



ENTERED



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 Elm Street, Suite 500
Dallas, TX 75270

State of New Mexico
ENVIRONMENT DEPARTMENT
Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

October 25, 2021

Mr. Stuart Boyd
General Counsel
Sparton Corporation
5612 Johnson Lake Road
DeLeon Springs, Florida 32130

Mr. Dev Kapadia
President and Managing Director
Sparton Parent, Inc.
425 North Martingale Road
Suite 1000
Schaumburg, Illinois 60173

**RE: DISAPPROVAL
2019 FINANCIAL ASSURANCE AND
2020 FINANCIAL ASSURANCE
SPARTON TECHNOLOGY, INC. - ALBUQUERQUE
BERNALILLO COUNTY, ALBUQUERQUE, NEW MEXICO
EPA ID #NMD083212332
HWB-ST-MISC**

Dear Messrs. Boyd and Kapadia,

The New Mexico Environment Department (NMED) has completed its review of Sparton Technology, Inc. (the Permittee's) *2019 Financial Assurance* dated November 15, 2019 and received November 25, 2019 and the *2020 Financial Assurance* dated October 26, 2020 and received November 5, 2020. NMED has reviewed both the 2019 and 2020 Financial Assurance submittals and hereby issues this Disapproval with the following comments.

Comment 1

There are several discrepancies with the wording for each of the Chief Financial Officer (CFO) letters submitted in the 2019 and 2020 Financial Assurance submittals. The wording provided in the CFO letters are not identical with the wording specified in 40 CFR 264.151(f) as required by Section XXIV (Financial Assurances) of the March 2000 Consent Decree. Address the following deviations from the CFO letter:

Messrs. Boyd and Kapadia

October 25, 2021

Page 2

- a. The *Chief Financial Officer* was replaced by the *President and Managing Director* for both CFO letters. Only the *Chief Financial Officer* has signatory authority for the CFO letter as required by 40 CFR 264.143(f)(3)(i). The intent of this requirement to ensure accountability of the Permittee's claim that the financial test was passed. In the future, if the *Chief Financial Officer* does not sign the CFO letter, the financial assurance submittal will automatically receive a Disapproval and the Permittee will be required to submit all new documents for that fiscal year;
- b. Additional language was included in the 2019 CFO letter discussing a Merger which became effective on March 4, 2019. An additional paragraph was also included that states the Sparton Parent, Inc. qualifies for a corporate guarantee based on the recitals in the CFO letter. This added language is not part of the wording of the instrument. It is not acceptable to include or omit language in any of the mechanisms. The Permittee must include a separate cover letter for all future submittals that will provide additional explanations or changes to their Financial Assurance documents for that fiscal year. The Permittee must not include explanations or make changes to the language of the mechanisms;
- c. Additional language was included in the 2020 CFO letter discussing the attachment of a guarantee and that Sparton Parent, Inc. qualifies for the corporate guarantee based on the recitals from the CFO letter. The inclusion of this language made it unclear if the document was a CFO letter or a second *Corporate Guarantee*. This added language is not part of the wording of the instrument. It is not acceptable to include or omit language in any of the mechanism. The Permittee must include a separate cover letter for all future submittals that will provide additional explanations or changes to their Financial Assurance documents for that fiscal year. The Permittee must not include explanations or make changes to the language of the mechanisms;
- d. Recital 1 replaces "This firm" with "Sparton Parent, Inc.", omits "or" between "closure and/or post-closure care", and adds "corrective action" in two places of the recital. As stated above, changing the language of the instrument is not acceptable;
- e. Recital 2 omitted the language about the relationship between the corporate guarantor and the owner/operator. The Permittee also failed to include the cost estimate for post-closure care. Include the EPA Identification Number, name, address, and current closure and/or post-closure cost estimate(s) in the recital. The Permittee must not omit any language from the instrument;
- f. Recital 3 includes language "other than New Mexico", replaces "this firm" with "Sparton Parent, Inc.", omits "owner or operator", and adds "corrective action". As stated above, changing the language of the instrument is not acceptable;

- g. Recital 4 replaces “This firm” with “Sparton Parent, Inc.”, omits “or” between “closure and/or post-closure and adds “corrective action” in two places of the recital. Most of the language in this recital has also been modified. As stated above, changing the language of the instrument is not acceptable and will result in a Disapproval;
- h. Recital 5 replaces “This firm” with “Sparton Parent, Inc.”. As stated above, changing the language of the instrument is not acceptable;
- i. The language from the second to the last paragraph regarding the *Security Exchange Commission requirements for an audit* has been modified and does not follow the wording of the instrument. As stated above, changing the language of the instrument is not acceptable;
- j. The language of the closing paragraph does not match verbatim. As stated above, changing the language of the instrument is not acceptable;
- k. The certification language certifying that the wording is identical to the wording specified in 40 CFR 264.151(f) is missing. This language can be found after the Alternative II Financial Test language. The Permittee is required to provide the certification language and signatures with the CFO letter.

Correct these deviations by following, verbatim, the wording of the instrument in accordance with 40 CFR 264.151(f) for the 2021 submittal and all future submittals. Failure to follow the wording of the instruments in 40 CFR 264, Subpart H will result in another Disapproval of the financial assurance submittal. In addition, the Permittee is reminded to submit a separate cover letter from the financial assurance instruments to provide explanations to any changes to the submittals.

Comment 2

The *Alternative I* Tables included with the 2019 and 2020 CFO letters do not match verbatim the wording of the instrument in accordance with 40 CFR 264.151(f). Address the following discrepancies:

- a. Item 1 of the *Alternative I* Table states the “[s]um of current corrective action and post-closure care cost estimates.” However, Item 1, *Alternative I* Table, from 40 CFR 264.151(f) states the “[s]um of current closure and post-closure cost estimate” which is the total of all cost estimates stated in the five paragraphs of the CFO letter. NMED is aware that the Permittee is only responsible for reporting costs for post-closure care as well as for corrective action; therefore, the Permittee does not need to adjust the

Messrs. Boyd and Kapadia

October 25, 2021

Page 4

wording of the instrument. As stated above in Comment 1, changing the language of the instrument is not acceptable and will result in a Disapproval;

- b. Item 7 of the *Alternative I* Table states "Working Capital"; however, Item 7, *Alternative I* Table, from 40 CFR 264.151(f) states "Net working capital." Explain why "Net" was omitted from Item 7. Verify that the value provided is the "Net working capital";
- c. Item 8 of the *Alternative I* Table states "[t]he sum of net (loss) plus depreciation, depletion, and amortization:", replacing "income" with "(loss)." However, the actual language of Item 8 of the *Alternative I* Table is not identical to 40 CFR 264.151(f) and does not include "(loss)" in the language. In future submittals, provide a statement in the cover letter to indicate if the value reported in Item 8 of the *Alternative I* Table was "net loss" and demonstrate that another mechanism will not be required as a result.

For future Financial Assurance submittals, the *Alternative I* Table wording of the instrument must be identical to 40 CFR 264.15(f). Failure to match the language will result in a Disapproval. Furthermore, the Permittee is reminded to state any changes or explanations relating to the *Alternative I* Table in the separate cover letter.

Comment 3

Criteria 3 (*Net Income plus depreciation plus depletion plus amortization/Total Liabilities greater than 0.1*) of the attached table titled *Used Audited Financial Statements for Sparton Parent Inc and Subsidiaries*, from the 2019 and 2020 *Alternative I* Financial Tests reported that the Permittee did not meet the ratio criteria where total liabilities were greater than 0.1. The owner or operator is required to meet at least two of the three ratio criteria to pass the *Alternative I* Financial Test in accordance with 40 CFR 264.145 (f)(1)(i). Although two of the three ratios were passed for the 2019 and 2020 *Alternative I* Financial Tests, the Permittee is reminded that if the *Alternative I* Financial Test fails to pass two of the three ratio criteria at anytime throughout the year, an alternative financial assurance mechanism must be put in place.

Comment 4

As the guarantor, Sparton Parent, Inc. is required to provide a Corporate Guarantee, as stated in 40 CFR 264.145(f)(11), and they are also required to provide a certified copy of the guarantee with wording that is identical to 40 CFR 264.151(h)(1). Address the following discrepancies in the 2019 and 2020 Corporate Guarantees:

- a. Paragraph 1 of the 2019 and 2020 Corporate Guarantees are not identical to the language of 40 CFR 264.151(h)(1);

Messrs. Boyd and Kapadia
October 25, 2021
Page 5

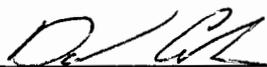
- b. In Recital 2, the Permittee omitted "or" and replaced it with "and";
- c. In Recitals 3, 4, 8 10, and 12, the Permittee omitted "closure" and "closure plans" from the language. NMED is aware that the facility is in post-closure care; therefore, the omission of "closure" and "closure plans" from the recital is not necessary;
- d. In Recitals 5 and 7, the Permittee replaces "he" with "it."

As stated above, the Permittee must not modify or omit language from the mechanism(s). If the Permittee continues to be eligible to submit a Corporate Guarantee, ensure the language of all future corporate guarantees are identical to 40 CFR 264.151(h)(1).

The Permittee must address and incorporate Comments 1 through 4 of this Disapproval in the 2021 Financial Assurance document and must be submit the response no later than the financial assurance submittal date for the Facility.

If you have any questions, please contact Dave Cobrain at 505-476-6055 or Greg Lyssy at 214-665-8317.

Sincerely,



Dave Cobrain
Program Manager, Hazardous Waste Bureau
New Mexico Environment Department



Greg J. Lyssy
Senior Project Manager
U.S. EPA Region 6

cc: R. Maestas, Acting Chief, NMED HWB
N. Davidson, NMED HWB
C. Amindyas, NMED HWB
L. Tsinnajinnie, NMED HWB
J. Lerczak, Sparton Corporation

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File: ST 2019 and 2020 and Reading, HWB-ST-MISC