

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
E-Mail: harrisj@tklaw.com

AUSTIN
FORT WORTH
HOUSTON
MONTERREY, MEXICO

February 25, 1998

VIA FEDERAL EXPRESS

Honorable C. LeRoy Hansen
United States District Judge
13th Floor, West Courtroom
Federal Building & U.S. Courthouse
500 Gold Avenue S.W.
Albuquerque, NM 87103


FEB 1998
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Legal

Re: *City of Albuquerque v. Sparton Technology* (97-0206-LH/JHG)
State of New Mexico v. Sparton Technology (97-0208-JC/RLF)
USA v. Sparton Technology (97-0210 M/DJS)
Sparton Technology v. Environmental Protection Agency (97-981 LH/JHG)

Dear Judge Hansen:

I write in an effort to provide a framework to better understand the procedural posture of the cases before you, to alert you that my client, Sparton Technology, Inc., ("Sparton"), needs its own injunctive relief, to advise you of pending matters that are ripe for determination, and to seek guidance on the scope of the hearing now set for March 17 and March 18, 1998.

It may be conceptually easiest to view the matters before you as falling into two general categories. The first category consists of claims unrelated to administrative actions. The second category includes those claims directly connected to administrative actions.

The governmental entities request for a preliminary injunction, which will be addressed at the hearing set for mid-March, falls squarely in the first category. After your decision on that request, the Court must still decide under the first category of claims, what remedy, if any, it will order after a final trial in this matter, as well as whether the governmental entities are entitled to recovery of any costs or civil penalties.

There are four substantive issues that fall into the second category: (1) was EPA foreclosed as a result of an agreement it entered into with Sparton (referred to as an Administrative Order on Consent or "AOC") from initiating, as it did, an administrative proceeding for identifying a final remedy to address impacts associated with the Sparton plant; (2) if EPA was not foreclosed, did the administrative proceeding leading to the issuance of a

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final administrative determination, as applied to the facts of this matter, violate Sparton's due process rights; (3) was EPA precluded from continuing its administrative proceeding to select a final remedy to address the impacts associated with Sparton's plant, when the agency sought relief in your court, because such a concurrent administrative action can only limit or interfere with the exercise of your jurisdiction in violation of the separation of powers doctrine; and (4) what effect, if any, should the decision EPA reached in a final administrative order effective February 12, 1998, be given.

Issues 1 and 3 are the subject of a pending motion for summary judgment, filed by Sparton on June 11, 1997, when its action was still pending in Dallas. Although EPA requested that its obligation to respond be stayed, the only stay entered, pursuant to the order of this Court dated August 6, 1997, was lifted by the Court's order of February 6, 1998.

Under both the Dallas local rules and this district's local rules, a response from EPA to Sparton's Motion for Summary Judgment is past due. Because all of Sparton's pleadings in connection with the motion for summary judgment were filed in Dallas, they are currently before you, and there is no need to provide a motion packet under the local rules. Sparton's motion for summary judgment is ready to be decided.

If Sparton's motion for summary judgment is granted, then the second category of issues in this case is removed. If the second category of issues remain, Sparton must seek a restraining order and injunctive relief. The February 12, 1998, administrative order puts Sparton to Hobson's choice -- comply with an order it opposes, or incur civil penalties of \$25,000 per day, which the administrator of EPA can unilaterally and preemptively impose.

Sparton has requested that EPA confirm it will not seek any civil penalties during the pendency of any judicial review of the order in question. EPA has declined this invitation. Sparton, therefore, has filed its unopposed motion to amend its complaint¹ to request that the Court grant a temporary restraining order and preliminary injunction to prohibit EPA from imposing any civil penalties on Sparton for any alleged failure to comply with the order, while it is the subject of judicial review.

My review of the administrative order in question suggests that the first time Sparton may be placed in a position of having to decide whether to comply or face penalties is March 14, 1998. We would therefore, request an opportunity to visit with the Court next week to discuss the entry of a temporary restraining order, which would expire at the same time that the hearing on the governmental entities' motion for preliminary injunction is to be heard.

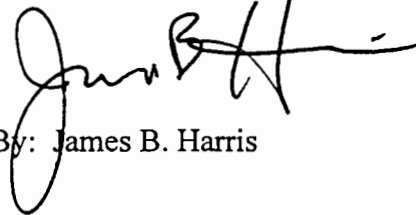
¹That motion is currently before you.

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The Court might be interested in entertaining argument on this issue at that time, given that testimony should not be necessary.

Sparton also believes that a short conference with the Court in advance of the preliminary injunction hearing might be helpful to identify what the parties need to present to the Court in the way of evidence. Sparton anticipates that for purposes of the hearing on the governmental entities' preliminary injunction only, it will not challenge the authority of the Court under RCRA to grant the relief requested, but will limit its presentation to demonstrating such relief is unnecessary and inappropriate, and would violate the traditional tests used in determining whether injunctive relief is appropriate. Sparton would reserve, until the trial of this matter, its other objections to use of the statutes the governmental entities rely upon to obtain the relief they seek.

Respectfully submitted,
Thompson & Knight, P.C.

A handwritten signature in black ink, appearing to read "James B. Harris", with a large, stylized initial "J" and a long horizontal stroke extending to the right.

By: James B. Harris

cc: All Counsel of Record via Federal Express
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