THOMPSON & KNIGHT
A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS

1700 PACIFIC AVENUE - SUITE 3300
DALLAS, TEXAS 75201-4693
(214) 969-1700
FAX (214) 969-1751

DIRECT DIAL:
(214) 969-1102

AUSTIN
FORT WORTH
HOUSTON
MONTERREY, MEXICO

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Mr. Michael T. Donnellan
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Re: City of Albuquerque v. Sparton Technology, Inc.
No. CV-97-0206 (D.N.M.)

Dear Michael:

Thank you for your letter of October 24, 1997. It appears that we have made significant progress over the last few weeks. I am hopeful that the remaining concerns can be amicably resolved. I thought the best way to respond to your letter would be to identify what currently appears to be the main issues that I believe still need to be resolved and certain of the positions you have taken about which we need clarification.

For instance, in the opening paragraph of your letter, you state "we disagree Sparton's designs will work as the complete clean-up remedy for the site . . .". Are the plaintiffs saying that they have already decided that issue, or rather, are they saying that they have doubts about whether Sparton's actions will result in a complete clean-up, but are willing to review analytical results with an open-mind and in an even-handed fashion, before reaching a final conclusion?

With respect to the leading edge containment system, Sparton has the following questions and comments:

(1) Your letter assumes that dry wells are the only option for disposing of water, if we do not discharge to the arroyo. Although that technology is certainly promising, we are continuing to evaluate its feasibility. We anticipate that Pierce and Gary, before the end of next week, will have conducted a site visit that should allow us to identify how many wells should be used and their useful life. Additionally, we continue to evaluate the use of infiltration galleries. We understand from AMAFCA that the arroyo may be available for such a disposal option. We continue to investigate that issue. At any rate, it seems to us that a meeting of technical representatives to discuss the dry well/infiltration gallery issue and review and, hopefully, agree on design parameters could be profitably held the week of

November 17, 1997. We would propose submitting to your technical representatives during the week of November 10, 1997, our initial design thoughts, for their review.

(2) We need clarification on the timing of discharge plan approval, if we proceed with either a dry well or an infiltration gallery. We want to have either system up and operating at the conclusion of the sixty day period when the city's sanitary sewer is no longer available to us at no cost. We would, therefore, propose meeting with representatives of NMED, also the week of November 17, 1997, to discuss what should be included in a discharge plan and to tie down the time frame for action on such a submission.

(3) I understand from Gary O'Dea, that the city is prepared to act rapidly on our request for a permit to discharge to the sanitary sewer system. The contemplated length of that permit would be 5 years. Within that 5 year period, we would be allowed to discharge to the city's sanitary sewer system if certain preconditions are met. We need to tie down exactly what those conditions would be. We also need information on what the city would propose we would be charged for using the sanitary sewer system. We had been assuming that such use would be free of charge and, obviously, that cost is something we need to evaluate.

(4) We need to reach an understanding of how many dry wells or inflitration galleries could fail before we could discontinue either approach and discharge to the city's sanitary sewer system.

(5) I am sending out to you today under separate cover, a further revision to the scope of work that incorporates our changes to your latest effort.

(6) Do you intend that we would continue to operate the off-site containment system, even if we are arguing about its effectiveness?

The following are our initial comments and questions about your soil vapor extraction proposal:

(1) I am assuming that after the 30-day shutdown we could restart the system while we talked about what additional activity, if any, was needed for SVE.

(2) We would like to revisit the target level of 10 ppmv. It is our understanding that the target concentration for GTE was 70 ppmv and for Digital was 275 ppmv. Are we correct? If we are, it seems that one or the other of those standards should also apply to our site.

The following are our initial comments and questions regarding your proposal about staying adversarial action between the parties:

(1) An eight month stay on issues related to restoration is unacceptable. We feel very strongly, for a variety of technical reasons, that the off-site containment, SVE, and on-site containment system should be given at least five years to operate in order to understand how the plume is responding to those activities.

(2) We have significant concerns about how the initial administrative order should be dealt with. We simply cannot take any action that would prejudice the legal and technical objections we have to that proceeding. Asking us to agree to modify a provision of that order could, in our view, significantly prejudice us. It seems to us the simpler and better approach is for EPA to withdraw the order. It obviously will need to be significantly redrafted if we are able to reach agreement on the issues we have been discussing so that it does not specify any inconsistent or additional work. Moreover, as a practical matter, the litigation has superseded the administrative process making, in our view, the order unnecessary for the plaintiffs to achieve their objectives. We will obviously need to discuss this issue further.

Michael, it is my view that with some hard work and flexibility on the part of all parties, we have a fair chance of getting this matter resolved in the month of November. Let's talk Tuesday to see if we can't set up a schedule for the rest of the month.

Yours very truly,

James B. Harris

JBH/bje
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