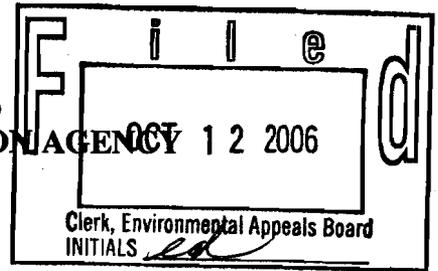


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In the Matter of:

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

CERCLA § 106(b) Petition No. 06-01

ORDER DIRECTING REGION TO FILE STATUS REPORT

On January 9, 2006, the Raytheon Aircraft Company (“RAC”) filed a petition (“Petition”) seeking 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 (the “Site”). On February 9, 2006, the Region filed a Motion to Dismiss the Petition of RAC (“Motion to Dismiss”) on the grounds that RAC had filed the Petition prematurely. On February 16, 2006, the Board issued an Order to Show Cause Why Petition for Reimbursement Should Not Be Dismissed As Premature (“Order to Show Cause”). On March 6, 2006, RAC filed a Response to the Board’s Order to Show Cause (“Response”). On April 14, 2006, the Region filed a Motion For Leave To Reply To the Response (“Motion For Leave”) and a Reply To the Response (“Reply Brief”). The Board granted the Motion for Leave and accepted the Reply Brief for filing on May 22, 2006.

Based on the above-described filings, the Board has observed that the Region’s sole argument in its Motion to Dismiss is that RAC’s Petition is premature because the Region has not yet provided a written notice of completion to RAC.¹ The Region argues that a notice of

¹ CERCLA section 106(b)(2)(A) states that petitions for reimbursement must be filed
(continued...)

completion is a condition precedent to RAC's reimbursement claim under CERCLA §106(b). RAC, on the other hand, argues that if the Board accepts the Region's position, the Region would have "an unlimited time period within which to file its notice of completion. To use that event as the trigger for the sixty-day period, rather than the last action required of RAC articulated in the UAO, grants [the Region] unfettered discretion to control the timing of RAC's position." Response at 3. The Board has not yet ruled on the Region's Motion to Dismiss. On September 21, 2006, RAC reported to the Board that the Region issued RAC a Notice of Completion of Field Work on September 6, 2006, and now moves the Board to deny the Region's Motion to Dismiss. RAC's Status Report at 2.

The Board hereby orders the Region to file a status report and response to RAC's Status Report. The Region's status report and response shall be filed by October 20, 2006.

So ordered.

Dated: October 12, 2006

ENVIRONMENTAL APPEALS BOARD

By: _____


Scott C. Fulton

Environmental Appeals Judge

¹(...continued)
within 60 days of "completion of the required action." 42 U.S.C. § 9606(a)(2)(A).

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Directing Region To File Status Report, 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:

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Dated: 06/12/2006


Annette Duncan,
Secretary