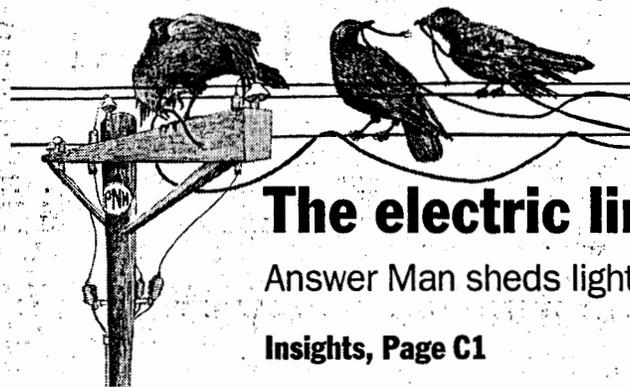


November 25, 1997

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TUESDAY MIDDAY

THE ALBUQUERQUE  
**T** **TRIBUNE**

**The electric li**  
 Answer Man sheds light  
 Insights, Page C1

# Owners want builder to buy back their houses

**The lawsuit alleges that Richard Fuller Homes Inc. failed to disclose groundwater contamination in the development.**

**By John Hill**  
 TRIBUNE REPORTER

More than 20 West Side homeowners are suing their homebuilder, alleging he failed to tell them that a plume of contaminated

groundwater runs beneath their properties.

The lawsuit, filed in October by residents of the Cactus Pointe subdivision, contends that Richard Fuller Homes Inc. failed to disclose the groundwater contamination in the development, which was built in 1995 and 1996.

Richard Fuller of Richard Fuller Homes called the lawsuit "frivolous."

The contamination comes from Sparton Technology, 9621 Coors Blvd. N.W., which from 1961-94 built components for

nuclear weapons developed at Sandia National Laboratories, the lawsuit says. City and state officials say solvents used at Sparton found their way into the groundwater and could threaten drinking-water wells. The area is served by municipal water.

In addition to damages, the Cactus Pointe homeowners want Richard Fuller Homes to buy back their houses. A substantial percentage of residents in the subdivision, just south of Irving Boulevard east of Paradise Hills, are named as plaintiffs in the lawsuit.

Residents fear that efforts to clean up the groundwater will disrupt their neighborhood, said Alan Wilson, a lawyer whose firm is representing the homeowners.

"The concern the homeowners have is whether or not the properties can be sold on the open market or whether it decreases the values," Wilson said. "The immediate concern is the remediation efforts (to clean up groundwater). The problem is that no one really knows what it will involve."

Please see **GROUNDWATER/A3**

## **GROUNDWATER** *from A1*

The lawsuit says that wells used to pump out the water and decontaminate it will run for 30 years, and that the "remediation units are likely to produce airborne contamination."

Fuller said he was unaware of the Sparton contamination when he sold the houses. And, he said, the cleanup is unlikely to disrupt the neighborhood.

The lawsuit "is totally based on someone saying this could happen," he said. "There's been no plan for anything to happen yet."

Government agencies involved in the cleanup, he said, have vowed not to damage neighborhoods.

Sparton and several government agencies, including the city of Albuquerque, Bernalillo County, the state of New Mexico and the U.S. Department of Justice, have been trying to work out an agreement for how the contamination will be mapped and cleaned up.

The mediation, ordered by a U.S. District judge last summer, has still not resulted in an agreement, and the government agencies may soon

**Outside the plant, several monitoring wells have been drilled to show how far the plume has flowed. So far, it has migrated about 2,500 feet north-northwest of the plant.**

ask a judge to let them go ahead with a lawsuit against Sparton forcing the company to clean up the groundwater.

At the Sparton plant, one well is pumping out groundwater for decontamination, said Assistant City Attorney Gary O'Dea, the city's representative in the Sparton case.

Outside the plant, several monitoring wells have been drilled to show how far the plume has flowed. So far, it has migrated about 2,500 feet north-northwest of the plant.

"I think it would be safe to say it's approaching or in the vicinity of Cactus Pointe," O'Dea said.

Since no settlement has been reached, he said, it's impossible to say what effect the cleanup would have on the neighborhood.

The cleanup wells are likely to take contaminants out of the water and put them into the air with a device called an "air stripper," O'Dea said. But the project would have to get a permit from the city's Air Pollution Control Division showing that contaminants in the air would be kept to safe limits.

The lawsuit is apparently the first of its kind related to the Sparton contamination.

It says that Richard Fuller Homes knew or should have known about the contamination and should have disclosed it to homebuyers because it affected the value of the property.

Fuller and his company "knowingly failed to disclose these facts" to the housebuyers, the suit says.

It says that Fuller and his company said that house prices at Cactus Pointe were lower than elsewhere because the company had no employees and used subcontractors.

Fuller and others in his company "knew or should have known that the presence of contamination was one of the reasons the properties were less expensive," the suit says.

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

90-7-1-875

P.O. Box 7611  
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Telephone (202) 514-4226  
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November 19, 1997.

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

Dear Fellow Plaintiffs:

I am writing to update you on my conversation with Jim Harris yesterday evening at approximately 6:30 pm PST. Jim said that on the technical side, Sparton is making good progress. Sparton has concluded that dry wells are an unproven technology and has returned to infiltration galleries. Jim said that Sparton is working with AMAFGA (sp?) to obtain permission to locate the infiltration galleries in the arroyo. I told Jim that the United States primary concern about the arroyo is that we need to be convinced that there will be no mingling of remedial waters with surface waters. He said that he would have Gary Richardson provide us with technical details sufficient to evaluate that. He said that he might be able to deliver the proposed design of the discharge system on Thursday and, if not, he will call me on Thursday to let me know when the proposed design will be delivered.

The remaining problems which Harris identified were two. First, he remains concerned about EPA's Administrative Order. I told him that we have expressed our intentions about that order clearly and that if he had another proposal, he should communicate it as soon as possible. Second, Harris feels that the details of the discharge permit from the City of Albuquerque need "fine tuning." Basically, his client wants a lot of security. I told him that the City was unlikely to make an overly large commitment, but that he should talk to Gary about that. I told him that I expected that Gary and the Industrial Waste Engineer would probably be willing to meet with Sparton about the permit.

Finally, he promised to send a redline/strikeout copy of the off-site work plan to me today. I will send it to y'all as soon as I get it.

This leaves us with an issue: do we need technical folks in Albuquerque on December 5. My instinct at this point is no. I feel that the primary outstanding issues at present are legal. I propose that technical folks be available by telephone, but that they not attend the settlement conference. If y'all concur, I will call Kyle and make sure that she agrees. Please let me know.

I am presently in Seattle and will be here through the end of the week. However, you can reach me by leaving a voicemail in Washington, D.C.

Michael T. Donnellan

November 19, 1997 Letter from Donnellan  
 Status Report on Settlement Negotiations

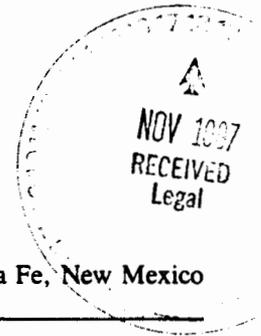
Albuquerque v. Sparton Technology, Inc.  
 No. CV-97-0206 (D.N.M.)

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GROUND WATER

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November 17, 1997

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Re: *United States of America v. Sparton Technology, Inc.*, USDC DNM No. CIV 97-0210 M/DJS; *State of New Mexico v. Sparton Technology, Inc.*, USDC DNM No. CIV 97-0208 JC/RLP; *City of Albuquerque and The Board of County Commissioners of the County of Bernalillo v. Sparton Technology, Inc.*, USDC DNM No. CIV 97-0206 LH/JHG

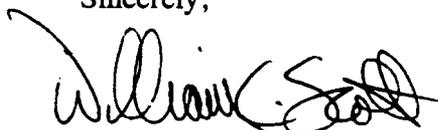
Dear Counsel:

Enclosed please find Albuquerque Metropolitan Arroyo Flood Control Authority Resolution 1997-13 which describes AMAFCA's position concerning the minimum conditions

Counsel in Sparton Litigation  
November 17, 1997  
Page 2

that would have to be satisfied before AMAFCA would enter into any agreement with Sparton concerning discharge of treated groundwater to the Calabacillas Arroyo. Please feel free to raise any questions you may have.

Sincerely,



William C. Scott

WCS:rkg:435019  
Enclosure

cc w/out encl.: Mr. Larry Blair

COPY

**RESOLUTION 1997-13**

WHEREAS, The Albuquerque Metropolitan Arroyo Flood Control Authority ("AMAFCA") holds an easement in the Calabacillas Arroyo (the "Arroyo") for flood control and drainage purposes; and

WHEREAS, Sparton Technology, Inc. ("Sparton") owns certain property located at 9621 Coors Road, N.W., Bernalillo County, New Mexico (the "Sparton Property");

WHEREAS, The City of Albuquerque (the "City"), the County of Bernalillo (the "County"), the New Mexico Environment Department (the "NMED"), the New Mexico Office of the Natural Resource Trustee (the "ONRT"), the United States, and the United States Environmental Protection Agency (the "USEPA") have filed suit against Sparton in the United States District Court for the District of New Mexico seeking injunctive relief and restitution under the federal Resource Conservation and Recovery Act, the New Mexico Hazardous Waste Act, the New Mexico Water Quality Act and state and federal common law concerning soil and groundwater contamination beneath and migrating from the Sparton Property; and

WHEREAS, Sparton has approached AMAFCA concerning the possibility of entering into an agreement to discharge treated groundwater from remediation of the contamination beneath and migrating from the Sparton Property which would allow for the discharge of that water to the Arroyo; and

WHEREAS, AMAFCA is willing to cooperate with Sparton and other agencies to identify and develop solutions to the problem of contamination at the Sparton Property provided that AMAFCA is fully indemnified from and protected against any liabilities or adverse future consequences;

WHEREAS, the AMAFCA Board of Directors desires to set forth its position concerning the minimum conditions that would have to be satisfied before AMAFCA would enter into any agreement with Sparton concerning discharge of treated groundwater to the Arroyo;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Albuquerque Metropolitan Arroyo Flood Control Authority:

1. As a precondition to the execution of any agreement to allow discharge to the Arroyo and to any discharge to the Arroyo, Sparton must have received at least the following final enforceable agreements and permits:

(a) National Pollution Discharge Elimination System ("NPDES") permit from the USEPA specifically authorizing discharge to the Arroyo;

(b) an agreement with the City regarding use of the City's storm sewer drains to convey the treated ground water generated from the Sparton Property to the Arroyo;

(c) an agreement with the City and New Mexico Utilities ("NMU") regarding use of NMU's and the City's sanitary sewer systems as alternative discharge points for all of the treated ground water generated from the Sparton Property; and

(d) an approved ground water discharge plan from the NMED authorizing discharge of treated ground water from the Sparton Property to the Arroyo.

(e) a fully executed written agreement with the underlying fee owner of the Arroyo authorizing the discharge of treated ground water into the Arroyo.

2. Prior to the execution of any agreement or to the consent to any discharge to the Arroyo, the USEPA, the NMED, the City, the ONRT, and the County must have completed a technical review of and must have issued a final written approval of the equipment and methodology Sparton intends to employ to treat the ground water from the Sparton Property and each such agency or body must further have issued a final written determination finding that the equipment and methods to be employed by Sparton will treat the ground water to a quality that will satisfy all applicable federal, state, tribal and local water quality standards prior to such water being discharged to the Arroyo or any alternative point of discharge;

3. Prior to the execution of any agreement or to the consent to any discharge to the Arroyo, the USEPA, the NMED, the City, the ONRT, and the County must have issued a final written determination that the equipment and methodology Sparton intends to utilize to treat the ground water from the Sparton Property will eliminate or sufficiently reduce the concentrations of heavy metals in the treated water to prevent accumulations of heavy metals in the soil within the Arroyo and that the discharges to the Arroyo will not at any point during the term of the remediation project result in a build up of heavy metals within the Arroyo or otherwise result in soil contamination at any time exceeding any applicable federal, state, tribal, or local regulatory or health and safety standards;

4. As a further precondition to the execution of any agreement to allow discharge to the Arroyo and to any discharge to the Arroyo, Sparton must strictly comply with any and all monitoring and testing requirements imposed by the USEPA, the NMED or any other environmental regulatory body to ensure that the treatment methods and equipment employed are satisfactory and are in fact cleaning the ground water from the Sparton Property to the extent necessary to satisfy all applicable federal, state, tribal, and local water quality standards. Any agreement or authorization to allow discharges to the Arroyo will be subject to AMAFCA's right to terminate any agreement or consent to any discharge without prior written notice immediately upon receipt of any evidence that (i) the remediation system is not cleaning the ground water to the levels required to satisfy all applicable federal, state, tribal and local water quality standards, (ii) is not preventing accumulations of heavy metals in the soil within the Arroyo or that the discharges to the Arroyo are or have been causing a build up of heavy metals within the Arroyo or otherwise result in soil contamination exceeding any applicable federal, state, tribal, or local regulatory, or (iii) is otherwise failing to adequately protect health, safety or the environment;

5. As a precondition to the execution of any agreement to allow discharge to the Arroyo and to any discharge to the Arroyo, Sparton, the federal, the state, and any local