



U.S. Department of Justice
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**CONFIDENTIAL SETTLEMENT LETTER—NOT FOR PUBLIC RELEASE
INADMISSIBLE UNDER FEDERAL RULES OF EVIDENCE**

April 22, 1998

By telefax and first class U.S. mail

James B. Harris
Thompson & Knight
1700 Pacific Ave, Suite 3300
Dallas, Texas 75201-4693
(214) 969-1102
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Re: Albuquerque v. Sparton Technology, Inc., No. CV-97-0206 (D.N.M.)

Dear Jim:

I write in response to certain statements in your letter of April 13, 1998 to Michael A. Hebert. Specifically, on page 2 of your letter, you state that Sparton has:

[B]egun a program for addressing impacts to the vadose zone on its property. That work was undertaken based upon a proposal presented to and approved by the New Mexico Environment Department, as well as discussions with a variety of regulatory bodies, including EPA. It is our understanding that none of these regulatory bodies has any objection to the program we have implemented.

Your understanding regarding the Plaintiffs' position is not accurate.

As you are aware, one element of the settlement discussions between the parties during the Fall of 1997 was a soil vapor extraction ("SVE") system. Sparton insisted that design of an SVE system be incorporated into any settlement agreement and outlined a design concept for an SVE system using AcuVac technology. In correspondence and settlement talks, Plaintiffs unambiguously stated that they did not agree with Sparton that the AcuVac system would be robust enough to address the soil contamination problem. During settlement discussions, Plaintiffs agreed to consider a 30 day pilot test using an AcuVac system as part of a larger

settlement. See, e.g., October 24, 1997 letter to James B. Harris from Plaintiffs at 3. Unfortunately, settlement negotiations terminated in December 1997 without an agreement. The AcuVac system was never "approved by the New Mexico Environment Department," and Plaintiffs continue to maintain their original objections to the AcuVac system.

Sparton has also failed to inform Plaintiffs regarding the details of the design and installation of its SVE system. Under the terms discussed last fall, Sparton was to submit to Plaintiffs a workplan describing in detail the system they proposed to install. Once agreed, the workplan was to be incorporated into an enforceable settlement document. See October 24, 1998 letter to Harris from Plaintiffs at 2-3. In his January 16, 1998 letter to Mark Weidler, et al., R. Jan Appel, stated Sparton's intention to move forward with the SVE system outlined in letters dated October 24, 1997, October 31, 1997, and November 7, 1997. Apparently, Sparton then installed an AcuVac based SVE system sometime this winter. However, Sparton has never provided to Plaintiffs a workplan or any other detailed description of that system.

Sparton's failure to communicate with Plaintiffs extends beyond the lack of a workplan. Indeed, it was not until I read your April 10, 1998 letter to Judge DeGiacomo that I learned that start-up of your SVE system had occurred on April 9, 1998. At the time of startup, Plaintiffs had no specific knowledge of the design of the system installed by Sparton. Lacking information regarding the design of the system and date of startup, Plaintiffs were not in a position to raise specific objections to the system installed by Sparton.

In general, these problems illustrate the importance of proceeding under the Final Administrative Order issued by EPA on February 9, 1998. In violation of that order, Sparton has failed to submit to EPA a Vadose Zone Investigation Workplan. See April 9, 1998 letter from Michael Hebert, EPA, to Richard Mico, Sparton. As a result, EPA has neither reviewed nor approved your SVE system. Plaintiffs have not sought to prevent Sparton from installing an SVE system of its own design. However, Plaintiffs are in the process of judicially enforcing the Final Administrative Order, and EPA may not approve the SVE system installed by Sparton.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,



Michael T. Donnellan

c: Counsel of record