

**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**

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COMPLAINANT'S IDENTIFICATION OF ISSUES ON APPEAL

On May 26, 2010, the Environmental Appeals Board issued an Order requiring the Region to identifying all issues on appeal by June 4, 2010. Complainant hereby files this Identification of Issues on Appeal in accordance with that Order. Complainant raises the following issues regarding various rulings made by the Presiding Officer in this matter:

- A. Whether the Administrative Law Judge ("ALJ") erred in applying state law, as opposed to federal common law, to determine whether John A. Biewer Company, Inc. ("JAB Co."), as parent corporation, could be held derivatively liable for violations alleged and the proposed penalties sought by Complainant against its subsidiaries, John A. Biewer Company of Toledo, Inc. ("JAB Toledo") and John A. Biewer Company of Ohio, Inc. ("JAB Ohio").
- B. Whether the ALJ erred in denying Complainant's Motions for Accelerated Decision on Derivative Liability against JAB Co. where Complainant presented significant probative evidence demonstrating the appropriateness of piercing the veil to reach JAB Co. and/or hold JAB Co. directly liable for the alleged violations.
- C. Whether, in the alternative, the ALJ erred in granting the Motions for Accelerated Decision with regard to derivative and direct liability filed by JAB Co. where Complainant presented significant evidence in support of a finding of derivative and direct liability.
- D. Whether the ALJ erred in denying, in part, Complainant's Motions for Accelerated Decision on Liability and Penalty where Complainant presented significant evidence

- regarding the appropriateness of the proposed penalties and Respondents presented argument but no evidence in opposition to Complainant's Motions.
- E. Whether the ALJ abused his discretion in awarding a zero penalty in these matters when the ALJ had previously granted Complainant's Motions for Accelerated Decision as to Liability and the facts of the violation were already in the record and, by themselves, warranted imposition of penalties in accordance with the RCRA Civil Penalty Policy or otherwise in accordance with the penalty criteria set forth in RCRA.
 - F. Whether the ALJ erred in holding that there is a constitutional right for respondents in an administrative penalty proceeding to cross-examine, during an evidentiary hearing, a live witness with regard to the calculation of the penalties proposed by Complainant.

Complainant will be requesting that: the EAB overturn adverse aspects of the Presiding Officer's Orders on Complainant's Motions for Accelerated Decision on Derivative Liability, Complainant's Motions for Accelerated Decision on Liability and Penalty, Complainant's Motions to Strike, in part, Respondents' Prehearing Exchange and the Initial Decisions and rule in EPA's favor; remand this matter to the Presiding Officer for further proceedings if necessary; and enter a Compliance Order requiring Respondents to comply with applicable provisions of RCRA.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing **Complainant's Identification of Issues on Appeal** in the matters of John A. Biewer Co. of Toledo, Inc., RCRA Appeal No. 10-01, and John A. Biewer Co. of Ohio, Inc., RCRA Appeal No. 10-02 was filed with the Environmental Appeals Board electronically, via the CDX portal. In addition, a copy was deposited for UPS overnight delivery service to the party listed below and was hand delivered to the Regional Hearing Clerk in EPA, Region 5.

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