



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

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ENVIR. APPEALS BOARD

EXPRESS MAIL OVERNIGHT DELIVERY

October 19, 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 please find one original for filing and five copies of EPA's Status Report in the above-referenced matter as required by the Board by Order dated October 12, 2006. A copy of this letter and its attachments has been sent to counsel for the Petitioner.

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

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

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ENVIR. APPEALS BOARD

IN RE:)
)
)

Tri-County Public Airport Site)
Morris County, Kansas)

Raytheon Aircraft Company,)
)

Petitioner)
)

Petition for Reimbursement Under)
Section 106(b)(2) of the Comprehensive)
Environmental Response, Compensation,)
and Liability Act of 1980, as amended,)
42 U.S.C. § 9606(b)(2).)
)

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

**U.S. ENVIRONMENTAL PROTECTION AGENCY'S STATUS REPORT AND
RESPONSE TO RATHEON AIRCRAFT COMPANY'S STATUS REPORT**

The Respondent, Region VII of the U.S. Environmental Protection Agency ("EPA"), by and through its Office of Regional Counsel submits this Report pursuant to the Environmental Appeals Board's October 12, 2006 Order Directing Region To File Status Report. This Report concerns the completion of the required actions by Petitioner, Raytheon Aircraft Company ("RAC"), pursuant to the Unilateral Administrative Order for Removal Response Activities, Docket No. CERCLA-07-2004-0311 ("UAO"), issued by EPA on September 30, 2004.

RAC filed a Petition for Reimbursement on January 9, 2006, with the Environmental Appeals Board (“Board”) seeking to recover the costs (plus interest) incurred in complying with the UAO, which required RAC to conduct a removal action in the area of Hangar 1 of the Tri-County Public Airport Site located in Morris County, Kansas. On February 9, 2006, EPA filed a Motion to Dismiss the Petition of RAC on the grounds that RAC had filed the Petition prematurely. Completion of the required actions is a statutory prerequisite for obtaining review of a reimbursement petition under Section 106(b)(2) of CERCLA, 42 U.S.C. § 9606(b)(2). At the time RAC filed its Petition, it had not completed the required actions under the UAO. By letter dated September 6, 2006, EPA provided a Notice of Completion of Field Work (see Exhibit A).

EPA agrees that it would now be appropriate for the Board to consider a Petition for Reimbursement, if RAC decides to resubmit its Petition or if the Board allows the existing Petition to go forward. EPA is filing concurrently with this Report a Motion to stay further proceedings until liability issues are resolved in related litigation in federal court. *Raytheon Aircraft Company v. United States of America*, Case No. 05-2328-JWL.

Dated this 19th day of October, 2006.

Respectively submitted,

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

Lee R. Tyner
Senior Attorney
Office of General Counsel
U.S. EPA
1200 Pennsylvania Ave, N.W.
Washington, DC 20460
(202) 564-5524
FAX (202) 564-5531

CERTIFICATE OF SERVICE

I, Sarah Zaragoza, hereby certify that on the 19th day of October, 2006, the original and five copies of the foregoing U.S. Environmental Protection Agency Status Report 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

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 06 2006

John M. Baker
Manager, Environmental Engineering
Raytheon Aircraft Company
P.O. Box 85
Wichita, Kansas 67201-0085

Lloyd R. Mathes
Herington City Manager
City of Herington
P.O. Box 31
Herington, Kansas 67449

Dear Mr. Baker and Mr. Mathes:

Re: Notice of Completion of Field Work, Unilateral Administrative Order for
Removal Response Activities, Docket No. CERCLA-07-2004-0311
In The Matter Of: Tri-County Public Airport Site, Morris County, Kansas
Respondents: Raytheon Aircraft Company and City of Herington, Kansas

The United States Environmental Protection Agency (EPA) has received the latest submittal(s) from the referenced respondents. The Raytheon Aircraft Company provided the Certificates of Insurance in correspondence dated August 8, 2006, and the city of Herington sent their completion of task information in correspondence dated March 27, 2006. However, Raytheon failed to demonstrate its ability to complete the work as required by Section XIX of the Unilateral Administrative Order. The EPA has determined that all field work has been fully performed in accordance with the referenced Order, with the exception of any continuing obligations required by the referenced Order, including Section XI (Record Preservation) and Section XVI (Reservation of Rights by EPA).

If you have any questions, please contact me at (913) 551-7769 or Scott Pemberton of Regional Counsel at (913) 551-7276.

Sincerely,

Kenneth Rapplean
Remedial Project Manager
Missouri/Kansas Remedial Branch
Superfund Division

Cc: Jean Underwood, Kansas Department of Health and Environment

EXHIBIT A

