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ENVIRONMENT DEPARTMENT

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ENTERED



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

January 31, 2019

Mr. Joseph G. McCormack
Senior Vice-President and Chief
Financial Officer
425 North Martingale Road,
Suite 1000
Schaumburg, IL 60173

Mr. Ernesto Martinez
Corporate EHS Manager
Sparton Technology, Inc.
30167 Power Line Road
Brooksville, Florida 34602

**RE: DISAPPROVAL
FINANCIAL ASSURANCE SUBMITTAL
SPARTON TECHNOLOGY, INC.
EPA ID # NMD083212332
HWB-ST-MISC**

Dear Messrs McCormack and Martinez:

The New Mexico Environment Department (NMED) has completed its review of the Sparton Technology, Inc. (the Permittee) financial assurance submittal dated October 31, 2018. The Permittee has not met the requirements to submit the financial assurance information for 2018 and must address the following comments.

Comment 1

The Permittee inadvertently omitted the EPA ID number for the facility. In the revised financial assurance submittal, as well as future financial assurance submittals, the Permittee must provide the EPA ID number where appropriate.

Comment 2

In the cover letter, the Permittee states “[i]n the past, pursuant to 40 C.F.R. § 264.143(f)(10), Sparton Technology, Inc. (“Sparton Technology”) has met its financial assurance requirements under the Consent Decree by obtaining and providing a corporate guarantee from its direct parent corporation, Sparton Corporation. However, due to certain one-time events during its just-closed fiscal year ended July 1, 2018, Sparton Corporation is not able to satisfy the financial test requirements in support of Sparton Technology’s financial assurance. Sparton Corporation expects that it will be able to meet the financial test requirements, and thus resume its corporate guarantee at the close of its 2019 fiscal year. Accordingly, pursuant to 40 C.F.R. § 264.143(d), Sparton Corporation is submitting a letter of credit and standby trust agreement on behalf of Sparton Technology.” For 2019, the Permittee must demonstrate that the Sparton Corporation can pass the financial test requirements for a full year. If at any time during the year the Permittee is unable to meet the financial test requirements, the Permittee will be required to put in place an alternate financial assurance mechanism for the facility.

Comment 3

In the cover letter, the Permittee states that “[t]he standby trust agreement named the Environmental Protection Agency as the Beneficiary of Trust. The New Mexico Environment Department (“NMED”) cannot be named as a beneficiary because the wording of the trust agreement and form in 40 C.F.R. § 264.151(a) does not provide for naming NMED.” NMED has received authorization from EPA to implement the Resource Conservation and Recovery Act and its implementing regulations for the State of New Mexico in accordance with 40 CFR 272.1601; therefore, Sparton is subject to NMAC 20.4.1.101.A(1) that names the “‘administrator’ or ‘regional administrator’ [as] the secretary of the New Mexico environment or his/her designee.” Revise the financial assurance documentation to name the NMED as beneficiary. This information must be used for future financial assurance submittals.

Comment 4

The October 26, 2018 Standby Letter of Credit No. HACH5763260S wording does not match verbatim the text specified in 40 CFR 264.143(d)(2) and 264.151(d) as required by EPA. For example, the third paragraph states, “This Letter of Credit is effective as of October 26, 2018 and shall expire on October 25, 2019, but such expiration date shall be automatically extended for a period of 1 year on October 25, 2019 and on each successive expiration date, unless, at least 120 days before the then current expiration date, we notify you by certified mail or overnight courier service, return receipt requested, that we have decided not to extend this letter of credit beyond the then current expiration date. In the event you are so notified, any unused portion of the letter of credit shall be available upon presentation of your sight draft to us prior to the then expiration date.” It should state, “This letter of credit is effective as of October 26, 2018 and shall expire on October 25, 2019, but such expiration date shall be automatically extended for a period of at least one year on October 25, 2019 and on each

successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and Spartan Technology, Inc. by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and Spartan Technology, Inc., as shown on the signed return receipts." Future submittals must use the exact wording from 264.151(d). Sparton must provide corrected financial assurance documentation and ensure that the 2019 financial assurance submittal matches the wording in the regulations.

Comment 5

The October 26, 2018 Standby Trust Agreement wording does not match verbatim as specified in 40 CFR 264.143(a) and 264.151(a)(1) as required by the EPA. The Permittee must address the following comments:

- a. The Permittee has several places in the Standby Trust Agreement that include additional wording. For example, in the second paragraph, it states "Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility, which are applicable to Spartan Technology, Inc., the subsidiary of Grantor, pursuant to the consent decree styled The City of Albuquerque, et. Al. v. Sparton Technology, Inc., Civil Action No. CIV97 0206 LH/JHG pending in the United States District Court for the District of New Mexico (the "Consent Decree"),". The additional information must be included in the cover letter and should not be repeated in the Standby Trust Agreement. Another example is the last paragraph before the signature page. The Permittee states, "[t]he parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 264.151(a)(1) as such regulations were constituted on the data first above written except where the language [h]as been changed to clarify that Sparton Corporation is establishing this Trust Agreement for Sparton Technology Inc, as alternate financial assurance under the referenced Consent Decree and to clarify the obligations of the Trustee." Additional wording in not acceptable; however, if the Permittee decides to provide additional explanation for parts of their submittal, the appropriate place for doing so is in the cover letter.
- b. There are several places in the Standby Trust Agreement where the Permittee omitted words and phrasing. For example, in Section 6(ii), the Permittee states, "The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee;". The Permittee omitted "to the extent insured by an agency of the Federal or State government;". Wording included in the regulations must not be omitted from the financial assurance documentation.

It is not acceptable to omit, paraphrase or embellish the financial assurance documents. The wording of the instruments in 40 CFR 264.151 are required text to be included in the

document. Wording for the Standby Trust Agreement must be verbatim as specified in the 40 CFR 264.151(a)(1).

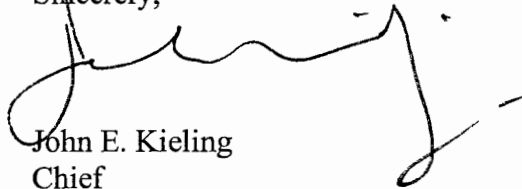
Comment 6

There appears to be some typographical errors associated with the Standby Trust Agreement's signature page. A seal was not provided by the first or second attested signatures as required by 40 CFR 264.151(a)(1) in the signature section. In addition, the notary public signed the page and provided a seal, but didn't complete the date, name, address, or title spaces in the signed statement of 40 CFR 264.151(a)(2). The Permittee must provide the revised signatory page and ensure the 2019 financial assurance submittals are complete and in compliance to the wording of the regulations.

The Permittee must address Comments 1 through 6 above and submit corrected financial assurance documentation no later than February 28, 2019. The Permittee must incorporate the changes into its 2019 financial assurance submittal as applicable.

If you have any questions, please contact Vanessa Colón of my staff at 505-476-6058.

Sincerely,



John E. Kieling
Chief
Hazardous Waste Bureau

JEK:lt

cc: D. Cobrain, NMED HWB
L. Tsinnajinnie, NMED HWB
V. Colón, NMED HWB
L. King, EPA Region 6 (6PD-N)

File: ST 2019 and Reading, HWB-ST-MISC