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James C. Kenney  
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Jennifer J. Pruett  
Deputy Secretary

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

August 9, 2019

Mr. Joseph G. McCormack  
Senior Vice-President and Chief  
Financial Officer  
425 North Martingale Road  
Suite 100  
Schaumburg, Illinois 60173

Mr. Paul Warmus  
EHS Corporate Manager  
Sparton Technology, Inc.  
Cerberus Capital Management  
299 Park Avenue 12<sup>th</sup> Floor  
New York, NY 10171

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

Dear Messrs McCormack and Warmus:

The New Mexico Environment Department (NMED) has completed its review of Sparton Technology, Inc.'s (the Permittee) *Financial Assurance Submittal*, dated February 27, 2019. The Permittee did not meet the requirements to demonstrate financial assurance for 2018. NMED hereby issues this second Disapproval and the Permittee must address the following comments.

**Comment 1**

In the February 27, 2019 response letter (response letter), page 1, paragraph 2, the Permittee states “[f]or reasons discussed below, it is Sparton’s position that the deviations do not impact the enforceability of the standby trust agreement of the letter of credit, and in fact, provide greater protection to NMED than would result if the exact language in §264.151 was followed. Sparton is requesting that [NMED] reconsider its request that Sparton modify its financial

assurance documents and instead accept them as submitted.” Item 90 of Section XXIV (*Financial Assurances*) of the March 13, 2000 Consent Decree (Consent Decree) states that “[t]he financial assurances submitted by Sparton shall comply with the requirements of 40 C.F.R. Part 264, Subpart H (§§ 264.140-151).” 40 CFR §264.143(a)(2) states “[t]he wording of the trust agreement must be identical to the wording specified in §264.151(a)(1)” and 40 CFR §264.143(d)(2) states “the wording of the letter of credit must be identical to the wording specified in §264.151(d).” To remain in compliance with the Consent Decree, the Permittee must ensure the wording for the trust agreement, letter of credit and all future mechanisms is verbatim in accordance with 40 CFR §264.151 (*Wording of Instruments*). Revise the trust agreement and letter of credit and resubmit for the 2018 financial assurance submittal.

### **Comment 2**

In the response letter, page 1, paragraph 3, the Permittee states that “[t]he first comment notes the absence of the EPA ID number for the Sparton facility. That information is not material to the enforceability of either the letter of credit of the standby trust. Its absence does not create any confusion about what facility is covered and that information is not required by §264.151.” Section 2 (*Identification of Facility and Cost Estimates*) of 40 CFR §264.151(a)(1) states “on Schedule A, for each facility list the EPA Identification Number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, of which financial assurance is demonstrated by this Agreement.” Furthermore, 40 CFR 264.151(d) references 40 CFR §264.143(d), which lists the requirements for the closure letter of credit. 40 CFR §264.143(d)(4) states “[t]he letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.” Revise the trust agreement Schedule A and include the letter referenced in 40 CFR 264.143(d)(4) and submit with the revised 2018 financial assurance submittal.

### **Comment 3**

In the response letter, page 1, paragraph 4, the Permittee states “it is unclear to Sparton why the standby trust needs to be modified to specifically mention the secretary of NMED. It is our understanding that NMED has been delegated responsibility to enforce the [Resource Conservation Recovery Act (RCRA)] in the state of New Mexico. Therefore, a reference to the regional administrator of EPA necessarily incorporates the secretary of NMED. Moreover, making that change would require a deviation from the exact language of §264.151, which is inconsistent with the general thrust of your letter that the language of §264.151 be followed exactly.” The State of New Mexico does not have a Regional Administrator. As stated in Comment 3 from the January 31, 2019 disapproval letter (disapproval letter), the NMED has received regulatory authority from EPA to oversee the hazardous waste programs for the State of New Mexico in accordance with 40 CFR §272.1601. Financial assurance falls within NMED’s

authority and the Permittee is subject to the RCRA regulations as stated in both the September 2003 Post-Closure Care Permit (PCC Permit) and the Consent Decree. The facility is located in New Mexico and any action that requires the use of the financial assurance mechanisms falls to the State of New Mexico. Therefore, the Secretary of NMED must replace "EPA Regional Administrator" and "Beneficiary" in the revised submittals.

#### **Comment 4**

In the response letter, page 1, paragraph 4, the Permittee states that "none of the other comments appear to Sparton to be substantive in the sense that not making them does not impact the reach or enforceability of the standby trust or the letter of credit<sup>1</sup>." Item<sup>1</sup> continues "[f]or instance, comment 6 requests that signatures be sealed. The absence of a seal does not impact the reach or enforceability of the standby trust. More problematic is the fact that Sparton does not have a seal." As stated in Comment 1, Item 90 of Section XXIV of the Consent Decree states that "[t]he financial assurances submitted by Sparton shall comply with the requirements of 40 C.F.R. Part 264, Subpart H (§§ 264.140-151)." In 40 CFR §264.151(a)(1), the last paragraph before the signatures by the Grantor and Trustee, it states "In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The 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 date first above written." The Permittee must provide the seals to the signature page (where directed by 40 CFR §264.151) for the revised financial assurance submittals to remain in compliance with the Consent Decree.

#### **Comment 5**

In the response letter, page 2, paragraph 1, the Permittee states that "[d]eleting any reference in the standby trust and the letter of credit to the Consent Decree limits the reach of the financial assurance documents to the Post-Closure Care Permit." Part II.P (*Financial Assurance for Facility Post-Closure*) of the PCC Permit states that "[f]inancial assurance for the post-closure care period is satisfied by the financial assurance requirements of Section XXIV of the Consent Decree." Removing the reference from any of the submitted financial assurance mechanisms does not limit or relieve the Permittee of performing financial assurance activities described in the Consent Decree. Reference the Consent Decree in the cover letter, which accompanies the financial assurance mechanisms as part of the submittal and demonstrates that financial assurance activities are being carried out in compliance with the Consent Decree. Furthermore, the EPA Identification Number (referenced in the appropriate sections of the financial assurance mechanisms) provides an identifier that is traced back to the PCC Permit and Consent Decree. Remove the references to the Consent Decree in the trust agreement and letter of credit and provide a statement in the cover letter that the submittal of the financial assurance documents is a requirement of, and in accordance with, the Consent Decree. Submit a revised

trust agreement, letter of credit and cover letter to complete the 2018 financial assurance submittal.

**Comment 6**

In the response letter, page 2, paragraph 2, the Permittee states that “[t]he requested changes to the letter of credit will have a financial impact on Sparton without any corresponding benefit to NMED.” The Permittee is reminded that Item 90 of Section XXIV of the Consent Decree states that “[t]he financial assurances submitted by Sparton shall comply with the requirements of 40 C.F.R. Part 264, Subpart H (§§ 264.140-151).” The Permittee must make the changes discussed in the January 2019 disapproval letter to remain in compliance with the Consent Decree.

**Comment 7**

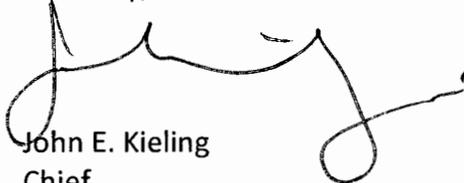
In the response letter, page 2, paragraph 3, the Permittee states that “the documents Sparton submitted in October [2018] are in substance identical, except for the dates, addresses, signatories, and dollar amount, to what Sparton submitted in September of 2016 (copies of that submission are attached). Neither NMED or EPA identified any concerns with the 2016 submission and Sparton reasonably assumed that it could submit same documents, modified with the current dates and the most recent estimate of future costs, in 2018.” It is NMED’s understanding that a new company recently acquired Sparton Corporation and NMED is therefore correcting oversights associated with past financial assurance reviews. The NMED will work with the Permittee to ensure that the information and formatting of the financial assurance submittals are correct and in accordance with 40 CFR §§ 264.140-151 per the Item 90 of Section XXIV of the Consent Decree.

Messrs McCormack and Warmus  
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The Permittee must address Comments 1 through 7 in this Disapproval and the January 31, 2019 Disapproval and submit the revised financial assurance documentation no later than **September 30, 2019**. The Permittee must incorporate these changes into its 2019 financial assurance submittal, as applicable, and ensure any new mechanisms are in accordance with 40 CFR §§264.140-151. Furthermore, all future correspondence with NMED must reference comment numbers in correspondence so that NMED can cross reference comments from previous letters and the associated responses accordingly.

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

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Kieling". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke.

John E. Kieling  
Chief  
Hazardous Waste Bureau

cc: D. Cobrain, NMED HWB  
L. Tsinnajinnie, NMED HWB  
V. Colón, NMED HWB  
L. King, EPA Region 6 (6LCRRC)  
C. Henderson, EPA Region 6 (6LCRRC)

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