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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

ENVIR. APPEALS BOARD

**EXPRESS MAIL OVERNIGHT DELIVERY**

February 28, 2006

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

RE: In the Matter of Tri-County Public Airport Site  
The Raytheon Aircraft Company, Petitioner  
Petition Number: 106(b) 06-01

Dear Ms. Durr:

Enclosed for filing in the above-referenced matter please find one original and five copies of a Motion for Clarification of Deadline for Filing Response on the Merits of the Petition of Raytheon Aircraft Company and a certificate of service. Please file the original and the copies of the motion.

A sixth copy of the motion is also enclosed. Please stamp the sixth copy and return it to me at the address below:

J. Scott Pemberton  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Thank you for your assistance in this matter.

Sincerely,

J. Scott Pemberton  
Senior Assistant Regional Counsel

Enclosures

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




response should be filed no later than February 13, 2006. The letter further states that if the initial response addresses the merits of petitioner's reimbursement claim, said response should be filed by March 13, 2006. On February 9, 2006, EPA filed a motion to dismiss the Petition on the basis that the required action has not been completed. Section IV.A.1 of the EAB Guidance states that, if the Region has filed a pleading moving to dismiss a petition for failure to meet one or more of the prerequisites for obtaining review, the Board may rule on any or all of the prerequisite issues or may defer ruling on prerequisite issues until after the merits have also been briefed. If the Board so decides to defer ruling on the prerequisite issues, the EAB Guidance indicates that the Board would issue a further order directing the Parties to brief the merits of the Petition.

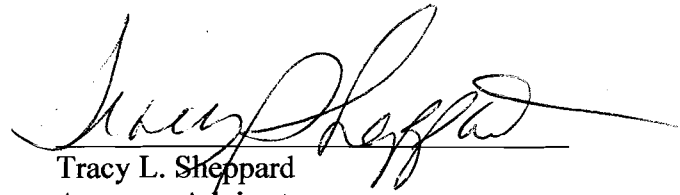
The EPA respectfully requests that the Board issue an Order clarifying that the time to file a response on the merits of a petition, where the initial responsive filing challenges the petitioner's eligibility to seek reimbursement, is determined by a further order of the Board and not by the initial filing timeframes designated in the EAB letter soliciting EPA's first response to a petition. The EPA has contacted the attorneys representing the Raytheon Aircraft Company, who indicated they may wish to oppose this motion.

Dated this 28<sup>th</sup> day of February, 2006.

Respectfully submitted,

By:

  
J. Scott Pemberton  
Senior Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101  
(913) 551-7276      FAX (913) 551-7925



Tracy L. Sheppard

Attorney-Advisor

Office of Site Remediation Enforcement

U.S. EPA

1200 Pennsylvania Ave., N.W.

Washington, D.C. 20460

(202) 5664-4785

FAX (202) 564-0086

**CERTIFICATE OF SERVICE**

I, Sarah Zaragoza, hereby certify that on the 28<sup>th</sup> day of February, 2006, the original and five copies of the foregoing Motion to Dismiss the Petition of Raytheon Aircraft Company 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 true and correct copies were 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

