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July 2, 2009

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

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**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Re: John A. Biewer of Ohio, Inc.
RCRA-05-2008-0007

Dear Clerk:

Enclosed for filing you will find Respondents John A. Biewer Company, Inc. and Biewer Lumber, LLC's Motion for Accelerated Decision, Memorandum in Support of Respondents John A. Biewer Company, Inc. and Biewer Lumber, LLC's Motion for Accelerated Decision, and Certificate of Service indicating mailing of the same to opposing counsel in the above-referenced matter.

Very truly yours,


Amy L. VanDyke

sjv
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 Ohio, Inc.
300 Oak Street
St. Clair, Michigan 48079-0497
(Perrysburg Facility)

U.S. EPA ID #: OHD 081 281 412

DOCKET NO: RCRA-05-2008-0007

**RESPONDENTS JOHN A. BIEWER
COMPANY, INC. AND BIEWER LUMBER,
LLC'S MOTION FOR ACCELERATED
DECISION**

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

RESPONDENT

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U.S. ENVIRONMENTAL
PROTECTION AGENCY**


Pursuant to 40 C.F.R. § 22.20, Respondents John A. Biewer Company, Inc. and Biewer Lumber, LLC hereby move this Administrative Law Judge to hold that Respondents are neither directly nor indirectly liable for the RCRA violations allegedly committed in this action for the reasons set forth in the attached memorandum.

Respectfully Submitted,

MIKA MEYERS BECKETT & JONES PLC
Attorneys for Respondent

Dated: July 2, 2009

By: _____


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

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
(Perrysburg Facility)

**MEMORANDUM IN SUPPORT OF
RESPONDENTS JOHN A. BIEWER
COMPANY, INC. AND BIEWER
LUMBER, LLC'S MOTION FOR
ACCELERATED DECISION**

U.S. EPA ID #: OHD 081 281 412

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

RESPONDENT
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PROTECTION AGENCY,

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inapplicable where, as here, the two entities do not even have common ownership. In fact, Complainant has not even asserted that Biewer Lumber, LLC has ever acted through JAB Ohio or in any way disregarded the separate corporate status of the two companies. As such, Complainant's veil-piercing theory is wholly inapplicable, as a matter of law, because there is no veil to be pierced in the first instance.

Even if there were a corporate veil to be pierce, Complainant has advanced no plausible theory or explanation of how a corporation could possibly be subject to a veil-piercing claim based on actions or inactions that *pre-date* its existence. Thus, this Court should rule that, as a matter of law, Biewer Lumber, LLC cannot be indirectly liable for JAB Ohio's RCRA liability under the Ohio common law of corporate veil piercing.


CONCLUSION

For the above reasons, JAB Company and Biewer Lumber, LLC respectfully request that this Court hold that as a matter of law neither JAB Company nor Biewer Lumber, LLC are directly or indirectly liable for JAB Ohio's alleged RCRA liability incurred at the Facility and grant Respondent's motion for accelerated decision.

Respectfully submitted,

MIKA MEYERS BECKETT & JONES PLC
Attorneys for Respondent

Dated: July 2, 2009

By: 

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

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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
(Perrysburg Facility)

CERTIFICATE OF SERVICE

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

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I, Sheryl J. Van Woerkom, hereby state that I am an employee of Mika Meyers Beckett & Jones PLC, and that on July 2, 2009, I served a copy of:

Respondents John A. Biewer Company, Inc. and Biewer Lumber Company, LLC's Motion for Accelerated Decision; and

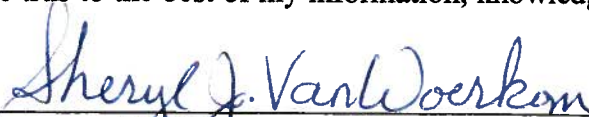
Memorandum in Support of Respondents John A. Biewer Company, Inc. and Biewer Lumber, LLC's Motion for Accelerated Decision

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 2, 2009

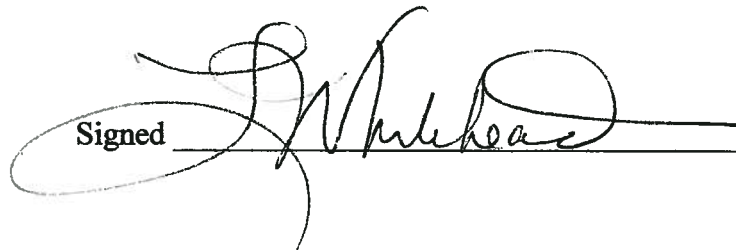


Sheryl J. Van Woerkom

I LaDawn Whitehead certify that the following items were received by the EPA Regional Hearing Clerks Office.

- 1) Binder: John A. Biewer Company of Ohio
 - a. original signed motion and memorandum in support of the motion
 - b. letter to the Clerk
 - c. proof of service
 - d. copy of motion
 - e. copy of memorandum in support of the motion
 - f. exhibits A-O

- 2) Binder: John A. Biewer Company of Toledo
 - a. original signed motion and memorandum in support of the motion
 - b. letter to the Clerk
 - c. proof of service
 - d. copy of motion
 - e. copy of memorandum in support of the motion
 - f. exhibits A-O

Signed  Date July 6, 2009

Mika Meyers
Beckett & Jones PLC

Douglas A. Donnell
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