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GARY E. JOHNSON
Governor

State of New Mexico
ENVIRONMENT DEPARTMENT
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PETER MAGGIORE
Secretary

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August 22, 2001

Sent by facsimile (214) 969-1751

Mr. James B. Harris
Thompson & Knight
1700 Pacific Ave., Suite 3300
Dallas, Texas 76201-4693



RE: Dispute Over Post Closure Care Permit Issues and Invocation of Informal Dispute Resolution

Dear Mr. Harris:

This letter serves to respond to your letter of August 21, 2001 that was provided to me by my client.

In my previous letter of August 7, 2001, I requested that you provide me copies of any and all correspondence that you send directly to my client. Despite the fact that the Consent Decree allows you to send notice to designated persons, you are not precluded from sending me a courtesy copy of all correspondence related to any dispute invoked under the Consent Decree or otherwise. In my letter of August 7, 2001, I specifically requested that you provide me with a courtesy copy of any letter you send directly to my client related to disputed issues on all post closure care permit matters. I am disappointed in your failure to provide me with the professional courtesy I requested and that does not violate the Consent Decree.

It appears from your letter that you classify my response to your letter as a refusal to engage in informal dispute resolution under the Consent Decree and therefore a violation of the Consent Decree. I believe your perceptions are misplaced and are inappropriate. In my letter of August 7, 2001, I specifically requested that we attempt to resolve our recent dispute informally and requested that you call me to set up a conference call to do so. However, you decided to ignore my request to informally attempt to resolve our

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differences with respect to the Department's letter of June 22, 2001 and instead unilaterally decided to invoke Paragraph 53 of the Consent Decree.

Prior to invoking Paragraph 53 of the Consent Decree, informal negotiations are required. The Department's letter of August 7, 2001 specifically agrees to enter into informal dispute resolution. Your recent letter only attempts to exacerbate a situation that I believe can be resolved if you simply make an effort to call me to set up a conference call to discuss our differences, as suggested. The Department's letter of August 7, 2001 was not a final decision that was based on any informal negotiations, as required under the Consent Decree. Nor is the Department's letter of August 7, 2001 a decision issued under the terms of Paragraph 49 of the Consent Decree. The Department's letter provided notice that the Department was agreeable to informal resolution of our differences and that in the Department's opinion, the disputed issues were not necessarily corrective action and subject to the dispute resolution process under the Consent Decree. The Department is willing to discuss its concerns and reasoning if it can be given the opportunity. However, based upon your letter of August 21, 2001 and your failure to call me to informally attempt to resolve our differences, it appears Sparton is unwilling to attempt to informally resolve our differences of opinion, under the Consent Decree or otherwise. I hope my understanding of your recent actions is incorrect.

It is not altogether clear that the items you are disputing are indeed considered corrective action under the Consent Decree. I think the issues required to be resolved during informal resolution are whether the items requested by the Department in its letter of June 22, 2001 amount to corrective action; and based upon such determination, what dispute resolution process should be invoked for each item in dispute. It is not altogether clear that the items you are objecting to provide to the Department are indeed corrective action requirements. The Department's position is that until we enter into informal negotiations, conference and otherwise agree on whether specified items the Department is requesting Sparton to provide amount to corrective action, such items of dispute are not clearly considered corrective action and the dispute resolution process under the Consent Decree may not apply.

I previously requested in my August 7, 2001 letter that you call me directly so that we can conference to see if the dispute in question can be resolved informally. I am again requesting that you call to discuss our respective concerns as well as to set up a conference call to deal with the issues that need to be resolved informally, whether by Consent Decree or otherwise. It is my hope that you will call so that we can try to informally resolve the outstanding issues that have arisen. Should the Consent Decree apply, the period of time for informal resolution under the Consent Decree will expire tomorrow, unless we both agree to extend the period of informal negotiations. Your good faith efforts and attempt to informally resolve the matters in dispute will be appreciated.

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I will be out of my office tomorrow morning at a meeting in Albuquerque, but will agree to extend informal negotiations for an additional 30 days if you notify me by August 24, 2001 of your client's desire and willingness to proceed with informal negotiations, and call me to set up a time and date to conference on the issues of dispute. An agreement by your client to extend informal negotiations for an additional 30 day period will also be needed. Your failure to call me will be considered a refusal by Sparton to enter into informal negotiations on the items in dispute under the Consent Decree, 20.4.1 NMAC or 20.4.2 NMAC.

Very truly yours,

A handwritten signature in black ink that reads "Ana Marie Ortiz". The signature is written in a cursive, flowing style.

Ana Marie Ortiz

cc: James Bearzi, Bureau Chief, HWB
Greg Lewis, Director, Water and Waste Management Division
Robert Warder, HWB
Carl Will, HWB