

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

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In re:

John A. Biewer Co. of Toledo, Inc.
Docket No. RCRA-05-2008-0006

RCRA Appeal Nos. 10-01 and 10-02

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

and

John A. Biewer Co. of Ohio, Inc.
Docket No. RCRA-05-2008-0007

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

On Friday, October 22, 2010, Complainant-Appellant filed a motion seeking leave of this Board to file another appeal brief to respond to the appeal brief filed by Respondents-Appellees on October 18, 2010. The stated reason for Appellant's request is "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."

With respect to the "new issues" raised in Appellees' brief, Appellees submit that issues such as whether Appellant even preserved certain issues for appeal should not be considered a "new issue" since every appellant is required to demonstrate that it has preserved the issues for appeal. Furthermore, with respect to the attorney's fee issue identified in the motion, Judge Moran in his initial decision sought guidance from the EAB on this issue (Initial Decision, p. 17, fn. 28), the issue was briefed by both parties before Judge Moran, and there is certainly nothing "new" about the issue now. Appellant simply chose not to brief the issue.


Finally, as to the "complexity of issues," it would seem that Appellees are faced with the same complexity as Appellant, and if any reply briefs are allowed, both parties should be granted the right to file a reply brief. Moreover, since both parties have exhaustively briefed this appeal with

100-plus page briefs, Appellees submit that if any further briefing is allowed by one or both parties, such briefs should be limited to 10 pages and limited to the “new issues” Appellant claims to have been raised in Appellees’ appeal brief.

Respectfully submitted,

MIKA MEYERS BECKETT & JONES PLC
Attorneys for Appellees

Dated: October 25, 2010

By: 

Douglas A. Donnell
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U.S. ENVIRONMENTAL
PROTECTION AGENCY

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CERTIFICATE OF SERVICE

John A. Biewer Co. of Ohio, Inc.
Docket No. RCRA-05-2008-0007

I hereby certify that on this date the foregoing **Response to 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. I certify that on this date the foregoing was also served on the following person:

Karen L. Peaceman
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590


La Dawn Whitehead
Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

by United State Postal Service, first-class postage prepaid.

I declare that the statements above are true to the best of my information, knowledge and belief.

MIKA MEYERS BECKETT & JONES PLC
Attorneys for Respondents/Appellees

Dated: October 25, 2010

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