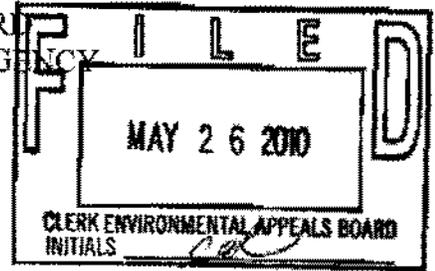


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



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, IN PART, THE REGION'S MOTION
FOR EXTENSION OF TIME TO FILE APPEAL BRIEF**

On April 30, 2010, Administrative Law Judge William B. Moran ("ALJ") issued two nearly identical initial decisions in two matters involving two facilities potentially owned or operated by the same entity.¹ *In re John A. Biewer Co. of Toledo, Inc.*, Docket No. RCRA-05-2008-0006 (Apr. 30, 2010) (Initial Decision Regarding Penalty) (concerning the "Perrysburg Facility"); *In re John A. Biewer Co. of Ohio, Inc.*, Docket No. RCRA-05-2008-0007 (Apr. 30, 2010) (Initial Decision Regarding Penalty) (concerning the "Washington Courthouse Facility"). At present, any notice of appeal from these decisions must be filed with the Environmental Appeals Board ("Board") by June 4, 2010. On May 21, 2010, Complainant, EPA Region 5, filed

¹ Three respondents are listed for each facility. The matter involving the "Perrysburg facility" lists: (1) John A. Biewer Company of Toledo, Inc.; (2) John A. Biewer Company, Inc.; and (3) Biewer Lumber LLC. The matter involving the "Washington Courthouse Facility" lists: (1) John A. Biewer Company of Ohio, Inc.; (2) John A. Biewer Company, Inc.; and (3) Biewer Lumber LLC. Derivative liability was at issue before the ALJ. With this Order, the Board is not making any determinations with respect to who exactly the owner or operator of each facility is in this case.

two notices of appeal, each combined with an identical motion for a 60-day extension of time to file the appellate brief.² For administrative convenience, the Board hereby consolidates these two appeals.

The Region indicates, in its motions for extension, that it is “appealing adverse aspects of the various rulings” made in each case by the ALJ “including without limitation,” three separate and specifically identified preliminary orders and the initial decision for each matter. Further, the Region indicates that “[the] rulings in [these] matters focus on many important areas of EPA’s administrative litigation practice, as well as the correct application of federal versus state law in the area of derivative liability in EPA’s administrative proceedings.” Region 5 states that the “complexity” and “national significance of the issues raised” in these matters necessitate a 60-day extension of time to “consult with several different offices within EPA Headquarters and Region 5,” prior to briefing. The Region does not identify the issues presented for review.

The Board may grant extensions of time for filing any document pursuant to 40 C.F.R. § 22.7(b) (authorizing extensions of time upon timely motion, for good cause shown, after consideration of prejudice to other parties, or upon the Board’s own initiative). Having duly considered these motions and for good cause shown, the Board **GRANTS, IN PART**, the Region’s motions for an extension of time within which to file its appeal briefs. The Region must identify all issues on appeal by the **June 4, 2010**, appeal deadline. The Region may then file its

² According to the Region, Respondents do not object to a 30-day extension of time, but the Region does not indicate whether Respondents oppose a 60-day extension of time.

appeal brief in these consolidated appeals, presenting argument and information supporting the identified issues, no later than **August 3, 2010**.³

So ordered.

Dated: 5/26/2010

ENVIRONMENTAL APPEALS BOARD

Edward E. Reich (for EER)

Edward E. Reich

Environmental Appeals Judge

³Documents 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.

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

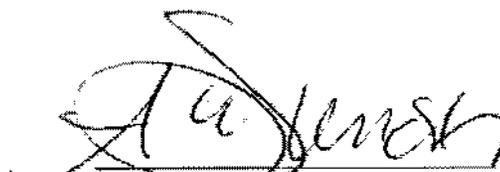
By Interoffice Mail and FAX:

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: MAY 26 2010

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 Dufican