards compliance is technically infeasible. Technical infeasibility proposals involving the use of experimental abatement technology shall be considered at the discretion of the secretary. Technical infeasibility may be demonstrated by a statistically valid extrapolation of the decrease in concentration(s) of any water contaminant(s) over the remainder of a twenty (20) year period, such that projected future reductions during that time would be less than 20% of the concentration(s) at the time technical infeasibility is proposed. A statistically valid decrease cannot be demonstrated by fewer than eight (8) consecutive quarters. The technical infeasibility proposal shall include a substitute abatement standard(s) for those contaminants that is/are technically feasible. Abatement standards for all other water contaminants not demonstrated to be technically infeasible shall be met. [12-1-95]

2. In no event shall a proposed technical infeasibility demonstration be approved by the secretary for any water contaminant if its concentration is greater than 200% of the abatement standard for that contaminant. [12-1-95]

3. If the secretary cannot approve any or all portions of a proposed technical infeasibility demonstration because the water contaminant concentration(s) is/are greater than 200% of the abatement standard(s) for each contaminant, the responsible person may further pursue the issue of technical infeasibility by filing a petition with the commission seeking:

a. approval of alternate abatement standard(s) pursuant to Section 4103.F below; or