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November 21, 1996

**Via Facsimile & Regular Mail**

Ana Marie Ortiz, Esq.  
Assistant General Counsel  
State of New Mexico  
Environment Department  
Harold Runnels Building  
1190 St. Francis Drive  
P.O. Box 26110  
Santa Fe, NM 87502

*Re: Clarification of Sparton's Response to NMED's October 17, 1996 Letter*

Dear Ana:

Thanks for your letter of November 18, 1996. Its tone is consistent with the generally frank discussions we have had concerning NMED's letter of October 17, 1996. Unfortunately, it appears that in several ways, Jan and I may still have not made our client's position as clear as we would have hoped.

Before turning to any clarifications, I want to address an issue on which Sparton Technology, Inc. ("Sparton") has been silent, and that is whether we will move forward on SVE regardless of what happens on the other issues. The point you and Rob have made during our telephone conversations and in your most recent letter is well taken — namely, whether there is an economical way to deal with any recovered groundwater should not directly impact our ability to undertake or an SVE pilot test. As we have previously discussed, Sparton has always believed it important that all three components of what we proposed on July 10, 1996 — SVE, enhanced on-site groundwater recovery, and off-site containment — be operated together. Nevertheless, after further consideration, Sparton has decided to begin the SVE program and we should have a proposal to you by December 6, 1996, which is consistent with your October 17, 1996, letter.

Sparton also wants to immediately enhance the on-site containment system by increasing the pumpage to 20 gallons per minute. Unfortunately, we cannot do so because we have no way to economically deal with the additional recovered groundwater. Yesterday I received a voice mail message from Gary O'Dea, in which he said it was unlikely the city would allow that much recovered groundwater into its sanitary sewer system on a long term basis. Gary thought he

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would have a more definitive statement by yesterday, but I am still waiting for a response. If the city is unwilling to take the water, then moving forward quickly to enhance on-site containment could still occur if NMED would provide a temporary discharge plan, expedite approval of a final discharge plan, and the city grants permission to discharge water through a storm sewer. Otherwise we cannot proceed.

As Jan and I have already mentioned on the phone, he and I are frustrated by our inability to reach closure on the off-site groundwater issues. This is the first experience I have had in over eighteen years of negotiating response type actions, where a governmental entity has resisted an offer by a client to take some response while waiting for a final decision on whether that effort will be sufficient. Specifically, NMED wants us to undertake tests to demonstrate how off-site impacts can be contained. Sparton is not only willing to undertake those tests, but wants to continue with some remediation at the conclusion of those tests. We understand NMED's position to be that absolutely no remediation can begin until after the tests results are analyzed, a determination is made as to whether further tests need to be conducted, and then agreement reached on the number of containment wells that may be necessary. Given the fact that almost five months have elapsed since we offered to begin remediation, with no work being conducted in the field, we are very concerned that many months or even years could pass between the completion of testing and the initiation of any remediation of groundwater off-site. As Jan and I have expressed to you, my client is tired of testing; it wants to begin work that will actually address impacts instead of simply further defining conditions.

Of course, in order for Sparton to afford any type of groundwater remediation there must be an economical way of dealing with recovered and treated water. We believed that the plan of discharging that water to the Calabacillas Arroyo was an acceptable "break-through." It was something that Sparton could afford, and it seemed to have the support of all parties, other than perhaps EPA, at our two-day meeting in Santa Fe. From Sparton's standpoint, it is critically important to have the necessary authorization to discharge water to the arroyo, otherwise it makes no economic sense to move forward with the testing. Stated as plainly as possible, if we cannot afford to get rid of the water, then there is no reason for us to conduct any tests, because Sparton would not have the financial resources to translate the results into any type of remediation.

In our judgment the issue is not as you have characterized it, a matter of what we can "save," but whether we can do the work at all. Sparton simply must have a way to economically get rid of the water it has treated in order to implement any type of remediation involving the groundwater. We continue to believe that if the city, NMED, and Sparton work together, the issue of discharge to the arroyo can be solved within a time frame that would still

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allow Sparton to complete all of the off-site groundwater testing, called for in your October 17, 1996, letter, within the time frames proposed.

Let me reiterate that our need for an economical mechanism for getting rid of recovered groundwater is not designed in any way to limit NMED's discretion with respect to the number of containment wells that may be required. The issue of disposal of water is totally "unlinked" to the question of the number of containment wells that may be required. In that regard, part of the language we include in any proposal will consist of the following statements from your October 17, 1996, letter:

- NMED reserves all rights and remedies it has, including, but not limited to, legal action against Sparton, to address the release of hazardous waste from the Site;
- NMED does not consider that the horizontal and vertical extent of the plume has been adequately defined;
- NMED approval of any Sparton proposal shall in no way constitute an approval, express or implied, by NMED of a remediation or containment system design;
- NMED shall require additional aquifer tests if Sparton's first test is inadequate;
- NMED does not consider the on-site interim pump and treat system to provide on-site groundwater containment even after this proposal is implemented; and
- If Sparton fails to meet a schedule or conditions, NMED may immediately pursue its administrative or judicial remedies, which, in any event, NMED reserves.

Because the most significant impediment to proceeding with all the work described in your October 17, 1996, letter is finding a mechanism by which Sparton can be convinced it will have an economical way of discharging recovered groundwater, Sparton continues to press ahead in seeking all the authorizations it needs to operate a containment well off-site. For instance we are currently involved in acquiring permission to discharge water into the city of Albuquerque's storm sewer, permission to place water in the arroyo, authorization from the state engineer's

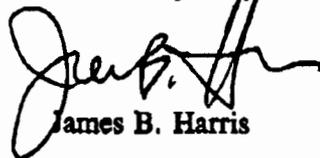
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office for authority to pump up to 220 gallons per minute for the off-site and on-site systems, authorization to operate an air stripper off-site, necessary zoning changes, if any, from the city of Albuquerque to operate the off-site system, and preparation of a discharge plan.

Ana, we have made significant progress over the last several months. To some extent, I think our remaining differences are more form than substance. Please contact me to discuss whether NMED believes there may be some way to resolve the one issue that currently exists between us -- NMED authorization to discharge to the arroyo.

Yours very truly,



James B. Harris

JBH/dh

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cc: Mark Weidler  
R. Jan Appel

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## FACSIMILE COVER LETTER

TO: Ana Marie Ortiz, Esq.  
New Mexico Environment Department

FROM: James B. Harris, Esq.

SUBJECT: *Spartan*

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