

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

SEP - 11 1997
INITIAL HEARING SCHEDULED
EPA REGION 6

IN THE MATTER OF:)
) U.S. EPA DOCKET NO.
SPARTON TECHNOLOGY, INC.) RCRA VI-001(h)-96-H
ALBUQUERQUE, NEW MEXICO)
)
EPA I.D. NO. NMD083212332) FINAL DECISION
)
RESPONDENT)

BACKGROUND

This action commenced with the filing and service of an Initial Administrative Order (Initial Order) on September 16, 1996, by the Environmental Protection Agency (EPA). Sparton Technology, Inc., the Respondent, was the recipient of the Initial Order. The Initial Order requires corrective action pursuant to Section 3008(h) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(h). EPA seeks to compel Respondent to conduct corrective measures, including soil vapor extraction, groundwater extraction and treatment, and reinjection of treated groundwater or reuse at the surface.

Respondent requested a public hearing regarding the Initial Order on October 18, 1996. The parties completed prehearing, hearing and post-hearing proceedings pursuant to 40 C.F.R. §§ 24.14 - 24.17. The Acting Regional Judicial Officer issued a Recommended Decision on July 9, 1997, pursuant to 40 C.F.R. § 24.17(a). Each party timely filed comments concerning the

Recommended Decision on July 30, 1997, under 40 C.F.R. § 24.17(b). Therefore, this action is ripe for a final decision based upon the administrative record.

FINAL DECISION

Based upon the entire record this tribunal affirms the Recommended Decision, minus modifications included herein. Any provision in the Recommended Decision inconsistent with this Final Decision is hereby modified. First, while the correct date for delegation of authority to the Region 6 Compliance Assurance and Enforcement Division Director (Director), is included in the Recommended Decision, a complete description of pertinent delegations of authority is not. See Recommended Decision, pp. 11, 58-59.

Delegation of authority No. 8-31, dated May 11, 1994, authorized the Regional administrator to make a determination that there is or has been a release to the environment pursuant to Section 3008(h). See Administrative Record, p. 008429. Delegation of authority No. 8-32, dated May 11, 1994, gives the Regional Administrator authority to issue orders requiring corrective action. See Administrative Record, p. 008431. Delegation of authority Nos. R6-8-31 and R6-8-32, dated July 27, 1995, authorized the Director to make a determination that there is or has been a release to the environment, and issue orders requiring corrective action. See Administrative Record, pp.

008430, 008433. Accordingly, the Recommended Decision is modified as necessary to fully incorporate the delegations described above.

Next, Respondent was appropriately afforded additional procedural due process protection. However, this Final Decision does not adopt a portion of the Recommended Decision's reasoning. Specifically, additional procedural safeguards are warranted here in light of conceivable financial stakes, rather than policy concerns expressed in the Recommended Decision. See In Re General Electric, 4 EAD 615, 632-633 (EAB 1993); and Recommended Decision pp. 26-27. The financial assurance terms in the Initial Order indicate the burden to pay for corrective action costs rests with Respondent. See Initial Order, pp. 18-20.

Several possible disputes regarding revisions to plans or reports, may significantly increase corrective action costs. For example, EPA's final decision and response to comments dated June 24, 1996, incorporated into the Initial Order, estimated \$15.046 million as the present worth cost of the selected remedy without metals removal.¹ See Administrative Record, pp. 008634-

¹ Although EPA and Respondent both dispute the selected remedy's estimated costs as provided in the final decision and response to comments, this tribunal is not persuaded by either party. See EPA's Response to Sparton's Position on the Facts, Law, and Relief Sought by EPA, pp. 61-62; EPA's Response to the Recommended Decision, pp. 3-4; and Public Hearing Record, pp. 99-102, and Respondent's Exhibit 13. EPA relied on Respondent's approved Corrective Measures Study (CMS) data to estimate costs of the selected remedy. See EPA's Response to Sparton's Position on the Facts, Law, and Relief Sought by EPA, pp. 61-62; and

008635, 008647-008652. However, if the selected remedy includes water treatment with ion exchange for removal of metals, the estimated present worth cost is \$26.393 million. See Administrative Record, pp. 008634-008635, 008647-008652. Without question, disputed plans or reports concerning the necessity of removing metals from contaminated groundwater, may involve millions of dollars.²

Based upon reliable record evidence and potential disputes identified, revisions to plans or reports in this action may remarkably escalate corrective action costs. Cases such as this one, embellished with a prodigious financial landscape, warrant special treatment and more procedural protection. Consequently, the dispute resolution process in the Recommended Decision affording Respondent additional procedural safety, is perfectly reasonable under the circumstances. See In Re General Electric, 4 EAD 615, 632-633 (EAB 1993).

Administrative Record, pp. 005613-005691. EPA authored the final decision and response to comments, and Respondent conducted the CMS. In light of above circumstances, cost information included in the final decision and response to comments is reliable and controlling here.

² In addition, other possible disputes that may result in a significantly higher expenditure of funds, include reinjection of the treated groundwater into the aquifer or reuse at the surface, the number of groundwater containment wells, monitoring wells, recovery wells and soil vapor extraction wells, necessary to implement the selected remedy. See Administrative Record, pp. 005613-005691, 008625-008626, 008634-008635, 008645, 008647-008652.

In the final analysis, reliable record information concerning this 40 C.F.R. Part 24 administrative proceeding, demonstrates Respondent is the owner and operator of a facility that had interim status, and released hazardous waste or hazardous constituents into the environment. In addition, reliable record information shows that relief provisions included in the Initial Order are reasonably specific, consistent with EPA remedy selection procedures, and necessary to protect human health and the environment.

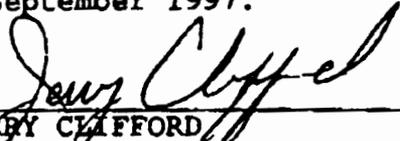
The Initial Order's relief provisions are necessary to protect the groundwater. These provisions will reduce and control contamination in the soil and groundwater. The relief provisions are also necessary in light of potential human contact with the highly contaminated groundwater. The Initial Order's aggressive approach to restoring contaminated groundwater in a timely manner, will reduce the risk of human exposure. Accordingly, the Recommended Decision is affirmed with modification, as expressed in this Final Decision rendered pursuant to 40 C.F.R. § 24.18.

ORDER

In accordance with 40 C.F.R. § 24.19, the Director shall modify the Initial Order to agree with the terms of the Recommended Decision, as revised by this Final Decision. Upon completion of modifications to the Initial Order, the Director

shall file the original Final Administrative Order, and serve Respondent a copy. This Final Decision and subsequent Final Administrative Order constitute final Agency action not appealable to the Administrator.

SO ORDERED, this 3rd day of September 1997.



JERRY CLIFFORD
ACTING REGIONAL ADMINISTRATOR

In the Matter of Sparton Technology, Inc., Respondent
Docket No. RCRA VI-001(h)-96-H

CERTIFICATE OF SERVICE

I, Lorena S. Vaughn, Regional Hearing Clerk for the Region 6, U.S. Environmental Protection Agency located in Dallas, Texas, hereby certify that I served true and correct copies of the foregoing Final Decision dated September , 1997, on the persons listed below, in the manner and date indicated:

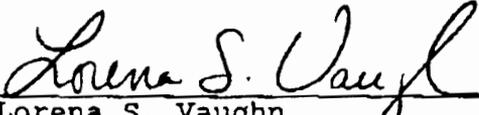
Mr. James B. Harris, Esq.
Thompson & Knight
1700 Pacific Avenue
Suite 3300
Dallas, Texas 75201

U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED
& FACSIMILE TRANSMISSION

Mr. Evan Pearson, Senior Esq.
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

HAND DELIVERY

Date : 9-4-97



Lorena S. Vaughn
Regional Hearing Clerk