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WRITER'S DIRECT NUMBER

768-7315

HAND-DELIVERED

Honorable C. LeRoy Hansen
Federal Building & U.S. Courthouse
500 Gold Avenue SW
Albuquerque, NM 87103

Re: City of Albuquerque v. Sparton Technology, Inc. (97-0206-LH/JHG); State of New Mexico v. Sparton Technology, Inc. (97-0208-JC/RLF); and U.S.A. v. Sparton Technology, Inc. (97-0210 M/DJS)

Dear Judge Hansen:

We represent Sparton Technology, Inc., the Defendant in each of the three suits referenced above. We are addressing this letter to you because you were assigned the first filed, lowest numbered case.

Plaintiffs in each of the three cases seek a preliminary injunction against Sparton and make claims under RCRA. Plaintiffs in all cases also ask for possible additional or different relief under causes of action other than RCRA, so the cases are close, but not quite the same in causes of action and potential proof and discovery. Plaintiffs have filed motions to consolidate the cases, which are pending. Sparton does not object to consolidation for discovery matters and for case management.

We are writing you to seek your guidance on how to proceed to quickly resolve several issues that significantly impact our client's ability to timely respond to the Motions for Preliminary Injunction. We believe a Rule 16 conference should be held as soon as possible, with involvement of out-of-town counsel by telephone, if necessary, to discuss these issues, which could easily and quickly be resolved at such a conference. Today we filed a motion and brief requesting such a conference, a copy of which is attached to this letter. Hopefully, early control will substantially speed



Honorable C. LeRoy Hansen
April 8, 1997
Page 2

preparation and will eliminate unnecessary motions with attendant briefing expense and delay.

Sincerely yours,

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

By 
Jonathan W. Hewes

JWH/jkj
Enclosure

cc w/encl: David L. Fishel, Esq. (Via Facsimile & Regular Mail)
Charles De Saillan, Esq.
Ana Marie Ortiz, Esq.
Honorable John C. Conway
Honorable Edwin L. Mechem
James B. Harris, Esq.

John W. Zavitz, Esq. (Via Hand-Delivery)
Gary A. O'Dea, Esq.
Patrick Trujillo,

James P. Fitzgerald, Esq.
Bruce Hall, Esq.

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/JHG

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/RLF

UNITED STATES OF AMERICA,

Plaintiff,

v.

SPARTON TECHNOLOGY, INC.,

Defendant.

CIVIL ACTION NO.

CIV-97-0210-M/DJS

MOTION AND BRIEF FOR RULE 16 CONFERENCE

Sparton Technology, Inc. ("Sparton"), Defendant in the above-entitled actions, requests that pursuant to Rule 16 of the Federal Rules of Civil Procedure the Court hold, as soon as possible, a conference to establish early and continuing control of this litigation.

I. BACKGROUND

On February 19, 1997, the above-referenced actions were simultaneously filed. All three actions involve a request that Sparton be ordered to address impacts to soil and groundwater the company is already correcting. Sparton wants to expand those activities, but has yet to receive from the very same entities suing it, the necessary authorizations to move forward.

The issue of how to address the impacts to soil and groundwater is already the subject of a pending action in Federal Court in Dallas, filed by Sparton against the United States Environmental Protection Agency ("EPA"), Region 6 in August of 1996.

The same issue is also the subject of an administrative proceeding currently pending before EPA Region 6 in Dallas.

Although Sparton's answer date was March 25, 1997, there are already four motions pending in the Albuquerque cases: (1) a motion filed by the Plaintiffs to consolidate; (2) a motion filed by Sparton to stay, dismiss or transfer the action filed by the United States to the pending lawsuit in Dallas; (3) a 32 page motion by the Plaintiffs for a preliminary injunction accompanied by 328 pages of exhibits; and (4) a motion by the Plaintiffs to exceed the limitation in the local rules that not more than 50 pages of exhibits accompany any motion.

Of the three motions directed to it, Sparton has responded to two, leaving only the Motion for Preliminary Injunction requiring a reply.

II.
**SPARTON NEEDS LIMITED DEPOSITIONS OF FOUR INDIVIDUALS
TO COMPLETE ITS RESPONSE TO THE
MOTION FOR PRELIMINARY INJUNCTION**

Included in the 328 pages of exhibits is: (1) a two-page affidavit from an employee of the City of Albuquerque, Norman Gaume, setting forth in conclusory terms a purported connection between groundwater impacted by Sparton's past manufacturing operation and the city's water supply; (2) a two-page affidavit from Robert Morrison with a seven page work-plan explaining also in conclusory terms why the Court should order Sparton to install and test a containment well as well as five new monitor wells; (3) two determinations, one by Samuel Coleman, an EPA Region 6 employee, and the other by Mark Weidler, Secretary of the New Mexico Environment Department, of the purported existence of an imminent and substantial endangerment associated with the groundwater impacted by Sparton's past manufacturing activities.

Sparton needs the deposition of the director of public works for the City of Albuquerque to establish that the conclusions set forth in Mr. Gaume's affidavit are incorrect and not supported by the facts. It needs Mr. Morrison's deposition in order to understand the basis for his conclusion, and to develop an effective response. It needs the depositions of Mr. Coleman and Mr. Weidler to explore the process used in reaching the conclusions of both gentlemen, and to understand the facts actually relied upon in reaching the conclusions set forth.

In accordance with the local rules, Sparton conferred with the attorney for the United States to schedule these depositions. See attached correspondence from James B. Harris to David Fishel dated April 3, 1997, attached as Exhibit "A." That request was rejected. See

correspondence from Michael Donnellan to James B. Harris dated April 4, 1997, and response of James B. Harris to Michael Donnellan dated April 4, 1997, attached as Exhibits "B" and "C" respectively. Counsel for Sparton had originally suggested two days for each deposition in order to allow those depositions to cover all issues that might arise in this litigation. Sparton is willing to limit the depositions to issues directly related to the Motion for Preliminary Injunction, so long as Plaintiffs will not object to a second deposition after the preliminary injunction hearing and in preparation for a trial on the merits, if any, for each of the individuals identified. In the event the Plaintiffs are willing to agree to this arrangement, each deposition could be completed in a day or less.

Sparton believes it would need, at most, ten days following the completion of the last deposition to finalize its response to the Motions for Preliminary Injunction so that it can include information developed during the depositions. If the depositions were completed by Friday, April 18, 1997, Sparton's response date would be April 28, 1997.

III. OTHER OPEN ISSUES REQUIRING ATTENTION

Apart from the dispute regarding the holding of depositions, before Sparton's response is due, there are several other "housekeeping" issues that the Court might want to address now, as opposed to resolving on a piecemeal basis. These include the following:

1. Consolidation of these cases for purposes of determining the claims under the Resource Conservation and Recovery Act and for pretrial purposes. The parties do not disagree that one judge should hear these matters, although the Plaintiffs want all matters heard by one judge.
2. Scheduling of a date for evidentiary hearing on the Motion for Preliminary Injunction.

Sparton believes that resolving these issues early on, in one hearing, will allow for a more orderly presentation of the dispute and a more efficient use of judicial resources.

**IV.
SCHEDULING A PRE-TRIAL CONFERENCE UNDER RULE 16
OF THE FEDERAL RULES OF CIVIL PROCEDURE**

Federal Rule of Civil Procedure 16 provides the Court broad discretion to schedule pre-trial conferences to address the types of issues presented in this motion. Sparton submits that holding such a conference as early as possible in these cases is particularly appropriate. Such a conference could be held on relatively short notice, given that lead counsel for all parties, other than the United States and Sparton, are based in Albuquerque or Santa Fe. The court may wish to consider allowing out-of-town counsel to participate by telephone, if they so choose. Such a hearing should not require more than an hour of the Court's time and might be scheduled as early as Wednesday April 9, 1997.

Respectfully submitted,

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

By 

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

On the 8th day April, 1997, a true and correct copy of the foregoing document was served upon all counsel of record by:

Hand-Delivery to:

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U.S. Attorney's Office
625 Silver NW, 4th Floor
Albuquerque, NM 87102**

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James P. Fitzgerald