

COPY

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 97-0210-M/DJS
)	
SPARTON TECHNOLOGY, INC.,)	
)	
Defendant.)	

DEFENDANT'S MOTION TO STAY, DISMISS OR TRANSFER VENUE

Defendant Sparton Technology, Inc. ("Sparton") moves this court to stay or dismiss the present lawsuit pursuant to Federal Rule of Civil Procedure 13, or, alternatively, to transfer this lawsuit to the United States District Court for the Northern District of Texas, Dallas Division, pursuant to 28 U.S.C. § 1404(a).

I.

Because the present lawsuit should have been filed as a compulsory counterclaim in litigation already pending in the Northern District of Texas, Dallas Division, this lawsuit should be stayed or dismissed. Since August 1996, a lawsuit has been pending in federal court in Dallas involving the same issue presented by this action; namely, how should environmental impacts associated with a Sparton manufacturing plant be addressed? Since October 1996, an administrative proceeding has been pending before Region VI of the United States Environmental Protection Agency ("EPA"), also seeking to identify how the same

environmental impacts should be addressed. The present lawsuit is the third proceeding seeking to answer this same question. Because the EPA's claims in this lawsuit are logically related to the first filed Dallas Litigation, this action should have been brought as a compulsory counterclaim in the Dallas Litigation. Consequently, pursuant to Federal Rule of Civil Procedure 13, this Court should stay or dismiss this litigation so that it may be brought as a counterclaim in the pending Dallas Litigation.

II.

Alternatively, if this Court chooses not to stay or dismiss the present action, this Court should transfer venue of this action under Section 1404(a) of the Judicial Code. Section 1404 of the Judicial Code allows this Court to transfer the present action, in the interest of justice, to any district where the action might have been brought. Because the present lawsuit should have been filed as a compulsory counterclaim in the pending Dallas Litigation, the Northern District of Texas, Dallas Division, is a district where this suit "might have been brought." Because the interest of justice favors the efficient resolution of this dispute, this case should be transferred to the Northern District of Texas, Dallas Division, where it may be consolidated with the Dallas Litigation.

III.

As support for this motion, Defendant relies on its contemporaneously-filed Brief in Support, and the Declaration of R. Jan Appel.

FOR THESE REASONS Defendant requests that this Court stay or dismiss the present lawsuit, or, alternatively, transfer it to the United States District Court for the Northern District of Texas, Dallas Division.

Respectfully submitted,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By



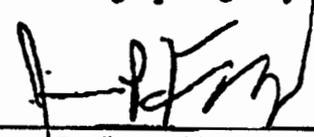
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

On the 31st day March, 1997, a true and correct copy of the foregoing document was served upon all counsel of record by hand-delivery and overnight package express.



James P. Fitzgerald