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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)
)
U.S. EPA ID #: OHD 106 483 522)
)
Respondent)
_____)

MOTION TO AMEND COMPLAINT AND COMPLIANCE ORDER

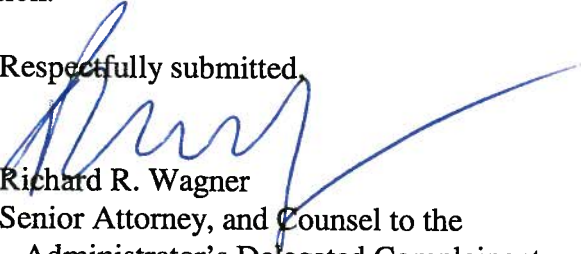
The Administrator's Delegated Complainant (Complainant), by undersigned Counsel, hereby moves to amend the Complaint and Compliance Order, filed in this matter on May 5, 2008, to add as Respondents the following entities:

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)
) **DOCKET NO. RCRA-05-2008-0006**
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**RECEIVED
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**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 Toledo, Inc., 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 Perrysburg, Ohio, facility, after it has 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 July 9, 2004, John A. Biewer Company of Toledo, Inc., submitted a drip pad closure plan on November 24, 2004, 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 Toledo 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.

FACTS SUPPORTING THE MOTION

The following facts support the entry of an order adding the above companies as respondent in this enforcement action:

- (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 Toledo, Inc., has informed Complainant that “John A. Biewer Co., Inc.,” is the parent company of Respondent John A. Biewer Company of Toledo, Inc., and 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) 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 C, Toxic Inventory Reports (Biewer).

- (6) 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,

¹There 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.

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 D (other).

- (7) 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 E.
- (8) 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 F, at 2-3 (supporting documentation at 47-81).²
- (9) That as to John A. Biewer Company of Toledo, Inc., "[s]ince October of 1997, the company has been inactive except for the rental" of a part of the property. Attachment A, at 2. "The current rental rate for the Toledo property is \$6,300 per month which, after expenses, provides approximately \$53,500 in net income." Id.
- (10) That on June 9, 1998, John A. Biewer of Toledo, Inc., amended its Articles of Incorporation, changing its name to Eckle Junction, Inc. Attachment F, at 55-56.
- (11) "[B]ecause of past expenses paid by the company that the parent company were not reimbursed by Toledo, there currently remains an inter-company account payable from Toledo to the parent company as of close of 2006 of \$53,361." Attachment A, at 3.

²Attachment F 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.

- (12) That the facts supporting the violation alleged in the Administrative Complaint and Compliance Order (“Complaint”) filed in this matter occurred in 2004 and 2005, and involved actions which were required by law to be taken at Respondent’s drip pad during that time period. Complaint, Paras. 24 and 25.
- (13) That in electronic correspondence with the Ohio Environmental Protection Agency (OEPA) concerning Respondent’s closure activities at the drip pad of the facility of John A. Biewer of Toledo, Inc., Brian Biewer used the following e-mail address: bbiewer@biewerlumbercompany.com. Brian Biewer E-mail, June 9, 2004. Attachment G.
- (14) That, as of June 13, 2007, the Dun & Bradstreet Report identifies a Biewer Lumber LLC, 300 Oak Street, Saint Clair, Michigan, with Richard N. Biewer, President; Timothy Biewer, Vice-President; and Brian R. Biewer, Secretary-Treasurer. It also states that 100% of capital stock is owned by officers and stockholders. Dun & Bradstreet Report (as of June 13, 2007). Attachment F, at 29.
- (15) That on September 25, 2007, the Chief Financial Officer of Biewer Lumber transmitted copies of balance sheets and income statements of John A. Biewer Company of Toledo, Inc., for the years 1998-2006, by cover letter on Biewer Lumber letterhead. Id., at 15.
- (16) That on October 8, 2004, Brian Biewer informed OEPA that “Eckel Junction Inc.” had authorized the Mannik & Smith Group, environmental consultants, “to provide services and implement a drip pad closure plan at 1301 Eckel Junction Road, Perrysburg, Ohio[,]” which had been operated by Respondent, John A. Biewer Company of Toledo, Inc. Attachment H; and Answer, Para. 10.
- (17) That on November 23, 2004, on behalf of “John A. Biewer Company of Toledo, Inc.,” MSG submitted to OEPA a drip pad closure plan. Attachment I.
- (18) That in the drip pad closure plan submitted by John A. Biewer Company of Toledo, OEPA is informed that it is “John A. Biewer Company” that will “reassess” the remediation approach and provide the Ohio EPA with a contingent closure approach for concurrence.” Attachment I, at 3.
- (19) That in 1985, John A. Biewer Company, Inc., was assessed an \$85,000 penalty for contamination that its wood preserving activities caused in 1979 in the vicinity of its Schoolcraft, Michigan, facility. Attorney General of the State of Michigan, et al. v. John A. Biewer Co., Inc., 140 Mich. App. 1 (1985).

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 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-subsidary 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 violations if the “corporate veil” between the parent and subsidiary can be “pierced,” or, in the alternative, the parent can be found to have committed, or participated in, violating conduct.

Two issues are involved here. First, identifying who is the parent corporation, and second, determining whether there may be some basis on which to find that the “corporate veil” between the parent and subsidiary can be appropriately “pierced,” or, in the alternative, that the parent can be found to have committed, or participated in, violating conduct of the subsidiary.

Complainant attempts to add both John A. Biewer Company, Inc., and Biewer Lumber LLC as respondents in that one or the other is the parent corporation of Respondent John A. Biewer Company of Toledo, Inc. However, due to conflicting statements and actions of Respondent and those representing Respondent, and conflicting available information regarding these companies, which of the two is the appropriate party cannot be determined at this time. Some context is necessary in evaluating the Motion.

While Respondent has represented that it is a “wholly owned subsidiary,” it claims to be a subsidiary of the John A. Biewer Company, Inc. SOF 2. However, the true nature of the identity of this and various other Biewer companies, and their inter-relationship, has been obscured by the business practices of the Biewers. Information available from Michigan’s Department of Labor and Economic Growth, Corporation Division, and from Ohio Business Filings, reveals that, in conducting their business of manufacturing and selling treated wood products, the Biewers have demonstrated an inclination to form numerous corporations, and periodically change their names.

There have been 18 “John A. Biewer” or “Biewer” companies. SOF 8. At least 6 of these Biewer companies, including the Respondent in this matter, have treated, or continue to treat, wood and lumber with a chromated copper arsenate solution, SOF 5 and 7, and wood treated with this solution is a product sold by Biewer Lumber LLC. SOF 3 and 4. Biewer Lumber LLC, at its website, informs the public that it continues to operate “three pressure-treated lumber and distribution facilities.” SOF 3. Though over the years toxic inventory reports have been filed for six of the Biewer wood treating facilities, including that of Respondent, none of these reports has been filed in the name of Biewer Lumber LLC. SOF 5 and 6.

Regarding the company that John A. Biewer Company of Toledo, Inc., claims as its parent, a search of the Michigan and Ohio corporate data base cited reveals that a “John A. Biewer Co., 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 F, 49-50. The data base further reveals that a second “John A. Biewer Company, Inc.,” was formed on December 1, 1980. *Id.*, at 47.

There is no separate entry in Dun & Bradstreet for a “John A. Biewer Company, Inc.,” nor is this specific company explicitly identified as a wholly owned subsidiary of Biewer Lumber LLC, though numerous other Biewer companies are so identified in that data base. Attachment F, 30.³ However, in the Dun & Bradstreet entry for Biewer Lumber LLC, there are 5 UCC filings identified for “John A. Biewer Co., Inc.,” *Id.*, at 27-29. In that entry, Biewer Lumber LLC’s business is identified as “wood preserving,” and the year it started in business as 1980. *Id.*, at 22.

³Though numerous pieces of correspondence have been provided to Complainant by the Respondent in this matter, as well as the related matter of John A. Biewer Company of Ohio, Inc., no piece of correspondence has been on John A. Biewer Company, Inc., letterhead.

In its answer to the Complaint in this matter, Respondent admitted that “John A. Biewer Company of Toledo, Inc., was at all times relevant to this Complaint a corporation incorporated under the laws of Michigan.” In all correspondence with Complainant, and filings in this matter, attorneys for “John A. Biewer Company of Toledo, Inc.,” have identified Respondent by that name. However, ten years ago, the Biewers changed the name of “John A. Biewer Company of Toledo, Inc.,” to “Eckle Junction, Inc.,” on June 9, 1998. Attachment F, 55-56.

Finally, Complainant would 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 Toledo, 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 its “Supplemental Witness Disclosure,” dated September 15, 2008, Respondent stated that Brian Biewer “may also testify regarding the lack of adequate income or assets of John A. Biewer Company of Toledo, inc., to fully perform action requested by Ohio EPA and/or U.S. EPA.”

It is against this backdrop of Byzantine corporate structures used by the Biewers that Complainant’s motion must be evaluated. Here we have parties acting on behalf of Respondent, John A. Biewer Company of Toledo, Inc. -- an entity whose actual name since 1998 has been Eckle Junction, Inc. -- representing that it has no money to pay for the decontamination of the drip pad it closed in 1997, and has not operated since. On the one hand, they represent that John A. Biewer of

Toledo Company, Inc., is a wholly owned subsidiary, indebted to its parent in the sum of \$53,361 for monies provided the subsidiary by the parent, SOF 11, as the subsidiary has limited income of about \$53,500 annually with which to conduct its affairs.⁴ SOF 9. They submit a recent pleading stating that Brian “may also testify regarding the lack of adequate income or assets of John A. Biewer Company of Toledo, Inc. to fully perform actions requested by Ohio EPA and/or U.S. EPA[.]” Respondent’s Supplemental Witness Disclosure, at 1. On the other hand, when given an

⁴Financial records provided by the company disclose that it has had positive net income since 1999. Attachment M, at 2. [Attachment J is a spread sheet prepared from financial information provided by Respondent, which is provided in Attachment K]. This income was primarily driven by the “other income” that the company started receiving in 1999 (\$80,762 in 2006). Id. Presumably, this represents the rental income mentioned previously. SOF 9. This would appear to a source of income enabling it cover its interest, insurance and tax expenses. However, it also appears that the company has been using the rest of this money (i.e., its net income), to pay off the debt to the related parties (as evidenced by the steady reduction of Accounts Payable Intercompany). Attachment J, at 1 Between 1998 and 2006 the company reduced its Accounts Payable Intercompany sixfold, from \$361,233 in 1998 to \$53,361 in 2006. Id. Alternatively, these moneys (\$307,872 over the eight years for which data were available) could have been used to cover the company’s environmental liabilities. Also, the environmental consultant, MSG, was presumably paid to conduct a study of the drip pad at the Perrysburg, Ohio, facility, of John A. Biewer Company of Toledo, Inc., and prepare the drip pad closure plan, in 2004. SOF 17. MSG’s work involved conducting decontamination procedures at the drip pad, which included dry vacuuming the pad, two cycles of pressure washing and wet vacuuming, with sampling taken from the resulting rinseate, which was analyzed at a laboratory for levels of arsenic and chromium. SOF 17. There is no entry in the company’s balance sheet or income statement that would appear to account for this cost, causing one to conclude that the parent company must have provided funding for these tasks. Finally, it is not known what happened to any inventory of John A. Biewer Company of Toledo, Inc., when it closed in 1997. The earliest records provided Complainant are for November 1998, a year after its facility’s wood treating operations shut down. Inventory at the John A. Biewer of Ohio Company, Inc., amounted to \$1,406,770 in November 2000, and, after closing in June 2001, was listed as \$0 in November 2001, without any showing that John A. Biewer Company of Ohio, Inc., received any cash for that inventory. See Memorandum in Support of Complainant’s Motion to Amend Complaint and Compliance Order, at fn.13, in In Re John A. Biewer of Ohio, Inc., No. RCRA-05-2008-0007.

explicit opportunity to assert in this enforcement action that it is without the financial wherewithal to pay the proposed penalty amount of \$287,441, John A. Biewer of Toledo Company, Inc. explicitly waives that opportunity. For its waiver of that issue to have been made in good faith, John A. Biewer Company of Toledo, Inc., must have available resources of its parent company to draw upon. It certainly does not have \$282,649 in its own account.

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. While Complainant at this point in time does not have the same level of information here as it has presented regarding John A. Biewer of Ohio, Inc., see Memorandum in Support of Complainant's Motion to Amend Complaint and Compliance Order, In Re John A. Biewer Company of Ohio, Inc., RCRA-05-2008-0007, there certainly is a level of information sufficient to warrant an order adding as parties to this action John A. Biewer Company, Inc., and Biewer Lumber LLC. As Respondent John A. Biewer Company of Toledo, Inc., has waived any ability to pay claim, while at the same time, it appears to have minimal resources available itself, proceeding under the status quo may well result in an order being issued by the Administrator against a corporation that no longer exists, or has no resources to pay the penalty. John A. Biewer Company of Toledo, Inc., escapes paying a penalty as it does not have the resources to do so; its parent company escapes paying a penalty as it and its subsidiary are "independent." The Biewers will have succeeded in masking the identity of the party actually responsible for the operation of the closed Perrysburg, Ohio, wood treating facility during the time the violation identified in the Complaint is alleged to have occurred, that being 2004-2005.

Enforcement of the law can have no deterrent effect if the payment of penalties can be avoided.⁵ Again, once they are added as respondents, discovery can be used to accurately determined the relationship of John A. Biewer Company, Inc., Biewer Lumber LLC, and the named Respondent, and the true involvement of the parent corporation in the business of its subsidiary.

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.

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.⁶ 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, which

⁵The 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.__. 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).

⁶See 18 U.S.C. § 3060(a), and Section 767.4 of the Michigan Code of Civil Procedure.

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. Biewer Company, Inc., and Biewer Lumber LLC, and subject to discovery.⁷

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

⁷“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.

**In Re John A. Biewer Company of Toledo, Inc.
No. RCRA-05-2008-0006**

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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

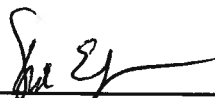
Biewer Lumber LLC
812 S. Riverside St.
St. Clair, Michigan 48079
Registered Agent: Timothy Biewer

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
77 W. Jackson Blvd.
Chicago, IL 60604
(312) 353-6719

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2008 SEP 29 AM 9:17

In Re John A. Biewer Company of Toledo, Inc.
No. RCRA-05-2008-0006

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;

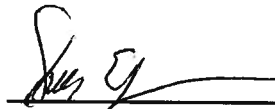
(2) the **Answer to Complaint and Compliance Order**, filed in this matter on June 10, 2008;

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
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September 29, 2008



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Paralegal Specialist
77 W. Jackson Blvd.
Chicago, IL 60604
(312) 353-6719