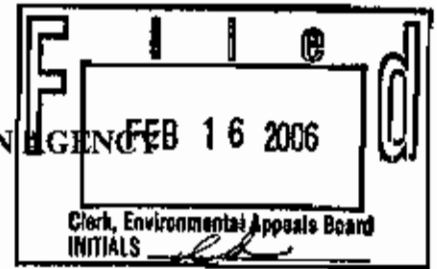


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In the Matter of:

Tri-County Public Airport Site,
Raytheon Aircraft Company, Petitioner

CERCLA § 106(b) Petition No. 06-01

**ORDER TO SHOW CAUSE WHY PETITION FOR REIMBURSEMENT
SHOULD NOT BE DISMISSED AS PREMATURE**

By petition filed on January 9, 2006, the Raytheon Aircraft Company ("RAC") seeks reimbursement of costs (plus interest) incurred in complying with the terms of the Unilateral Administrative Order for Removal Response Activities, Docket # CERCLA-07-2004-0311, (the "UAO") issued by U.S. Environmental Protection Agency Region 7 (the "Region") on September 30, 2004, regarding the Tri-County Public Airport Site, Morris County, Kansas. Consistent with the Board's practice, the Clerk of the Environmental Appeals Board (the "Board") sent a letter to the Region requesting that the Region file a response to the petition on or before February 13, 2006, if the response were to challenge the petitioner's eligibility to seek reimbursement without regard to the merits of the reimbursement claim, or on or before March 13, 2006, if the response were to address the merits of the reimbursement claim. Before the Board at this time is the Region's motion to dismiss RAC's petition without prejudice, alleging that the required action has not been completed. *See* Motion to Dismiss the Petition of Raytheon Aircraft Company (Feb. 9, 2006) ("Motion to Dismiss").

The petition was filed under section 106(b)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, 42 U.S.C. § 9606(b)(2). This section states, in part:

Any person who receives and complies with the terms of any order issued under subsection (a) of this section may, within 60 days after *completion of the*

required action, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest.

CERCLA § 106(b)(2)(A), 42 U.S.C. § 9606(b)(2)(A) (emphasis added).¹ When a petition has been filed before completion of the required action, we have dismissed the petition without prejudice. *See, e.g., In re CoZinco, Inc.*, CERCLA § 106(b) Petition No. 95-2 (EAB, Sept. 11, 1995) (Order Dismissing Petition).

In the present case, the UAO states in Section XXII that “[w]hen EPA determines, after its review of the Removal Action Report, that all Work has been fully performed in accordance with this Order, * * * EPA will provide written notice to the Respondents.” UAO at 28. RAC states that it has completed the required action, and refers to the submission of its Removal Action Report and a November 3, 2005 letter written by an EPA Remedial Project Manager, published in the *Herrington Times*, which states: “The field work started in late June of this year and was completed the first week in October. The final report is being prepared by the Raytheon Aircraft Company.” RAC has not stated, however, that it has received written notice from EPA that all work has been fully performed, as is contemplated by Section XXII of the UAO. Moreover, according to the Region, “EPA is currently reviewing the Removal Action Report and has not yet provided its approval or disapproval to RAC.” Motion to Dismiss at 2. The Region further states that “[i]t is through its review of the removal action report that EPA determines whether or not all actions have been completed in accordance with the requirements of the UAO.” *Id.* at 3.

¹ Executive Order 12580 (January 23, 1987) delegated the President’s authority to implement section 106(b) of CERCLA to the EPA Administrator. The Administrator has delegated to the Environmental Appeals Board the authority to receive, evaluate, and make determinations regarding petitions for reimbursement submitted pursuant to section 106(b). *See* Delegation of Authority 14-27 (“Petitions for Reimbursement”).

Because RAC has not provided evidence that it has received written notice from EPA that the work has been fully performed in accordance with the UAO, RAC's petition appears to be premature. Accordingly, RAC is hereby ordered to show cause why its petition for the reimbursement of costs with respect to the UAO should not be dismissed without prejudice. RAC shall show cause by filing an appropriate brief or pleading on or before Monday, March 6, 2006.

So ordered.

Dated: February 16, 2006

ENVIRONMENTAL APPEALS BOARD

By: Kathleen C. Stern for Scott C. Fulton
Scott C. Fulton
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order to Show Cause Why Petition for Reimbursement Should Not Be Dismissed as Premature, in the matter of Tri-County Public Airport Site, Raytheon Aircraft Company, Petitioner, CERCLA § 106(b) Petition No. 06-01, were sent to the following persons in the manner indicated:

By First Class Mail
Postage Prepaid:

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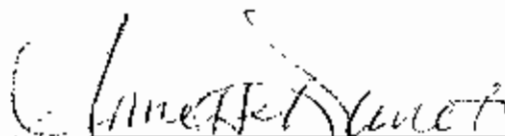
By Pouch Mail:

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Dated: FEB 17 2006


Annette Duncan,
Secretary