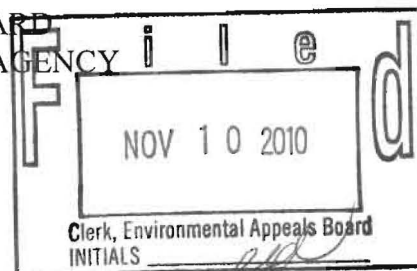


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



\_\_\_\_\_  
In re: )  
)  
John A. Biewer Co. of Toledo, Inc. )  
Docket No. RCRA-05-02008-0006, )  
)  
and )  
)  
John A. Biewer Co. of Ohio, Inc. )  
Docket No. RCRA-05-02008-0007 )  
\_\_\_\_\_ )

RCRA Appeal Nos. 10-01 & 10-02

**ORDER GRANTING MOTION TO FILE REPLY BRIEF  
AND SETTING DEADLINE FOR FILING SURREPLY**

Complainant-Appellant, EPA Region 5 (the "Region"), filed its appeal brief in this previously consolidated case on August 3, 2010. *See Complainant's Brief in Support of Its Notice of Appeal*, Docket No. 10 (Aug. 3, 2010). Respondents-Appellees filed their responsive brief on October 18, 2010. *See Appeal Brief of Respondents-Appellees*, Docket No. 15 (Oct. 18, 2010). By motion, the Region seeks leave to file a reply brief in response to Respondent's brief. *See Complainant's Motion to File a Brief in Response to Appeal Brief of Respondents-Appellees*, Docket No. 16 (Oct. 22, 2010) ("Motion").

Pursuant to 40 C.F.R. § 22.30(a)(2), further briefs may be filed in this matter only with the permission of the Board. The Region asserts that further response is necessary due to "the complexity of the issues," and to "several additional new issues and arguments" raised by Respondents in their brief. Motion at 1-2. By way of example, but without limitation, the Region

points to new issues “regarding allegations of waiver and authority for this appeal and the awarding of attorney’s fees and costs.” *Id.* at 2. The Region also states that, due to the complexity of the record and the need to consult with several offices within EPA in preparing its response, it needs until November 23, 2010 to file its reply. *Id.*

Respondents disagree with, but do not explicitly oppose the motion. Respondent’s also submit that if any reply briefs are allowed, both parties should be permitted to file replies and both parties should be limited to briefing only new issues raised. *See Response to Complainant’s Motion to File a Brief in Response to Appeal Brief of Respondents-Appellees*, Docket No. 17 at 1-2 (Oct. 25, 2010). Respondents also submit that, in light of the 100-plus page appeal briefs filed to date, any reply briefs permitted should be limited to 10 pages. *Id.* at 2.

Upon consideration,<sup>1</sup> the Board **GRANTS** the Region until November 23, 2010, to file a reply brief in this matter. The reply brief is limited to 15 pages and may not raise any new issues and must respond only to the allegedly new issues raised by the Respondents’ appeal brief that the Region previously did not have the opportunity to address. Respondents may file a surreply no later than December 13, 2010.<sup>2</sup> Any surreply filed is limited to 15 pages and must not raise any

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<sup>1</sup> The Board reserves judgment on whether Respondent’s brief raises any new issues or arguments.


<sup>2</sup> Documents are considered “filed” on the date they are received by the Clerk of the Board. Filing may now be accomplished electronically pursuant to the Board’s standing order of January 28, 2010 (for more information visit <http://www.epa.gov/eab>, click on “Standing Orders” on the sidebar), as well as by paper.

new issues and must respond only to matters raised in the reply brief that Respondents previously did not have the opportunity to address.

So ordered.

Dated: 11/10/10

ENVIRONMENTAL APPEALS BOARD

  
\_\_\_\_\_  
for Kathie A. Stein  
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting, in Part, the Region's Motion for Extension of Time to File Appeal Brief, in the matters of John A. Biewer Co. of Toledo, RCRA Appeal No. 10-01, and John A. Biewer Co. of Ohio, RCRA Appeal No. 10-02, were sent to the following persons in the manner indicated:

**By Pouch Mail and FAX:**

Karen L. Peaceman, Assoc. Regional Counsel  
Gary Steinbauer, Asst. Regional Counsel  
Richard R. Wagner, Senior Attorney  
Luis Oviedo, Assoc. Regional Counsel  
U.S. EPA, Region 5

**Mailcode: C-14J**  
77 W. Jackson Blvd.  
Chicago, IL 60604-3590  
**FAX: 312-408-2208**

Benjamin D. Fields  
Acting National Coordinator  
Cross-Cutting Administrative Litigation Issues  
U.S. EPA Region 3

**Mailcode: (3RC30)**  
1650 Arch Street  
Philadelphia, PA 19103  
**FAX: 215-814-2603**

**By Interoffice Mail and FAX:**

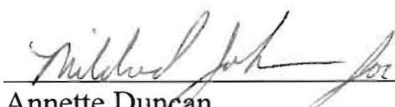
Pete Raack  
Attorney Advisor  
U.S. EPA, OECA-OCE-WCED  
Ariel Rios South

**Mail Code: 2249A**  
1200 Pennsylvania Ave.  
Washington DC 20460  
**FAX: 202-564-0019**

Dated: 11-10-10

**By First Class Mail and FAX:**

Douglas A. Donnell  
Mika Meyers Beckett & Jones, PLC  
900 Monroe Avenue, NW  
Grand Rapids, MI 49503-1423  
FAX: 616-632-8002

  
Annette Duncan