U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section

90-7-1-875

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CONFIDENTIAL SETTLEMENT LETTER--FOR SETTLEMENT PURPOSES ONLY NOT ADMISSIBLE FOR ANY PURPOSE--NOT FOR PUBLIC RELEASE

November 7, 1997

By telefax and first class U.S. mail
James B. Harris
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Re: City of Albuquerque v. Sparton Technology, Inc., No. CV-97-0206 (D.N.M.)

Dear Jim:

I am writing to respond to the issues raised in your letter of October 31, 1997. In preparing this response, I have consulted with the other Plaintiffs. I too remain hopeful that we can work out our remaining concerns. I will respond to your questions and comments using the numbering system from your letter.

While Plaintiffs' letter of October 24, 1997 states that "we disagree Sparton's designs will work as the complete clean-up remedy for the site," we certainly remain willing to review analytical results with an open mind. Indeed, Plaintiffs feel it is imperative that we review the analytical results from the pump test before opining on a complete cleanup remedy for the site. Plaintiffs included the quoted statement in the letter because we felt it imperative that Sparton understand that Plaintiffs do not share Sparton's confidence in the measures it proposes to implement. It is Plaintiffs' understanding, based upon Sparton's representations, that should Sparton's designs fail, Plaintiffs will seek additional relief.

You raise numerous comments and questions related to the off-site containment system. Plaintiffs' response to these comments and questions follows:

1. First, Plaintiffs are willing to consider any wastewater disposal system that is functional, can be operational in the near future, and complies with applicable statutes and regulations. We propose that Sparton select a technology which meets these criteria. Once Sparton selects a wastewater disposal technology, we request that Sparton propose a design for that system to Plaintiffs. Once the parties have agreed on the design, the final design would be attached to the settlement document. It should be clear that, by agreeing to attach a particular design to the settlement agreement, Plaintiffs would not be guaranteeing that such a system would work. Should Sparton's wastewater disposal system fail, it would be Sparton's responsibility to propose and install an alternative system.

Second, Plaintiffs appreciate Sparton's offer to submit an initial design during the week of November 10, 1997. Plaintiffs are willing to review the initial design and discuss it with Sparton during the week of November 17. I expect that the most efficient alternative would be to discuss the wastewater disposal system design during a conference call involving technical personnel and counsel.

2. If Sparton selects a wastewater disposal technology that requires a discharge permit from the State of New Mexico, the State is willing to schedule a meeting during the week of November 17 to discuss the timing and requirements for the discharge permit. You may also find that the Environment Department's web site, http://www.nmev.state.nm.us, contains a great deal of useful information.

3. Your letter suggests that Sparton may misunderstand the nature of the proposed permit from the City of Albuquerque and how it relates to the proposed settlement. I have spoken with Mr. O'Dea concerning this matter and I have set forth my understanding of the issue below. I encourage you to confirm this with Mr. O'Dea. The City requires that all dischargers to its sanitary sewer system have a permit. In the October 24, 1997 counter-proposal, the City offered to accept discharge waters from Sparton under the circumstances outlined on page 2 of Plaintiffs' October 24, 1997 letter. As stated in that letter, this commitment would cover the eight month period when the litigation stay for the containment is in effect.

Having offered to accept Sparton's discharge water under the conditions outlined in the October 24, 1997 letter, Mr. O'Dea on behalf of the City contacted you by telephone on October 30, 1997 to discuss the mechanism whereby this could be accomplished. Mr. O'Dea stated that the City would require that Sparton apply for and receive a standard sanitary sewer discharge permit. Mr. O'Dea informed you (1) that the permit would authorize Sparton to discharge to the City's sanitary sewer system under the terms set forth in the October 24, 1997 letter and as authorized by the City's Industrial Waste Engineer; and (2) that the standard duration of such permit is five years, and the City proposed to issue a standard five year permit in this case.

Plaintiffs counter-proposal of October 24, 1997 was effectively amended by Mr. O'Dea's telephone call. In its current form, the proposal is that for five years after Sparton applies for and receives a permit from the City to discharge to the sanitary sewer system, the City will consider any request to accept Sparton's discharge water should Sparton's disposal system fail. Any such requests would be considered under the permit which would incorporate the conditions stated in our October 24, 1997 letter.[1] If that request were approved, discharges would be pursuant to the permit already in effect. The City's decisions on such requests would be made by appropriate City official applying the conditions of the permit and using the discretion granted them by the City's ordinances. These decisions would not be governed by the settlement document nor would they be reviewable by the federal District Court. While the City stands ready to work with Sparton should legitimate problems occur, that cooperation would occur outside the context of the proposed settlement.

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[1] As Mr. O'Dea informed you during your October 30, 1997 telephone call, the specific terms of the permit, including the seventy-two hour notice requirement set out in the October 24, 1997 letter, are subject to technical discussions between the Industrial Waste Engineer and Sparton's representatives.

4. As stated in the response to the previous comment and in our letter of October 24, 1997, the City cannot pre-approve requests to accept unknown quantities of Sparton's wastewaters into its sanitary sewer system. While the City will consider requests to discharge to the sanitary sewer system under the terms of the permit, there would be no pre-defined number of replacement wells. While the concept of pre-defining a set number of replacement dry wells or infiltration galleries was an element of Sparton's October 15, 1997 settlement proposal, it was not an element of Plaintiffs' October 24, 1997 counter-proposal.

5. I am still awaiting Sparton's proposed revisions to the October 14, 1997 draft of the off-site work plan. I understand from my conversation with you on November 4, 1997 that these proposed revisions will be ready soon.

6. It is an important element of Plaintiffs' October 24, 1997 counter-proposal that Sparton continue to operate the pump test well during any period of negotiations or litigation regarding the off-site containment system.

You also made comments and raised questions regarding Plaintiffs' counter-proposal on the soil vapor extraction ("SVE") system. Plaintiffs' response to these comments and questions follows:

1. It is an important element of Plaintiffs' October 24, 1997 counter-proposal that Sparton would re-start the SVE system after the thirty day shutdown and continue to operate it during any period of negotiations or litigation regarding the SVE system.

2. Plaintiffs are not prepared to revise the cleanup level for the vadose zone. Throughout settlement discussions, in repeated correspondence, and in the Corrective Measures Study, Sparton stated its willingness to accept a vadose zone cleanup level of 10 parts per million volume ("ppmv"). The two sites referenced in your letter, GTE and Digital, are located in the Albuquerque area, used technology similar to that proposed for the Sparton site, and, according to NMED, reduced vadose zone contamination below 10 ppmv. Although GTE and Digital originally proposed cleanup levels greater than 200 ppmv, NMED rejected those proposals as unacceptably high. Thus, the experience at those sites does not support reconsideration of the 10 ppmv cleanup level.

Finally, you set out Sparton's initial comments and questions regarding the litigation stay issues proposed in Plaintiffs' October 24, 1997 letter. Plaintiffs' response to these comments and questions follows:

1. In the October 24, 1997 letter, Plaintiffs proposed an eight month stay on issues related to restoration. After the spread of contamination is halted, restoration of the aquifer will be Plaintiffs' primary goal in this litigation. Under the stay on restoration issues contained in our counter-proposal, work related to off-site containment to be implemented under the proposed settlement would be completed prior to renewed litigation on restoration issues. As proposed, the stay would have the practical benefit of allowing the parties to focus on resolving critical off-site containment issues before turning their attention to restoration of the aquifer. Plaintiffs remain willing to discuss this issue with Sparton, but at this point, Plaintiffs see no

justification for a five year--or even a one year--stay of litigation on issues related to restoration of the aquifer.

2. EPA will not withdraw the administrative order, which was the subject of Sparton's administrative appeal, because the settlement at issue here concerns only a portion of the long-term remedy addressed in that order. As stated previously, EPA intends to issue the final order shortly. In an effort to address Sparton's concerns regarding the final order, EPA has suggested two different alternative measures that may be taken. First, if a partial settlement is reached, EPA is willing, upon Sparton's request, to extend each of the deadlines set forth in the final order for the period of time that the litigation is stayed. Alternatively, EPA is willing to agree to jointly modify in writing, pursuant to Section XX of the final order, the effective date provision of the order so that the provision is consistent with the stay in the litigation. EPA will memorialize its intention to agree to a joint modification of the effective date provision in a letter to Sparton.

In your October 31 letter, you expressed some concerns regarding the joint modification option. In your view, modifying the effective date provision or any other provision of the final order would prejudice any future challenges that Sparton may have to the order. Depending on the nature of Sparton's concerns, the matter may be addressed by including language in the proposed joint modification to the order indicating that notwithstanding the modification, Sparton reserves all of its objections to the final order, as issued by EPA.

Plaintiffs are prepared to work with Sparton throughout November in an effort to reach an agreement prior to Judge DeGiacomo's return from Europe. I propose that we schedule a conference call amongst counsel for the parties to discuss the status of negotiations early in the week of November 10.

Sincerely,

Michael T. Donnellan

c: Honorable Robert J. DeGiacomo
Counsel of record