UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	**DOCKET NO. RCRA-05-2008-0007**
	)	
John A. Biewer Company of Ohio, Inc.	)	
300 Oak Street	)	
St. Clair, Michigan 48079-0497	)	
	)	
U.S. EPA ID #: OHD 106 483 522	)	
	)	
Respondent	)	
_____	)	

MOTION TO AMEND COMPLAINT AND COMPLIANCE ORDER

The Administrator's Delegated Complainant (Complainant), by undersigned Counsel, hereby moves to amend the Complaint and Compliance Order, filed in this matter on May 5, 2008, to add as Respondents the following entities:

John A. Biewer Company, Inc.
812 S. Riverside St.
St. Clair, Michigan 48079
Registered Agent: Richard Biewer

Biewer Lumber LLC
812 S. Riverside St.
St. Clair, Michigan 48079
Registered Agent: Timothy Biewer

A Memorandum in Support of Complainant's Motion to Amend Complaint and Compliance Order is submitted with this Motion.

Respectfully submitted,

Richard R. Wagner
Senior Attorney, and Counsel to the
Administrator's Delegated Complainant

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Respondent	)	
_____	)	

MEMORANDUM IN SUPPORT OF COMPLAINANT'S MOTION TO AMEND COMPLAINT AND COMPLIANCE ORDER

The violation alleged in the Administrative Complaint is that John A. Biewer Company of Ohio, Inc. (Respondent), failed to meet its obligations under the law to remove any contaminated soils that may be present under and in the vicinity of the drip pad at its Washington Courthouse, Ohio, facility, after it had ceased operations. Complaint, Para. 28. The violation is based upon the fact that, in response to an Ohio Environmental Protection Agency (OEPA) Notice of Violation, dated February 8, 2005, Respondent submitted a drip pad closure plan on May 3, 2005, but never followed through on amending the plan, or carrying out decontamination procedures as found necessary in the plan. Complaint, Paras. 21-28.

The Administrator's Delegated Complainant (Complainant), by undersigned Counsel, is seeking to have the parent corporation(s) of John A. Biewer of Ohio Company, Inc. -- Biewer Lumber, LLC, and John A. Biewer Company, Inc. -- added as respondents in this enforcement action, and provides this memorandum in support of Complainant's Motion to Amend Complaint and Compliance Order.

STATEMENT OF FACTS

(1) Since early 1970, John A. Biewer Co., Inc., has conducted a process involving "pressurized treatment of [] lumber with a chemical solution" containing, in part, chrome and arsenic. Attorney General of the State of Michigan, et al. v. John A. Biewer Co., Inc., 140 Mich. App. 1, at 5 (1985).

(2) Respondent John A. Biewer Company of Ohio, Inc., has informed Complainant that "John A. Biewer Co., Inc.," is the parent company of Respondent John A. Biewer Company of Ohio, Inc., and that Respondent is a "wholly owned subsidiar[y] and do[es] not file separate income tax returns."[1] Attachment A, at 1.

(3) At its web site, www.biewerlumber.com, "Biewer Lumber" informs the public that it has been serving the public for more than 45 years, and that "Biewer Lumber includes three pressure-treated lumber and distribution facilities." Attachment B.

(4) Regarding its "Permanent Wood Foundations" products, Biewer Lumber includes a link to U.S. EPA safety information concerning chromated copper arsenate, the hazardous material which is the subject matter of this enforcement action. Attachment B.

(5) As of June 13, 2007, the Dun & Bradstreet Report identifies "Biewer Lumber LLC" as having the following 100% owned subsidiaries, each engaged in wood or lumber treatment:

(a) John A. Biewer Lumber Company, Inc., St. Clair, Michigan;
(b) John A. Biewer Company of Ohio, Inc., St. Clair, Michigan;
(c) John A. Biewer Company of Illinois, Inc., St. Clair, Michigan; and,
(d) John A. Biewer of Wisconsin, Inc., St. Clair, Michigan.

Attachment C, at 29-30.[2]

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[1]There are numerous variants of "John A. Biewer" companies. Consequently, for purposes of clarity, the full name of each company will be used throughout this memorandum.

[2]Attachment C is a memorandum, with supporting documentation, prepared by Industrial Economics, Inc., at the request of the Administrator's Delegated Complainant. This report, in part, addresses evidence of Respondent's related party transactions, based upon publicly available information and financial information provided Complainant by Respondent, as well as the relationship of Respondent with other "Biewer" or "John A. Biewer" companies. Each page of this attachment is separately numbered.

(6) The same Dun & Bradstreet Report identifies officers of Biewer Lumber LLC, as follows: Richard N. Biewer, President; Timothy Biewer, Vice-President; and Brian R. Biewer, Secretary-Treasurer, stating that 100% of capital stock is owned by officers and stockholders. Attachment C, at 8. See also Attachment D, at 61, a Michigan filing by counsel, identifying Timothy J. Biewer as member, manager or agent of Biewer Lumber, LLC.

(7) Brian Biewer, as Secretary Treasurer of each of the following companies, has filed with U.S. EPA toxic inventory reports for chrome, copper and arsenate, in each of the identified years, identifying the business conducted at each company's facility as wood preserving, under SIC 2491:

(a) John A. Biewer of Illinois (1987-2007);
(b) John A. Biewer Co. of Schoolcraft (1987-1997);
(c) John A. Biewer Co. of Ohio (1987-2001); and,
(d) John A. Biewer Co. of Toledo (1987-1997).

Attachment D, Toxic Inventory Reports (Biewer).

(8) Toxic inventory reports also have been filed on behalf of each of the following companies, for chrome, copper and arsenate, in each of the identified years, identifying the business conducted at each by each company's facility as being wood preserving, under SIC 2491:

(a) John A. Biewer Lumber Company (Wisconsin) (1996-2006); and
(b) John A. Biewer Lumber Co. (Michigan) (1987-2000).

Attachment E, Additional Toxic Inventory Reports.

(9) Incorporated within SIC Code 2491 are "[e]stablishments primarily engaged in treating wood, sawed or planed in other establishments, with creosote or other preservative to prevent decay and to protect against fire and insects. This industry also includes the cutting, treating, and selling of poles, posts, and piling, but establishments primarily engaged in manufacturing other wood product, which they may also treat with preservative, are not included." Attachment F.

(10) A search of the data base of the Michigan Department of Labor and Economic Growth, Corporation Division, and Ohio Business Filings, reveals that there are 20 companies for which filings have been made with either Richard, James or Timothy Biewer identified as Resident Agent. Of these companies, 18 companies used to or currently have the name "Biewer" or "John A. Biewer" in their name. Attachment C, at 2-3 (supporting documentation at 47-81).

(11) John A. Biewer Company of Ohio, Inc., had negative net income in fiscal year 2000, and ceased treating operations in 2001. Attachment G, at 10 (net income, year to date, last year).[3]

(12) John A. Biewer Company of Ohio, Inc., "has had no operational activity since June of 2001." Attachment A.

(13) John A. Biewer Company of Ohio, Inc.'s, "parent company has been paying the taxes and insurance since the time that it ceased operations." Attachment A.

(14) As of 2006, John A. Biewer Company of Ohio, Inc., had $154,123 in accounts payable owing to its parent, John A. Biewer Company, Inc. Attachment G, at 39.

(15) The facts supporting the violation alleged in the Complaint and Compliance Order ("Complaint") filed in this matter occurred in 2004 and 2005, several year after John A. Biewer Company of Ohio ceased operating. Complaint, Paras. 25-28.

(16) The gravamen of the violation of John A. Biewer Company of Ohio, Inc., is that, notwithstanding the drip pad closure plan that it generated, it failed to take "steps to meet its obligations to remove any contaminated subsoils that may be present under and in the vicinity of its drip pad," in violation of requirements of the Resource Conservation and Recovery Act (RCRA). Complaint, Paras. 25-28.

(17) In electronic correspondence with the OEPA concerning Respondent's closure activities at its drip pad, Brian Biewer used the following e-mail address: bbiewer@biewerlumbercompany.com. Attachment H, Brian Biewer E-mail (6-9-04).

(18) That in written correspondence with OEPA concerning Respondent's drip pad, Brian Biewer has used Biewer Lumber letterhead. Attachment I(a) Letter of Brian Biewer (11/18/04); (b) Letter of Brian Biewer (12/30/04); and (c) Letter of Brian Biewer (3/4/05).

(19) Biewer Lumber letterhead has been used to submit financial data to the Administrator's enforcement staff in this matter. Attachment C, at 15.

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[3]Attachment G consists 39 pages of Income Statements and Balance Sheets provided to Complainant by Respondent prior to the Complaint being filed, and a spread sheets prepared by Industrial Economics, Inc., setting out the data identified in Respondent's submission. In submitting this financial information, Respondent made no claim of confidentiality. Moreover, some of the same balance sheets and income statements were filed by Respondent with Respondent's Supplemental Witness Disclosure, and, there too it made no claim of confidentiality regarding the information.

(20) In response to a Notice of Violation issued by OEPA on February 8, 2005, The Mannik & Smith Group, Inc., on behalf of John A. Biewer Company of Ohio, issued a Drip Pad Closure Plan, in which OEPA is informed that it is "John A. Biewer Company" that will "reassess" the remediation approach set forth in the Plan, if necessary. Attachment J, at 3.

ARGUMENT

In June 1998, the United States Supreme Court issued a unanimous decision addressing the liability of a parent corporation to the United States for environmental clean-up costs under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), for contamination at a facility of its subsidiary. United States v. Bestfoods, et al., 524 U.S. 51 (1998). The Court noted that "CERCLA was enacted in response to the serious environmental and health risks posed posed by industrial pollution." Id., at 55. The Court recognized:

> a general principle of corporate law deeply 'ingrained in our economic and legal systems' that a parent corporation (so-called because of control through ownership of another corporation's stock) is not liable for acts of its subsidiaries.

Id., at 55-56. However:

> there is an equally fundamental principle of corporate law, applicable to the parent-subsidiary relationship as well as generally, that the corporate veil may be pierced and the shareholder held liable for the corporation's conduct when, *inter alia*, the corporate form would otherwise be misused to accomplish certain wrongful purposes, most notably fraud on the shareholder's behalf.

Id., at 57. Moreover, under CERCLA, "liability may turn on operation as well as ownership, and nothing in the statute's terms bars a parent corporation from direct liability for its own actions in operating a facility owned by its subsidiary." Id., at 58. "Under the plain language of the statute, any person who operates a polluting facility is directly liable for the costs of cleaning up the pollution." Id.

As with CERCLA, the Solid Waste Disposal Act (SWDA), and Resource Conservation

and Recovery Act (RCRA) amendments, were passed in response to the concerns of Congress regarding health risks caused by industrial pollution. Section 1002(b) of RCRA, 42 U.S.C. § 6902(b). While CERCLA makes "owners and operators" liable for clean-up costs of the contaminated site, Section 107 of CERCLA, 42 U.S.C. § 9607, liability for violations of RCRA extends to "any person" who is in violation of any requirement of RCRA. Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1). Consequently, a parent corporation can be liable for RCRA liability if the "corporate veil" between the parent and subsidiary can be "pierced," or, in the alternative, if the parent can be found to have committed, or participated in, violating conduct.[4]

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[4]Complainant attempts to add both John A. Biewer Company, Inc., and Biewer Lumber LLC as respondents in that, as will be seen when reading this memorandum, and the accompanying documentation, the true nature of the relationship of these companies with Respondent has been obscured by the business practices of the Biewers. There is conflict between information provided to Complainant by counsel for Respondent and what is reported in Dun & Bradstreet, and the names of both John A. Biewer Company, Inc., and Biewer Lumber LLC have been used by the Biewers in addressing the affairs of Respondent and its violating conduct. Moreover, information available from Michigan's Department of Labor and Economic Growth, Corporation Division and from Ohio Business Filings, reveal that the Biewers have demonstrated an inclination to change the names of their 18 "John A. Biewer" or "Biewer" companies. Attachment C, 2-3. For instance, this data base reveals that a "John A. Biewer Company, Inc.," was formed on October 13, 1960; its name changed to "John A. Biewer Sporting Goods, Inc." on November 21, 1980, effective December 1, 1980; and automatically dissolved on July 15, 2005. Attachment C, 49-50. The data base further reveals that a second "John A. Biewer Company, Inc.," was formed on December 1, 1980. Id., at 47. No report to Dun & Bradstreet has been made by any "John A. Biewer Company, Inc.," though numerous other Biewer Companies appear in that data base. No submission of any document has been to Complainant on "John A. Biewer Company, Inc., letterhead. Finally, in the companion case, John A. Biewer Company of Toledo, Inc., No. RCRA-05-2008-0007, an answer to the Complaint was filed by "John A. Biewer Company of Toledo, Inc." In all correspondence and other filings, attorneys for "John A. Biewer Company of Toledo, Inc.," have identified Respondent by that name. However, the Biewers changed the name of "John A. Biewer Company of Toledo, Inc.," to "Eckle Junction, Inc.," ten years ago, on June 9, 1998. Id., at 55-56. Given the manner in which the Biewers have conducted themselves over the years in forming and dissolving numerous corporations, and changing the names of these corporations, it is a waste of public resources to proceed in litigation in this matter until a determination can be made as to the appropriate respondent(s). Proceeding under the status quo, an order may be issued by the

Parent Corporations' Participation in Violating Conduct

On September 28, 2007, counsel for Respondent John A. Biewer Company of Ohio, Inc., informed the Administrator's enforcement staff that that company was a subsidiary, wholly owned by its parent, John A. Biewer Company, Inc., and that the subsidiary did not file separate income tax returns. Statement of Fact (SOF) 2. However, as of June 13, 2007, Dun & Bradstreet was reporting that "John A. Biewer Company of Ohio, Inc.," was an "100% owned" subsidiary of Biewer Lumber LLC. SOF 5. That same report lists as officers of Biewer Lumber LLC the following: Richard N. Biewer, President; Brian R. Biewer, Secretary-Treasurer; and Timothy Biewer, (titled not identified), Id., with 100% of Biewer Lumber LLC stock held by the officers and stockholders. SOF 6.

John A. Biewer Company of Ohio, Inc., had negative income in the last year of its operation, fiscal year 2000. SOF 11. It ceased its wood treating operations in June 2001, SOF 12. Since John A. Biewer of Ohio, Inc., ceased operation, its parent company has been paying its taxes and insurance. SOF 13. John A. Biewer Company of Ohio, Inc., and Biewer Lumber LLC have the same address. SOF 17.

Notwithstanding John A. Biewer Company of Ohio, Inc.'s, lack of resources, Brian Biewer, Secretary-Treasurer of both John A. Biewer Company of Ohio, Inc., and Biewer Lumber LLC -- as well as, most likely, John A. Biewer Company, Inc. -- communicated with OEPA, using "Biewer Lumber" letterhead and its e-mail address, informing OEPA of "Biewer's" management of the

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Administrator against a corporation that no longer exists, as a consequence of the Biewers being able to succeed at masking the identity of the party actually responsible for the violations, alleged in the Complaint, of rules governing the management of hazardous waste. Once added, discovery can be used to accurately determine the relationship of John A. Biewer Company, Inc., Biewer Lumber LLC, and the named Respondent.

closed Washington Courthouse, Ohio, facility formerly operated by John A. Biewer Company of Ohio, Inc. SOF 17-18. On "Biewer Lumber" letterhead, with regard to "our facility" in Washington Courthouse, Brian Biewer informed OEPA that: (1) "Biewer" has made submissions to the fire department and the count Local Emergency Planning Commission; (2) "Biewer" has manifested and shipped certain hazardous materials to Alabama, including "various materials that remained on site and were removed on December 14, 2004"; (3) "Biewer" retained Bluck Family Farms to do weekly inspections and repairs; (4) "Biewer" removed all of the materials from the "90-day area"; and, (5) "Biewer" will submit a closure plan for the drip pad, and notify Ohio EPA when all of the material is removed. SOF 18(b).

The Mannik & Smith Group, Inc. (MSG), an environmental consulting group, was retained to prepare a drip pad closure plan for the Washington Courthouse facility of John A. Biewer of Ohio, Inc. SOF 20. Evidence suggests that this was done by its parent company, as John A. Biewer Company of Ohio, Inc., had no funds to pay for any such work; Brian Biewer is copied on the consulting group's correspondence; and the closure plan states that, if necessary, "'John A. Biewer Company' will reassess the remediation approach and provide the Ohio EPA with a contingent closure approach for concurrence." Id. As John A. Biewer Company of Ohio, Inc., had no resources, financing to carry out these activities regarding its closed wood treatment facility had to come from some source other than that company. Just as with the payment of its taxes and insurance, the interested party to fund these activities was the parent company of John A. Biewer Company of Ohio, Inc.

In framing the issue of direct liability of a parent corporation for its subsidiary, the Supreme Court recognized that: "[t]he question is not whether the parent operates the subsidiary,

but whether it operates the facility, and that operation is evidenced by participation in the activities of the facility, not the subsidiary." Best Foods, et a., 524 U.S., at 60.

At the time OEPA issued the Notice of Violation concerning the Washington Courthouse facility drip pad to John A. Biewer Company of Ohio, Inc., in February 2005, SOF 21, it was impossible for that company to do anything. Just as it had kept the company going by paying its taxes and insurance costs, SOF 13, its parent company, John A. Biewer Company, Inc., and/or Biewer Lumber LLC, stepped in, in the person of Brian Biewer, the Secretary-Treasurer of all three companies, and took over the affairs of the Washington Courthouse facility regarding its drip pad obligations. Under the circumstances, the participation of the parent companies in the activities of the John A. Biewer Company of Ohio, Inc., which constitute the violation alleged in the Complaint and Compliance Order -- failing to decontaminate the Washington Courthouse facility drip pad as directed by the Drip Pad Closure Plan -- was total.

Complainant recognizes that it is well established that "'directors and officers holding positions with a parent and its subsidiary can and do change hats to represent the two corporations separately, despite their common ownership.'" Best Foods, 524 U.S., at 69, citing Lusk v. Foxmeyer Health Corp., 129 F.3d 773, 779 (5th Cir. 1997). He further recognizes that, "despite the general presumption to the contrary," Complainant must show that officers and directors common to both the parent and subsidiary "were acting in their capacities as" officers of the parent before parental liability can attach for acts of omissions of a subsidiary. Id.

In paying the taxes and insurance of John A. Biewer Company of Ohio, Inc., in dealing with OEPA regarding that company's Notice of Violation and in hiring MSG to develop a closure plan for its drip pad, it was not possible for Brian Biewer, or any other common officer of John A.

Biewer Company of Ohio, Inc., John A. Biewer Company, Inc., and Biewer Lumber LLC, to act "in their capacity" as an officer of the subsidiary, John A. Biewer Company of Ohio, Inc. John A. Biewer Company of Ohio, Inc., had no resources to undertake any of these tasks. As with the payment of its taxes and insurance, these tasks could only be accomplished by using the resources of its parent corporation. The violation alleged did not occur when John A. Biewer Company of Ohio, Inc., was conducting its wood treatment operations and using its drip pad, prior to 2001. It occurred several years later, in 2004 and 2005, when that company's parent corporation was managing its affairs.

The Supreme Court noted three examples of activities of a parental corporation upon which it would be sufficient to find the parent liable under environmental laws; two of these are relevant to John A. Biewer Company of Ohio, Inc., and its parents in this enforcement action. "[A] parent can be held directly liable when the parent operates the facility in the stead of its subsidiary or alongside the subsidiary in some joint venture[,] or, the "agent of the parent with no hat to wear but the parent's hat might manage or direct activities at the facility." Id., 524 U.S., at 71.

With no resources, it was not possible for any of the officers of John A. Biewer Company of Ohio, Inc., to "manage or direct activities at the facility" as officers of John A. Biewer Company of Ohio, Inc. The resources any such officer used to pay that company's taxes and insurance, and to pay for the management of its closed facility, were resources of the company's parent corporation, John A. Biewer Company, Inc., and/or Biewer Lumber LLC. Under the circumstances, when these tasks were "managed or directed" by the Biewers, the Biewers were wearing the hat of the parent corporation, and they were acting "in the stead of" John A. Biewer Company of Ohio, Inc.

Consequently, John A. Biewer Company, Inc., and/or Biewer Lumber LLC, as the parent corporation of John A. Biewer Company of Ohio, Inc., are liable for civil penalties, in that, though they initially retained an environmental consultant, MSG, to prepare a closure plan for the drip pad at the Washington Courthouse facility of John A. Biewer Company of Ohio, Inc., they failed to carry through in amending and implementing that plan so as to assure that any hazardous waste remaining on or around the drip pan was removed, and disposed of in accordance with the law.

Piercing the Corporate Veil

The Michigan Supreme Court has stated that "[i]t is a well-recognized principle that separate corporate entities will be respected[,]" and that "Michigan law presumes that, absent some abuse of corporate form, parent and subsidiary corporations are separate and distinct entities." Eric Seasword v. Filti, Inc., 449 Mich. 542, at 547 (1995).[5] "This presumption, often referred to as a 'corporate veil,' may be pierced only where an otherwise separate corporate existence has been used to 'subvert justice or cause a result that is contrary to some other clearly overriding public policy.'" Id., at 548. "Michigan courts have generally required that a subsidiary must 'become a mere instrumentality of the parent' before its separate corporate existence will be disregarded." Id.

In a prior decision cited in Seasword, the Michigan Supreme Court noted that in determining whether to pierce the corporate veil, "each case is *sui generis* and must be decided in accordance with its own underlying facts." Herman v. Mobile Homes Corp., 317 Mich 233, at 243 (1947). The Court recognized that "it is well settled that where a holding company directly

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[5]"In determining whether one corporation is a successor of another, we apply state law." IBC Manufacturing Company v. Velsicol Chemical Corporation, et al., 1999 U.S. App. LEXIS 15140, at 2 (6th Cir. 1999). Respondent admits that it "was at all times relevant to this Complaint a corporation incorporated under the laws of Michigan. Answer, Para. 8. As the decision cited was not published, a copy is attached. Attachment K.

intervenes in the management of its subsidiaries so as to treat them as mere departments of its own enterprise, it is responsible for the obligations of those subsidiaries incurred or arising during its management." Id., at 246-247.[6]

Has John A. Biewer Company of Ohio, Inc., become a "mere instrumentality" of John A. Biewer Company, Inc., and/or Biewer Lumber LLC? Has there been an "abuse of corporate form" by the Biewers? Without a piercing of the corporate veil in this matter, will there be a "subver[sion of] justice or [] a result that is contrary to some other clearly overriding public policy?"

The Biewer family has long experience in the manufacturing and sale of chemically treated wood. At its web-site, Biewer Lumber informs the public that since it began "over 45 years ago," its aim has been to deliver "the best products and services to our customers," and its products include pressure-treated lumber. SOF 3. Certain of these products are "C[hromate] C[opper] A[rsenic] pressure-treated" lumber, and, at its web site, Biewer Lumber provides a link to consumer safety information on chromated copper arsenate. SOF 4.[7] Biewer Lumber also informs the public that "Biewer Lumber includes three pressure-treated lumber and distribution facilities. . . ." SOF 3. In the matter before the Presiding Officer, Respondent John A. Biewer Company of Ohio, Inc., admits that, when in the form of waste, cromated copper arsenate is listed

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[6]The Environmental Appeals Board itself has recognized that, in RCRA civil penalty enforcement actions before the Administrator, "the Agency may look at the financial condition of a related company to determine whether the related company may be a legitimate source of funds affecting the respondent's ability to pay or the economic impact of the penalty." In Re Carroll Oil Company, 10 E.A.C. 635, at 665 (2002).

[7]Pressure treating wood with Chromated Copper Arsenate is exactly what Respondent John A. Biewer Company of Ohio, Inc., did in conducting its business. Answer, Para. 13.

by the Administrator as hazardous waste F035. Answer, Para. 19. It also admits that the constituents of chromated copper arsenate are chromic acid, arsenic acid and copper oxide. Id., Para. 17.

It has been reported that the Biewers have been treating wood with chemical solutions containing chrome and arsenic since at least 1970, as, at that time, they were operating a Schoolcraft, Michigan, facility under the name John A. Biewer Company, Inc. Attorney General of the State of Michigan, et al. v. John A. Biewer, Co., Inc., 140 Mich App. 1 (1985). In toxic substance inventory reports filed by Brian Biewer, the Schoolcraft facility name is identified as that of "John A. Biewer Co., of Schoolcraft." SOF 7.

According to Dun & Bradstreet, Richard N., Timothy and Brian Biewer have set up four "John A. Biewer" companies which are engaged in "wood treatment," all wholly owned subsidiaries of Biewer Lumber. SOF 5. Between 1987 and 1997, under SIC Code 2491, Brian Biewer filed toxic inventory reports for chrome, copper and arsenate, on behalf of two of those four companies, as well as on behalf of two additional "John A. Biewer" companies not identified in Dun and Bradstreet. SOF 7.[8] Reports concerning the same toxic substances for the remaining two "John A. Biewer" companies identified in the Dun & Bradstreet were submitted by someone other than Brian Biewer. SOF 8. Of the six "John A. Biewer" companies filing toxic substance inventory reports, two, John A. Biewer Company of Ohio, Inc., and John A. Biewer Company of

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[8]The U.S. Department of Labor's description for SIC Code 2491, the code chosen by the Biewers under which to report, covers "[e]stablishments primarily engaged in treating wood, sawed or planed in other establishment, with creosote or other preservative to prevent decay and to protect against fire and insects. This industry also includes the cutting, treating, and selling of poles, posts, and piling, but establishments primarily engaged in manufacturing other wood product, which they may also treat with preservative, are not included." SOF 9.

Toledo, Inc., are the subject matter of this and a companion enforcement action, In Re John A. Biewer of Toledo, Inc., RCRA-5-2008-0006, for having failed to decontaminate their drip pads after closing their facilities. Reports for both of these facilities were filed by Brian Biewer. SOF 7.

As of June 2001, when it ceased operations, John A. Biewer Company of Ohio, Inc., had had negative income for the prior year. SOF 11. It had no income after it ceased operations. Yet, from 2001, or earlier, through the present, its parent, John A. Biewer Company, Inc., and/or Biewer Lumber LLC, have continued to extend its life which it otherwise would not have by paying its taxes and its insurance. SOF 13. Moreover, John A. Biewer Company, Inc., and/or Biewer Lumber LLC, have communicated with OEPA over a notice of its environmental violations, SOFs 17-18, and with the Administrator's enforcement staff, and engaged in numerous tasks managing that facility, including shipping hazardous materials off-site and engaging persons to perform weekly inspections and repairs at the facility.[9] Presumably, the parent company retained the services of an environmental consultant to prepare a closure plan for the drip pad at the former Washington Courthouse wood treating facility, as the plan was submitted to OEPA in response to a February 8, 2005, letter of OEPA regarding the November 22, 2004, Notice of Violation served on John A. Biewer Company of Ohio, Inc., SOFs 18(d) and 20, and, in the plan itself, the reader is informed that, should remediation levels for arsenic and chromium not be reached after a second

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[9]As already noted, on "Biewer Lumber" letterhead, with regard to "our facility" in Washington Courthouse, Brian Biewer informed OEPA that: (1) "Biewer" has made submissions to the fire department and the count Local Emergency Planning Commission; (2) "Biewer" has manifested and shipped certain hazardous materials to Alabama, including "various materials that remained on site and were removed on December 14, 2004"; (3) "Biewer" retained Bluck Family Farms to do weekly inspections and repairs; (4) "Biewer" removed all of the materials from the "90-day area"; and, (5) "Biewer" will submit a closure plan for the drip pad, and notify Ohio EPA when all of the material is removed. SOF 18 (I)(b).

pressure washing, "'John A. Biewer Company, Inc.' will reassess the remediation approach and provide the Ohio EPA with a contingent closure approach for concurrence." SOF 20.

While these actions may have been performed by individuals who might be identified as officers of the subsidiary John A. Biewer Company of Ohio, Inc., those individuals, of necessity, were acting as officers of the parent, John A. Biewer Company, Inc., and/or Biewer Lumber LLC, whichever was providing the resources. John A. Biewer Company of Ohio, Inc., was entirely incapable of taking any of these actions. Under these circumstances, it is clear that John A. Biewer Company, Inc., and/or Biewer Lumber LLC "directly intervene[d] in the management of" John A. Biewer Company of Ohio, Inc., their subsidiary, "so as to treat [it] as a mere department of its own enterprise," and a finding is warranted that they are "responsible for the obligations of those subsidiaries incurred or arising during [their] management." Herman, 317 Mich., at 246-247.[10] Indeed, John A. Biewer Company, Inc., and/or Biewer Lumber LLC were all that was keeping the John A. Biewer Company of Ohio, Inc., alive, and it was during the management of the Washington Courthouse facility by John A. Biewer Company, Inc., and/or Biewer Lumber LLC, that the violation alleged in the Complaint and Compliance Order occurred.

In proposing RCRA rules to govern the operation of drip pads in the wood preserving

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[10]There is evidence that the parent's management of its "wholly owned subsidiar[y,]" SOFs 2 and 5, had been going on for some time. A review of the Intercompany Accounts Receivable and Accounts Payable between 1998 and 2006 reveals that substantial sums of money were moving back and forth between John A. Biewer Company of Ohio, Inc., and an unidentified related company. Attachment G. These transactions will be addressed in detail at fn.13. Moreover, at its web site, Biewer Lumber LLC, a public vendor of treated lumber products, acknowledges that its operation "includes pressure-treated lumber and distribution facilities[,]" SOF 3, which is what the Washington Courthouse facility of John A. Biewer Company of Ohio, Inc., was, as that description of its work is consistent with the SIC Code under which the facility was filing its toxic inventory reports. SOFs 7-9.

industry, the Administrator found that "[w]astes from the preservation of wood with inorganic formulations or arsenic and/or chromium typically contain high concentrations of these toxic metals, as well as lead." 53 Fed. Reg. 53282, 53284 (December 30, 1988). He further found that "[p]ast mismanagement of these wastes has led to off-site contamination of ground water, surface, water, and soils[,]" and recognized the "known toxicity and/or carcinogenicity of these metals[.]" Id. All of the Biewer companies are charged with notice of these findings, as well as notice of the rules, including those governing closure of drip pads.[11] Federal Crop Insurance Corporation, 332 U.S. 380, at 384-385 (1947). In addition, the Biewers historical experience includes having been assessed an $85,000 penalty, and other clean-up costs, for 1979 environmental violations caused by the use of a chromated arsenic solution at its John A. Biewer Company, Inc.'s, wood treating facility in Schoolcraft, Michigan. John A. Biewer Company, Inc., 140 Mich. App., at 5.[12] Consequently, all of the various "John A. Biewer" companies were well aware that their wood treatment operations created a potential for contamination that could expose them to expensive clean-up costs and serious financial penalties under environmental statutes and regulations.

Given the well-recognized presumption that "parent and subsidiary corporations are separate and distinct entities," Seasword, 449 Mich, at 547, parties controlling wood treating

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[11]The Administrator has granted the State of Ohio authorization to administer a state hazardous waste program in lieu of the federal government's RCRA program. Administrative Complaint and Compliance Order, Para. 4. In the Complaint, Respondent is alleged to have violated Section 3745-69-45 of the Ohio Administrative Code. That Ohio Rule is the equivalent of 40 C.F.R. § 264.575(a), adopting the same language.

[12]In this enforcement action by the State of Michigan, the Biewer Company "admitted it caused the ground water and soil contamination in the course of its Wolmanizing process," a process described as "pressurized treatment of the lumber with a chemical solution containing chromic acid, cupric oxide and arsenic pentoxide." Attorney General of the State of Michigan, et al. v. Jolhn A. Biewer Co., Inc., 140 Mich. App. 1, at 5 (1985).

facilities -- as well as other facilities known to generate hazardous waste contamination -- may well find an advantage in setting up numerous individual subsidiary corporations, minimally funded, to govern each of their several facilities, while maintaining the bulk of the resources and funding in a parent corporation.[13] Under such a scheme, each "independent" subsidiary corporation can be insulated from any realistic liability for the clean-up of its contamination or for environmental

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[13]Respondent John A. Biewer Company of Ohio, Inc., and its parent company, John A. Biewer Company, Inc., and/or Biewer Lumber LLC, are all operated by the Biewer family. The Biewer family also controls, or controlled, five additional wood treating facilities. SOFs 7 and 8. Certain transactions appearing on the balance sheet of John A. Biewer Company of Ohio, Inc., reveal a substantial amount of inter-company movement of its resources. Attachment G. For instance, as of November 2000, this company had $1,406,770 in Inventory on its balance sheet. Id., at 11. One year later, and in each of the following years, its inventory was $0, according to the balance sheets. Id., at 15, 19, 27, 31, 35, and 38. Further, the balance sheets show certain movements in accounts receivable intercompany and accounts payable intercompany. Accounts receivable intercompany of John A. Biewer Company of Ohio, Inc., increased from $0 in November 2000, Id., at 11, to $1,175,320 in November 2001. Id., at 15. Its accounts payable intercompany decreased from $1,658,669 in November 2000, Id., at 12, to $1,339,852 in November 2001. Id., at 16. In sum, the sale of the inventory that occurred between November 2000 and November 2001 did not result in cash being paid to John A. Biewer Company of Ohio, Inc. Instead, it was accounted for by a paper transaction, including an increase in accounts receivable intercompany and a decrease in accounts payable intercompany. If the company were paid cash for its inventory, one would expect that the money would be available for its drip pad closure operations, and the payment of a penalty should it fail to meet closure requirements. Yet, a paper transaction took place instead. Lastly, notwithstanding that it closed operations in June 2001, and had no income after that, by December 2006 John A. Biewer Company of Ohio, Inc. had $154,123 in accounts payable intercompany, a value considerably lower than its intercompany liability of $1,339,852 in November 2001. Without any income, it appears that John A. Biewer Company of Ohio, Inc., has been paying off its debts to a related company, or companies, for 5 years after it ceased operations. Finally, the balance sheet for this company discloses $300,000 in negative dividends for November 1998, Id., at 4, and November 1999, Id., at 8; yet, in November 2000, no dividends are disclosed. Id., at 12. While a review of additional information, including the actual accounts receivable intercompany and accounts payable intercompany, would be necessary to sort out what was going on with more accuracy, it is certain that a related company -- or companies -- was very involved in handling the resources of John A. Biewer Company of Ohio, Inc., and, in fact, managing those resources. As it had no continuing operations as a wood treating facility during the years in question, it is clear that John A. Biewer Company of Ohio, Inc., was not being managed for its own benefit, but rather for the benefit of some other company.

fines, as it is effectively kept "judgment proof," while the parent corporation, with resources, can avoid liability as it is a "separate" corporation from the subsidiary corporation and not liable for the subsidiary's actions. With such a corporate scheme, the controlling parties can close one wood treating facility and simply walk away, at the same time continuing their wood treating operations at another "independent" subsidiary's wood treating facility, free of any risk or consequence that the contamination it is likely to have left behind will burden them.

To allow such parties to escape liability because they set up their wood treating facilities under such a corporate scheme would allow the corporate form to "be misused to accomplish certain wrongful purposes[.]" Best Foods, et al., 524 U.S., at 62. It would "subvert justice or cause a result that is contrary to some other clearly overriding public policy." Seasword, at 548.

Congress, through RCRA, and the Administrator, through his rules, including those governing the closure of drip pads, have clearly established a policy to provide for an accounting of hazardous waste from the cradle to the grave.[14] In operating the John A. Biewer Company of Ohio, Inc., the Biewers clearly have failed to make resources available to the company to fulfill its lawful obligations to protect the surrounding environment and public health of the Washington Courthouse, Ohio, community. As this company has no resources of its own, the Biewers use resources of John A. Biewer Company, Inc., and/or Biewer Lumber LLC, to pay the taxes and insurance of its subsidiary; to remove some hazardous waste from the facility of its subsidiary; to

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[14]The Administrator has recognized that "[t]he objectives of RCRA are to promote the protection of human health and the environment and to conserve valuable material and energy resources[,]" and that Sections 2002(a), 3001, 3002, 3003, 3004 and 3005 of the Solid Wasted Disposal Act, as amended by RCRA, "fosters these objectives by providing for the identification of hazardous wastes, the establishment of a 'cradle to grave' hazardous waste tracking system, and the development of standards and permit requirements for the treatment, storage, and disposal of hazardous waste." 45 Fed. Reg. 12724, 12724-12725 (February 26, 1980).

retain someone to do weekly inspections and repairs at its subsidiary's facility; and to pay for environmental consultants to inventory the potential hazardous waste contamination left behind by the operation of its subsidiary's drip and to devise a plan for its removal. See above, p. 14. However, the Biewers take the position that, as they have organized the John A. Biewer Company of Ohio, Inc., as an "independent" subsidiary of John A. Biewer Company, Inc., and/or Biewer Lumber LLC, the "independent" parent is not responsible for, and the "independent" subsidiary has no money to pay for, the removal of hazardous waste left behind from the subsidiary's wood treatment operations at the Washington Courthouse facility. Yet, these companies cannot be legitimately viewed as independent when the subsidiary's very existence depends upon the resources provided by the parent.

The clear policy of Congress and the Administrator is to require a "cradle to grave" accounting of the hazardous waste generated in the Nation, so as to assure that it is not mis-handled, thereby contaminating the air, soils and water, causing injury to the environment and public health. Fn.14. One of the tools Congress provides the Administrator is the authority to assess civil penalties for violations of RCRA. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). By being subject to civil penalties for violations of these laws, "[b]usiness is encouraged to comply with the law not only because that is what the law exacts but because failing to do so will bring down on the activity or purse noncriminal consequences." Atlas Roofing Company v. OSHA Commission, US Department of Labor, 518 F.2d 990, 1009 (5th Cir. 1975).

A source of chemically treated wood is a necessity for the Biewers to conduct the business of Biewer Lumber LCC, as that business is identified at its web-site. Attachment B. Since the early 1970s, the Biewer's have conducted their wood treating operations at at least six different

locations, each operation, supposedly, a separate "independent" subsidiary. SOFs 1, 7 and 8. Operations at the Washington Courthouse facility, the sole function of the John A. Biewer Company of Ohio, Inc., have been closed down since 2001, SOF 12, as have those at a second facility the Biewers operated as John A. Biewer Company of Toledo, Inc., since 1997. In Re John A. Biewer Company of Toledo, Inc., No. RCRA-05-2008-0006, Answer, para. 10. According to the Biewer Lumber web-site, "three pressure-treated lumber and distribution facilities" continue to operate. SOF 3.

Should the Biewer's position prevail, notwithstanding the clear dependence that its subsidiary corporation has to its parent corporation, the public policy of Congress and the Administrator cannot be effective. There can be no deterrent when parties use the parent-subsidiary corporate structure to insulate both from liability for the violation of laws put in place to protect the environment and public health from contamination resulting from their improper disposal of hazardous waste.

The financial circumstances of the subsidiary John A. Biewer of Ohio, Inc., are that it is only capable of doing whatever its parent, John A. Biewer Company, Inc., and/or Biewer Lumber LLC, chooses to do for it. Should the Administrator issue a final order finding that the violations alleged in the Complaint and Compliance Order were committed as alleged, and that a certain dollar amount of penalty is appropriate for those violations, ordering that John A. Biewer of Ohio, Inc., pay the penalty, the penalty cannot be collected. It cannot be collected as, without piercing the corporate veil, that "independent" subsidiary has no resources. And, if the penalty cannot be collected, civil penalties for violations such as those alleged in the Complaint and Compliance Order can have no deterrent effect in pressuring people who operate wood treating facilities to be

compliant with hazardous waste laws governing their operations. Under such circumstances, the law cannot be enforced; the intent of Congress becomes meaningless. If the corporate veil is not pierced, there can be no realistic deterrent available to the Administrator to enforce the environmental law which Congress has directed that he administer. The Biewers, and anyone else operating wood treating facilities -- or any other type of facility generating hazardous waste -- can set up corporate schemes, with parent corporations underfunding subsidiaries, distributing resources only on an "as needed" basis, determined not based upon a subsidiary's legal obligations, but on the discretion of the parent corporation.

This is an outcome not required by Michigan law, as such an outcome would allow the corporate form to "subvert justice or cause a result that is contrary to some other clearly overriding public policy." Seaword, 449 Mich., at 547. It would allow parties to contaminate a site as a consequence of their business operations, then simply walk away from the site, escaping liability for no reason other than they are clever enough to succeed in their attempt to use the corporate structure to avoid any obligation they have under the law for the containment and disposal of hazardous waste that they are leaving behind. On the other hand, ruling to "pierce the corporate veil," finding John A. Biewer Company, Inc., and Biewer Lumber LLC liable for the violations of John A. Biewer of Ohio, Inc., as alleged in the Complaint, is consistent with the well established principle of corporate law providing that parties will not be allowed to use the corporate law to "be misused to accomplish certain wrongful purposes[.]" Best Foods et al., 524 U.S., at 62.[15]

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[15]The purpose of the corporate-form legal fiction is to allow convenience and limit liability for shareholders. *Soloman v. Western Hills Development Co.*, 110 Mich. App. 257, 263, 312 N.W.2d 428 (1981). In Michigan the separate corporate form will be respected. *Bodenhamer Bldg. Corp., v. Architectural Research Corp.,* 873 F.2d 109, 111, 13 Fed.R.Serv.3d 1144 (1989). But, when the corporation's creditors need to be protected because the corporate

CONCLUDING COMMENTS

It must be emphasized that the relief sought by Complainant in this motion is not a finding that the violations alleged in the Complaint were committed by John A. Biewer Company, Inc., and Biewer Lumber LLC, and that these two companies, as well as the currently named Respondent, are liable for the penalty amount proposed. The relief sought is to add John A. Biewer Company, Inc., and Biewer Lumber LLC as respondents in this matter, for reasons that, whichever one is the parent of John A. Biewer Company of Toledo, Inc., it is, by law, responsible for its subsidiary's failure to complete hazardous waste decontamination work at the drip pad of its Washington Courthouse, Ohio, facility's drip pad.

While no standard for deciding motions such as this is identified in the Administrator's Rules, at 40 C.F.R. § 22.16(c), Complainant would point out that, even in a criminal case, the government can proceed with a complaint against a person based upon a "probable cause" standard.[16] While Complainant acknowledges the limited evidentiary value of Dun & Bradstreet reports, these reports do not constitute the evidence presented by this motion in its entirety. Writings and reports generated by Respondent, its agents and its attorneys are also cited, as are Michigan corporate filings, which corroborate relevant statements in the Dun & Bradstreet reports. Moreover to the extent that better evidence is available, that would be in the hands of John A.

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form has been used to avoid legal obligations – for example to defeat public convenience, justify a wrong, protect fraud, or defend a crime – then the corporate veil will be pierced. *Rymal v. Baergen*, 262 Mich. App. 274, 293, 686 N.W.2d 241, 252 (Mich. App.,2004); *see also, K Mart Corp. v. Knitjoy Mfg., Inc.* 542 F.Supp. 1189, 1192 (D.C. Mich., 1982).

[16]See 18 U.S.C. § 3060(a), and Section 767.4 of the Michigan Code of Civil Procedure.

Biewer Company, Inc., and Biewer Lumber LLC, and subject to discovery.[17]

Finally, Complainant will note that on June 26, 2008, on his behalf, a Motion for Partial Accelerated Decision was filed, asking that the Presiding Officer enter a finding "that Respondent has waived any claim that it otherwise may have that it is unable to pay the penalty amount proposed" in the Complaint. The penalty amount proposed is $282,649. Complaint, at 6. After being granted an extension of time to file a response, Respondent filed its July 22, 2008, response stating that "John A. Biewer Company of Ohio, Inc. does not object to relief sought in EPA's Motion for Partial Accelerated Decision." Notwithstanding its explicit waiver of any claim that it is unable to pay a $282,649 penalty, in it "Supplemental Witness Disclosure," dated September 15,

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[17] "The ordinary rule, based on considerations of fairness, does not place the burden upon a litigant of establishing facts peculiarly within the knowledge of his adversary." U.S. v. New York, New Haven & Hartford R.R., 355 U.S. 253, 256 n.5 (1957). "Ordinarily a litigant does not have the burden of establishing facts peculiarly within the knowledge of the opposing party." Browzin v. Catholic University of America, 527 F. 2d 843, 849 (D.C. Cir. 1975). In upholding a regulation of the Secretary of the Interior requiring a mine owner to come forward with information regarding his mine when challenging an "imminent danger" order, issued under the Federal Coal Mine Health and Safety Act of 1969, the Seventh Circuit Court of Appeals noted that "[a]s respondents logically say, it is, after all, his mine and he had the best knowledge of its condition." Old Ben Coal Corporation v. Interior Board of Mine Operation Appeals, 523 F. 2d 25, 36 (7th Cir. 1975). "Simply stated, the [adverse inference] rule provides that when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him." International Union (UAW) v. N.L.R.B., 459 F.2d 1329, 1336 (D.C. Cir. 1972). See also, Newell Recycling Company, 231 F.3d. 204, 210 (5th Circuit 2000) (as "[s]urely Newell was in possession of such information [of its ability to pay] if anyone was[,]" and, as there was "a complete absence of evidence as to Newell's ability to pay" in the record, the Administrator "correctly declined to mitigate the penalty on the basis of Newell's putative inability to pay it"); and, Bluestone Energy Design, Inc. v. Federal Energy Regulatory Commission, 74 F.3d 1288, 1295 (D.C. Cir. 1996) ("Because Bluestone failed to present a satisfactory picture of its financial status, it was not an abuse of discretion for the Commission to decline to consider Bluestone's ability to pay"). Moreover, as financial records of a party are proprietary in nature, sound policy warrants a rule that allows the party itself to determine whether it might benefit from the release of such records, and whether it wishes to release its records.

2008, Respondent stated that Brian Biewer "may also introduce financial reports of John A. Biewer Company of Ohio, Inc." and that he "may testify that as a result of the lack of financial resources, John A. Biewer Company of Ohio, Inc. has been unable to perform various cleanup and requirement tasks requested of it by Ohio EPA and U.S. EPA." These statements provide further support for the entry of the Motion to Amend Complaint and Compliance Order. We have a subsidiary corporation that has had no income since 2001, whose parent corporation has had to pay its insurance and taxes, and who claims to have had insufficient resources in 2004 and 2005, and since, to conduct hazardous waste decontamination closure activities it was required by law to perform at the drip pad of its facility. However, on July 22, 2008, it files a pleading in this matter stating that it has no objection to a finding being made that it waives any right it may have to raise a claim that it is unable to pay a penalty amount of $282, 649. For its July 22, 2008, pleading of John A. Biewer Company of Ohio, Inc., to have been made in good faith, John A. Biewer Company of Ohio, Inc., must have available resources of its parent company to draw upon. It certainly does not have $282,649 in its own account.

In its totality, the evidence identified herein is sufficient to support an order allowing the Complaint in this matter to be amended, adding as respondents John A. Biewer Company, Inc., and Biewer Lumber LLC.

Respectfully submitted,

Richard R. Wagner
Senior Attorney and Counsel for
the Administrator's Delegated Complainant

In Re John A. Biewer Company of Ohio, Inc.
No. RCRA-05-2008-0007

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of the **Motion to Amend Complaint and Compliance Order, and Memorandum in Support of Complainant's Motion to Amend Complaint and Compliance Order** in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3590, with this Certificate of Service.

I further certify that I then caused true and correct copies of the filed documents to be served by certified mail to the following:

John A. Biewer Company, Inc.
812 S. Riverside St.
St. Clair, Michigan 48079
Registered Agent: Richard Biewer

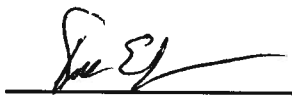
Biewer Lumber LLC
812 S. Riverside St.
St. Clair, Michigan 48079
Registered Agent: Timothy Biewer

I further certify that I then caused true and correct copies of the filed documents to be mailed to the following:

Honorable William B. Moran
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Douglas A. Donnell
Mika Meyers Beckett & Jones, PLC
900 Monroe Avenue, NW
Grand Rapids, MI 49503-1423

September 29, 2008



Donald E. Ayres (C-14J)
Paralegal Specialist
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In Re John A. Biewer Company of Ohio, Inc.
No. RCRA-05-2008-0007

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Certificate of Service** in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3590, and served it on the following parties, as indicated:

By certified mail to the following:

John A. Biewer Company, Inc.
812 S. Riverside St.
St. Clair, Michigan 48079
Registered Agent: Richard Biewer

Biewer Lumber LLC
812 S. Riverside St.
St. Clair, Michigan 48079
Registered Agent: Timothy Biewer

By U.S. Mail to the following:

Honorable William B. Moran
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Douglas A. Donnell
Mika Meyers Beckett & Jones, PLC
900 Monroe Avenue, NW
Grand Rapids, MI 49503-1423

I further certify that on this day I caused true and correct copies of:

(1) the **Administrative Complaint and Compliance Order**, filed in this matter on May 2, 2008;

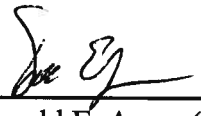
(2) the **Answer to Complaint and Compliance Order**, filed in this matter on June 10, 2008;

by certified mail on the following:

John A. Biewer Company, Inc.
812 S. Riverside St.
St. Clair, Michigan 48079
Registered Agent: Richard Biewer

Biewer Lumber LLC
812 S. Riverside St.
St. Clair, Michigan 48079
Registered Agent: Timothy Biewer

September 29, 2008



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