

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

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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)
(Washington Courthouse Facility))
)
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)
)
Respondents)
)

**COMPLAINANT'S NOTICE OF APPEAL AND MOTION FOR AN
EXTENSION OF TIME WITHIN WHICH TO FILE A BRIEF**

NOTICE OF APPEAL

On April 30, 2010, the Presiding Officer concluded proceedings in this matter below by issuing an Initial Decision Regarding Penalty ("Initial Decision"). Complainant files this Notice of Appeal pursuant to 40 C.F.R. § 22.30(a). In 40 C.F.R. § 22.30(c), the Administrator provides to parties a "right of appeal" which is "limited to those issues raised during the course of the proceedings and by the initial decision." Complainant provides notice that it is appealing adverse aspects of the various rulings made by the Presiding Officer, including without limitation, the following orders, and the Initial Decision:

- (1) **Order on Cross Motions for Accelerated Decision on Derivative Liability, dated October 5, 2009.**
- (2) **Order on EPA's Motion for Accelerated Decision on Liability and Penalty, dated December 23, 2009.**
- (3) **Order on EPA's Motion to Strike, in part, Respondent's Prehearing Exchange, dated December 23, 2009.**
- (4) **Initial Decision Regarding Penalty, dated April 30, 2010.**

**MOTION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A BRIEF**

According to the Certificate of Service, the Initial Decision was sent to Complainant via regular mail and facsimile on April 30, 2010. Pursuant to 40 C.F.R. §§ 22.30(a) and 22.7(c), a party has 30 days, plus an additional 5 days when service is by regular mail, from the date of service of the Initial Decision in which to appeal, making Complainant's Notice of Appeal and Brief due no later than June 4, 2010. Complainant requests that the Board grant it a 60 day extension of time, to August 3, 2010, within which to file a brief addressing the issues on appeal. The Presiding Officer's rulings in this matter focus on many important areas of EPA's administrative litigation practice, as well the correct application of federal versus state law in the area of derivative liability in EPA's administrative proceedings. EPA counsel will need to consult with several different offices within EPA Headquarters and Region 5. Consequently, Counsel for Complainant respectfully submits that the important issues raised by the Orders and Initial Decision cannot be briefed effectively by June 4, 2010.

The EAB has the authority to grant the requested extension of time pursuant to 40 C.F.R. § 22.7(b). Under that subsection, a motion for extension can be granted for good cause shown, after consideration of prejudice to other parties. 40 C.F.R. § 22.7(b). Complainant submits that

the complexity and national significance of the issues raised in this case and the need for consideration among various offices within EPA constitute good cause for the requested extension. *See In re Euclid of Virginia, Inc.*, Docket No. RCRA-3-2002-0303 (EAB, Dec. 1, 2006) (granting a 60 day extension to a respondent to file its appeal brief). Complainant also submits that a 60 day extension of time for the filing of its Brief will not cause prejudice or harm to Respondents in any way. Counsel for EPA has conferred with counsel for Respondents regarding this request for extension of time. Counsel for Respondents has represented that Respondents have no objection to Complainant receiving a 30 day extension of time in which to file its Brief. Notwithstanding Respondents' agreement to a 30 day extension of time, Complainant believes the complexity of the issues presented in this appeal and their national significance warrant an extension of time to August 3, 2010.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing **Complainant's Notice of Appeal and Motion for an Extension of Time within which to File a Brief** in *In the Matter of John A. Biewer of Ohio, Inc., et al.*, Docket No. RCRA-05-2008-0007 was filed with the Environmental Appeals Board electronically, via the CDX portal. In addition, a copy was hand delivered to the Regional Hearing Clerk in EPA, Region 5 and was sent by UPS overnight delivery service to each of the other persons listed below:

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May 21, 2010
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