

Company ("Beach") operated a TCE degreaser in Hangar 1,¹ which was located immediately adjacent to the TCE-contaminated area excavated by RAC pursuant to the UAO, not because of any perceived inability of the United States Army to truthfully respond to a CERCLA Section 104(e) information request.²

In its Response, RAC states the operations of its predecessor, Beach Aircraft Company, could not have caused the contamination at the Site, including but not limited to the contamination north and northwest of Hangar 1, despite the fact that RAC has admitted that Beach operated a TCE degreaser in Hangar 1. Contrary to RAC's belief that the evidence compels the conclusion that the contamination was caused by the United States Army Air Force ("Army") operations at the Site during World War II, EPA currently has no information that the Army operated a TCE degreaser at the Site during World War II. The Army has consistently denied using TCE as a degreaser at the Site during World War II. In addition, EPA has no information that TCE was ever shipped or used at the Site by the Army during World War II.³

III. The Issue Of RAC's And The Army's Liability Should In This Case Be Determined In The Federal Courts

What is before the Board, as well as the District Court, is a dispute as to what the evidence will prove as to the liability or non-liability of RAC and the Army. The District Court

¹See Exhibit A (partial response), answers to questions 4 and 5. Hangar 1 is referred to as H1 in RAC's response.

²The Army submitted a response to an April 28, 2004 EPA CERCLA Section 104(e) information request letter on July 30, 2004, and EPA believes the Army adequately responded to this request.

³The Army may have had fire extinguishers that contained TCE during its operations at the Site during World War II.

action was filed first and discovery is well-advanced. The timing of the actions and the expansive discovery permitted in the federal courts make the District Court the more appropriate venue for determining the liability or non-liability of RAC and the Army. If the Board denies EPA's Motion to Stay Proceedings the real possibility of conflicting decisions exists. For example, if the Board proceeds with the Petition process and the Board were to grant RAC's Petition, and if the District Court were to find the Army not liable, concluding that the contamination was caused by RAC, there would be conflicting decisions and EPA would not be able to appeal the Board's decision. This could be avoided by allowing the District Court action (and any subsequent appeals) to play out and then the parties could return to the Board with whatever portions of the federal court ruling are res judicata.

IV. RAC's Inconsistent Position

Under Section V.A of the Environmental Appeals Board Practice Manual, dated June 2004, to establish a claim for reimbursement, a petitioner must demonstrate that it is not liable for response costs under CERCLA Section 107(a), or that the selection of the ordered response action was arbitrary, capricious, or otherwise not in accordance with the law. Since the issue of the appropriateness of the selection of the response action is not before the Board, RAC must demonstrate that it is not liable to establish its claim for reimbursement. As noted in the Motion to Stay Proceedings, the District Court dismissed RAC's CERCLA Section 107(a) cost recovery claim against the United States on the basis that RAC failed to allege in its complaint that it was not a potentially responsible party ("PRP"), but provided RAC with an opportunity to amend its complaint by June 16, 2006 to assert that it was not liable and thus not a PRP. In its response to EPA's Motion to Stay Proceedings, RAC addressed its failure to amend its complaint in the

District Court action by stating that such amendment was not necessary given the Court's recognition of RAC's right to bring a contribution [claim] against the United States (see RAC's Response - footnote #1). By definition, contribution means or connotes a share in causation or liability. RAC is clearly taking different positions on its liability in the District Court and before the Board. These inconsistent positions are another reason to stay the petition for reimbursement process and allow the district court action to determine the liability issues.

V. RAC's Constitutional Issues

In its Response, RAC has mischaracterized the District Court decision as it applies to RAC's constitutional claims. RAC asserts that the granting of a stay would effectively deny RAC any opportunity for a fair hearing on its constitutional complaints regarding the UAO scheme. Contrary to this assertion, RAC has already had a hearing on its constitutional challenge to the UAO scheme and the District Court has ruled that RAC does not have standing to bring such a challenge (see May 26, 2006, Memorandum and Order, Attachment C to EPA's Motion to Stay Proceedings at IV.C). A decision by the Board, therefore, will not give RAC standing to bring this constitutional challenge.

VI. Conclusion

For the reasons stated above and in its Motion to Stay Proceedings, EPA respectfully requests that the Petition for Reimbursement be stayed pending resolution in the federal courts of the liability issues in this case.

Dated the 16th day of November 2006

Respectfully submitted,

By:



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CERTIFICATE OF SERVICE

I, Sarah Zaragoza, hereby certify that on the 16th day of November 2006, the original and five copies of the foregoing Reply to Raytheon Aircraft Company's Response to Environmental Protection Agency's Motion to Stay Proceedings were sent via Express Mail Overnight Service to Eurika Durr, Clerk of the Board, Environmental Appeals Board, U.S. Environmental Protection Agency, 1341 G Street, N.W., Suite 600, Washington, D.C. 20005, and that a true and correct copy was sent regular mail to the following counsel for Petitioner:

Beverlee J. Roper, Esquire
Daryl G. Ward, Esquire
Blackwell Sanders Peper Martin, LLP
4801 Main Street, Suite 1000
Kansas City, Missouri 64112

A handwritten signature in cursive script, reading "Sarah Zaragoza", written over a horizontal line.

Raytheon Aircraft Company
9709 E. Central
P.O. Box 85
Wichita, KS 67201-0085

EXHIBIT A

Raytheon Aircraft

Beech
Hawker

REC'D NOV 13 1997

139209

to: Tri County Airport +
ID: K30001402320
Break: 11.6
Other: Raytheon Aircraft
11/10/97

OTX5

November 10, 1997

David A. Hoefler
Office of Regional Counsel
U.S. Environmental Protection Agency
726 Minnesota Avenue
Kansas City, Kansas 66101

Re: Information Request Response pursuant to CERCLA Section 104 (e), Tri-County Public Airport Site, Former Herington Army Air Field, Herington, Kansas.

Dear Mr. Hoefler:

Raytheon Aircraft Company (formerly Beech Aircraft Corporation) is in receipt of a CERCLA Section 104(e) information request letter (Information Request) which pertains to the Tri-County Public Airport Site, Herington, Kansas, as referenced. The letter request was dated October 15, 1997, and was received by RAC on October 17, 1997. The following document provides Raytheon Aircraft Company (RAC) response to the Information Request. The response consists of the cover letter, Information Request questions and RAC answers; and supporting documents including Beech Plant Layout Department drawings (Attachment A), historic photographs (Attachment B), and telephone communication list (Attachment C).

Based on available information, Beech Aircraft Corporation (Beech) occupied the former Herington Army Air Field (Site) between 1950 and early 1960's. Given the fact that Beech ceased operations at the site over 35 years ago, information concerning hazardous substance or chemical use at the site is very limited. The information utilized to prepare this Information Request was based on historic Beech Plant Layout Department drawings, historic photographs from 1953, and on telephone conversations with previous Beech employees and current RAC employees. Additional records or documentation concerning chemical use during Beech occupancy of the Site are not available.

Following review of the Information Request response, if you have any questions, call me at 316-676-8626.

Sincerely,

RAYTHEON AIRCRAFT COMPANY

Doug Oliver

Doug Oliver
Group Manager, Process and
Environmental Engineering



S00143844
SUPERFUND RECORDS

cc: Alice Leslie Rawlings, RAC

Enclosures

RAYTHEON AIRCRAFT COMPANY,
INFORMATION REQUEST RESPONSE,
TRI-COUNTY PUBLIC AIRPORT SITE,
FORMER HERINGTON ARMY AIR FIELD

November 10, 1997

INFORMATION REQUEST QUESTIONS AND ANSWERS

(Questions in bold italics, RAC responses in normal text)

Q1. Did Respondent ever have any property interest, fee, leasehold, or otherwise in the Site? If so, provide the following information:

- a. What was the nature of the property interest?***
- b. What was the term of the property interest? (Provide inception through termination dates.)***
- c. Identify the party from whom this property interest was obtained.***
- d. Provide a copy of all instruments evidencing the creation or otherwise evidencing the existence of this property interest (e.g., deeds, lease agreements, etc.)***

Beech Aircraft Corporation (Beech) leased various buildings from the City of Herington from approximately 1950 to early 1960's. No lease agreement document was located evidencing the lease.

Q2. Describe in detail the relationship between Raytheon Aircraft Company and Beech Aircraft Company. If Beech Aircraft Company, or Beech entity, was acquired by Raytheon, identify the entity acquired, when the acquisition occurred, and the nature of the acquisition.

Beech Aircraft Corporation was purchased by Raytheon Company in 1980. At the time of the purchase, Beech became the aircraft division of the Raytheon Company, retaining the name "Beech Aircraft Corporation" for name recognition. In 1995, Raytheon Company changed the name of the aircraft division to Raytheon Aircraft Company (RAC).

Q3. Describe in detail the nature and term of Respondent's operations at the Site.

Beech manufactured aluminum military aircraft wing fuel dispensing tanks (see Attachment A, drawing #A9-126), steel wing tank shipping containers (see drawing #A9-126), military aircraft starter generators; and refurbished military Model 18 Beech airplanes (see photographs, Attachment B). Based on discussions with previous employees and drawings provided by RAC Layout Department, aluminum processing and wing tank manufacturing was accomplished in Buildings H1, H2 and H5 (see drawings #A11-131, #A11-132, #A11-135, #A11-163, #A11-164, #A11-167, #A9-176). Steel wing tank shipping container manufacturing was completed in Building H4 (see drawing #A11-134, #A11-166). Aircraft starter generators were manufactured in Building H2 (see drawing #A11-132).

Model 18 Beech airplanes were refurbished in Buildings H1 and H5. The refurbishment involved disassembling the airplane by removing wings, engines, and landing gear. The wings were rebuilt and wings, engines, and landing gear were shipped to the Beech Wichita, Kansas Facility, and installed on new fuselages. The old fuselages remaining at the Herington Site were sold as scrap.

Q4. Describe in detail the processes employed by Respondent in its operations at the Site.

Beech employed aluminum and steel sheet metal fabricating operations at the site. Metal fabricating processes included welding, heat treating, degreasing, chromium conversion coating, pressing, cutting, bending, painting, and assembly (refer to drawings #A11-163, #A11-164, #A11-166, #A11-167). Beech Plant Layout drawings #A9-177 through #A9-191, #A9-196, #A9-197, #A9-201, #A9-202, and #A9-207 detail processes employed by Beech in its operations at the Site.

Specific processes employed by Beech which utilized chemicals included a chromium conversion coat process line, wastewater treatment system, trichloroethene degreasing operations, paint stripping operation, and painting operations.

Chromium Conversion Coat Process Line: In Building H1, Beech operated a chromium conversion coat process line for aluminum parts. The process tanks included a trichloroethene degreaser, chromic acid solution deoxidizer tank, chromium conversion coat process tank, alkaline cleaner tank, and associated water rinse tanks.

Wastewater Treatment: To the northwest of Building H1, Beech operated a wastewater treatment system. The wastewater treatment system received process rinse waters and chromium solutions from the chromium conversion coat process line in Building H1. Wastewaters flowed from the process line in Building H1 to the wastewater treatment system through piping. The wastewater treatment system consisted of approximately three concrete-lined pits. The treatment process involved adjusting the pH of the wastewater with sulfuric acid, reducing hexavalent chromium in the wastewaters with a reducing agent, and then adjusting the pH with soda ash. The composition of the reducing agent utilized is not known. Following settling in the last pit, treated waters would discharge to the surface and flow to the west in a drainage ditch.

Degreasing Operations: Two trichloroethene degreasers were utilized by Beech at the Site. One degreaser was located in Building H1 (see drawings #A11-131, #A11-163) as part of the chromium conversion coat process line. A second degreaser was located in Building H4 (see drawings #A11-134, #A11-166) as part of the steel wing tank shipping container manufacturing process.

Paint Stripping: In the northwest corner of Building H1, Beech utilized a chemical paint stripping operation to remove paint from the wings of Model 18 Beech airplanes. The composition of the paint stripping chemical is not known. Wastewater from the stripping operation was diverted to a holding pond which was located north of Building H1. It is not clear whether the paint stripping wastewater holding pond was a separate pit or if one of the wastewater treatment system pits was utilized.

Painting Operations: Beech operated painting areas in Building H4 (see drawing #A11-134, #A11-166) and Building H5 (see drawing #A11-135, #A11-167). The booth utilized in Building H5 was a waterfall curtain type booth. The booth type utilized in Building H4 is not known. Zinc chromate primer and toluene thinning agents were used in painting areas for wing manufacturing or rebuilding contracts at the Site.

Q5. Did Respondent use, store, dispose of, or otherwise handle any hazardous substances, including volatile organic compounds, in its operations at the site? If so, identify all of the hazardous substances used. In addition, provide the following information:

- a. The chemical name, composition, and trade name of such hazardous substances;**
- b. The time period(s) during which such hazardous substances was used, stored, or otherwise handled;**
- c. Describe briefly the purpose for which the hazardous substances were used for at the Site. If there were multiple uses, describe each use and how such use was employed in Respondent's processes;**
- d. What was the total volume (in gallons) of all hazardous substances used, stored, or otherwise handled at the Site by Respondent?;**
- e. Describe how and where hazardous substances were stored at the Site, including but not limited to, the kind and size of containers or tanks, the location of storage areas, pads or enclosures, and the approximate average volume stored by Respondent at each such location at the Site;**
- f. Identify the locations at the Site where Respondent used, stored, or otherwise handled hazardous substances (please refer to Attachment II, Site map, or provide an alternative Site map depicting such locations); and**
- g. Describe how any hazardous substances used by Respondent at the Site was transported from the point of storage to the point where it was applied, in what amounts, and whether this was done using containers, hoses, piping or other equipment.**

Beech utilized a number of chemicals at the Site, as specified above in answer to question #4. Following is a list of chemicals utilized and available information on usage:

Trichloroethene: Trichloroethene was utilized in two degreasers at the Site. One degreaser was located in Building H1 and one in Building H4. Trichloroethene was utilized to remove cutting oils and grease from the surfaces of metal parts prior to additional processing, such as painting or chromium conversion coating processes. Unused or new trichloroethene was stored in 55 gallon drums in a building located northwest of Building H1. The specific storage building and building identification number is not known. Trichloroethene drums were transported to Building H1 and H4 degreasers for material additions. Usage amounts of trichloroethene are not known. Disposal method for trichloroethene is not known.

Chromium Conversion Coat Process Line Chemicals: As noted in response to question #4 above, Beech operated a conversion coat process line in Building H1. Chemicals in process tanks in the line included trichloroethene for degreasing, a chromic acid based deoxidizer, an alkaline cleaner solution, a chromium based conversion coat solution, and water rinse tanks. The trade-name of the chromium conversion coat may have been Iridite (refer to drawing #A11-163). The trade-names of the alkaline cleaner and chromic acid based deoxidizer are not known. The storage methods, storage locations, or usage amounts of the alkaline cleaner, conversion coat solution, or deoxidizer are not known. The wastewater treatment system (refer to question #4 response) was utilized for treatment of rinse waters and spent chromium based solutions. Disposal method for the alkaline cleaner solution is not known.

Q5. (Continued)

Wastewater Treatment Chemicals: Sulfuric acid, a reducing agent, and soda ash were utilized at the wastewater treatment system (see response to question #4, above). Sulfuric acid was utilized in the wastewater treatment system for pH adjustment of wastewater, a reducing agent was utilized to reduce hexavalent chromium in the wastewaters, and soda ash was utilized for pH adjustment prior to discharge. The storage methods, storage locations, usage amounts, or disposal methods for wastewater treatment chemicals are not known. The composition of the reducing agent is not known.

Paint Stripping Chemical: Beech utilized a chemical paint stripper in the northwest corner of Building H1 (see response to question #4). The chemical utilized, storage methods, storage locations, usage amounts, or disposal methods are not known.

Paints and Painting Solvents: Zinc chromate primer was utilized at the Site in the painting areas for priming newly manufactured or rebuilt wings. Toluene solvent was utilized as a thinning agent for the paint. Paint and painting solvent storage methods or locations are not known. Usage amounts of paints or painting solvents are not known. Disposal methods for paints or painting solvents are not known.

- Q6. Does Respondent have in its custody or control any records or documents evidencing or suggesting the use or disposal of any such hazardous substances at the Site? If so, submit copies of such records or documents to EPA along with your response to this Information Request.*

Information utilized to prepare the response to this Information Request was based on historic Beech Plant Layout Department drawings (Attachment A), historic photographs from 1953 (Attachment B), and on telephone conversations with previous Beech employees and current RAC employees (Attachment C). Attachments A, B, and C are included with this response. Additional records or documentation concerning chemical or hazardous substance use or disposal during Beech occupancy of the Site are not available.

- Q7. Provide copies of documents including plans, figures and/or specifications depicting or describing Respondent's facilities while it occupied the Site.*

The Beech Plant Layout Department drawings (Attachment A) and historic photographs (Attachment B) are included with this submittal.

- Q8. Did Respondent use the landfill located at the Site (depicted on Attachment II)? If yes, what did Respondent dispose of in the landfill?*

Based on telephone communication with a previous Beech Herington employee, the referenced landfill on the south portion of the property was a military landfill and was not utilized by Beech.

- Q9. When Respondent departed the Site what became of any hazardous substances that Respondent may have had in its possession at the Site?*

The status of hazardous substances that Beech may have had in its possession when it departed the Site is not known.

Q10. Identify any other parties who occupied the Site during Respondent's occupancy of the Site.

Other parties who occupied the Site during Beech's occupancy are not known.

Q11. Describe the acts or omissions of any persons, other than Respondent's employees, agents or those persons with whom Respondent had a contractual relationship, that may have caused the release or threat of release of hazardous substances at the Site and identify such persons.

RAC has no knowledge of acts or omissions by others who may have caused the release or threat of release of hazardous substances at the Site. However, other entities have occupied the Site prior to and following Beech's occupancy of the Site who may have caused the release or threat of release of hazardous substances at the Site.