



State of New Mexico
Office of the Natural Resources Trustee

GARY E. JOHNSON
Governor

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October 21, 1997

The Honorable Max Coll, Chairman
Legislative Finance Committee
416 State Capitol Building
Santa Fe, New Mexico 87503

RE: SPARTON TECHNOLOGY, INC. ALBUQUERQUE

Dear Chairman Coll:

Secretary Weidler and I have sent to you a joint letter responding to your inquiry of the Sparton Technology matter. The joint letter gives a complete history of State, Federal, and local involvement. I am writing this letter to express some personal ideas which go beyond a recitation of the cold facts. New Mexicans must be able to assume responsibility for all contamination sites. Presently, we cannot do it.

The State of New Mexico has many contamination sites for which no responsible party can be found. Since, becoming Natural Resources Trustee, I have frequently expressed my profound frustration with the miasmatic legal process created by legislatures and courts to deal with environmental contamination and the lack of funding. It is the Gordian knot that the judge in the Sparton case used to characterize the case in his opening remarks. I do not think the knot can be untied given the many vested interests. It must be cut just as the ancients did.

In fact, the legal process is more of a problem than actually cleaning up the sites, particularly when we are dealing with Federal, State and local laws and regulations which were put in place in an uncoordinated fashion such that conflicts of laws; regulations and jurisdictions arise. We are also dealing with a plethora of governmental organizations each with their own agenda and statutory areas of responsibility. This is the modern version of Trial by Wager of Battel. Which was outlawed during the reign of King George III. Lawyers now tilt in the lists (courts) armed with law books and discourse rather than lances. Our legislatures have provided responsible parties with due process before contamination is cleaned up rather than provide them with the due process after cleanup is completed and they are faced with the bills. I doubt our founding Fathers contemplated due process as a weapon in the hands of polluters to delay or escape accountability.

We must cut the Gordian knot by enacting our own laws which return control for cleanup to the State without reliance of Federal Statutes and the EPA and which give emergency powers of eminent domain for the purpose of drilling wells, building infiltration galleries, constructing decontamination equipment. That is, take the land and pay for it later. We must protect and promote all common law equitable remedies. Our laws have failed the taxpayer: heaping more laws and regulations on old. This approach will not work.

We might follow the Detroit Model where the City of Detroit cleans up the contamination and sends the bill later. The sense in their approach is that experts can argue in courts over technical imponderables with no definitive action plan forthcoming. By cleaning up a site, it is easier, having done it, to retrospectively determine who are the responsible parties and what should be their allocable share of the costs. It could be called the Detroit Model. I prefer to call this the "Hannibal Model". If Hannibal had listened to his advisers, his descendants would still be feeding his elephants in Spain waiting for fail-safe technical details to be worked and the best available technology to cross the Pyrenes to be developed.

Spartan freely admits they caused the problem but they stall waiting for the best technology and seeking assurances that if they use this method or that they will be successful; and, if they are not, they will be let off the hook.

With proper statutory authority, the NMED could hire a contractor and clean up the contamination without trying to force a responsible party to do it and face their interminable delaying tactics. The benefit is that we can clean up these sites swiftly rather than allowing continuing contamination and we can send the responsible party the bill.

This approach requires money which the legislature would have to authorize. Perhaps, the emergency clean up fund administered by the NMED could be used.

My suggestion is that because nearly all contamination sites in the state originate from oil and gas or their derivative products, that we should follow the Oklahoma example and impose a one tenth of one percent severance tax on all oil and gas production for environmental remediation. This tax catches companies that export their products to manufacturers who convert them into solvents, for example, and who then sell those solvents back into New Mexico where the solvents may end up contaminating ground water viz. the Baca Street well in Santa Fe.

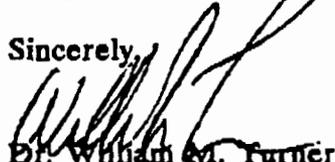
The environmental severance tax also catches UST contamination and allows us to remove the present loading fee tax on gasoline to the benefit of New Mexican motorists, truckers and tourists. It also lets us fund clean up of petroleum contamination from above ground storage tanks such floating product at the Rio Pecos site in Encino, New Mexico. It will provide funding to clean up the 39 orphan sites in New Mexico. A similar severance

tax on the mining industry would fund closure of old mines.

The environmental severance tax will also provide a source of funding for the Office of Natural Resources Trustee to carry out natural resource damage assessments. Next year, for example, we will be asking for \$600,000 to conduct natural resource damage assessments at Walker Air Force Base, the United Nuclear Churchrock Facility, and the NASA Facility east of Las Cruces and the General Electric Facility in the Albuquerque South Valley.

I hope you find these comments useful.

Sincerely,



Dr. William M. Turner
Natural Resources Trustee

cc: Gary Johnson, Governor
Mark Weidler, Secretary, NMED