


- (1) That JAB-Ohio, on closing its facility in 2001, was not a viable company, and was incapable of participating in or exercising control over any business activity regarding its facility.
- (2) That at all times relevant to the violation alleged in the Amended Complaint and Compliance Order, Brian Biewer, as JAB-Co and Biewer Lumber LLC, actively participated in, and exercised control over, the environmental operations of JAB-Ohio, including working with Ohio EPA and MSG on removing the arsenic and chromium contamination from the drip pad of the facility of JAB-Ohio, so as to bring JAB-Ohio's facility in compliance with RCRA.
- (3) That based upon the evidence identified accompanying this motion, it is appropriate that the corporate veil between and among JAB-Ohio and JAB-Co and Biewer Lumber LLC be pierced, and JAB-Co and Biewer Lumber be found jointly, and severely, liable for the \$282,649 civil penalty amount proposed.
- (4) That based upon the evidence identified in this motion, it is appropriate that, under the Bestfoods doctrine, JAB-Co and Biewer Lumber LLC be found directly liable for the violation alleged in the Administrative Complaint and Compliance Order, and JAB-Co and Biewer Lumber be found jointly, and severely, liable for the \$282,649 penalty amount proposed.

Complainant further moves that, on those findings, an initial decision be entered directing that, within 30 days, both JAB-Co and Biewer Lumber LLC, jointly and severely, pay the \$287,441 penalty amount proposed for the violations alleged in the Amended Complaint and Compliance Order; and that, no later than a date certain -- to be determined -- the parties confer and agree to an appropriate order to be issued against Respondents to assure the decontamination of the JAB-Ohio facility drip pad of the arsenic and chromium contamination present there, and submit to the Presiding Officer the agreed order. Should the parties be unable to reach agreement

on a corrective action order within the designated time, the parties shall report to the Presiding Officer for the matter will be set for hearing, with an appropriate order to follow.

A memorandum, with attachments, is filed in support of this motion.

Respectfully submitted,



Richard R. Wagner
Senior Attorney

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

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CERTIFICATE OF SERVICE

I hereby certify that today I filed the original, and one copy, of each of the following:

- (1) **Complainant's Motion for Accelerated Decision on Derivative Liability**
- (2) **Complainant's Memorandum in Support of Motion for Accelerated Decision on Derivative Liability, and attachments (includes all CBI material)**
- (3) **Complainant's Memorandum in Support of Motion for Accelerated Decision on Derivative Liability, and attachments (excludes all CBI material)**


in the office of the Regional Hearing Clerk (E-19J), 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 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

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July 2, 2009



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