

the environment; (2) to require the EPA to specifically perform its obligations under AOC; (3) to enjoin and restrain EPA from violating the AOC; and (4) to order EPA to discharge its affirmative legal duty to adopt a response to a release of hazardous waste described in a corrective measures study submitted by Sparton to the EPA.

PARTIES

2. Plaintiff Sparton is a New Mexico corporation having its principal place of business in Rio Rancho, New Mexico.

3. Defendant the EPA is an executive agency of the United States, established under Reorganization Plan No. 3 of 1970, found in the appendix to Title 5 of the United States Code. As used in this complaint, unless otherwise indicated, all references to the EPA or the Agency include constituent parts of that entity, and its officials and employees acting in their official capacity.

4. Defendant, Coleman is a resident of the Northern District of Texas, and is named a defendant in his official capacity as the Director, Compliance Assurance and Enforcement Division of the EPA, Region 6.

JURISDICTION, VENUE AND PROCESS

5. This complaint is filed, and the jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1346. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

6. Service of process may be had on the Defendant, the EPA, by serving the United States through the United States Attorney for the Northern District of Texas, Dallas

COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF
AND WRIT OF MANDAMUS -- Page 2

Division, and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General of the United States, Washington, D.C., and on the defendant Coleman, by delivering a copy of the summons and the complaint to the United States Attorney for the Northern District of Texas, Dallas Division, and by sending a copy of the summons and complaint by registered or certified mail to Coleman at the United States Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733

BACKGROUND

7. From the early 1960s through the early 1980s, Sparton manufactured components for nuclear weapons under a series of government contracts at a facility located at 9621 Coors Road, N.W., Bernalillo County, New Mexico (the "Coors Road Facility").

8. As specified in the government contracts, and directed by the United States and its contractors, Sparton made use of various solvents in the manufacture of the components.

9. Based on quality specifications dictated by the government contracts and the United States and its contractors, solvents used in the manufacturing process that became dirty ("spent solvents"), had to be discarded on a routine basis.

10. Spent solvents that had to be discarded were accumulated at the Coors Road Facility until sufficient quantities were on hand for economic off-site disposal.

11. In August of 1980, Sparton notified the EPA of its periodic on-site accumulation of spent solvents.

12. On November 19, 1980, the on-site accumulation of spent solvents became subject to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 to

6992k, because such material was considered a hazardous waste. Sparton has been in compliance with the requirements of that law since it became applicable to its Coors Road Facility.

13. In accordance with the requirements of RCRA, Sparton installed four groundwater monitoring wells at its Coors Road site in May of 1983. In March of 1984, a report was submitted to the EPA, based on sampling from the completed wells, identifying solvents in the groundwater.

14. For the next four and one-half years, Sparton worked closely with state authorities to better understand the reason for the solvents in the groundwater and undertook a variety of activities designed to address this situation.

15. The EPA has the authority under section 3008(h) of RCRA, 42 U.S.C. §6028(h), to issue orders requiring "corrective action or such other response measures," as are necessary to protect human health or the environment from releases into the environment of hazardous waste, such as the spent solvents accumulated by Sparton at its Coors Road Facility.

16. Instead of unilaterally issuing such an order to Sparton, the EPA entered into negotiations with Sparton to reach a mutually acceptable agreement describing the process to be followed to identify what action, if any, should be taken to deal with solvents in the groundwater. Those negotiations occurred either in Dallas or with the EPA personnel located in Dallas.

17. The culmination of those negotiations was the AOC, a copy of which is attached hereto as Exhibit "A," and incorporated herein, which was executed by the EPA, Region 6 and Sparton.

18. Under the AOC, Sparton was to conduct a facility investigation, designed to delineate where solvents and other materials associated with manufacturing operations at the Coors Road Facility might be found in the groundwater, and to use the results of that work to develop a corrective measures study that specified a response for dealing with the materials found in the groundwater.

19. The AOC specified the content of these reports and set deadlines for their completion.

20. Sparton has performed all of the requirements of the AOC to the satisfaction of EPA.

21. The corrective measures study Sparton timely submitted to EPA on May 13, 1996, concluded that the appropriate response to the solvents and other materials in the groundwater was: (1) the operation of an enhanced groundwater recovery and treatment system in the immediate vicinity of the presumed source of the materials in the groundwater; (2) a phased approach to soil vapor extraction, a process by which any solvents remaining in the soil of the area thought to be the source of the solvents would be removed; and (3) the installation of five new groundwater monitoring wells, to augment the sixty-four already in place, to confirm the size and shape of the impacts to groundwater beyond the source area. The materials in the groundwater present no threat to public water supplies nor to human health.

22. By letter dated June 24, 1996, the EPA, through Coleman, rejected Sparton's response, and proposed a much more costly alternative, which is described in a "Final Decision," signed by Coleman, attached hereto as Exhibit "B" and incorporated herein.

23. Based on information generated since submission of its corrective measures study, Sparton has notified EPA that the company's response should include a groundwater recovery well completed near the leading edge of solvents in the groundwater, for the purpose of containing materials in the groundwater associated with manufacturing operations at the Coors Road Facility.

24. EPA's proposed response is no more protective of human health or the environment than Sparton's response, yet is significantly more expensive.

COUNT 1

25. Sparton realleges paragraphs 1 to 24.

26. Under the terms of the AOC, EPA was required to select a response to solvents and other materials in the groundwater associated with manufacturing operations at the Coors Road Facility based on the facility investigation and corrective measures study completed by Sparton and approved by EPA.

27. EPA's Final Decision reached on June 24, 1996, was not based upon the facility investigation and the corrective measures study. EPA's Final Decision violates and, therefore, constitutes a breach of the AOC.

28. Sparton has no adequate remedy for this violation and breach other than to obtain an order requiring EPA to honor its obligations under the AOC.

29. The EPA's violation and breach will irreparably harm Sparton.

COUNT II

30. Sparton realleges paragraphs 1 to 24.

31. In the alternative, the EPA was under an affirmative duty, imposed by the AOC, to accept and authorize the implementation of the response identified in the corrective measures study Sparton submitted to EPA on May 13, 1996.

32. In the alternative, the EPA's failure to adopt the response identified in that corrective measures study and authorize its implementation is a violation of a duty enforced by law.

33. In the alternative, Sparton has no adequate remedy for this violation other than the issuance of a writ of mandamus directing EPA to carry out its obligation under the AOC.

COUNT III

34. Sparton realleges paragraphs 1 to 24.

35. In the alternative, EPA's Final Decision must be set aside because it is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

COUNT IV

36. Sparton realleges paragraphs 1 to 24.

37. In the alternative, EPA's Final Decision must be set aside because it was based, in whole or in part, on political pressure, results from an improper motive, or was made in bad faith.

38. Beginning sometime in 1995, EPA entered into discussions with representatives of the state of New Mexico and the city of Albuquerque for the purpose of reaching agreement on a response, in advance of the completion of any corrective measures study.

39. Upon information and belief, the city of Albuquerque is using the selection of a response for the Coors Road Facility for political purposes. To that end, the city of Albuquerque has used a variety of tactics designed to cause EPA to select a particular remedy, prior to the completion of the corrective measures study, in order to further various political objectives.

40. Upon information and belief, EPA, in meetings with representatives of the city of Albuquerque and the state of New Mexico, from which Sparton was excluded, reached agreement on a response that would be politically acceptable, whether or not technically required or practicable, prior to the completion of the corrective measures study.

41. In an effort to justify its political decision on technical grounds, EPA constructed, post hoc, an "administrative record". In that regard, the complete administrative record upon which EPA purportedly made its decision was not available for review and comment until after the decision was made. Additionally, information upon which EPA has relied in making its Final Decision has been withheld from Sparton.

WHEREFORE, PREMISES CONSIDERED, Sparton prays that the Court:

(a) Find and declare that under the AOC, EPA is to select and authorize the implementation of the response identified in the corrective measures study, developed on the basis of information contained in the facility investigation, and remand this proceeding with specific directions to EPA and Coleman to do so;

COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF
AND WRIT OF MANDAMUS -- Page 8

(b) Issue a writ of mandamus directing EPA and Coleman to accept and authorize the implementation of the response identified in the corrective measures study.

(c) Interpret the AOC as requiring that Sparton have an adequate opportunity to address any and all concerns identified by EPA with the facility investigation or corrective measures study before a response is selected, and remanding this matter to EPA with directions to EPA and Coleman that Sparton be provided such an opportunity;

(d) Find and declare that EPA's Final Decision was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law, and remand this matter to the Agency for further proceedings consistent with the Court's decision;

(e) Find and declare that EPA's Final Decision was improperly based on political considerations, resulted from an improper motive, or was made in bad faith, and remand this matter to the Agency for further proceedings consistent with the Court's decision;

(f) Award Sparton its court costs and reasonable attorney's fees; and

(g) For such other and further relief at law and in equity to which Sparton may be justly entitled.

Respectfully submitted,

THOMPSON & KNIGHT,
A Professional Corporation

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COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF
AND WRIT OF MANDAMUS -- Page 10

FAX COVER SHEET

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
LEGAL BRANCH
COMPLIANCE ASSURANCE AND ENFORCEMENT DIVISION
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REGARDING: Spartan

MESSAGE: Please give me a call

FROM: EVAN L. PEARSON

IN CASE OF PROBLEMS, PLEASE CALL EVAN PEARSON AT (214) 665-8074

THIS IS PAGE 1 OF 11 PAGES