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VIA TELEFAX AND
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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Ms. Jane Saginaw
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U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Mr. Sam Coleman, Director
Compliance Assurance and Enforcement Division (6EN)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Re: US EPA Docket No. VI - 004(h)-87-H

Dear Ms. Saginaw and Mr. Coleman:

This letter is being written pursuant to the Dispute Resolution Provisions of Sections IV.A.4. and IV.F. of the Administrative Order on Consent, USA EPA Docket No. VI-004(h)-87-H; In The Matter of Sparton Technology, Inc., 9621 Coors Road, N.W., Albuquerque, New Mexico, 87114; EPA ID No. NMDO 83212332 ("Order"). It is written without prejudice to Sparton Technology, Inc.'s ("Sparton") administrative or judicial rights or remedies.

On or about August 8, 1995, Sparton received the U.S. Environmental Protection Agency's ("EPA") Statement of Basis ("SOB") for Sparton's facility at 9621 Coors Road, N.W. (Sparton Facility"). On the same date, the EPA also notified Sparton that a public meeting would be scheduled in Albuquerque, New Mexico on September 12, 1995. It is Sparton's position that the SOB is premature and, in essence, is a request to modify either the RCRA Facility Investigation ("RFI") or the Corrective Measures Study ("CMS"). Pursuant to Section IV.A.4. and IV.F., of the Order, Sparton is hereby presenting written notice of a dispute and invoking, without prejudice, the dispute resolution process with regard to the SOB and the pending public hearing.

Background

Sparton is surprised by these actions of the EPA. Sparton has been waiting for comments on the draft CMS report for almost three years, and did not anticipate the selection of a preferred remedy until the CMS report was approved. It appears that the EPA has decided

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to follow a course of action in contravention of the terms of the Order, and in disregard of its own guidelines. In doing so, the EPA takes the position that the plume has not been defined, and essentially ordered a continuation of the RFI at the same time it prematurely selected a remediation remedy.

Sparton is also concerned that the EPA, perhaps in response to adverse state, city or public opinion, has preempted Sparton's opportunity to provide input with regard to corrective measure alternatives, in lieu of good faith efforts to negotiate an appropriate remedy. The EPA's chosen course of action and non-compliance with the Order and the EPA's guidance and regulations has committed Sparton and the EPA to an economically infeasible and technically impractical corrective action measure alternative. Sparton therefore requests, in conformance with Section IV.A.4. and IV.F. of the Order: that the EPA (1) engage in dispute resolution, (2) withdraw the SOB and terminate the public comment period, (3) postpone the public meeting for the reasons detailed in this letter (4) finalize the CMS report and (5) meet with Sparton to discuss a means by which alternative remedial measures should be implemented.

Issues To Be Addressed

The SOB was neither developed in accordance with, nor based upon, requirements specifically stated in the Order. Exhibit I of the Order, at page 20, states:

"U.S. EPA will select the corrective measure alternatives to be implemented based on the results of Tasks III and IX."

Task III refers to the Facility Investigation of the RFI report approved July 1, 1992, and Task IX refers to Justification and Recommendation of the Corrective Measures in the Draft Report submitted to the EPA on November 6, 1992. EPA takes the position on pages 8, 11 and 19 of the SOB that significant additional characterization is needed, thereby ignoring the approved Task III in the RFI report. Although the SOB implies the CMS report has been approved by repeated reference to the document throughout the SOB, Sparton has never been notified of any approval of its Draft CMS report submitted on November 6, 1992. Since the CMS report is neither final nor approved, there is no Task IX (or CMS report) on which to base selection of a corrective measure alternative.

The SOB incorrectly implies that the EPA is moving from completion of the CMS Report to the negotiation of a Statement of Basis. In reality, the SOB is proposing to reopen the RFI

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issues nearly three years after EPA's acceptance of the RFI on July 1, 1992. Page 2 of Exhibit I to the Order states the purpose of the RFI is "to gather all necessary data to support the Corrective Measures Study." The issuance of the SOB is inconsistent with the EPA's July 1, 1992 acceptance of the RFI. The EPA's over three year inactivity since approval of the RFI report and its recent decision to reopen the RFI with respect to 20 additional monitoring wells, places Sparton at considerable risk and forces Sparton to respond again to a changing situation not contemplated by the Order, EPA guidance documents or demonstrated precedents.

Sparton has not been given any opportunity for input into the Corrective Measure Selection process before the public comment period commenced. However, state agencies (New Mexico Environmental Department and Office of Natural Resource Trustee) as well as the City of Albuquerque, have been given the opportunity to review the Draft CMS report and, upon information and belief, several drafts of the SOB. It was clearly the intent of the Order that in the normal sequence and schedule of events, there would be a smooth transition from the RFI to the CMS process and, that Sparton would be given the opportunity before any public meeting, to provide meaningful input during the CMS report process.

As a consequence of the EPA's delay in responding to Sparton's RFI and CMS, a concern has arisen regarding the size of the plume and its potential migration further to the west and northwest compared to the characterization contained in the approved RFI. In addition to 20 monitoring wells, the SOB also proposes that Sparton commit to the investment of millions of dollars in an expanded groundwater and soil vapor extraction system located somewhere off the Sparton Facility. EPA's proposed decision to require Sparton to move its remediation activity offsite before the plume is recharacterized and redefined through analysis of data from the new monitoring wells, is arbitrary and capricious.

Irreparable harm to Sparton may result by committing the EPA, Sparton and the public's perception to remedial action which may or may not be proven effective once data with respect to an updated data base is available for analysis. The data from the additional characterization may materially affect the selection of remedy. The EPA's premature selection of a remedy may become a public embarrassment to the agency and, in the long run, result in even further delays of effective remediation of this site.

Even if one were to assume that the EPA's preferred remedy has been properly developed and presented to the public, the SOB does not elaborate on the "technical impracticality" aspects of the various alternatives as discussed in the draft CMS report, current technical

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references, or the EPA's own Guidance for Evaluating the Technical Impracticability of Ground-Water Restoration (OSWER Directive 9234.2-25). (See Pierce Chandler's Declaration).

The manner in which the SOB was unilaterally developed and issued may unintentionally mobilize adverse public opinion against Sparton. The SOB unfairly compares Sparton's 1992 recommended CMS alternative (based on three years of data through June, 1991 as contained in the approved RFI report) to the EPA's preferred remedy referencing six years of data obtained through October, 1994. Contrary to the EPA's policy of "customer alignment," the SOB does not point out:

1. The basis for the difference between Sparton's and the EPA's position, or
2. That Sparton was afforded no opportunity to respond in the context of a database which contained almost twice as much information as that previously utilized by Sparton in preparation of the draft CMS report..

By not disclosing to the public or Sparton all of the facts, the SOB may readily be viewed by the public as portraying Sparton as environmentally insensitive and unwilling to commit adequate resources to the removal of the contamination. The SOB also implies that Sparton mischaracterized or undercharacterized the site. This process may have the effect of prejudicing the public against Sparton.

The fact the SOB was apparently developed in conjunction with state agencies and the City of Albuquerque, and without input from Sparton, suggests an arbitrary attempt to enforce an economically infeasible, "technically impracticable" corrective measure alternative upon Sparton. The EPA's failure to provide Sparton with an opportunity to discuss a draft copy of the SOB has compounded their failure to provide relevant discussion in the SOB of the applicability of various remedial alternatives to the Sparton Facility and realistic goals. The EPA, by taking such a course of action then proceeding directly to a public meeting, has made it extremely difficult for either the EPA or Sparton to select a practical solution because the EPA would then be perceived to be backing off from their initial preferred remedy.

For the foregoing reasons, proceeding into public comment and public meeting without a factually accurate SOB may result in prejudice to Sparton. A public meeting at this time may also unnecessarily tarnish Sparton's reputation as a responsible business entity and severely

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hamper any attempt by Sparton to negotiate a technically feasible and practical remedial solution.

Section IV.I.2. of the Order precludes amendments to the Final Order unless there is "mutual agreement of the Director and the Respondent." Under Section IV.I.3., the RFI was incorporated into the Order. The proposal that Sparton install up to 20 additional monitoring wells in order to redefine and recharacterize the plume is a proposed unilateral amendment of the Order. (See Pierce Chandler's Declaration). This amendment requires Sparton's and the Director's written consent.

Section IV.A.3. of the Order states the EPA:

" . . . shall provide a sixty (60) day period for negotiation of a new administrative order or consent for implementation of the corrective measure."

This mandatory 60-day period is to follow the review of the CMS and selection of a remedy. The EPA has never responded to Sparton's Draft CMS. Sparton contends this provision of the Order requires 60 days notice as well as negotiations before the SOB can be issued and the EPA's proposed remedy is made public. The EPA's August 8, 1995 "letter" provided Sparton with only 35 days "notice" before the public meeting.

The issues raised in this letter are not inclusive of all issues which presently form the basis for Sparton's request and Sparton does not intend to administratively or judicially waive any other issue, right or remedy available to Sparton, but not expressed herein.

Sparton therefore requests that:

1. The EPA cancel the public meeting and terminate the public comment period.
2. The EPA meet with Sparton and finalize the CMS report.

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3. The EPA meet with Sparton to evaluate a means by which alternative remedial measures may be implemented. This is a necessary prerequisite to the issuance of an SOB and further negotiations regarding reasonable remedial solutions.

Respectfully,

SPARTON TECHNOLOGY, INC.

RD Mico

Richard D. Mico
Vice President and General Manager

cc: Desi A. Crouther, Chief, Hazardous Waste Enforcement Branch
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