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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
)
) **DOCKET NO. RCRA-05-2008-0006**
John A. Biewer Company of Toledo, Inc.)
300 Oak Street)
St. Clair, Michigan 48079-0497)
(Washington Courthouse Facility))
)
U.S. EPA ID #: OHD 106 483 522; and)
)
John A. Biewer Company, Inc.)
812 South Riverside Street)
St. Clair, Michigan 48079; and)
)
Biewer Lumber LLC)
812 Riverside Street)
St. Clair, Michigan 48079)
)
Respondents)
_____)

**COMPLAINANT'S MEMORANDUM IN SUPPORT OF MOTION FOR
ACCELERATED DECISION ON DERIVATIVE LIABILITY**

BUSINESS CONFIDENTIALITY ASSERTED

Certain of the attachments cited by Complainant in its "Motion for Accelerated Decision on Derivative Liability" have been provided to Complainant by Respondents in discovery. With their first discovery response, on March 5, 2009, Respondents asserted, under 40 C.F.R. § 2.203, a business confidentiality claim as to all documents that they would be providing in discovery. Consequently, attachments cited by Complainant in this Motion which contain information on which Respondents have made a confidentiality claim have been so identified in this "List of Attachments" by the marking "CBI" and redacted. A complete copy of each attachment on which Respondents have made a confidentiality claim has been filed under seal with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 5. A sealed set of attachments are being served on the Presiding Officer and Respondents.

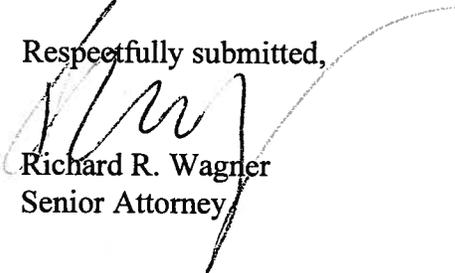
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LLC be pierced, and JAB-Co and Biewer Lumber be found jointly, and severely, liable for the \$287,441 civil penalty amount proposed.

- (4) Based upon the evidence identified in this motion, it is appropriate that, under the Bestfoods doctrine, JAB-Co and Biewer Lumber LLC be found directly liable for the violation alleged in the Administrative Complaint and Compliance Order, and JAB-Co and Biewer Lumber be found jointly, and severely, liable for the \$287,441 penalty amount proposed.

Under the circumstances, an order should be entered directing that, within 30 days, both JAB-Co and Biewer Lumber LLC, jointly and severely, pay the \$287,441 penalty amount proposed for the violations alleged in the Complaint. It is further ordered that, no later than a date to be determined, the parties confer and agree to an appropriate order to be issued against Respondents to assure the decontamination of the JAB-Toledo facility drip pad of the arsenic and chromium contamination present there, and submit to the Presiding Officer the agree order. Should the parties be unable to reach agreement on a corrective action order, Complainant is to report that circumstances to the Presiding Officer no later than a date to be determined, and the matter will be set for hearing on that issue, with an appropriate order to follow.

Respectfully submitted,


Richard R. Wagner
Senior Attorney