

LAW FIRM

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2006 MAR -2 AM 10: 12

ENVIR. APPEALS BOARD

DIRECT FAX: (816) 983-9143  
E-MAIL: broper@blackwellsanders.com

Beverlee J. Roper  
DIRECT: (816) 983-8143

March 1, 2006

**VIA COURIER**

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 please find one original and five copies of Raytheon Aircraft Company's Motion to Produce a Certified Administrative Record Index in the above-captioned matter. Please file the original and copies of the motion.

A sixth copy of the motion is also enclosed. Please stamp the sixth copy and return it in the self-addressed stamped envelope enclosed.

Sincerely,

*Beverlee J. Roper* (ST)

Beverlee J. Roper

BJR/maa  
Enclosures

KC-1375335-1

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AFFILIATES: LEEDS • MANCHESTER  
MEMBER OF THE WORLD SERVICES GROUP

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

2006 MAR 2 AM 10:12  
ENVIR. APPEALS BOARD

IN THE MATTER OF: )

TRI-COUNTY PUBLIC AIRPORT SITE, )  
RAYTHEON AIRCRAFT COMPANY )

) CERCLA § 106(b) Petition No. 06-01  
)  
)

**RAYTHEON AIRCRAFT COMPANY'S MOTION TO PRODUCE A CERTIFIED  
ADMINISTRATIVE RECORD INDEX**

Petitioner, Raytheon Aircraft Company ("RAC") moves the U.S. Environmental Protection Agency ("EPA"), through the Environmental Appeals Board ("the Board"), to produce a certified index of the Administrative Record with its Motion to Dismiss the Petition of Raytheon Aircraft Company. The Board should grant RAC's Motion to Produce because the Region is obligated to do so by the Board's applicable procedures and the Board must have the full agency record related to RAC's Petition for Reimbursement before deciding EPA's Motion to Dismiss.

On January 3, 2006, RAC filed a Petition for Reimbursement with the Board, seeking reimbursement of the costs it has incurred to comply with a September 30, 2004 Unilateral Administrative Order issued by EPA for the Tri-County Public Airport Site. The petition was filed within 60 days of RAC's completion of the work required by the UAO. On January 12, 2006, the Board directed EPA Region VII to submit a response to RAC's Petition and a certified index of the Administrative Record.<sup>1</sup> On February 8, 2006, EPA moved to dismiss the petition,

<sup>1</sup> See letter from Eurika Durr, Clerk of the Board, EAB, dated January 12, 2006, to Cecilia Tapia, Director Superfund Division, EPA Region VII (Exhibit A).

claiming that RAC's petition was premature. EPA, however, failed to file the requisite Administrative Record certified index with its initial motion.

The Board's *Revised Guidance on Procedures for Submission and Review of CERCLA Section 106(b) Reimbursement Petitions* ("Procedures") expressly provides at Section IV.A.3 that the Region must produce a certified index to the administrative record with its first filing:

The Region's *first response to the EAB* (either addressing one or more statutory prerequisites for reimbursement or the merits of the petitioner's claims) *must be accompanied by a certified index to the administrative record* that the Region compiled in connection with the issuance of the underlying CERCLA § 106(a) order.

(Emphasis added). Despite the Board's inclusion of this specific language in its articulated requirements for EPA's motion practice in this case, EPA Region VII failed to file the requisite index with its initial motion.

Counsel for RAC requested the index by letter dated February 20, 2006 (see Exhibit B), but the Region failed to respond. On February 27, 2006, the undersigned Counsel for RAC telephoned the Assistant Regional Counsel inquiring if and when the index would be produced. The Assistant Regional Counsel represented that, unbeknownst to RAC and contrary to the plain language of the Board's Procedures, the Board's staff told the Assistant Regional Counsel that the Board had waived this requirement, thus allowing the Region to avoid producing the required index.

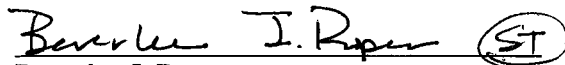
Given EPA's failure to follow its clearly articulated Procedures for its own behavior, the Procedures must be suggestive only – at least with respect to EPA. If, on the other hand, the provisions of the document stringently apply to RAC, then equity – even the *mere appearance* of equity – requires that the articulated requirements apply equally to EPA.

Having the full agency record before the Board as it decides EPA's Motion to Dismiss and RAC's Petition is presumably critical to an equitable adjudication of this matter. Otherwise the requirement would not have been so clearly articulated in the Procedures. EPA's failure to provide the index prevents the Board and RAC from ascertaining what documents in the Administrative Record are relevant to EPA's Motion to Dismiss and RAC's Petition.

RAC respectfully moves the Board to issue an order requiring EPA to produce a certified index to the Administrative Record within 10 days of the order. Because RAC needs the index to respond to the Board's Order to Show Cause, RAC should be permitted to review the index and obtain specific documents identified as relevant to the issues raised by EPA's Motion to Dismiss.

Date: March 1, 2006

Respectfully submitted,



Beverlee J. Roper

Daryl G. Ward

BLACKWELL SANDERS PEPER MARTIN LLP

4801 Main Street, Suite 1000

Kansas City, Missouri 64112

Telephone: (816) 983-8000

Facsimile: (816) 983-8080

**Attorneys for Petitioner Raytheon Aircraft Company**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed this 1<sup>ST</sup> day of March 2006 to:

J. Scott Pemberton  
Senior Assistant Regional Counsel  
Environmental Protection Agency  
901 N. Fifth Street  
Kansas City, Kansas 66101

*Beverlee J. Roper* (ST)

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Beverlee J. Roper

# Exhibit A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

ENVIRONMENTAL APPEALS BOARD

JAN 12 2006

Ms. Cecilia Tapia, Director  
Superfund Division  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

Re: Raytheon Aircraft Company  
Docket Number: CERCLA-07-2004-0311  
Petition Number: CERCLA 106(b) 06-01

Dear Ms. Tapia:

Enclosed is a petition for reimbursement dated January 3, 2006 (received by the Environmental Appeals Board (the "Board") on January 9, 2006), filed by Beverlee J. Roper and Daryl G. Ward, Attorneys, Blackwell Sanders Peper Martin LLP on behalf of Raytheon Aircraft Company (RAC) pursuant to CERCLA Section 106(b). The petition seeks reimbursement of costs incurred by the petitioner.

The Board has issued a revised guidance document, dated November 10, 2004, describing the Board's procedures for addressing Section 106(b) reimbursement petitions. A copy of the Board's guidance is enclosed.

Accordingly, please have your staff prepare and submit a response to the petition, as described more fully in Section IV.A of the Board's guidance. If your response challenges the petitioner's eligibility to seek reimbursement, without regard to the merits of the reimbursement claim, the response should be filed not later than February 13, 2006. If, however, your response does address the merits of the reimbursement claim, the response should be filed not later than March 13, 2006. In either event, please file an original (signed in blue ink) and two copies of the response with the Board at the address shown below, and send a copy of the response to the petitioner's attorneys.

Please include with the response a certified index to the administrative record that was

compiled in connection with the issuance of the underlying CERCLA Section 106(a) Order. Please also include copies of any documents that are relied on in the response and that have not already been submitted to the Board by the petitioner.

**Environmental Appeals Board's Mailing Address**

**All documents that are sent through the U.S. Postal Service (Except by Express Mail) MUST be addressed to the Environmental Appeals Board's mailing address which is:**

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals board 1103B  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

Documents that are sent to the Environmental Appeals Board's hand-delivery address (below) through the U.S. Postal Service (except by Express Mail) will be returned to the sender and shall not be considered as filed.

**Hand Delivery Address**

Documents that are **hand-carried** in person, delivered via courier, mailed by Express Mail, or delivered by a non-U.S. Postal Service carrier (e.g., Federal Express or UPS) **MUST be delivered to:**

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board  
1341 G Street, N.W. Suite 600  
Washington, D.C. 20005

Documents that are hand-carried may be delivered to the Clerk of the Board between 8:30 a.m. to 12:00 p.m. and 1:00 p.m. to 4:30 p.m., Monday through Friday (excluding federal holidays).

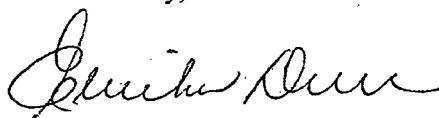
**Filing Requirements**

**IMPORTANT:** All documents, including the materials due February 13, 2006 and March 13, 2006, must reference the appeal number. In addition, any envelope or other packaging containing documents sent to the address, as prescribed above, must bear a complete and accurate return address in the upper left hand corner. The envelope or packaging must also clearly state the case name and case identifier in the lower left hand corner.

Thank you for your attention to this matter.



Sincerely,



Eurika Durr  
Clerk of the Board

Enclosure

cc w/o encl: Beverlee J. Roper  
Daryl G. Ward  
Law Firm  
Blackwell Sanders Peper Martin-LLP  
4801 Main Street Suite 1000  
Kansas City, MO 64112

w/encl: Kenneth Patterson  
Office of Enforcement and Compliance Assurance (2272A)  
U.S. EPA, Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

Earl C. Salo  
Office of General Counsel (2366A)  
U.S. EPA, Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

Exhibit  
B

LAW FIRM

**BLACKWELL SANDERS PEPPER MARTIN**  
LLP

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DIRECT FAX: (816) 983-9143  
E-MAIL: broper@blackwellsanders.com

February 20, 2006

**VIA ELECTRONIC DELIVERY**  
**AND U.S. MAIL**

Scott J. Pemberton  
EPA  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
901 N. 5th Street  
Kansas City, Kansas 66101

**Re: Raytheon Aircraft Company**  
**Docket Number: CERCLA-07-2004-1311**  
**Petition Number: CERCLA 106(b) 06-01**  
**Our File No: 2053-3**

Dear Mr. Pemberton:

Last week we received a copy of EPA Region VII's "Motion to Dismiss the Petition of Raytheon Aircraft Company". Accompanying the Motion were a copy of the underlying UAO with attachments, and a copy of the EPA Region VII Remedial Project Manager's published Letter to the Editor of the Herington Times, dated November 3, 2005.

Reviewing the January 12, 2006, letter from Eurika Durr, Clerk of the Environmental Appeals Board, to Cecilia Tapia, Director, Superfund Division, Region VII, the Region is asked to include with its response to RAC's petition, "a certified index to the administrative record that was compiled in connection with the issuance of the underlying CERCLA Section 106(a) Order."

The Board's "Revised Guidance on Procedures for Submission and Review of CERCLA Section 106(b) Reimbursement Petitions", provides at Section IV.A.3:

The Region's first response to the EAB (either addressing one or more statutory prerequisites for reimbursement or the merits of the petitioner's claims) *must be accompanied by a certified index to the administrative record* that the Region compiled in connection with the issuance of the underlying CERCLA § 106(a) order."

KC-1372316-1

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AFFILIATES: LEEDS • MANCHESTER  
MEMBER OF THE WORLD SERVICES GROUP

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**BLACKWELL SANDERS PEPER MARTIN**  
LLP

Scott J. Pemberton  
February 20, 2006  
Page 2

(Emphasis added.) Our copy of Region VII's certified index to the administrative record must have been inadvertently omitted from our copy of Region VII's submission to the Environmental Appeals Board.

Please forward a copy of the certified index to me by either fax or email, as well as by regular mail. Thank you for your kind and timely consideration of this request.

Sincerely,



Beverlee J. Roper

cc: Lois Godfrey Wye, Esq.