



Attorney General of New Mexico

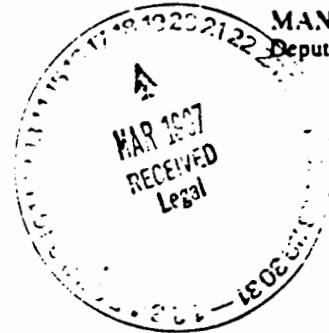
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TOM UDALL
Attorney General

March 17, 1997



MANUEL TIJERINA
Deputy Attorney General

BY OVERNIGHT MAIL

Mr. James B. Harris
Thompson & Knight
1700 Pacific Avenue
Suite 3300
Dallas, Texas 74201-4693

Re: Motion to Consolidate United States Sparton Technology, Inc., No. CIV-97-0210-M; State of New Mexico v. Sparton Technology, Inc., No. 97-0208-JC; City of Albuquerque v. Sparton Technology, Inc., No. CIV-97-0206-LH

Dear Jim:

This letter is to serve on Sparton Technology, Inc. a copy of the enclosed Joint Motion to Consolidate, and Memorandum in support thereof. We intend to file the Motion in the above-referenced cases in accordance with Rule 7.3(a) of the Local Civil Rules of the U.S. District Court for the District of New Mexico. I understand from our telephone conversation of March 6, 1997 that the Motion is opposed.

If you have any questions on this matter, you may call me at (505) 827-6939.

Sincerely,

Charles de Saillan
Assistant Attorney General

cc: Counsel of Record

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

THE CITY OF ALBUQUERQUE, and
THE BERNALILLO COUNTY
COMMISSIONERS,

Plaintiffs,

v.

SPARTON TECHNOLOGY, INC.,

Defendant.

CIVIL ACTION NO.

CIV-97-0206-LH

STATE OF NEW MEXICO,
THE NEW MEXICO ENVIRONMENT
DEPARTMENT, and
THE NEW MEXICO OFFICE OF
THE NATURAL RESOURCES TRUSTEE,

Plaintiffs,

v.

SPARTON TECHNOLOGY, INC.,

Defendant.

CIVIL ACTION NO.

CIV-97-0208-JC

UNITED STATES OF AMERICA,

Plaintiff,

v.

SPARTON TECHNOLOGY, INC.,

Defendant.

CIVIL ACTION NO.

CIV-97-0210-M

JOINT MOTION TO CONSOLIDATE

Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, and in accordance with Rule 7 of the Local Civil Rules of this Court, the United States, the State of New Mexico, the

New Mexico Environment Department, the New Mexico Office of the Natural Resources Trustee, the City of Albuquerque, and the Bernalillo County Commissioners (the "Plaintiffs"), hereby respectfully move this Court for an order consolidating the above-captioned actions. As set forth more fully in the accompanying Memorandum in Support of this Motion, these actions involve common questions of both law and fact, and consolidation of these actions would promote judicial economy and efficiency.

In accordance with Rule 7.2(a) of the Local Civil Rules of this Court, on March 6, 1997, counsel for the Plaintiff, State of New Mexico, contacted counsel for the Defendant and determined that this Motion is opposed.

Respectfully submitted,

LOIS J. SCHIFFER
Assistant Attorney General for
Environment and Natural Resources

By: 

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Attorneys for the Bernalillo
County Commissioners

Office of the Natural Resources Trustee, the City of Albuquerque, and the Bernalillo County Commissioners (the "Plaintiffs"), filed these actions seeking injunctive relief to address an imminent and substantial endangerment to health and the environment under sections 7002(a)(1)(B) and 7003(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6972(a)(1)(B) and 6973(a). The actions also seek identical injunctive relief under various other provisions of state and federal law, as well as restitution of costs.

Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, and in accordance with Rule 7 of the Local Civil Rules of this Court, the Plaintiffs have jointly moved this Court for an order consolidating the above-captioned actions. This Memorandum is submitted in support of that Motion.

I. STANDARD OF REVIEW

Rule 42(a) of the Federal Rules of Civil Procedure provides:

Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

FED. R. CIV. P. 42(a).

Whether to grant a motion to consolidate is committed to the discretion of the trial court. *Shump v. Balka*, 574 F.2d 1341, 1344 (10th Cir. 1978). The court "initially should determine that the cases to be consolidated 'involve[e] a common question of law or fact.'" *Servants of the Peraclete, Inc. v. Great*

American Insurance Co., 866 F. Supp. 1560, 1572 (D.N.M. 1994). If the cases involve a common question of law or fact, the court "should then weigh the interests of judicial convenience in consolidating the cases against the delay, confusion, and prejudice consolidation might cause." *Id.*

II. ARGUMENT

A. These Actions Involve Common Questions of Law and Fact

These actions involve common questions of both law and fact, and those common questions predominate over other issues in the actions. The primary count in each of these actions is for injunctive relief to address an imminent and substantial endangerment under RCRA. The State, City, and County Plaintiffs have filed their actions under section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), while the United States has filed its action under section 7003(a) of RCRA, 42 U.S.C. § 6973(a). The language in these two provisions is virtually identical, and they have been interpreted interchangeably. *See, e.g., Zands v. Nelson*, 779 F. Supp. 1254, 1263 (S.D. Cal. 1991); *see also* SEN. REP. No. 284, 98th Cong., 1st Sess. 56-57 (1983) (the citizen suit provisions "are intended to allow citizens exactly the same broad substantive and procedural claim for relief which is already available to the United States under section 7003").

In each of these actions, the primary issue will be to determine the appropriate injunctive relief to address the alleged imminent and substantial endangerment to health or the environment. In each of these actions, the factual and expert

testimony and other evidence on this issue will be virtually identical. Although these actions include various additional counts for injunctive relief under federal and state law, the Plaintiffs are seeking the same injunctive relief under each of these counts.

B. Consolidation of These Cases Will Promote Judicial Efficiency

Consolidation of these actions will promote judicial economy and efficiency. It will avoid duplicative proceedings in different courtrooms on the same issues based on the same evidence. It will also avoid separate and potentially conflicting judgments. It will thereby reduce the costs expended by the Court, by the Plaintiffs, and by the Defendant.

On the other hand, consolidation of these actions will not create any significant delay, confusion, or prejudice. None of these actions is any further along than any of the others, so there is no risk of delaying one action by consolidating it with the others. Moreover, because each of these cases is at a very early stage its proceedings, consolidation will not cause confusion, nor will consolidation create any prejudice to any of the parties.

CONCLUSION

For the foregoing reasons, the Plaintiffs respectfully move this Court for an order consolidating these actions.

Respectfully submitted,

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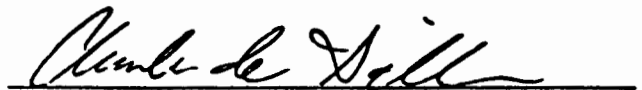


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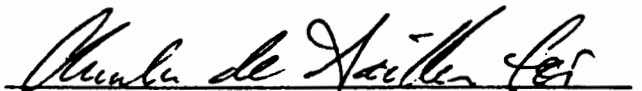


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March ____, 1997

Attorneys for the Bernalillo
County Commissioners

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March, 1997, a copy of the foregoing Joint Motion to Consolidate and Memorandum in support thereof were sent by overnight mail to:

James B. Harris
Thompson & Knight
1700 Pacific Avenue
Suite 3300
Dallas, Texas 75201-4693

and by first class mail to:

James P. Fitzgerald
Rodey, Dickason, Sloan, Akin & Robb, P.A.
P.O. Box 1888
Albuquerque, New Mexico 87103


Charles de Saillan