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August 21, 2001

Via Facsimile and Regular Mail

Chief, Hazardous & Radioactive Materials Bureau
 New Mexico Environment Department
 P. O. Box 26110
 Santa Fe, New Mexico 87502-6110



Re: Consent Decree-Dispute Resolution

Dear Mr. Bearzi:

I write on behalf of Sparton Technology, Inc. in response to Ana Marie Ortiz's August 7, 2001, letter regarding Sparton's invocation of dispute resolution under the Consent Decree. According to Ms. Ortiz's letter, NMED is refusing to engage in dispute resolution under the Consent Decree with respect to Sparton's concern that certain requests for information contained in Robert Warder's June 22, 2001, letter to Richard Mico of Sparton violate the terms of the Consent Decree. According to Ms. Ortiz, because our differences involve the post-closure care permit, the dispute resolution mechanism set forth in the Consent Decree supposedly is not applicable.

Sparton is treating Ms. Ortiz's letter as a "written statement of NMED's position" that ends the informal dispute resolution process. This letter represents Sparton's invocation of formal dispute resolution under Paragraph 53 of the Consent Decree.

The subject of the dispute is whether under Paragraph 22(b) of the Consent Decree the post-closure care permit can address, in any way, corrective action. Sparton's position is that the post-closure care permit is not to address, at all, corrective action issues. The basis for that position is the plain language of Paragraph 22(b), Paragraph 18, Paragraph 90, and Item 10 under the heading of "Outstanding Items Required to be Submitted" of attachment H of the Consent Decree. All of these paragraphs make clear that all aspects of corrective action are addressed through the Consent Decree and none are to be the subject of any post-closure care permit. In short, the language of these paragraphs and the negotiations of the parties leading to those paragraphs establish that corrective action was not to be controlled by NMED, either directly or indirectly, through the post-closure care permit. Instead, all corrective action issues were to be addressed under the Consent Decree. NMED's June 22, 2001, letter seeks information about corrective action that would only be necessary if the agency intends to try and regulate corrective action in the post-closure care permit, something that the Consent Decree prohibits. The threshold issue presented by this dispute then is what does the Consent Decree mean when it says corrective action issues are not to be included in the post-closure care permit.

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Chief, Hazardous & Radioactive Materials Bureau
August 21, 2001
Page 2

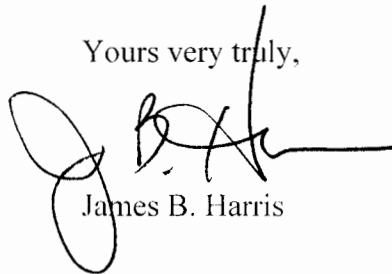
Contrary to Ms. Ortiz's August 7, 2001, letter that determination is not to be made outside of the Consent Decree. Instead, the language she cites from Paragraph 22(b) was only intended to confirm that disputes about the post-closure care permit, other than its regulation of corrective action issues, were to be resolved outside the Consent Decree. In other words, this language simply confirms that disputes about matters that are properly part of the post-closure care permit, which do not involve corrective action, are not to be addressed under the Consent Decree. On the other hand, disputes about whether the post-closure care permit is being handled as contemplated by the Consent Decree are to be resolved under that agreement. If NMED is asking for information it is not allowed to seek under the Consent Decree, which is the problem presented, that matter has to be resolved through an interpretation of the Consent Decree.

Sparton submits that whether NMED's request for information is consistent with the Consent Decree, must be resolved under the dispute resolution mechanism set forth in that document. Here, the dispute centers on whether the requested information is related to corrective action, which the Consent Decree makes clear is not part of the post-closure care permit. If Sparton is right, NMED's request violates the Consent Decree. If a dispute between Sparton and NMED addresses other issues related to matters properly part of the post-closure care permit, then they would not be subject to dispute resolution under the Consent Decree, because an interpretation of the Consent Decree would not come into play.

All of the information requested in NMED's June 22, 2001, letter to which Sparton objected, seeks information about corrective action. There is no reason to include this information in the application because corrective action cannot be regulated by NMED. Therefore, requesting such information violates the Consent Decree.

Formal dispute resolution of this matter should proceed under Paragraph 53 of the Consent Decree. NMED now has fifteen days to serve on Sparton its statement of position as set forth in Paragraph 51(b) of the Consent Decree.

Yours very truly,



James B. Harris

JBH/tks

Chief, Hazardous & Radioactive Materials Bureau
August 21, 2001
Page 3

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