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UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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DISTRICT OF NEW MEXICO

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UNITED STATES OF AMERICA,
Plaintiff,
v.
SPARTON TECHNOLOGY, INC.,
Defendant.

Civil Action No.

CIV 97-0210M

DON J. SVET

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA") files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought against defendant Sparton Technology, Inc. ("Sparton") pursuant to the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA") Section 7003, 42 U.S.C. § 6973; and Safe Drinking Water Act ("SDWA") (sometimes referred to as the Public Health Service Act) Section 1431, 42 U.S.C. § 300i, for injunctive relief to abate an imminent and substantial endangerment to public health, welfare, and the environment connected with the contamination of soil and groundwater at Sparton's plant on Coors Road in Albuquerque, New Mexico.

JURISDICTION, VENUE, AUTHORITY, AND NOTICE

2. This Court has jurisdiction over the subject matter of this action pursuant to RCRA Section 7003(a), 42 U.S.C. § 6973(a); SDWA Section 1431(a), 42 U.S.C. § 300i(a); and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this Court pursuant to RCRA Section 7003, 42 U.S.C. § 6973; and 28 U.S.C. § 1391(b).

4. Authority to bring this civil action is vested in the Attorney General of the United States pursuant to SDWA Section 1450(f), 42 U.S.C. § 300j-9(g); and 28 U.S.C. §§ 516 and 519.

5. Notice of the commencement of this action has been given to the State of New Mexico pursuant to RCRA Section 7003(a) and (c), 42 U.S.C. § 6973(a) and (c).

DEFENDANT

6. Sparton is a corporation organized under the laws of New Mexico. Sparton is registered and does business in the State of New Mexico.

7. Sparton is a "person" as that term is defined at RCRA Section 1004(15), 42 U.S.C. § 6903(15) and SDWA Section 1401(12), 42 U.S.C. § 300f(12).

8. Sparton is the "owner" and "operator" of a facility located at 9621 Coors Road NW, Albuquerque, Bernalillo County, New Mexico ("facility"), as those terms are defined at 40 C.F.R. § 260.10.

9. The Sparton facility is a treatment, storage, and/or disposal facility as those terms are defined in RCRA Section 1004(3), (33), and (34), 42 U.S.C. § 6903(3), (33), and (34).

RELEVANT STATUTORY PROVISIONS

10. RCRA Section 7003, 42 U.S.C. § 6973, provides in pertinent part:

[U]pon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court against any person (including . . . any past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or is contributing to such handling, storage, treatment, transportation, or disposal to restrain such person . . . [or] to order such person to take such other action as may be necessary, or both. . . . The Administrator shall provide notice to the affected State of any such suit.

42 U.S.C. § 6973(a).

11. SDWA Section 1431, 42 U.S.C. § 300i, provides, in pertinent part: ~~Source: De Groot, 1974, p. 10. In the Albuquerque Basin~~

[T]he Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. . . . The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary . . . and (2) commencing a civil action for appropriate relief including a restraining order or permanent or temporary injunction.

42 U.S.C. § 300i(a).

12. The authority to make a determination that an imminent and substantial endangerment exists has been delegated from the Administrator of EPA to the Regional Administrator of Region VI, and redelegated to the Director of the Compliance Assurance and Enforcement Division.

FACTUAL ALLEGATIONS

13. The Sparton facility is located at 9621 Coors Road NW, Albuquerque, Bernalillo County, New Mexico (hereinafter, "Sparton facility" or "facility"). The facility consists of a 64,000 square foot building located on a 12 acre parcel of land. The Sparton facility is located approximately one half mile from the Rio Grande River and is on the edge of a terrace approximately sixty feet above the flood plain of the river.

14. Land use in the immediate area of the Sparton facility includes commercial and residential development, and agricultural operations.

15. The aquifer beneath the Sparton facility is in the Santa Fe Group aquifer system in the Albuquerque Basin. The Santa Fe Group aquifer system is an "underground source of drinking water" as defined by 40 C.F.R. §§ 144.3 and 146.3.

16. The Santa Fe Group aquifer system currently supplies drinking water for the city of Albuquerque and New Mexico Utilities.

17. New Mexico Utilities, Inc. operates a municipal water supply well (known as "Well No. 2") which is located approximately 2.6 miles northwest of the Sparton facility.

18. Ground water is currently the sole source of drinking water for the City of Albuquerque.

19. The City of Albuquerque has identified the aquifer as a critical resource in its ground water protection master plan.

20. Sparton performed manufacturing operations at the Sparton facility for many years. Manufacturing operations included the production of commercial, industrial, and military electronic components including printed circuit boards. Sparton ceased manufacturing electronic components at the facility in 1994, but continues to operate a machine shop at the site.

21. On August 18, 1980, Sparton's corporate predecessor, Sparton Southwest, Inc., notified EPA pursuant to the requirements of RCRA Section 3010, 42 U.S.C. § 6930, that it generated and stored hazardous waste at the Sparton facility.

22. On January 6, 1983, Sparton submitted a Part A RCRA permit application. In that application, Sparton stated that it generated and stored hazardous wastes at the Sparton facility.

23. The wastes identified by Sparton in the Section 3010 notification and RCRA Part A permit application included hazardous wastes and constituents including Trichlorethene (TCE), 1,1,1-Trichloroethane, Methylene Chloride, 1,1-Dichloroethylene, Tetrachloroethylene (PCE), Toluene, Benzene, and Chromium.

24. On February 22, 1984 Sparton and EPA entered into a Consent Agreement Final Order ("CAFO"), U.S. EPA Docket No. RCRA VI-310-H. Pursuant to the 1984 CAFO, Sparton installed a ground water monitoring system at the Sparton facility to detect whether

hazardous wastes or constituents had been released from the facility.

25. Analyses of samples collected from the ground water monitoring system revealed that solid and hazardous wastes generated and stored at the Sparton facility had been released to the environment from the Sparton facility. The solid and hazardous wastes and constituents released to the groundwater included Trichlorethene (TCE), 1,1,1-Trichloroethane, Methylene Chloride, 1,1-Dichloroethylene, Tetrachloroethylene (PCE), Toluene, Benzene, and Chromium.

26. On October 1, 1988, EPA and Sparton entered into another Administrative Order On Consent, Docket No VI-004(h)-87-H ("the 1988 AOC"). Pursuant to the 1988 AOC, Sparton was required to (1) install an on-site ground water recovery system, (2) conduct a RCRA Facility Investigation ("RFI") to determine the nature and extent of the release of hazardous waste and hazardous constituents from the facility.

27. Sparton completed installation of an on-site ground water recovery system in 1988. The system pumps ground water under the Sparton facility to the surface where it is treated and disposed of. The system does not address contaminated ground water beyond the borders of the Sparton facility.

28. Sparton installed ground water monitoring wells on-site and off-site.

29. Analyses of samples collected from the off-site ground water monitoring wells show the presence of hazardous waste

constituents and contaminants, including Trichlorethene (TCE), 1,1,1-Trichloroethane, 1,1-Dichloroethylene, Tetrachloroethylene (PCE), and Chromium.

30. The contaminants referred to in paragraph 29 exceed Maximum Contaminant Levels (MCLs) which are the maximum allowable concentration of such contaminants in drinking water. The MCLs are established by EPA pursuant to the SDWA at 40 C.F.R. Part 141.

31. Analysis of samples showed that hazardous waste contaminants in excess of the MCLs have spread in the ground water at least one-half mile west-northwest of the facility, and extend to a depth of at least sixty feet below the water table.

32. Sparton installed a soil vapor monitoring well at the facility.

33. Analyses of samples collected from the soil vapor monitoring well show the presence of hazardous waste constituents and contaminants, including Trichlorethene (TCE), 1,1,1,-TCA, 1,1-Dichloroethylene, Tetrachloroethylene and Toluene.

34. To date, the vertical and horizontal extent of the contamination has not been fully defined.

35. Based upon the results of Sparton's analyses, on June 24, 1996, EPA selected a clean-up alternative for the facility. The selected alternative includes (1) operation of the on-site groundwater recovery system, (2) further characterization of the extent of contamination in the groundwater and in the soil above the groundwater table, (3) installation and operation of

additional ground water extraction wells to contain contamination and clean up to MCLs, and (4) installation and operation of an on-site soil vapor extraction system.

36. In August, 1996, the United States asked Sparton to enter into an Administrative Order On Consent to implement the selected clean-up alternative. Sparton declined to enter into an agreement.

37. On August 7, 1996, Sparton filed a Declaratory Judgment action in Federal District Court in Dallas, Texas, seeking to prevent EPA from implementing the selected remedy. Sparton Technology, Inc. v. U.S. EPA, et al Civ. Action No 3-96-CV-2229-G.

38. On September 11, 1996, EPA issued a Unilateral Administrative Order, U.S. EPA Docket No. RCRA-VI-001(h)-96-H (the "1996 UAO") to Sparton pursuant to its authority under RCRA Section 3008(h), 42 U.S.C. § 6921(h). The 1996 UAO requires Sparton to implement the cleanup alternative selected by EPA on June 24, 1996. Pursuant to 40 C.F.R. § 24, Sparton has requested a hearing on the order. The Section 3008(h) administrative order will become final and enforceable when the administrative hearing and appeal process is concluded. 40 CFR § 24.20.

39. The Director of Compliance Assurance and Enforcement Division of EPA Region VI ("Director") has determined pursuant to RCRA Section 7003, 42 U.S.C. § 6973, that the past or present handling, storage, treatment, transportation and/or disposal of solid wastes and/or hazardous wastes at the Sparton facility may

present an imminent and substantial endangerment to health or the environment.

40. The Director also has determined pursuant to SDWA Section 1431, 42 U.S.C. § 300i, that one or more contaminants which are present in or are likely to enter the ground water underlying and adjacent to the Sparton facility may present an imminent and substantial endangerment to the health of persons.

41. Pursuant to the previous enforcement action by EPA under 3008(h) of RCRA, Administrative Order on Consent dated October 1, 1988, no governmental action has been taken by state or local agencies to protect the health of persons from contaminants that are present in the underground source of drinking water.

FIRST CLAIM FOR RELIEF

42. Paragraphs 1-41 of this Complaint are incorporated herein by reference.

43. Solid and hazardous wastes, including TCE, 1,1,1-Trichloroethane, Methylene Chloride, 1,1-Dichloroethylene, PCE, Toluene, Benzene, and Chromium have been or are being handled, treated, stored, or disposed of at the Sparton facility.

44. The past or present handling, storage, treatment, transportation or disposal of solid or hazardous waste at the Sparton facility may present an imminent and substantial endangerment to human health or the environment.

45. Sparton is a person who has contributed or is contributing to the handling, storage, treatment, transportation

health of persons from the imminent and substantial endangerment resulting from the contaminants present in or likely to enter the public water system or underground source of drinking water.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- A. Order Sparton to take all actions necessary to abate the imminent and substantial endangerment identified by the EPA at the Sparton facility.
- B. Grant the United States its costs and disbursements in this action.
- C. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,



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