

# Mika Meyers Beckett & Jones PLC

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Fredric N. Goldberg	Ross A. Leisman	Benjamin A. Zainea			

May 13, 2009

Regional Hearing Clerk (E-13J)  
United States Environmental Protection Agency  
Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3590

Re: John A. Biewer of Ohio, Inc.  
RCRA-05-2008-0007

Dear Clerk:

Enclosed is Respondents' Second Set of Supplemental Responses to EPA's Discovery Requests and Certificate of Service indicating mailing of the same to opposing counsel to be filed in the above-referenced matter.

Very truly yours,



Amy L. VanDyke

jeb  
Enclosures

cc: Hon. William B. Moran (by Fed Ex and e-mail)  
Richard R. Wagner  
Douglas S. Touma, Sr.

via U. S. first-class mail

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U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

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IN THE MATTER OF:

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

\_\_\_\_\_ /

DOCKET NO: RCRA-05-2008-0007

**RESPONDENTS' SECOND  
SUPPLEMENTAL RESPONSES TO  
EPA'S DISCOVERY REQUESTS**

**RECEIVED**  
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PROTECTION AGENCY**

**GENERAL OBJECTIONS**

Respondents John A. Biewer Company of Ohio, Inc. ("JAB Ohio"), John A. Biewer Company of Toledo, Inc. ("JAB Toledo"), John A. Biewer Company, Inc. ("JAB Company"), and Biewer Lumber LLC object to the EPA's Discovery Requests dated February 26, 2009 ("Discovery Requests"), as follows:

1. By responding to any discovery request, the Respondents do not concede the relevance, materiality, admissibility or discoverability of the subject matter of the discovery request or of the information requested in response to the discovery request. Rather, the

responses to each discovery request are made expressly subject to, and without in any way waiving, any question or questions as to the competency, relevancy, privilege or admissibility of the responses given.

2. Respondents object to each request to the extent that it would require Respondents to prepare documents, lists or compilations not already in existence.

3. Respondents object to all discovery requests which purport to require responses going beyond those required by the Federal Rules of Civil Procedure.

4. Respondents object to each request to the extent that it seeks information which is not relevant to the subject matter of the pending action or seeks information which is not admissible and not reasonably calculated to lead to the discovery of admissible evidence.

5. Respondents object to each discovery request to the extent that it requests Respondents to conduct electronic searches for emails or other electronic data that were deleted or removed from active files (by archive, back-up or otherwise) in the ordinary course of business prior to receipt of these discovery requests, for the reason that it would be unreasonable, oppressive and unduly burdensome.

6. Respondents object to each discovery request to the extent that it requests Respondents to obtain information and/or documents which are not in the possession, custody or control of any of the Respondents.

7. Respondents object to each discovery request to the extent that it seeks documents protected by the attorney-client privilege, the attorney work product immunity or any other applicable privilege or immunity ("Privileged" documents), and will not produce Privileged documents.

8. Respondents object to each discovery request to the extent that it seeks a trade secret or other confidential research, development or commercial information. Respondents will not produce or disclose any information or documents disclosing trade secret or other confidential research, development or commercial information until a Protective Order has been entered in this matter.

9. Respondents object to each Discovery Request to the extent that it seeks confidential and personal information related to individual employees.

**SECOND SET OF SUPPLEMENTAL RESPONSES TO  
EPA'S DISCOVERY REQUESTS**

Subject to and without waiving the foregoing General Objections, Respondents supplement their Responses to EPA's Discovery Requests dated March 25, 2009, as follows:

1. For John A. Biewer Co., Inc. and Biewer Lumber LLC, complete tax returns including all schedules and attachments for January 1, 1997 through the present.

**RESPONSE: Respondents JAB Company and Biewer Lumber LLC responded to this request in the Responses to EPA's Discovery Requests dated March 25, 2009 (hereafter referred to as "Responses") and in Supplemental Responses to EPA's Discovery Requests dated April 28, 2009 (hereafter referred to as "Supplemental Responses"), subject to the objections stated therein. No further response is required by this Court's Order Regarding EPA's Motion for Discovery dated May 6, 2009 (hereafter referred to as "Order").**

2. For John A. Biewer Co., Inc. and Biewer Lumber LLC, complete year-end financial statements, including the auditor's letter, balance sheet, income statement, statement of cash flows and notes, for January 1, 1997 through the present.

**RESPONSE: Respondents JAB Company and Biewer Lumber LLC responded to this request in the Responses and Supplemental Responses”), subject to the objections stated therein. No further response is required by this Court’s Order.**

3. For John A. Biewer Company of Ohio and John A. Biewer Company of Toledo, complete year-end financial statements, including the auditor’s letter, balance sheet, income statement, statement of cash flows and notes for FY 1997 (the oldest financial statements that you provided are dated November 1998, according to a hand-written note on the Income Statements).

**RESPONSE: Respondents JAB Ohio and JAB Toledo have already produced the requested documents to the EPA in the Responses”), subject to the objections stated therein. No further response is required by this Court’s Order.**

4. Ownership and corporate management information:

a. For the Ohio and Toledo companies, John A. Biewer Company Inc., and Biewer Lumber LLC, a current corporate map, including detailed information on corporate ownership and officers, for all levels of corporate relationship. A corporate map showing the relationship of Toledo and Ohio Companies with John A. Biewer Co., Inc, Biewer Lumber LLC and other related entities.

**RESPONSE: Respondents have already produced the requested information and documents to the EPA in their Responses and Supplemental Responses, subject to the stated objections therein. No further response is required by this Court’s Order.**

b. A history of the ownership of the Toledo and Ohio Companies, John A. Biewer Co., Inc. and Biewer Lumber LLC from January 1, 1997 to

present, including percentages of ownership if more than one shareholder, member or partner.

**RESPONSE: Respondents have already produced the requested information and documents to the EPA in their Responses and Supplemental Responses, subject to the stated objections therein. No further response is required by this Court's Order.**

- c. A history of the officers of the Toledo and Ohio companies, John A. Biewer Co., Inc. and Biewer Lumber LLC from January 1, 1997 to the present.

**RESPONSE: Respondents have already produced the requested information and documents to the EPA in their Responses and Supplemental Responses, subject to the stated objections therein. No further response is required by this Court's Order.**

- d. A history of the Board of Directors of the Toledo and Ohio Companies, John A. Biewer Co., Inc. and Biewer Lumber LLC from January 1, 1997 to the present.

**RESPONSE: Respondents have already produced the requested information and documents to the EPA in their Responses and Supplemental Responses, subject to the stated objections therein. No further response is required by this Court's Order.**

- e. Copies of the Board of Directors' Meeting Minutes, Resolutions, or any other records of the Board for the four companies from January 1, 1997 to present.

**RESPONSE: Respondents have already produced the requested information and documents to the EPA in their Responses and Supplemental Responses, subject to the stated objections therein. No further response is required by this Court's Order.**

5. For the Toledo company, a description of all related party transactions for the period of January 1, 1997 to the present. For the Ohio company, a description of all related party transactions for the period of January 1, 2001 to the present. A related party transaction

includes, but is not limited to, sales, purchases, and transfers of realty and personal property; services received or furnished, for example, accounting management, engineering, and legal services; use of property and equipment by lease or otherwise; borrowings and lendings; guarantees; maintenance of bank balances as compensating balances for the benefit of another; intercompany billings based on allocations of common costs; and filings of consolidated tax returns.

Statement No. 57 of the Financial Accounting Standards Board defines related parties as the following:

- Affiliates of the enterprise. An affiliate is a party that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an enterprise.
- Entities for which investments are accounted for by the equity method by the enterprise.
- Trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of management.
- Principal owners of the enterprise. Principal owners are owners of record or known beneficial owners of more than 10 percent of the voting interests of the enterprise.
- Management of the enterprise. Management includes persons who are responsible for achieving the objectives of the enterprise and who have the authority to establish policies and make decisions by which those objectives are to be pursued. Management normally includes members of the board of directors, the chief executive officer, chief operating officer, vice presidents in charge of principal business functions (such as sales, administration, or finance), and other persons who perform similar policymaking functions. Persons without formal titles also may be members of management.
- Members of the immediate families of principal owners of the enterprise and its management. Immediate family includes family members whom a principal owner or a member of management might control or influence or by whom they might be controlled or influenced because of the family relationship.
- Other parties with which the enterprise may deal if one party controls or can significantly influence the management or operating policies of the other to an

extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.

- Other parties that can significantly influence the management or operating policies of the transacting parties or that have an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

For each transaction, the description should include, but not be limited to, the specific nature of the transaction, the related parties' names, the date of the transaction, and the dollar amount of the transaction.

**RESPONSE: Respondents JAB Toledo and JAB Ohio have already produced the requested information and documents to the EPA in their Responses and Supplemental Responses, subject to the stated objections therein. Respondents are unaware of any additional related party transactions other than those documented in the information and documents previously produced. No further response is required by this Court's Order.**

- a. For all transactions of \$5,000 or more involving transfer or sale of an item or asset from Toledo or Ohio company to a related party, provide all documentation developed by Toledo or Ohio company to assure that the asset transfer or sale was consistent with a third-party market transaction.

**RESPONSE: Respondents JAB Toledo and JAB Ohio have already produced the requested information and documents to the EPA in their Responses and Supplemental Responses, subject to the stated objections therein. Respondents are unaware of any additional related party transactions other than those documented in the information and documents previously produced. No further response is required by this Court's Order.**

- b. For all loans or other financing transactions between Toledo and Ohio companies and related parties, provide copies of the agreements between the parties.



**RESPONSE: Respondents have already informed the EPA in their Responses that the requested documents do not exist because there are no loans or other financing transactions between Respondent JAB Toledo, Respondent JAB Ohio, or a related party. No further response is required by this Court's Order.**

6. Provide an explanation of the companies' treatment of dividends on the balance sheet. Both companies show negative dividends (\$150,000 for the Toledo company and \$300,000 for the Ohio company) on their 1998 and 1999 balance sheets. Starting in 2000, these values are removed from the balance sheet. Please clarify the nature of these balance sheet entries, whether they represent actual cash in or out, and the reason for their disappearance in 2000. Also identify with which entity these dividend transactions occurred.

**RESPONSE: Respondents have already provided the EPA with the requested information in their Responses"), subject to the objections stated therein. No further response is required by this Court's Order.**

7. Provide all documents related in any way to the detail of the "Accounts Receivable Intercompany" and "Accounts Payable Intercompany" entries appearing on the Toledo company's balance sheets. The documentation should include, but not be limited to, the related parties associated with these transactions, the date of the transaction, and the services that were provided and received in association with these transactions. List the year end balances for these accounts for each related party for the years ending 1997 to present.

**RESPONSE: In addition to the documents attached to the Supplemental Responses, Respondent JAB Toledo has attached documents related to accounts receivable intercompany and accounts payable intercompany for the fiscal years 2007 and 2008 as**

**Attachment A. Respondent JAB Toledo is still compiling responsive documents for earlier fiscal years and will produce said documents, to the extent they exist, as soon as possible.**

8. Provide all documents related to in any way to the detail of the “Accounts Receivable Intercompany” and “Accounts Payable Intercompany” entries appearing on the Ohio company’s balance sheets. The documentation should include, but not be limited to, the related parties associated with these transactions, the date of the transaction, and the services that were provided and received in association with these transactions. List the year end balances for these accounts for each related party for the years ending 2001 to present.

**RESPONSE: In addition to the documents attached to the Supplemental Responses, Respondent JAB Ohio has attached documents related to accounts receivable intercompany and accounts payable intercompany for the fiscal years 2007 and 2008 as Attachment B. Respondent JAB Ohio is still compiling responsive documents for earlier fiscal years and will produce said documents, to the extent they exist, as soon as possible.**

9. For the Ohio company, describe in detail the transaction or transactions that occurred when \$1.4 million in inventory appearing on the company’s balance sheet in November 2001, became \$0 on the November 2002 balance sheet. Provide detailed information on the items included in the inventory as of November 2001, including, but not limited to, their book value and their estimated market value at the time. If the inventory was sold, provide the contract of sale of the inventory, the parties to which it was sold, and the value the company received from the sale, and whether this consideration was in the form of a note receivable or cash payment. Provide all documentation related to the reduction of the inventory from \$1.4 million to 0, including, but not limited to, any contracts, checks, and bank transfers.

**RESPONSE:** Respondent JAB Ohio provided some responsive information and documents in the Supplemental Responses. Respondent JAB Ohio acknowledges that this Court's recent Order requires it to produce "records to support the assertion that remaining inventory was sold at cost to JAB Company, JAB Illinois, and Biewer of Lansing LLC and supportive records to show that JAB Ohio's account was credited those amounts." Respondent JAB Ohio will produce said documents, to the extent they exist, as soon as possible.

10. Did the Toledo company sell inventory or other assets after it stopped operating? If so, provide detail on the transaction similar to that provided in Request 8 above.

**RESPONSE:** Respondents have already provided the EPA with responsive information in their Supplemental Responses"), subject to the objections stated therein. No further response is required by this Court's Order.

11. Provide an itemization of the fixed assets currently owned by the Ohio and Toledo companies (e.g. an asset ledger) that shows a brief description of the asset, the year it was put in service, the original cost, the accumulated depreciation and an estimate of the current market value.

**RESPONSE:** Respondents JAB Ohio and JAB Toledo have already produced the requested information and documents in the Responses"), subject to the objections stated therein. Pursuant to this Court's Order, no further response is required.

12. Provide estimates of the current market value for each parcel of land, improvements, and equipment owned by the Ohio and Toledo companies.

**RESPONSE:** Respondents JAB Ohio and JAB Toledo have already produced all responsive information and documents in their possession, as indicated in the

**Supplemental Responses”), subject to the objections stated therein. No further response is required by this Court’s Order.**

13. Provide the general ledgers from January 1, 1997 to present for the Ohio and Toledo companies. Provide the chart of accounts for both companies.

**RESPONSE: Respondents JAB Ohio and JAB Toledo have attached monthly general ledger trial balances from January 1, 1997 through December 31, 2008 as Attachment C. Respondents JAB Ohio and JAB Toledo have also attached a key to these general ledgers as Attachment D to correlate the dates in the report headings with the actual dates covered by the reports. Due to a change from a November fiscal year to a calendar fiscal year in 2002, report headings prior to December 2002 do not accurately describe the report contents. The key has been included as a guide to interpret the report headings. For general ledger reports for years 1997-2005, JAB Ohio accounts have a suffix ranging from 730 to 739 and JAB Toledo accounts have a suffix ranging from 760-769.**

14. Provide copies of contracts between Mannik & Smith Group and Toledo and Ohio companies (or a representing party). Provide all payment documents associated with this contract(s), including, but not limited to, copies of invoices, proof of bank transfers and all other payment documents with regard to payments made to Mannik & Smith Group by the parties for the services rendered by Mannik & Smith Group at the Ohio and Toledo sites (in particular, the Closure Plan prepared by Mannik & Smith Group).

**RESPONSE: Respondents JAB Toledo and JAB Ohio are continuing to search for responsive documents and, to the extent that documents responsive to this request exist, they will be produced as soon as possible.**

15. Provide all documents in possession of the Ohio and Toledo companies, as well as Biewer Lumber LLC and John A. Biewer Co. Inc., discussing the closure and closure costs at the Ohio and Toledo companies' facilities, as well as all documents discussing the extent of contamination at each company and the associated decontamination activities required to remove the contamination.

**RESPONSE: Respondents have provided some responsive information and documents in the Responses and Supplemental Responses, subject to the objections stated therein. Pursuant to this Court's Order, Respondents acknowledge that they must produce documents in their possession "regarding the costs to properly close the facilities in conformance with the law, as proposed in the plans," to the extent they exist and have not already been produced. Respondents are continuing to search for responsive documents and to the extent they exist, they will be produced as soon as possible.**

16. For the Ohio and Toledo companies, provide the number of officers and employees employed after the shut-down (2001 and 1997, respectively). For each officer and employee, provide name, position, a brief job description and annual gross pay. Provide copies of pay stubs and all other documentation confirming the payments made by the Ohio and Toledo companies to these officers and employees during the period since the closure and until the present.

**RESPONSE: Respondents JAB Ohio and JAB Toledo have already produced the requested information and documents, as stated in the Supplemental Responses"), subject to the objections stated therein. No further response is required by this Court's Order.**

17. For the Ohio and Toledo companies, provide the names of any individual acting on behalf of each company after the shut-down (2001 and 1997, respectively). For each

individual, provide name, corporate affiliation, position(s), and nature of compensation for work performed on behalf of Ohio or Toledo. Provide all documentation confirming the payments made by the Ohio and Toledo companies to these individuals during the period since the closure and until the present.

**RESPONSE: Respondents JAB Ohio and JAB Toledo have already produced some of the responsive information, as indicated in the Supplemental Responses”), subject to the objections stated therein. Respondents JAB Ohio and JAB Toledo acknowledge that this Court’s Order requires them to “provide information as to Brian Biewer’s corporate affiliations, position(s) and information identifying him as acting on behalf of Biewer Toledo and Ohio and substantiation that he was acting as its sole representative.” Respondents JAB Ohio and JAB Toledo will produce the required information as soon as possible.**

18. Provide the name and account number of the checking account(s) for Ohio and Toledo companies, as well as the name of the bank where this checking account is open, and the name of the primary holder of the account. If the checking account(s) have been closed, advise as to when the account was closed, and describe how the Ohio and/or Toledo companies make payments in the absence of a checking account.

**RESPONSE: Respondents JAB Ohio and JAB Toledo have already produced the requested information in the Supplemental Responses”), subject to the objections stated therein. No further response is required by this Court’s Order.**

19. With regard to the Repair and Maintenance expense appearing on the Ohio and Toledo companies’ income statements and the Legal and the Accounting expense appearing on

the Toledo company's income statement since the closure (2001 and 1997, respectively), provide the following information:

- a. Identify the specific services associated with these expenses.

**RESPONSE: Respondents JAB Toledo and JAB Ohio are continuing to search for responsive documents and, to the extent that documents responsive to this request exist, they will be produced as soon as possible.**

- b. Identify who performed the services associated with these expenses. If the services were performed by an Ohio or Toledo employee, provide name, position and brief job description of the employee, as well as the gross annual compensation and copies of the associated pay stubs. If the services were performed by a third party or a related entity, provide a service contract, the list of the services performed, and the associated payment information (any checks, payment stubs and other payment documentation).

**RESPONSE: Respondents are not yet able to determine if employees or third parties were responsible for performing any services associated with the expenses. Respondents object to this request to the extent that it seeks confidential and personal information related to individual employees. Respondents also acknowledge, however, that this Court has directed them to produce the requested information, subject to an acceptable confidentiality agreement. Therefore, Respondents JAB Toledo and JAB Ohio will produce responsive information and documents, to the extent they exist, as soon as possible.**

20. Identify the individual and company that prepare the financial data for the Ohio and Toledo companies. If the financial data are prepared by an employee(s), provide the

name(s), position and brief job description of the employee(s), as well as the gross annual compensation and copies of the associated pay stubs. If the services are performed by a third party or a related entity, provide all documentation regarding the services including any contract or agreement, the list of services performed, and the associated payment information, including, but not limited to, any checks, payment stubs and other payment documentation.

**RESPONSE: Without waiving their previously stated objections, Respondents JAB Ohio and JAB Toledo have provided the EPA with some of the requested information in the Supplemental Responses. JAB Ohio and JAB Toledo acknowledge that this Court's Order also requires them to produce "documentation regarding payment for services in the preparation of financial statements of these companies." Respondents JAB Ohio and JAB Toledo will provide the requested documents, to the extent they exist, to the EPA as soon as possible.**

21. With regard to all that property, income or other tax and insurance payments made by the Ohio and Toledo companies since the closure, provide all documents confirming the payments made by the Ohio and Toledo companies (including, but not limited to, copies of the checks covering the tax and insurance payments, electronic transfer information, etc.).

**RESPONSE: Respondents JAB Toledo and JAB Ohio have produced some responsive information in Attachments A and B. Respondents JAB Toledo and JAB Ohio will continue to search for responsive documents and, to the extent that documents responsive to this request exist, they will be produced as soon as possible.**

22. With regard to the rental income received by the Toledo company, provide all documents related to the rental, including but not limited to: rental agreement(s), and rent payments (i.e., copies of checks received by the Toledo company from the renter, electronic



transfer documentation, etc.), documentation regarding the deposit of the rent payments (including the account number, holder of the account, and the name of the bank where the account is open), and any related correspondence.

**RESPONSE: Respondents JAB Ohio and JAB Toledo have already produced the requested information in the Supplemental Responses”), subject to the objections stated therein. No further response is required by this Court’s Order.**

Respectfully submitted,

MIKA MEYERS BECKETT & JONES PLC  
Attorneys for Respondent

Dated: May 12, 2009

By: \_\_\_\_\_



Douglas A. Donnell (P33187)  
900 Monroe Avenue, NW  
Grand Rapids, MI 49503  
(616) 632-8000

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PROTECTION AGENCY.

**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  
(Perrysburg Facility)

**CERTIFICATE OF SERVICE**

U.S. EPA ID #: OHD 106 483 522  
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  
\_\_\_\_\_ /



I, Jane E. Blakemore, hereby state that I am an employee of Mika Meyers Beckett & Jones, PLC, and that on May 13, 2009, I served a copy of:

**Respondents' Second Set of Supplemental Responses to EPA's Discovery Requests**

upon the following individual by Federal Express overnight mail:

Richard R. Wagner, Senior Attorney  
Office of Regional Counsel (C-14J)  
U. S. Environmental Protection Agency  
77 West Jackson Blvd.  
Chicago, IL 60604-3590

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

Dated: May 13, 2009

  
\_\_\_\_\_  
Jane E. Blakemore