

**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)	RCRA Appeal Nos. 10-01 & 10-02
)	
John A. Biewer Co. of Ohio, Inc.)	
Docket No. RCRA-05-02008-0007)	
)	
_____)	

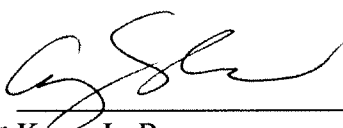
**COMPLAINANT’S MOTION TO FILE A BRIEF IN
RESPONSE TO APPEAL BRIEF OF RESPONDENTS-APPELLEES**

Complainant commenced this appeal by filing its Notice of Appeal and Motion for an Extension of Time within which to file a Brief on May 21, 2010. On May 26, 2010, the Environmental Appeals Board (the “Board” or “EAB”) issued an Order consolidating both matters into a single appeal, ordering Complainant to provide notice of the issues it is appealing by June 4, 2010, and extending the deadline by which to file its Brief in Support of the Appeal to August 3, 2010. Complainant timely filed its Notice of the Issues it is Appealing and its Brief. On October 18, 2010, Respondents John A. Biewer Co. of Toledo, Inc., John A. Biewer Company of Ohio, Inc., and John A. Biewer Company, Inc. (“Respondents”) filed their Appeal Brief in this matter. Pursuant to 40 C.F.R. § 22.30(a)(2), further briefs may be filed only with the permission of the Board.

Complainant respectfully requests that the Board grant it permission to file a brief to respond to the Appeal Brief of Respondents-Appellees due to the complexity of the issues

present in this matter and because Respondents appear to have raised several additional new issues and arguments in their brief which must be addressed by Complainant. By way of example, and without limitation, Respondents have raised new issues regarding allegations of waiver and authority for this appeal and the awarding of attorney's fees and costs. In addition, the complexity of the legal issues and the facts in these cases requires Complainant to have an opportunity to respond to Respondents' arguments, particularly to any misconceptions. Given that this appeal focuses on many critical areas of EPA's administrative litigation practice, Complainant submits that a brief which responds to the issues raised by Respondents will assist the Board in its decision making in this matter. *Cf.* FED. R. APP. P. 28(c) (allowing the appellant to file a reply brief as a matter of right). Furthermore, in light of the need for Region 5 to consult with several offices within EPA on these issues of national significance in preparing its response brief, Complainant respectfully requests leave to file its response brief on or before November 23, 2010. Counsel for Complainant left a voicemail message for counsel for Respondents on October 21, 2010 advising him of Complainant's intent to file this Motion.

RESPECTFULLY SUBMITTED,


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CERTIFICATE OF SERVICE

I certify that the forgoing **Complainant's Motion to File a Brief in Response to Appeal Brief of Respondents-Appellees** was filed with the Environmental Appeals Board electronically, via the CDX portal. In addition, a copy was sent by UPS overnight delivery service to:

Douglas A. Donnell, Esq.
Mika Meyers Beckett & Jones, PLC
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Grand Rapids, MI 49503-1423

and a copy was hand-delivered to:

Ms. La Dawn Whitehead
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DATE: October 22, 2010



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