Mika Meyers Beckett & Jones PLC

900 Monroe Avenue NW Grand Rapids, MI 49503 Tel 616-632-8000 Fax 616-632-8002 Web mmbjlaw.com

Attorneys at Law

James R. Brown
Larry J. Gardner
Claude L. Vander Ploeg
John M. DeVries[5]
Michael C. Haines
John T. Sperla
David R. Fernstrum
Mark A. Kehoe
Fredric N. Goldberg
James K. White

Stephen J. Mulder
Douglas A. Donnell[5]
Scott E. Dwyer
William A. Horn[6]
Daniel R. Kubiak
Mark A. Van Allsburg
Elizabeth K. Bransdorfer
Neil L. Kimball
Ross A. Leisman
Neil P. Jansen

Eric S. Richards
Daniel J. Parmeter, Jr.
Mark E. Nettleton[3]
John C. Arndts
Andrea D. Crumback
Scott D. Broekstra
Jennifer A. Puplava
Nathaniel R. Wolf
Benjamin A. Zainea
Ronald M. Redick

James J. Rosloniec
Brian M. Andrew
Matthew E. Fink
Kimberly M. Large[2]
Nikole L. Canute[4]
Steffany J. Dunker
Amy L. VanDyke
Daniel J. Broxup

Of Counsel
Steven L. Dykema
Ronald J. Clark
Leonard M. Hoffius[1]
Scott S. Brinkmeyer
Daniel J. Kozera, Jr.
Timothy J. Tornga

Also Admitted In
[1]Colorado
[2]Delaware
[3]Illinois
[4]New York
[5]Ohio
[6]Wisconsin

July 30, 2009

Regional Hearing Clerk (E-19J)
United States Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

Re: John A. Biewer Company of Toledo, Inc.; RCRA-05-2008-0006

Dear Clerk:

Enclosed for filing you will find the following pleadings:

1. Respondents' Brief in Opposition to Complainant's Motion to Strike, In Part, Respondents' Pre-Hearing Exchange.

2. Respondents John A. Biewer Company, Inc. and Biewer Lumber LLC's Memorandum in Opposition to EPA's Motion for Accelerated Decision on Derivative Liability.

3. Respondent John A. Biewer Company of Toledo, Inc.'s Memorandum in Opposition to Complainant's Motion for Accelerated Decision on Liability and Penalty.

4. Certificate of Service indicating mailing of the above to opposing counsel in the above-referenced matter

Very truly yours,

Douglas A. Donnell

jeb
Enclosures

cc: Hon. William B. Moran (by Fed Ex and e-mail)
Richard R. Wagner (by Fed Ex and e-mail)
Douglas S. Touma, Sr. (by First Class Mail)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

John A. Biewer Company of Toledo, Inc.
300 Oak Street
St. Clair, Michigan 48079-0497
(Perrysburg 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

_____/

DOCKET NO: RCRA-05-2008-0006

RESPONDENTS' BRIEF IN OPPOSITION TO COMPLAINANT'S MOTION TO STRIKE, IN PART, RESPONDENTS' PRE-HEARING EXCHANGE

On December 12, 2008, Complainant filed a Motion to Strike, In Part, Respondents' Pre-Hearing Exchange, focusing solely on Respondents' statement that "in addition, Respondents reserve the right to cross-examine the author of the 'Penalty Rationale' provided by Complainant dated August 15, 2008." During a conference call held with Judge Moran, Richard Wagner and the undersigned on January 9, 2009, the issue of this motion was raised and, according to Respondents' counsel's notes, Judge Moran stated that there would not be accelerated decision on the issue of penalty and that cross-examination of the author of the Penalty Rationale would be allowed. In fairness, Respondents do not believe that there was ever any order entered to this effect, and it is unclear to Respondents whether Complainant is still pursuing this motion, or whether the

Administrative Law Judge considers this issue resolved during the January 9, 2009 conference call. In the event the Administrative Law Judge believes the issue remains open, Respondents file this short brief to address the issue raised by Complainant in its motion.

At the crux of Complainant's motion appears to be the concept that it is sufficient for Complainant to simply inform the Court of the amount of the calculated penalty, and perhaps share a document showing how that amount was calculated, without any foundation, explanation or supporting oral testimony or even written declaration presented in lieu of oral testimony. In other words, proof without any real *evidence*. For this reason, Complainant argues that Respondents are not entitled to cross-examine the author of the Penalty Rationale and that the Administrative Law Judge should grant accelerated decision on the issue of penalty without one bit of testimony or evidence on the issue.

Recognizing that administrative tribunals are not necessarily held to strict compliance with the Federal Rules of Evidence, it is difficult to imagine how the Administrative Law Judge would even have a factual basis to support a decision in favor of Complainant, if he were inclined to make such a decision, in the absence of either admitted evidence on the point, or a stipulation by both parties to use of the penalty calculation without sworn testimony. No such stipulation has been sought or obtained in this matter.

40 C.F.R § 22.24(a) provides that "[t]he Complainant has the burdens of presentation and persuasion that the violation occurred as set forth in the complaint *and that the relief sought is appropriate*." (Emphasis added.) Further, 40 C.F.R. § 22.24(b) requires that "[e]ach matter of controversy shall be decided by the Presiding Officer upon a preponderance of the evidence." Since the relief sought is a large penalty, and the apportionment of that relief must be established by evidence, Respondents cannot see how Complainant can do that without the oral or written

testimony of the individual who calculated the amount, subject to cross-examination concerning his or her reasons and rationale.

Beyond the regulations in 40 C.F.R. 22.24, the basis for denying Complainant's motion is found in its own supporting brief at pages 1 and 4. On page 4 of its brief, Complainant acknowledges that "the Administrator recognizes that a presiding officer, under certain circumstances, 'may admit and insert into the record as evidence, in lieu of oral testimony, written testimony prepared by a witness['] but that the witness 'shall be subject to appropriate oral cross-examination.' 40 C.F.R. § 22.22(c)" If Complainant wishes to offer written testimony, in the form a penalty calculation, "penalty rationale," or other form of report, Respondents do not object and, pursuant to the above-cited rule, the Administrative Law Judge is entitled to receive such written testimony. But the testimony is expressly subject to the right of Respondents to cross-examine the witness on that written testimony. That is the right which was requested by Respondents in their Pre-Hearing Exchange, and which Respondents' counsel understood was recognized by the Administrative Law Judge in the January 9, 2009 pre-hearing conference call. Furthermore, Complainant's brief at page 1 acknowledges, in citing to section 3008(a)(3) of RCRA that "'[i]n assessing such a penalty, the Administrator shall take into account the seriousness of the violation *and any good faith efforts to comply with applicable requirements.*'" (Emphasis added). Respondents wish to cross-examine the author of Complainant's Penalty Rationale on this issue of good faith as well as other issues relating to the penalty calculation dated August 15, 2008.

Such inquiry is, as noted by Complainant, deemed expressly relevant to assessment of a penalty, and is an appropriate subject of cross-examination.

Respectfully submitted,

MIKA MEYERS BECKETT & JONES PLC
Attorneys for Respondents

Dated: July 30, 2009

By: _____

Douglas A. Donnell (P33187)
900 Monroe Avenue, NW
Grand Rapids, MI 49503
(616) 632-8000

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

John A. Biewer Company of Toledo, Inc.
300 Oak Street
St. Clair, Michigan 48079-0497
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John A. Biewer Company, Inc.
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and

Biewer Lumber LLC
812 Riverside Street
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Respondents

/

DOCKET NO: RCRA-05-2008-0006

RESPONDENTS JOHN A. BIEWER COMPANY, INC. AND BIEWER LUMBER LLC'S MEMORANDUM IN OPPOSITION TO EPA'S MOTION FOR ACCELERATED DECISION ON DERIVATIVE LIABILITY

INTRODUCTION

Both Respondents and Complainant have now filed Motions for Accelerated Decision on the issue of liability of John A. Biewer Company ("JAB Company") and Biewer Lumber LLC. Complainant's Memorandum in Support of Motion for Accelerated Decision on Derivative Liability ("Memorandum") in the case against John A. Biewer Company of Ohio, Inc. ("JAB Ohio") and in the case against John A. Biewer Company of Toledo, Inc. ("JAB Toledo") are nearly identical. Complainant used the exact same exhibits in the JAB Toledo Memorandum as were used in the JAB Ohio case. Complainant did not produce any additional documents

pertaining to JAB Toledo and is essentially relying on the same facts relied upon in JAB Ohio. To spare this Court the minutia of having to read two nearly identical documents in Response to Complainant's Motion and attempt to pick out the few differences, Respondents hereby incorporate all principles and arguments set forth in Respondents' Memorandum in Opposition of Complainant's Motion for Accelerated Decision on Derivative Liability filed in the JAB Ohio case. The discussion set forth below will solely encompass the significance of the factual differences in the case against JAB Toledo.[1]

COUNTER-STATEMENT OF FACTS

Many of the facts pertinent to Complainant's motion have already been described and supported in Memorandum in Support of Respondents John A. Biewer Company, Inc. and Biewer Lumber LLC's Motion for Accelerated Decision filed on July 2, 2009 ("Respondents' Memorandum) at pages 2 through 6. Except where necessary to address specific factual assertions of Complainant in its supporting Memorandum, Respondents will try to avoid unnecessary repetition of these previously described facts in this Memorandum, but in so doing, wish to make clear that they believe those facts are relevant to both Motions, even though not separately set forth again in this Memorandum. Furthermore, facts that are not specific to JAB Toledo and have already been addressed in Respondents' Memorandum filed in the JAB Ohio case are hereby incorporated into this Memorandum and will not be repeated below.

I. JAB Toledo is a Wholly-Owned Subsidiary of Its Parent JAB Company.

Like JAB Ohio, JAB Toledo is 100% owned by JAB Company. **Exhibit A**, Affidavit of Brian R. Biewer dated November 14, 2008 ("Biewer Aff. I"). Moreover, Biewer Lumber LLC is not a shareholder of JAB Toledo, cannot possibly be its parent, and is not owned by JAB

[1] As such, Respondents respectfully request that this Court read Respondents' Memorandum filed in the case against JAB Ohio before reading this Memorandum.

Company, such that Biewer Lumber LLC is not even a "sister" corporation of JAB Toledo. *See* **Exhibit A**, Affidavit of Brian R. Biewer dated November 14, 2008 ("Biewer Aff. I").

II. JAB Ohio and JAB Company Operated As Legally Distinct Entities Before and After JAB Ohio Stopped Its Wood Production Operations.

JAB Toledo was created as a corporate entity on January 3, 1983. **Exhibit B**, JAB Toledo Articles of Incorporation. JAB Toledo ceased wood production operations in 1997,[2] **Exhibit A**, Biewer Aff. I, and shortly thereafter changed its name to Eckel Junction, Inc. *See* **Exhibit C**, Certificate of Amendment to Articles of Incorporation. Prior to 1997, the Facility was operated by a plant manager hired by JAB Toledo, who in turn had and exercised full authority to hire, fire, train, and discipline employees of JAB Toledo. *See* **Exhibit D**, Affidavit of Richard Biewer. The JAB Toledo plant manager also hired his own inside and outside sales force, and employees were paid by checks issued by JAB Toledo. *Id.* Invoices for materials sold from the JAB Toledo Facility were issued by JAB Toledo, and JAB Toledo maintained separate financial statements and separate profit sharing plans from its parent, JAB Company. *Id.*

Although JAB Toledo used a bank account in the name of JAB Company, its parent, it had its own separate, individualized series of checks. *See* Respondents' Supplemental Responses to EPA's Discovery Requests dated April 28, 2009, ¶ 18. This allowed JAB Company to separately track and record the debits and credits of each of its subsidiaries. In addition, the internal financial statements for Respondent JAB Toledo were prepared separately by Gary Olmstead, who is the Chief Financial Officer of JAB Company, with the assistance of staff. *Id.* at ¶ 20. JAB Toledo paid JAB Company an annual management fee for performing the above services. *Id.*

[2] The Board of Directors document appointing Brian Biewer manager cited by Complainant on page 22 of its Memorandum (Attachment Z of that Memorandum) does indeed contain an error. JAB Ohio first shut down its operations in 2001, and JAB Toledo shut down its operations in 1997.

After JAB Toledo ceased operations, there were no employees. **Exhibit D**, Affidavit of Richard Biewer. Brian Biewer was duly appointed to be the manager/director of JAB Toledo and was not paid for his work at that position. *Id.* Because there were no more ongoing operations of JAB Toledo, it stopped using the individualized checks and JAB Company paid all expenses. *Id.* at ¶ 18. However, all expenses were accounted for through an intercompany payable and chargeable to JAB Toledo. *Id.* JAB Toledo thereafter sold any inventory on hand to customers or John A. Biewer Lumber Company, John A. Biewer Co. of Illinois, and Biewer of Lansing LLC, and paid the proceeds, or assigned the rights thereto, to JAB Company in partial satisfaction of debts owed to the same. *See* Respondents' Supplemental Responses to EPA's Discovery Requests dated April 28, 2009 at ¶ 10. In addition, JAB Toledo leased portions of the Facility. *See* **Exhibit A**, Biewer Aff. I. The Facility generated approximately $53,500 annually in rental income, part of which was used to wholly fund the Mannik & Smith Group ("MSG") report that gave rise to the violations alleged in the Complaint. *See id.*

III. The Alleged Violation

On July 9, 2004, the Ohio EPA sent JAB Toledo a Notice of Violation ("NOV") concerning the closure of the drip pad for its facility. **Exhibit E**, November 23, 2004 letter from MSG to Ohio EPA. In response, on October 8, 2004, JAB Toledo informed the Ohio EPA that it had directly retained MSG, an environmental consulting firm, to prepare a Drip Pad Closure Plan. **Exhibit F**, October 8, 2004 Letter from B. Biewer of Eckel Junction Inc. to T. Kileen of Ohio EPA. On November 24, 2004, the Ohio EPA received the proposed Drip Pad Closure Plan that MSG prepared for JAB Toledo. **Exhibit G**, JAB Toledo Closure Plan. On May 3, 2005, the Ohio EPA approved the plan. **Exhibit H**, May 16, 2005 letter from MSG to B. Biewer. Pursuant to that plan, JAB Toledo paid MSG who conducted power-washing at the Facility, collected samples of the rinseate, and analyzed those samples. **Exhibit I**, November 28, 2005

letter from MSG to Ohio EPA. Because the test results exceeded the remediation standards contained in the Closure Plan, MSG submitted a supplemental drip pad closure plan on December 22, 2005, that required many additional clean-up steps not required in the original plan. **Exhibit J**, JAB Toledo Supplemental Drip Pad Closure Plan. JAB Toledo has not had sufficient assets to complete the Supplemental Plan.

ARGUMENT

While Complainant treats JAB Toledo and JAB Ohio largely the same, there are some factual differences between the two entities that should be noted. First, JAB Toledo does have limited rental income, which it has used to pay its creditors, including MSG. As previously noted, even though the checks used to pay MSG only contain the name JAB Company, those amounts were properly debited from the JAB Toledo account.

Moreover, JAB Toledo performed all of the actions required by the original Closure Plan. The Supplemental Plan, however, required an extensive amount of additional work that JAB for which JAB Toledo did not have the funds to pay. JAB Toledo has never stated that it would not use its rental income towards clean-up of its Facility, but JAB Toledo maintains that there are few assets that it can draw upon to pay for clean-up of its Facility.

Finally, with regards to Complainant's undercapitalization arguments, it should be noted that JAB Toledo was in business for 14 years before closing its doors. In addition, Complainant's own chart demonstrates that JAB Toledo has had more total assets than total liabilities since 2003. Complainant does not explain why that would be if JAB Company was purposefully stripping JAB Toledo of its assets.

In summary, while important to note, the above factual differences do not get Complainant any closer to derivative liability through piercing the corporate veil or

demonstrating that JAB Company or Biewer Lumber LLC operated JAB Toledo's facility. If anything, the above facts weigh more in favor of not piercing the corporate veil and this Court finding that all of Brian Biewer's actions cited by Complainant were on behalf of JAB Toledo.

CONCLUSION

For all of the reasons stated in Respondents' Memorandum submitted in the JAB Ohio case, as applied to JAB Toledo, in addition to the discussion of the facts stated above, this Court should deny Complainant's Motion for Accelerated Judgment and grant Respondents' counter motion.

Respectfully submitted,

MIKA MEYERS BECKETT & JONES PLC
Attorneys for Respondents

Dated: July 30, 2009

By: _____

Douglas A. Donnell (P33187)
900 Monroe Avenue, NW
Grand Rapids, MI 49503
(616) 632-8000

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

John A. Biewer Company of Toledo, Inc.
300 Oak Street
St. Clair, Michigan 48079-0497
(Perrysburg Facility)

U.S. EPA ID #: OHD 106 483 522
and

John A. Biewer Company, Inc.
812 South Riverside Street
St. Clair, Michigan 48079

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812 Riverside Street
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Respondents
_____/

DOCKET NO: RCRA-05-2008-0006

RESPONDENT JOHN A. BIEWER COMPANY OF TOLEDO, INC.'S MEMORANDUM IN OPPOSITION TO COMPLAINANT'S MOTION FOR ACCELERATED DECISION ON LIABILITY AND PENALTY

INTRODUCTION

On May 5, 2008, Complainant initiated this action by filing an Administrative Complaint that states a claim under the Resources and Conservation Recovery Act ("RCRA") against John A. Biewer Company of Toledo, Inc. ("JAB Toledo"). The Administrative Complaint alleges that JAB Toledo violated RCRA by failing to remove contaminated soils around a drip pad after closure at its Eckle Junction facility ("Facility"), and otherwise did not carry out the clean-up steps outlined in a drip pad closure plan prepared for the same facility. On December 12, 2008, the Complainant moved for an accelerated decision in this matter on the issue of liability and on the issue of the proposed civil penalty. This Memorandum is submitted in opposition to such motion.

FACTUAL BACKGROUND

After 14 years of operations, JAB Toledo ceased operations at its Eckle Junction Road facility in 1997 because of its financial inability to continue. After 1997, JAB Toledo did generate some modest income through a lease agreement for a portion of the property. In 2004, JAB Toledo commissioned Mannik & Smith Group ("MSG") to perform certain decontamination activities at the Facility. Based on the result of these activities, JAB Toledo commissioned MSG to prepare a drip pad closure plan, using funds generated by the rental income from the Biewer-Toledo property. Owing to the failure of JAB Toledo's wood treatment operations, and the lack of significant income otherwise being generated by the company, JAB Toledo was unable (as opposed to unwilling) to carry out the drip pad closure plan. The foregoing events led to Complainant filing the Administrative Complaint in this matter.

ARGUMENT

Because JAB Toledo has admittedly been financially unable to complete the remedial activities called for in the drip pad closure plan, it must concede that it is not in compliance with RCRA. However, Complainant seeks more than a declaration that JAB Toledo is not in compliance – it seeks imposition of a substantial penalty. JAB Toledo vigorously contests the penalty assessment requested by Complainant, and thus opposes any accelerated decision on that aspect of the case.

Under Section 3008 of RCRA, 42 U.S.C. § 6928, whenever "the Administrator determines that any person has violated or is in violation of any requirement of [RCRA], the Administrator may issue an order assessing a civil penalty for any past or current violation." However, the Administrator does not have unbridled discretion in administering civil penalties: '[i]n assessing such a penalty, the Administrator [must] take into account *the seriousness of the violation* and any *good faith efforts to comply* with applicable requirements." *Id.*

In order to ensure compliance with the statutory mandate set forth in Section 3008, the EPA Office of Regulatory Enforcement, RCRA Enforcement Division, issued a revised RCRA Civil Penalty Policy (the "Policy") in 2003. Under the revised Policy, agency personnel are directed to adjust penalties up or down for various case specific adjustment factors surrounding a violation. Policy, p 33. One factor expressly mentioned in the Policy is the willingness or unwillingness of the Respondent to comply with RCRA obligations. *Id.* at 36. Indeed, the Policy states that "although RCRA is a strict liability statute, there may be instances where penalty mitigation may be justified based on the lack of willfulness." *Id.*

In assessing the degree of willfulness, agency personnel are directed to consider various sub-factors. Among the sub-factors expressly mentioned are: (1) how much control the violator had over the events constituting the violation, and (2) the foreseeability of the events constituting the violation. *Id.* With respect to these two sub-factors, the Policy expressly states that "[i]f correction of the environmental problem was delayed by factors which the violator can clearly show were not *reasonably foreseeable* and were *out of his or her control* and the *control of his or her agents*, the penalty may be reduced." *Id.* The same reasoning applies, *a fortiori*, in the case where the correction of an environmental problem is not just delayed, but utterly thwarted, by factors which the violator can show were not reasonably foreseeable and were out of his or her control.

In this case, Respondent JAB Toledo intends to present evidence at the hearing showing that there are a number of factors militating against Complainant's proposed penalty, including its efforts to comply, the measures completed even with minimal financial resources, and its financial inability, not unwillingness, to do more of the work sooner.[1] Its lack of funds stemmed

[1] Note that the inability tc pay defense deals a Respondent's inability to pay a proposed penalty; whereas, here, Respondent is arguing that a lack of funds was the reason that the RCRA violation occurred in the first place.

from circumstances that were beyond JAB Toledo's control, namely the failure of JAB Toledo's wood treatment operations at the Facility. Prior to the failure, JAB Toledo had successfully conducted business at the Facility for a significant period of time, with no expectation that the business would fail. Furthermore, the evidence at the hearing will show that JAB Toledo used what little assets it had available to retain MSG in the first place, and to undertake other decontamination activities. Such action clearly demonstrates good faith on the part of JAB Toledo.

With respect to the seriousness of the violation, in the Complainant's Memorandum in Support of the Penalty Amount Proposed, the Complainant states that "given the limited amount of the waste [at issue], the fact that the receptor population here does not appear to be necessarily large and the drip pad is enclosed in a building, limited avenues for the toxic constituents of Respondent's chromate copper arsenate to enter the environment, the '**potential seriousness**' of contamination would appear to be **minor.**" Complainant's Memorandum in Support of the Penalty Amount Proposed, p. 17 (emphasis is original). In addition, the Complainant readily admits that the Respondent did not substantially deviate from RCRA and its regulatory requirements and that in fact the Respondent implemented some of the closure requirements. *Id.* at 19. Thus, the Complainant's own admissions tend to establish that the proposed penalty is excessive.

In addition, JAB Toledo will introduce evidence showing that the proposed penalty would not serve to advance several important purposes underlying the Policy, which include "that penalties are appropriate for the gravity of the violation committed; that economic incentives for noncompliance with RCRA requirements are eliminated; that penalties are sufficient to deter persons from committing RCRA violations; and that compliance is

expeditiously achieved and maintained." Policy, p. 5. This evidence will show that other failed businesses will not be deterred from non-compliance because JAB Toledo is hammered with an inflated penalty; rather, such businesses, like JAB Toledo, will simply be left with no viable alternative to non-compliance. Finally, and perhaps most significantly, the evidence will show that the proposed penalty will not result in expeditious compliance. To the contrary, it will hamper JAB Toledo's potential efforts to reestablish its business, or even use its rental income for cleanup activities instead of penalties and attorney fees.

Finally, although "[a]gency-issued penalty policies provide a framework that allows a presiding officer to apply his or her discretion to statutory penalty factors" (*Allegheny Power Service Corp. and Choice Insulation, Inc.*, 9 E.A.D. 636, 655 (Feb. 15, 2001) (citations omitted)), the EAB has explained that an ALJ is not required to use the Policy in making a penalty determination. Rather, "a Presiding Officer, having considered any applicable civil penalty guidelines issued by the Agency, is . . . free not to apply them to the case at hand." *In re Employers Ins. of Wausau.*, 6 E.A.D. 735, 758 (Feb. 11, 1997); *accord* Allegheny, 9 E.A.D. at 656. Thus, should this Court determine that the Administrator's statutory mandate to consider the Respondent's good faith, as well as the seriousness of the violation, has not been met, then this Court may deviate from the Policy and apply its own discretion to the statutory penalty factors. Furthermore, the Court may assess a penalty amount that is significantly less than the penalty amount that is proposed. *In re Green Thumb Nursery, Inc.* 6 E.A.D. 782, 788, 803 (March 6, 1997).

One final note should be made with respect to Complainant's motion. Complainant does not even contend, much less establish, that there are no disputed facts pertaining to its proposed $287,441 penalty amount. It is clearly the obligation of the moving party to make such showing,

and here, other than defend the correctness of its proposed penalty (see Complainant's Memorandum in Support of the Penalty Amount Proposed) there is no showing whatsoever that such penalty amount is uncontested, or that the facts relevant to its determination are all undisputed. Respondent JAB Toledo is entitled to a hearing to present evidence relevant to the Court's determination, which, both sides agree, entails rather broad exercise of discretion.

CONCLUSION

Should the Court find that Respondent is liable in this matter, the Court should further find, based on the RCRA Civil Penalty Policy or based on the Court's own discretionary application of the statutory penalty factors, that the proposed penalty is unfair and unwarranted and that as such the proposed penalty should be reduced in whatever amount the Court deems just.

Respectfully submitted,

MIKA MEYERS BECKETT & JONES PLC
Attorneys for Respondent

Dated: July 30, 2009

By: _____

Douglas A. Donnell
900 Monroe Avenue, NW
Grand Rapids, MI 49503
(616) 632-8000

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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IN THE MATTER OF:

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812 Riverside Street
St. Clair, Michigan 48079

Respondents
_____/

DOCKET NO: RCRA-05-2008-0006

CERTIFICATE OF SERVICE

I, Jane E. Blakemore, hereby state that I am an employee of Mika Meyers Beckett & Jones, PLC, and that on July 30, 2009, I served a copy of:

1. Respondents' Brief in Opposition to Complainant's Motion to Strike, In Part, Respondents' Pre-Hearing Exchange

2. Respondents John A. Biewer Company, Inc. and Biewer Lumber LLC's Memorandum in Opposition to EPA's Motion for Accelerated Decision on Derivative Liability.

3. Respondent John A. Biewer Company of Toledo, Inc.'s Memorandum in Opposition to Complainant's Motion for Accelerated Decision on Liability and Penalty.

upon the following individual by Federal Express overnight mail:

Richard R. Wagner, Senior Attorney
Office of Regional Counsel (C-14J)
U. S. Environmental Protection Agency
77 West Jackson Blvd.
Chicago, IL 60604-3590

I declare that the statements above are true to the best of my information, knowledge and belief.

Dated: July 30, 2009

Jane E. Blakemore

Jane E. Blakemore