

UNITED STATES ENVIRONMENTAL PROTECTION AGE

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

2006 FEB 29 NM 9: 46-01

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. 5th 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

RECEIVED U.S. E.P.A.

BEFORE THE ENVIRONMENTAL APPEALS BOARD UNITED STATED ENVIRONMENTAL PROTECTION AGENCIES 29 AN 9: 46 WASHINGTON, D.C.

ENVIR. APPEALS BOARD

IN RE:)
Tri-County Public Airport Site Morris County, Kansas) Petition No.) CERCLA 106(b) 06-01
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).)))))

MOTION FOR CLARIFICATION OF DEADLINE FOR FILING RESPONSE ON THE MERITS OF THE PETITION OF RAYTHEON AIRCRAFT COMPANY

The Respondent, U.S. Environmental Protection Agency, Region 7 ("EPA"), by and through its Office of Regional Counsel, hereby moves this Board pursuant to Section II.I.1 and V of the Board's Practice Manual dated June 2004 ("EAB Manual") and Section IV.A.1 of the Board's Revised Guidance on Procedures for Submission and Review of CERCLA Section 106(b) Reimbursement Petitions dated November 10, 2004 ("EAB Guidance"), to clarify the time for filing a brief on the merits of the Raytheon Aircraft Company's Petition for Reimbursement ("Petition") dated January 3, 2006.

The EAB's January 12, 2006, letter soliciting a response from EPA on the Petition states that if the initial response challenges the petitioner's eligibility to seek reimbursement, said

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 respectively 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 28th day of February, 2006.

Respectively submitted,

By:

J. Scott Pemberton

Senior Assistant Regional Counsel

Office of Regional Counsel

U.S. EPA, Region 7

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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 26 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