

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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IN THE MATTER OF:)
) DOCKET NO. RCRA-05-2008-0006
)
John A. Biewer Company of Toledo, Inc.)
300 Oak Street)
St. Clair, Michigan 48079-0497)
)
U.S. EPA ID #: OHD 106 483 522)
)
Respondent)
_____)

**COMPLAINANT'S MOTION FOR ACCELERATED DECISION
ON DERIVATIVE LIABILITY**

Pursuant to 40 C.F.R. §§ 22.1(a)(4), 22.20 and 22.37, of the Administrator's Rules, the Administrator's Delegated Complainant hereby moves that the Presiding Officer in this matter enter a finding that there is no genuine issue of material fact regarding evidence relevant to determining the liability of Respondents John A. Biewer Company, Inc., and Biewer Lumber LLC, for the violations alleged in the Administrative Complainant and Compliance Order,¹ and,

¹There are additional motions of Complainant pending, awaiting a response from Respondents, as follows:

- (1) Complainant's Motion to Strike, in Part, Respondent's Pre-Hearing Exchange, filed December 12, 2008.
- (2) Complainant's Motion for Accelerated Decision on Liability and Penalty, filed December 12, 2008.

On June 15, 2009, Complainant filed an Addendum to Memorandum in Support of Complainant's Motion for Accelerated Decision on Liability and Penalty, to add a document as an attachment which had been identified in the original memorandum, but inadvertently was not included as an attachment.

on the evidence of record, that:

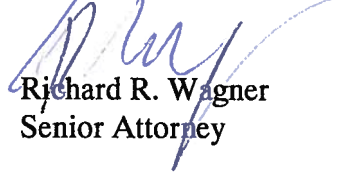
- (1) That JAB-Toledo, on closing its facility in 2001, was not a viable company, and was incapable of participating in or exercising control over any business activity regarding its facility.
- (2) That at all times relevant to the violation alleged in the Amended Complaint and Compliance Order, Brian 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-Toledo, so as to bring JAB-Toledo'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-Toledo 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,

A handwritten signature in blue ink, appearing to read 'R. Wagner', is written over the typed name.

Richard R. Wagner
Senior Attorney

In Re John A. Biewer Company of Toledo, Inc.
No. RCRA-05-2008-0006

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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

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

July 2, 2009



Donald E. Ayres (C-14J)
Paralegal Specialist
77 W. Jackson Blvd.
Chicago, IL 60604
(312) 353-6719