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December 17, 1996

Mr. James Harris
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RE: Response to letter submitted by Sparton Technology, Inc. on
December 9, 1996.

Dear Jim:

Although your most recent letter is dated December 7, 1996 we did not receive it until it was faxed on December 9, 1996. This letter serves to respond to your recent letter.

With respect to responding to Sparton's proposals, it was understood that the New Mexico Environment Department ("NMED") would have fourteen (14) days to respond to any proposals Sparton Technology, Inc. ("Sparton") submitted. NMED will respond within 14 days from December 11, 1996, the date of receipt of the proposals by all interested governmental participants. If we are able to respond sooner we will.

NMED will not agree to wait until Sparton receives all necessary permits for Sparton to implement the aquifer pumping test. As you are aware, NMED is of the opinion that an imminent and substantial endangerment to human health and the environment currently exists at the Sparton site. It is unacceptable to further delay the aquifer pumping test. Such terms were never part of NMED's offer of October 17, 1996. Additionally, since the City of Albuquerque has expressed a willingness to allow Sparton to discharge into its sewer system for a period not to exceed 30 days in order to complete the pumping test, there is absolutely no reason why Sparton can not proceed with the pumping test.

In your letter you state that "we now understand that NMED is willing to consider approving a discharge plan, in the absence of a completed and approved remediation plan for our facility at Coors Road." NMED is not in agreement with this statement. What NMED has stated is that if Sparton submits an application for a discharge permit, the Water Quality Control ("WQCC") regulations allow, under certain circumstances, temporary permission to discharge for a period not to exceed 120 days while approval or

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disapproval of the discharge plan is pending. Until Sparton submits a discharge permit application and request for temporary permission to discharge, NMED is unable to make any kind of preliminary determination regarding an interim discharge.

Sparton has made it quite clear that it will not proceed with the aquifer pumping test unless NMED agrees to issue a discharge permit and EPA issues Sparton an NPDES permit first and/or Sparton "feels comfortable." This is an unreasonable position for Sparton to take. In essence, Sparton's efforts over the last few months have been to attempt to force NMED to agree to a final remediation before the appropriate tests are complete. NMED has never agreed to a final remediation plan prior to completion of a site investigation. NMED has been consistent throughout our conversations and correspondence in expressing the need to complete the pumping test and soil vapor extraction tests before NMED can agree to translating any action to a final remedial plan.

Discharge plan proposals and NPDES permit applications must describe the quantity and quality of water to be discharge and the exact location of the discharge. Sparton does not seem to understand that if it applies for a discharge permit and NPDES permit in advance of performing the aquifer pumping tests, the permit applications will have to significantly overstate the discharge quantity and account for all points of discharge. If Sparton does not do this and if it is revealed, after the pumping test results are analyzed, that Sparton's calculations regarding the quantity and quality of water it anticipates recovering and discharging are incorrect, Sparton will have to amend its applications. Therefore, waiting for the issuance of a permit to discharge into the Calabacillas Arroyo before performing the aquifer pumping test will likely result in long delays which will not address the "imminent and substantial endangerment" which presently exists at the site. Sparton continues to put "the cart before the horse" and wants NMED to "buy off" on Sparton's counter proposal which is resulting in undue delay; NMED will not do so.

In your letter you raise the issue of whether the issuance of a NPDES discharge permit will simplify NMED's discharge permit application process. A NMED discharge permit may not be required if the NPDES permit application addresses all contaminants and requirements under the Water Quality Act, its regulations and EPA authority. Again, until Sparton submits an NPDES permit application to EPA, NMED cannot fully answer this question. NMED also suggests that Sparton submit a notice of intent to discharge to NMED at the time it submits its NPDES permit application so that NMED can make a determination on the need for a ground water

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discharge permit. In any event, if Sparton seeks to discharge into the arroyo, an NPDES permit will be necessary irrespective of whether or not an NMED discharge permit is required.

Given the problems that are apparent with the ability to discharge into the Calabacillas Arroyo and the time factor involved before the appropriate permits can be issued to Sparton, NMED strongly urges Sparton to consider reinjection of the treated water into the aquifer. On site reinjection is a much simpler solution to implement. On site reinjection will only require a NMED discharge permit and will therefore bypass the need for an NPDES permit, a State Engineer permit, AMAFCA permits and zoning variances from the City and County.

NMED will be providing its response to Sparton's proposals as indicated in this letter unless otherwise informed.

Very truly yours,



ANA MARIE ORTIZ
Assistant General Counsel

cc: Mark Weidler, Secretary
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