IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, MARK E. WEIDLER in his official capacity as Secretary of the New Mexico Environment Department and the NEW MEXICO ENVIRONMENT DEPARTMENT, and WILLIAM M. TURNER in his official capacity as New Mexico Natural Resources Trustee and the NEW MEXICO OFFICE OF THE NATURAL RESOURCES TRUSTEE, Plaintiffs, v. SPARTON TECHNOLOGY, INC., Defendant.	CIVIL ACTION NO. CIV 97 0208 JC RICHARD L. PUGLISI

COMPLAINT

The State of New Mexico, Mark E. Weidler in his official capacity as Secretary of the New Mexico Environment Department and the New Mexico Environment Department, and William M. Turner in his official capacity as New Mexico Natural Resources Trustee and the New Mexico Office of the Natural Resources Trustee (the "Plaintiffs"), by their undersigned attorneys, allege as follows:

PRELIMINARY STATEMENT

1. This is a civil action for injunctive relief and restitution brought under section 7002(a)(1)(B) of the federal Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §

6972(a)(1)(B); under the New Mexico Hazardous Waste Act, NMSA 1978, §§ 74-4-1 through 74-4-14 (Repl. Pamp. 1993); under the New Mexico Water Quality Act, NMSA 1978, §§ 74-4-1 through 74-6-17 (Repl. Pamp. 1993); and under federal and New Mexico common law. The Plaintiffs seek to enjoin the Defendant, Sparton Technology, Inc., to conduct a cleanup of soil and groundwater contamination beneath and migrating from the Defendant's facility located at 9621 Coors Road, N.W., City of Albuquerque, Bernalillo County, New Mexico. The soil and groundwater contamination results from the Defendant's handling, storage, treatment, transportation, or disposal of hazardous wastes or solid wastes. The contamination may present an imminent and substantial endangerment to the health of citizens of New Mexico, to the environment of New Mexico including the State's natural resources, or to both. The Plaintiffs also seek restitution of costs incurred in seeking to abate the endangerment, and such other relief as the Court may deem appropriate.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1367, and section 7002(a) of RCRA, 42 U.S.C. § 6972(a).

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), and section 7002(a) of RCRA, 42 U.S.C. § 6972(a).

THE PLAINTIFFS

4. The State of New Mexico is a "person" within the meaning of sections 1004(15) and 7002(a) of RCRA, 42 U.S.C. §§ 6903(15)

and 6972(a).

5. The New Mexico Environment Department ("NMED") is an agency of the State of New Mexico, established under NMSA 1978, §§ 9-7A-1 through 9-7A-14 (Repl. Pamp. 1994), and Mark E. Weidler is the Secretary of NMED. Among the several powers and duties of NMED and Secretary Weidler are to enforce relevant provisions of the New Mexico Hazardous Waste Act, NMSA 1978, §§ 74-4-10 and 74-4-13 (Repl. Pamp 1993); and to enforce the relevant provisions of the New Mexico Water Quality Act and the regulations, including water quality standards, adopted pursuant thereto by the New Mexico Water Quality Control Commission ("WQCC"), NMSA 1978, § 74-6-10 (Repl. Pamp. 1993). NMED is a "constituent agency" within the meaning of NMSA 1978, §§ 74-6-2(J) and 74-6-10 (Repl. Pamp. 1993).

6. NMED is a "person" within the meaning of sections 1004(15) and 7002(a) of RCRA, 42 U.S.C. §§ 6903(15) and 6972(a).

7. The New Mexico Office of the Natural Resources Trustee ("ONRT") is an agency of the State of New Mexico, established under NMSA 1978, § 75-7-1 (Repl. Pamp. 1994). Among the powers and duties of ONRT is to act on behalf of the public to protect New Mexico's natural resources. NMSA 1978, § 75-7-3 (Repl. Pamp. 1994).

8. ONRT is a "person" within the meaning of sections 1004(15) and 7002(a) of RCRA, 42 U.S.C. §§ 6903(15) and 6972(a).

THE DEFENDANT

9. The Defendant Sparton Technology, Inc. is a corporation

organized under the laws of the State of New Mexico that has been conducting business in the State of New Mexico.

10. The Defendant is a "person" within the meaning of sections 1004(15) and 7002(a)(1)(B) of RCRA, 42 U.S.C. §§ 6903(15) and 6972(a)(1)(B). The Defendant is also a "person" within the meaning of NMSA 1978, §§ 74-4-3(K) and 74-4-13 (Repl. Pamp. 1993) of the New Mexico Hazardous Waste Act, and NMSA 1978, §§ 74-6-2(H) and 74-6-10 (Repl. Pamp. 1993) of the New Mexico Water Quality Act.

GENERAL ALLEGATIONS

11. From approximately 1961 until the present, the Defendant has been, and is currently, the owner and operator of a manufacturing facility located at 9621 Coors Road, N.W., City of Albuquerque, Bernalillo County, New Mexico (the "facility"). From approximately 1961 until approximately December 1994, the Defendant operated the facility for the manufacture of electronic components. In approximately December 1994, the Defendant ceased its manufacturing operations at the facility. From December 1994 until the present, the Defendant has continued to operate a machine shop at the facility.

12. During the period of its operation, the Defendant generated metal plating wastes from its manufacturing process. From approximately 1961 until approximately 1975, the Defendant stored or disposed of the metal plating wastes in a concrete basin located on the facility property. From approximately 1975 until approximately August 1983, the Defendant stored or disposed

of the metal plating wastes in two surface impoundments on the facility property. From approximately August 1983 until approximately December 1994 when the Defendant ceased its manufacturing operation, the Defendant stored the metal plating wastes in steel drums on-site prior to shipment for disposal off-site.

13. During the period of its operation, the Defendant generated spent solvent wastes from its manufacturing process. The Defendant also generates spent solvent waste from its machine shop operation. From approximately 1961 until approximately 1980, the Defendant stored or disposed of the spent solvent wastes in a concrete sump located on the facility property. From approximately 1980 until the present, the Defendant stored the spent solvent wastes in steel drums on-site prior to shipment for disposal off-site.

14. The metal plating wastes that the Defendant generated from its manufacturing operation are hazardous wastes within the meaning of sections 1004(5) and 7002(a)(1)(B) of RCRA, 42 U.S.C. §§ 6903(5) and 6972(a)(1)(B), and within the meaning of NMSA 1978, §§ 74-4-3(I) and 74-4-13(A) (Repl. Pamp. 1993) of the New Mexico Hazardous Waste Act. The metal plating wastes that the Defendant generated from its manufacturing operation are also hazardous wastes, designated "F006," "F007," "F008," and "F009" under the RCRA implementing regulations at 40 C.F.R. § 261.31, and under the analogous State regulations at 20 NMAC 4.200.

15. The metal plating wastes that the Defendant generated

from its manufacturing operation are solid waste within the meaning of sections 1004(27) and 7002(a)(1)(B) of RCRA, 42 U.S.C. §§ 6903(27) and 6972(a)(1)(B), and within the meaning of NMSA 1978, §§ 74-4-3(M) and 74-4-13(A) (Repl. Pamp. 1993) of the New Mexico Hazardous Waste Act.

16. The spent solvent wastes that the Defendant generated from its manufacturing and machine shop operations are hazardous wastes within the meaning of sections 1004(5) and 7002(a)(1)(B) of RCRA, 42 U.S.C. §§ 6903(5) and 6972(a)(1)(B), and within the meaning of NMSA 1978, §§ 74-4-3(I) and 74-4-13(A) (Repl. Pamp. 1993) of the New Mexico Hazardous Waste Act. The spent solvent wastes that the Defendant generated from its operations are also hazardous wastes, designated "F001," "F002," "F003," "F004," and "F005" under the RCRA implementing regulations at 40 C.F.R. § 261.31, and under the analogous State regulations at 20 NMAC 4.200.

17. The spent solvent wastes that the Defendant generated from its manufacturing and machine shop operations are solid wastes within the meaning of sections 1004(27) and 7002(a)(1)(B) of RCRA, 42 U.S.C. §§ 6903(27) and 6972(a)(1)(B), and within the meaning of NMSA 1978, §§ 74-4-3(M) and 74-4-13(A) (Repl. Pamp. 1993) of the New Mexico Hazardous Waste Act.

18. The metal plating wastes and the spent solvent wastes that the Defendant generated from its operations contain the following hazardous constituents: trichloroethylene ("TCE"), tetrachloroethylene ("PCE"), 1,1,1-trichloroethane ("TCA"), 1,1-

dichloroethylene ("DCE"), methylene chloride, benzene, toluene, chromium, and lead, among others.

19. The Defendant's storage or disposal of hazardous wastes and solid wastes at its facility has caused hazardous and solid wastes, and hazardous constituents therefrom, to contaminate soil and groundwater both on the facility property and off the facility property. Such contamination may present an imminent and substantial endangerment to health or the environment within the meaning of section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), and within the meaning of NMSA 1978, § 74-4-13(A) (Repl. Pamp. 1993) of the New Mexico Hazardous Waste Act.

a. Groundwater monitoring has identified a plume of groundwater contamination beneath and migrating from the Defendant's facility, extending approximately one-half mile west-northwest of the facility, and extending at least sixty feet below the water table.

b. The following contaminants have been detected in soils and groundwater affected by the plume of contamination beneath and migrating from the Defendant's facility: TCE, PCE, TCA, DCE, methylene chloride, benzene, toluene, chromium, and lead, among others. Several of these substances are known or suspected human carcinogens.

c. In January 1996, TCE was detected in the plume of groundwater contamination beneath the Defendant's facility at the level of 7,600 micrograms per liter. In January 1996, TCE was detected in the plume approximately one-quarter mile from the

facility at the level of 1,900 micrograms per liter. The maximum contaminant level ("MCL") for TCE, set by the U.S. Environmental Protection Agency ("EPA") under the Safe Drinking Water Act, 42 U.S.C. § 300g-1, for protection of human health, is 5 micrograms per liter. The maximum allowable concentration for TCE, set by the WQCC pursuant to NMSA 1978, § 74-6-4 (Repl. Pamp. 1993) of the New Mexico Water Quality Act, is 100 micrograms per liter.

d. In January 1996, TCA was detected in the plume of groundwater contamination beneath and migrating from the Defendant's facility at the level of 1,900 micrograms per liter. The MCL for TCA, set by EPA under the Safe Drinking Water Act, 42 U.S.C. § 300g-1, for protection of human health, is 200 micrograms per liter. The maximum allowable concentration for TCA, set by the WQCC pursuant to NMSA 1978, § 74-6-4 (Repl. Pamp. 1993) of the New Mexico Water Quality Act, is 60 micrograms per liter.

e. In January 1996, DCE was detected in the plume of groundwater contamination beneath and migrating from the Defendant's facility at the level of 220 micrograms per liter. The MCL for DCE, set by EPA under the Safe Drinking Water Act, 42 U.S.C. § 300g-1, for protection of human health, is 7 micrograms per liter. The maximum allowable concentration for DCE, set by the WQCC pursuant to NMSA 1978, § 74-6-4 (Repl. Pamp. 1993) of the New Mexico Water Quality Act, is 5 micrograms per liter.

f. In January 1996, chromium was detected in the plume of groundwater contamination beneath and migrating from the

Defendant's facility at the level of 4,110 micrograms per liter. The MCL for chromium, set by EPA under the Safe Drinking Water Act, 42 U.S.C. § 300g-1, for protection of human health, is 100 micrograms per liter. The maximum allowable concentration for chromium, set by the WQCC pursuant to NMSA 1978, § 74-6-4 (Repl. Pamp. 1993) of the New Mexico Water Quality Act, is 50 micrograms per liter.

g. The soil contamination and the plume of groundwater contamination migrating from the Defendant's facility has contaminated, and is continuing to further contaminate, a groundwater aquifer that is a current and potential source of drinking water for citizens of the City of Albuquerque and Bernalillo County.

20. On June 24, 1996, pursuant to section 3008(h) of RCRA, 42 U.S.C. § 6928(h), EPA adopted a "Final Decision: RCRA Corrective Action" selecting a remedy for the soil and groundwater contamination at and migrating from the Defendant's facility. EPA based its decision on the administrative record for the facility. EPA concluded that "corrective action is necessary to protect human health and/or the environment," and that "the selected remedy is protective of human health and the environment."

21. To date, the Defendant has refused or has otherwise been unwilling to implement the corrective action remedy that EPA has selected.

22. On February 14, 1997, EPA made a finding that the

handling, storage, treatment, transportation, or disposal of hazardous and solid wastes at the Defendant's facility may present an imminent and substantial endangerment to health or the environment under section 7003 of RCRA, 42 U.S.C. § 6973.

23. On February 14, 1997, NMED and ONRT jointly made a finding that the handling, storage, treatment, transportation, or disposal of hazardous and solid wastes at the Defendant's facility may present an imminent and substantial endangerment to health or the environment under section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), and NMSA 1978, § 74-4-13(A) (Repl. Pamp. 1993) of the New Mexico Hazardous Waste Act.

24. On May 10, 1996, in accordance with section 7002(b)(2)(A) of RCRA, 42 U.S.C. § 6972(b)(2)(A), the State of New Mexico, by and through the New Mexico Office of the Attorney General, gave notice of the endangerment to the Administrator of EPA and to the Defendant.

25. On May 10, 1996, in accordance with section 7002(b)(2)(A) of RCRA, 42 U.S.C. § 6972(b)(2)(A), ONRT gave notice of the endangerment to the Administrator of EPA and to the Defendant.

26. On June 6, 1996, in accordance with section 7002(b)(2)(A) of RCRA, 42 U.S.C. § 6972(b)(2)(A), NMED gave notice of the endangerment to the Administrator of EPA and to the Defendant.

FIRST CLAIM FOR RELIEF:
INJUNCTION UNDER RCRA

27. The Plaintiffs herein incorporate by reference the

allegations of Paragraphs 1 through 26, inclusive, as if fully set forth below.

28. The Defendant is a past or present generator of hazardous or solid waste within the meaning of section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B).

29. The Defendant is a past or present owner or operator of a treatment, storage, or disposal facility for hazardous or solid waste within the meaning of section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B).

30. The Defendant's facility is a past or present treatment, storage, or disposal facility for hazardous or solid waste within the meaning of sections 1004(3), (33), and (34) and 7002(a)(1)(B) of RCRA, 42 U.S.C. §§ 6903(3), (33), and (34) and 6972(a)(1)(B).

31. The Defendant has contributed to or is contributing to the past or present handling, storage, treatment, transportation, or disposal of hazardous and solid wastes at its facility within the meaning of section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B).

32. The Defendant's past or present handling, storage, treatment, transportation, or disposal of hazardous and solid wastes at its facility may present an imminent and substantial endangerment to health or the environment within the meaning of section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B).

33. Pursuant to section 7002(a) of RCRA, 42 U.S.C. § 6972(a), the Defendant is liable to take such action as may be

necessary to abate the endangerment.

34. Pursuant to section 7002(a) of RCRA, 42 U.S.C. § 6972(a), the Plaintiffs are entitled to an injunction ordering the Defendant to take such action as may be necessary to abate the endangerment.

SECOND CLAIM FOR RELIEF:
INJUNCTION UNDER THE NEW MEXICO HAZARDOUS WASTE ACT

35. The Plaintiff NMED herein incorporates by reference the allegations of Paragraphs 1 through 26, inclusive, as if fully set forth below.

36. The Defendant is a past or present generator of hazardous or solid waste within the meaning of NMSA 1978, §§ 74-4-3(F) and 74-4-13(A) (Repl. Pamp. 1993) of the New Mexico Hazardous Waste Act.

37. The Defendant is a past or present owner or operator of a treatment, storage, or disposal facility for hazardous or solid waste within the meaning of NMSA 1978, § 74-4-13(A) (Repl. Pamp. 1993) of the New Mexico Hazardous Waste Act.

38. The Defendant's facility is a past or present treatment, storage, or disposal facility for hazardous or solid waste within the meaning of NMSA 1978, §§ 74-4-3(C), (N), and (Q) and 74-4-13(A) (Repl. Pamp. 1993) of the New Mexico Hazardous Waste Act.

39. The Defendant has contributed to or is contributing to the past or present handling, storage, treatment, transportation, or disposal of hazardous and solid wastes at its facility within the meaning of NMSA 1978, § 74-4-13(A) (Repl. Pamp. 1993) of the

New Mexico Hazardous Waste Act.

40. The Defendant's past or present handling, storage, treatment, transportation, or disposal of hazardous and solid wastes at its facility may present an imminent and substantial endangerment to health or the environment within the meaning of NMSA 1978, § 74-4-13(A) (Repl. Pamp. 1993) of the New Mexico Hazardous Waste Act.

41. Pursuant to NMSA 1978, §§ 74-4-10 and 74-4-13(A) (Repl. Pamp. 1993) of the New Mexico Hazardous Waste Act, the Defendant is liable to take such action as may be necessary to abate the endangerment.

42. Pursuant to NMSA 1978, §§ 74-4-10 and 74-4-12 (Repl. Pamp. 1993) of the New Mexico Hazardous Waste Act, the Defendant is liable for civil penalties of up to $10,000 per day of noncompliance for each violation of the New Mexico Hazardous Waste Act.

43. Pursuant to NMSA 1978, §§ 74-4-13(A), 74-4-10(E), and 74-4-12 (Repl. Pamp. 1993) of the New Mexico Hazardous Waste Act, the Plaintiff NMED is entitled to an injunction ordering the Defendant to take such action as may be necessary to abate the endangerment, and is entitled to civil penalties of up to $10,000 per day of noncompliance for each of the Defendant's violations of the New Mexico Hazardous Waste Act.

THIRD CLAIM FOR RELIEF:
INJUNCTION UNDER THE NEW MEXICO WATER QUALITY ACT

44. The Plaintiff NMED herein incorporates by reference the allegations of Paragraphs 1 through 26, inclusive, as if fully

set forth below.

45. The Defendant is in violation of water quality standards adopted pursuant to NMSA 1978, § 74-6-4(C) (Repl. Pamp. 1993) of the New Mexico Water Quality Act.

46. The Defendant has unlawfully discharged contaminants from its facility into soil and groundwater in such quantities that will injure or be detrimental to human health, animal or plant life, or property, and that exceed water quality standards adopted pursuant to NMSA 1978, § 74-6-4(C) (Repl. Pamp. 1993) of the New Mexico Water Quality Act, contained in 20 NMAC 6.3103(A) and 6.4103.

47. Pursuant to NMSA 1978, § 74-6-10(A) (Repl. Pamp. 1993) of the New Mexico Water Quality Act, and the regulations adopted pursuant thereto, 20 NMAC 6.1203.A.5, 6.4103.A, and 6.4103.B, the Defendant is liable to take corrective action to contain and remove the contaminants, and to abate vadose zone and groundwater pollution to conform to the water quality standards in 20 NMAC 6.3103 and 6.4103.

48. Pursuant to NMSA 1978, § 74-6-10.1 (Repl. Pamp. 1993) of the New Mexico Water Quality Act, the Defendant is liable for civil penalties of up to $10,000 for each day of violation of the New Mexico Water Quality Act, and its regulations or standards.

49. Pursuant to NMSA 1978, §§ 74-6-10(A)(1) and 74-6-10.1 (Repl. Pamp. 1993) of the New Mexico Water Quality Act, the Plaintiff NMED is entitled to an injunction ordering the Defendant to take corrective action to address the violations of

water quality standards, and is entitled to civil penalties of up to $10,000 per day of noncompliance for each of the Defendant's violations of the New Mexico Water Quality Act, and its regulations or standards.

FOURTH CLAIM FOR RELIEF:
PUBLIC NUISANCE

50. The Plaintiff NMED herein incorporates by reference the allegations of Paragraphs 1 through 26, inclusive, as if fully set forth below.

51. The Defendant has knowingly and without lawful authority created a plume of groundwater contamination that affects a number of citizens and is injurious to the public health, safety, or welfare, and interferes with the exercise and enjoyment of public rights.

52. The Defendant's creation of a plume of groundwater contamination constitutes a public nuisance contrary to NMSA 1978, § 30-8-1 (Repl. Pamp. 1994) and New Mexico common law.

53. The Defendant has knowingly and unlawfully introduced contaminants into a body of public water causing it to be offensive or dangerous for human or animal consumption or use.

54. The Defendant's introduction of contaminants into a body of public water constitutes a public nuisance contrary to NMSA 1978, § 30-8-2 (Repl. Pamp. 1994) and New Mexico common law.

55. Pursuant to NMSA 1978, § 30-8-8 (Repl. Pamp. 1994) and New Mexico common law, the Defendant is liable to abate the public nuisance it has created.

56. Pursuant to NMSA 1978, § 30-8-8 (Repl. Pamp. 1994) and

New Mexico common law, the Plaintiff NMED is entitled to an injunction ordering the Defendant to abate the public nuisance it has created.

FIFTH CLAIM FOR RELIEF: RESTITUTION

57. The Plaintiff ONRT herein incorporates by reference the allegations of Paragraphs 1 through 34, inclusive, as if fully set forth below.

58. As of December 31, 1996, ONRT has incurred costs in the amount of at least $66,457.51 in seeking to abate the soil and groundwater contamination at and migrating from the Defendant's facility. ONRT has incurred these costs to protect the public health and welfare of the citizens of New Mexico, and to protect the environment of New Mexico including the State's natural resources.

59. The Defendant has a statutory and common law duty to abate the soil and groundwater contamination at and migrating from its facility.

60. Pursuant to section 7002 of RCRA, 42 U.S.C. § 6972, and federal common law, the Defendant is liable to ONRT for restitution of its costs, including any and all indirect costs, oversight costs, and interest, incurred after the invocation of the RCRA process in seeking to abate the soil and groundwater contamination at and migrating from the Defendant's facility.

61. Pursuant to New Mexico common law, the Defendant is liable to ONRT for restitution of its costs, including any and all indirect costs, oversight costs, and interest, incurred in

seeking to abate the soil and groundwater contamination at and migrating from the Defendant's facility.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court enter a judgment against the Defendant, Sparton Technology, Inc., as follows:

1. Order the Defendant to take such action as is necessary to abate the imminent and substantial endangerment to health or the environment resulting from the soil and groundwater contamination at and migrating from the Defendant's 9621 Coors Road facility;

2. Order the Defendant to reimburse the Plaintiff ONRT for its past and future costs, including any and all indirect costs, oversight costs, and interest, incurred in seeking to abate the contamination at and migrating from the Defendant's facility;

3. Award the Plaintiffs their costs of litigation (including reasonable attorney and expert witness fees) incurred in this action, in accordance with section 7002(e) of RCRA, 42 U.S.C. § 6972(e);

4. Award the Plaintiffs civil penalties and damages as authorized by law; and

5. Grant the Plaintiffs such other relief as this Court deems just and proper.

Respectfully submitted,

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Dated:
February 19, 1997

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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UNITED STATES OF AMERICA, Plaintiff, v. SPARTON TECHNOLOGY, INC., Defendant.	Civil Action No. CIV 97 0210M

DON J. SVET

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA") files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought against defendant Sparton Technology, Inc. ("Sparton") pursuant to the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA") Section 7003, 42 U.S.C. § 6973; and Safe Drinking Water Act ("SDWA") (sometimes referred to as the Public Health Service Act) Section 1431, 42 U.S.C. § 300i, for injunctive relief to abate an imminent and substantial endangerment to public health, welfare, and the environment connected with the contamination of soil and groundwater at Sparton's plant on Coors Road in Albuquerque, New Mexico.

JURISDICTION, VENUE, AUTHORITY, AND NOTICE

2. This Court has jurisdiction over the subject matter of this action pursuant to RCRA Section 7003(a), 42 U.S.C. § 6973(a); SDWA Section 1431(a), 42 U.S.C. § 300i(a); and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this Court pursuant to RCRA Section 7003, 42 U.S.C. § 6973; and 28 U.S.C. § 1391(b).

4. Authority to bring this civil action is vested in the Attorney General of the United States pursuant to SDWA Section 1450(f), 42 U.S.C. § 300j-9(g); and 28 U.S.C. §§ 516 and 519.

5. Notice of the commencement of this action has been given to the State of New Mexico pursuant to RCRA Section 7003(a) and (c), 42 U.S.C. § 6973(a) and (c).

DEFENDANT

6. Sparton is a corporation organized under the laws of New Mexico. Sparton is registered and does business in the State of New Mexico.

7. Sparton is a "person" as that term is defined at RCRA Section 1004(15), 42 U.S.C. § 6903(15) and SDWA Section 1401(12), 42 U.S.C. § 300f(12).

8. Sparton is the "owner" and "operator" of a facility located at 9621 Coors Road NW, Albuquerque, Bernalillo County, New Mexico ("facility"), as those terms are defined at 40 C.F.R. § 260.10.

9. The Sparton facility is a treatment, storage, and/or disposal facility as those terms are defined in RCRA Section 1004(3), (33), and (34), 42 U.S.C. § 6903(3), (33), and (34).

RELEVANT STATUTORY PROVISIONS

10. RCRA Section 7003, 42 U.S.C. § 6973, provides in pertinent part:

> [U]pon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court against any person (including . . . any past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or is contributing to such handling, storage, treatment, transportation, or disposal to restrain such person . . . [or] to order such person to take such other action as may be necessary, or both. . . . The Administrator shall provide notice to the affected State of any such suit.

42 U.S.C. § 6973(a).

11. SDWA Section 1431, 42 U.S.C. § 300i, provides, in pertinent part:

> [T]he Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. . . . The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary . . . and (2) commencing a civil action for appropriate relief including a restraining order or permanent or temporary injunction.

42 U.S.C. § 300i(a).

12. The authority to make a determination that an imminent and substantial endangerment exists has been delegated from the Administrator of EPA to the Regional Administrator of Region VI, and redelegated to the Director of the Compliance Assurance and Enforcement Division.

FACTUAL ALLEGATIONS

13. The Sparton facility is located at 9621 Coors Road NW, Albuquerque, Bernalillo County, New Mexico (hereinafter, "Sparton facility" or "facility"). The facility consists of a 64,000 square foot building located on a 12 acre parcel of land. The Sparton facility is located approximately one half mile from the Rio Grande River and is on the edge of a terrace approximately sixty feet above the flood plain of the river.

14. Land use in the immediate area of the Sparton facility includes commercial and residential development, and agricultural operations.

15. The aquifer beneath the Sparton facility is in the Santa Fe Group aquifer system in the Albuquerque Basin. The Santa Fe Group aquifer system is an "underground source of drinking water" as defined by 40 C.F.R. §§ 144.3 and 146.3.

16. The Santa Fe Group aquifer system currently supplies drinking water for the city of Albuquerque and New Mexico Utilities.

17. New Mexico Utilities, Inc. operates a municipal water supply well (known as "Well No. 2") which is located approximately 2.6 miles northwest of the Sparton facility.

18. Ground water is currently the sole source of drinking water for the City of Albuquerque.

19. The City of Albuquerque has identified the aquifer as a critical resource in its ground water protection master plan.

20. Sparton performed manufacturing operations at the Sparton facility for many years. Manufacturing operations included the production of commercial, industrial, and military electronic components including printed circuit boards. Sparton ceased manufacturing electronic components at the facility in 1994, but continues to operate a machine shop at the site.

21. On August 18, 1980, Sparton's corporate predecessor, Sparton Southwest, Inc., notified EPA pursuant to the requirements of RCRA Section 3010, 42 U.S.C. § 6930, that it generated and stored hazardous waste at the Sparton facility.

22. On January 6, 1983, Sparton submitted a Part A RCRA permit application. In that application, Sparton stated that it generated and stored hazardous wastes at the Sparton facility.

23. The wastes identified by Sparton in the Section 3010 notification and RCRA Part A permit application included hazardous wastes and constituents including Trichlorethene (TCE), 1,1,1-Trichloroethane, Methylene Chloride, 1,1-Dichloroethylene, Tetrachloroethylene (PCE), Toluene, Benzene, and Chromium.

24. On February 22, 1984 Sparton and EPA entered into a Consent Agreement Final Order ("CAFO"), U.S. EPA Docket No. RCRA VI-310-H. Pursuant to the 1984 CAFO, Sparton installed a ground water monitoring system at the Sparton facility to detect whether

hazardous wastes or constituents had been released from the facility.

25. Analyses of samples collected from the ground water monitoring system revealed that solid and hazardous wastes generated and stored at the Sparton facility had been released to the environment from the Sparton facility. The solid and hazardous wastes and constituents released to the groundwater included Trichlorethene (TCE), 1,1,1-Trichloroethane, Methylene Chloride, 1,1-Dichloroethylene, Tetrachloroethylene (PCE), Toluene, Benzene, and Chromium.

26. On October 1, 1988, EPA and Sparton entered into another Administrative Order On Consent, Docket No VI-004(h)-87-H ("the 1988 AOC"). Pursuant to the 1988 AOC, Sparton was required to (1) install an on-site ground water recovery system, (2) conduct a RCRA Facility Investigation ("RFI") to determine the nature and extent of the release of hazardous waste and hazardous constituents from the facility.

27. Sparton completed installation of an on-site ground water recovery system in 1988. The system pumps ground water under the Sparton facility to the surface where it is treated and disposed of. The system does not address contaminated ground water beyond the borders of the Sparton facility.

28. Sparton installed ground water monitoring wells on-site and off-site.

29. Analyses of samples collected from the off-site ground water monitoring wells show the presence of hazardous waste

constituents and contaminants, including Trichlorethene (TCE), 1,1,1-Trichloroethane, 1,1-Dichloroethylene, Tetrachloroethylene (PCE), and Chromium.

30. The contaminants referred to in paragraph 29 exceed Maximum Contaminant Levels (MCLs) which are the maximum allowable concentration of such contaminants in drinking water. The MCLs are established by EPA pursuant to the SDWA at 40 C.F.R. Part 141.

31. Analysis of samples showed that hazardous waste contaminants in excess of the MCLs have spread in the ground water at least one-half mile west-northwest of the facility, and extend to a depth of at least sixty feet below the water table.

32. Sparton installed a soil vapor monitoring well at the facility.

33. Analyses of samples collected from the soil vapor monitoring well show the presence of hazardous waste constituents and contaminants, including Trichlorethene (TCE), 1,1,1,-TCA, 1,1-Dichloroethylene, Tetrachloroethylene and Toluene.

34. To date, the vertical and horizontal extent of the contamination has not been fully defined.

35. Based upon the results of Sparton's analyses, on June 24, 1996, EPA selected a clean-up alternative for the facility. The selected alternative includes (1) operation of the on-site groundwater recovery system, (2) further characterization of the extent of contamination in the groundwater and in the soil above the groundwater table, (3) installation and operation of

additional ground water extraction wells to contain contamination and clean up to MCLs, and (4) installation and operation of an on-site soil vapor extraction system.

36. In August, 1996, the United States asked Sparton to enter into an Administrative Order On Consent to implement the selected clean-up alternative. Sparton declined to enter into an agreement.

37. On August 7, 1996, Sparton filed a Declaratory Judgment action in Federal District Court in Dallas, Texas, seeking to prevent EPA from implementing the selected remedy. Sparton Technology, Inc. v. U.S. EPA, et al Civ. Action No 3-96-CV-2229-G.

38. On September 11, 1996, EPA issued a Unilateral Administrative Order, U.S. EPA Docket No. RCRA-VI-001(h)-96-H (the "1996 UAO") to Sparton pursuant to its authority under RCRA Section 3008(h), 42 U.S.C. § 6921(h). The 1996 UAO requires Sparton to implement the cleanup alternative selected by EPA on June 24, 1996. Pursuant to 40 C.F.R. § 24, Sparton has requested a hearing on the order. The Section 3008(h) administrative order will become final and enforceable when the administrative hearing and appeal process is concluded. 40 CFR § 24.20.

39. The Director of Compliance Assurance and Enforcement Division of EPA Region VI ("Director") has determined pursuant to RCRA Section 7003, 42 U.S.C. § 6973, that the past or present handling, storage, treatment, transportation and/or disposal of solid wastes and/or hazardous wastes at the Sparton facility may

present an imminent and substantial endangerment to health or the environment.

40. The Director also has determined pursuant to SDWA Section 1431, 42 U.S.C. § 300i, that one or more contaminants which are present in or are likely to enter the ground water underlying and adjacent to the Sparton facility may present an imminent and substantial endangerment to the health of persons.

41. Pursuant to the previous enforcement action by EPA under 3008(h) of RCRA, Administrative Order on Consent dated October 1, 1988, no governmental action has been taken by state or local agencies to protect the health of persons from contaminants that are present in the underground source of drinking water.

FIRST CLAIM FOR RELIEF

42. Paragraphs 1-41 of this Complaint are incorporated herein by reference.

43. Solid and hazardous wastes, including TCE, 1,1,1-Trichloroethane, Methylene Chloride, 1,1-Dichloroethylene, PCE, Toluene, Benzene, and Chromium have been or are being handled, treated, stored, or disposed of at the Sparton facility.

44. The past or present handling, storage, treatment, transportation or disposal of solid or hazardous waste at the Sparton facility may present an imminent and substantial endangerment to human health or the environment.

45. Sparton is a person who has contributed or is contributing to the handling, storage, treatment, transportation

or disposal of solid or hazardous waste which may present an imminent and substantial endangerment to human health or the environment.

46. Pursuant to RCRA Section 7003(a), Sparton is liable to take such action as may be necessary to abate the imminent or substantial endangerment at and near the Sparton facility.

SECOND CLAIM FOR RELIEF

47. Paragraphs 1-46 of this Complaint are incorporated herein by reference.

48. TCE, 1,1,1-Trichloroethane, Methylene Chloride, 1,1-Dichloroethylene, PCE, Toluene, Benzene, and Chromium are "contaminants" as defined by Section 1401(6) of the Safe Drinking Water Act, 42 U.S.C. § 300f(6).

49. The Santa Fe Group aquifer supplies a public water system, as defined by Section 1401(4) of the Safe Drinking Water Act, 42 U.S.C. § 300f(4).

50. The contaminants TCE, 1,1,1-Trichloroethane, Methylene Chloride, 1,1-Dichloroethylene, PCE, Toluene, Benzene, and Chromium are present in, or likely to enter a public water system, or an underground source of drinking water.

51. The contaminants TCE, 1,1,1-Trichloroethane, Methylene Chloride, 1,1-Dichloroethylene, PCE, Toluene, Benzene, and Chromium may present an imminent and substantial endangerment to the health of persons.

52. Pursuant to SDWA Section 1431(a), 42 U.S.C. § 300i(a), Sparton is liable to take all actions necessary to protect the

health of persons from the imminent and substantial endangerment resulting from the contaminants present in or likely to enter the public water system or underground source of drinking water.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

A. Order Sparton to take all actions necessary to abate the imminent and substantial endangerment identified by the EPA at the Sparton facility.

B. Grant the United States its costs and disbursements in this action.

C. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

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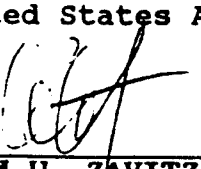

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