Cheryl
WA 3019
9/28/05
5a

RECEIVED
05 SEP 30 AM 11:06
HEARINGS CLERK
EPA--REGION 10

FILE COPY

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 10
Seattle, Washington

IN THE MATTER OF: J.H. BAXTER & CO. Arlington, Washington EPA ID # WAD 05382 3019 Respondent	Docket No. RCRA-10-2005-0229 CONSENT AGREEMENT AND FINAL ORDER

CONSENT AGREEMENT

I. Preliminary Statement

Complainant, the Director of the Office of Compliance and Enforcement of the United States Environmental Protection Agency ("EPA"), Region 10, brings this administrative action seeking a civil penalty under Section 3008 of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act, ("RCRA"), 42 U.S.C. § 6928, and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, Title 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). The Respondent is J.H Baxter & Co. ("Baxter" or "Respondent'), a California Limited Partnership. Respondent owns and operates a facility located at 6520 188th NE, Arlington, Washington 98223.

Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Washington has been granted final authorization to administer and enforce a hazardous waste program. The Washington

Revised Statutes provide authority for the Washington State Dangerous Waste Regulations, Chapter 173-303, which include the regulations that are part of the state program authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926.

When EPA determines that any person has violated or is in violation of Subtitle C of RCRA, including any violation of an authorized state program, EPA may, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), issue an order assessing a civil penalty for any past or current violation of RCRA, and require compliance with Subtitle C immediately or within a specified time period. In the case of a violation in a state that is authorized to carry out a hazardous waste program, EPA shall notify the state in which such violation has occurred prior to issuing an order. The State of Washington has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

EPA alleges that the Respondent violated certain provisions of RCRA and the regulations promulgated thereunder. The parties have engaged in settlement discussions regarding the alleged violations. The parties have agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and the Final Order without further litigation is the most appropriate means of resolving this matter. Thus, pursuant to 40 C.F.R. § 22.13, EPA is simultaneously commencing and concluding this proceeding through this Consent Agreement and the Final Order ("CAFO") under 40 C.F.R. § 22.18(b)(2).

This CAFO resolves the alleged violations identified below and found during EPA's August 16, 1999, and November 17, 1999 inspections of Respondent's Arlington facility. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18 (b)(2) and (3), Complainant EPA alleges the following:

II. Findings of Fact and Conclusions of Law

1. Respondent is a California Limited Partnership organized and existing under the laws of the State of California doing business in the State of Washington.

2. Respondent owns and operates a facility located at 6520 188th NE, Arlington, Washington 98223 ("Facility").

3. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903, and is the owner or operator of a facility as defined at 40 C.F.R. § 260.10.

4. Respondent is a generator as defined in 40 C.F.R. § 260.10 and WAC 173-303-040.

5. Respondent generates and accumulates "hazardous wastes" as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and "dangerous wastes" as defined in the Washington Administrative Code (WAC) Chapter 173-303-040 at the Facility from wood-treating operations that are subject to RCRA and WAC Chapter 173-303.

6. Pursuant to 40 C.F.R. § 261.31(a) and WAC 173-303-9904, wastewaters, process residuals, preservative drippage, and spent formulations from wood-preserving processes generated at plants that use chlorophenolic formulations are hazardous wastes and dangerous wastes and are assigned the number F032.

7. Pursuant to 40 C.F.R. § 261.20, and WAC 173-303-090(5), mineral spirits exhibit the characteristic of ignitability and are assigned the dangerous waste code D001.

8. Respondent began wood-treating operations at the Facility in 1970.

9. On August 8, 1980, Respondent submitted a "Notification of Hazardous Waste Activity" (EPA Form 8700-12) to EPA, which identified the Respondent's hazardous waste generation activities at the Facility.

10. The violations alleged arise from two inspections of the Facility conducted by EPA on or about August 16, 1999, and November 17, 1999, and Respondent's response to the Request for Information pursuant to Section 104 of CERCLA and Section 3007 of RCRA dated January 16, 2001.

11. During the time of the inspections, Respondent used pentachlorophenol in an oil base to preserve wood at its Facility.

12. Respondent pressure treats wood in two retorts at its Facility.

13. Respondent has two drip pads that are located immediately outside of the opening end of the retorts. Treated wood is moved to a drip pad after treatment in the retort. The treated wood is later moved from the drip pads to the treated wood storage yard.

14. During the 1999 inspections, staining was observed adjacent to the drip pads on the center asphalt strip and the aprons.

15. On or about November 17, 1999, EPA collected samples from the areas adjacent to the drip pads.

16. At the time of the 1999 inspections, there were catch basins at the end of each drip pad (catch basins 13 and 14).

17. Catch basins 13 and 14 were connected by hard, underground piping to a ditch on the western side of the Facility.

18. On or about November 17, 1999, EPA collected samples from in and around catch basins 13 and 14.

19. The analytical results of all samples collected from the ground adjacent to the drip pads and in and around catch basins 13 and 14 showed that the samples contained pentachlorophenol.

COUNT I: STORAGE AND DISPOSAL OF DANGEROUS/HAZARDOUS WASTE WITHOUT A PERMIT OR INTERIM STATUS

20. The allegations of paragraphs 1. through 19. are incorporated herein by reference.

21. The regulation at WAC 173-303-800 and Section 3005 of RCRA, 42 U.S.C. § 6925 requires the owner or operator of a dangerous/hazardous waste Facility that treats, stores or disposes of dangerous or hazardous waste to obtain a permit.

22. Respondent does not have interim status nor has it been issued a permit to treat, store or dispose of dangerous/hazardous waste pursuant to WAC 173-303-803(2) and 173-303-806 or Section 3005 of RCRA, 42 U.S.C. § 6925.

I.a. Disposal of hazardous waste without a permit or interim status

23. The samples collected from the aprons and the center asphalt strip adjacent to the drip pads that contained pentachlorophenol indicated that wastewaters, process residuals or preservative drippage had been disposed of in those locations.

24. The samples collected from in and around catch basins 13 and 14 that contained pentachlorophenol indicated that wastewaters, process residuals or preservative drippage had been disposed of in those locations.

25. At the time of the 1999 inspections, Respondent had disposed of F032 listed hazardous waste on the ground off of its drip pads on the aprons, and center asphalt strip.

26. At the time of the 1999 inspections, Respondent had disposed of F032 listed hazardous waste on the ground in and around catch basins 13 and 14.

27. At the time of the 1999 inspections, Respondent had disposed of F032 listed hazardous waste at its Facility without a permit or interim status.

I.b. Failure to comply with conditions for accumulation of hazardous waste without a permit or interim status

28. Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulation at WAC 173-303-800 requires the owner or operator of a hazardous waste Facility that treats, stores or disposes of hazardous waste to obtain a permit. However, in accordance with 40 C.F.R. § 262.34 and WAC 173-303-200(1) a generator may accumulate hazardous waste on-site without a permit for ninety (90) days or less, after the date of generation, provided that:

a. Where the waste is placed on a drip pad, the generator complies with 40 C.F.R. § 265.443 (WAC 173-303-675).

b. the waste is placed in containers and the generator complies with subparts I, AA, BB, and CC of 40 C.F.R. Part 265 (WAC 173-303-630(2), (3), (4), (5), (6), (8), (9), (10), and (11)). Container accumulation areas constructed or installed after September 30, 1986, must also comply with the provisions of WAC 173-303-630(7); and

c. the generator otherwise complies with WAC 173-303-200 and 40 C.F.R. § 262.34.

29. At the time of the inspection(s) noted below, Respondent failed to accumulate hazardous waste in accordance with the following conditions:

Failure to minimize tracking of hazardous waste or hazardous constituents off the drip pad

30. The regulation at 40 C.F.R. § 265.443(j) (WAC 173-303-675(4)(j)) requires that drip pads be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents by personnel or equipment.

31. At the 1999 inspections, workers walked onto and off of the drip pads tracking preservative drippage (F032 hazardous waste) off of the drip pads.

32. At the 1999 inspections, there were stains of preservative drippage on the ground adjacent to the drip pads.

33. At the 1999 inspections, there were tire track marks on the asphalt leading off a drip pad consistent with equipment driving on to and off of the drip pad.

34. At or before the time of the 1999 inspections, Respondent did not operate its drip pads to minimize tracking of hazardous waste or hazardous constituents by personnel or equipment in accordance with 40 C.F.R. § 265.443(j) (WAC 173-303-675(4)(j)).

Failure to label and to keep closed containers of hazardous/dangerous waste

35. The regulation at WAC 173-303-200(1)(c) and 40 C.F.R. § 262.34 requires that containers of dangerous or hazardous waste be marked with the date upon which each period of accumulation begins.

36. The regulation at WAC 173-303-200(1)(d) and 40 C.F.R. § 262.34 requires that containers of dangerous or hazardous waste be labeled or marked with the words "hazardous waste" or "dangerous waste".

37. The regulation at WAC 173-303-630(5)(a) and 40 C.F.R. § 262.34 requires that containers of dangerous or hazardous waste must always be closed, except when it is necessary to add or remove waste.

38. At the time of the August 1999 inspection, in the tank farm associated with the drip pads were two drums that contained gloves and absorbent pads contaminated with listed hazardous waste F032.

39. The two drums that contained gloves and absorbent pads were not closed and waste was not being added or removed.

40. At the time of the August 1999 inspection, outside of the wash rack station and just north of a large yellow dumpster there were several large white bags that contained gravel, wood particles and other waste generated by the clean up of the infrequent and incidental preservative drippage in the storage yard. This waste included, was mixed with, or contained preservative drippage listed hazardous waste F032.

41. These white bags were not closed and waste was not being added or removed.

42. These white bags were not labeled with the words "hazardous waste" or "dangerous waste".

43. At the time of the August 1999 inspection, a drum of waste mineral spirits (dangerous waste D001) was not closed nor labeled with the words "hazardous waste" or "dangerous waste" as required.

44. At the time of the August 1999 inspection, there was a drum containing floor sweepings in the butt tank area. This waste included, was mixed with, or contained preservative drippage listed hazardous waste F032.

45. The drum of floor sweepings was not closed and waste was not being added or removed.

Summation of Count I

46. Respondent disposed of hazardous waste on the ground; stored dangerous/hazardous waste in containers without a permit or interim status and without complying with conditions for accumulation in containers without a permit or interim status; and operated hazardous waste drip pads without complying with conditions for operating without a permit or interim status. For these reasons, Respondent was subject to the requirement to have a permit or interim status.

COUNT II: FAILURE TO HAVE A WRITTEN CLOSURE PLAN

47. The allegations of paragraphs 1. through 46. are incorporated herein by reference.

48. At or before the time of the 1999 inspections, Respondent failed to comply with the conditions for storage of hazardous/dangerous waste without a permit or interim status set forth at 40 C.F.R. § 262.34 and WAC 173-303-200.

49. At or before the time of the 1999 inspections, Respondent disposed of hazardous waste at its Facility without a permit or interim status.

50. Respondent failed to file a Part A permit application per WAC 173-303-803(2), Section 3005 of RCRA, and 40 C.F.R. Part 270 for the dangerous/hazardous waste storage and disposal that occurred at or before the 1999 inspections.

51. The regulation at WAC 173-303-400 states that the interim status standards apply to owners and operators who treat, store, transfer and/or dispose of dangerous waste.

52. The regulation at WAC 173-303-400 states that the interim status standards apply to owners and operators of facilities in existence on November 19, 1980, who have failed to provide the required notification pursuant to WAC 173-303-060 or failed to file Part A of the permit application pursuant to WAC 173-303-805(4) and (5).

53. The regulation at WAC 173-303-400(3) sets forth the interim status standards to which owners and operators are subject.

54. Respondent stored and disposed of dangerous or hazardous waste at its Facility at or before the 1999 inspections of the Facility and is the owner and operator of a hazardous waste management facility.

55. Respondent failed to comply with applicable standards set forth in 40 C.F.R. Part 265 that are incorporated by reference into WAC 173-303-400(3).

56. The regulation at WAC 173-303-400(3) incorporates by reference, among other regulations, 40 C.F.R. § 265.112.

57. The regulation at 40 C.F.R. § 265.112 requires that owners or operators of hazardous waste management facilities have a written closure plan that identifies the steps necessary to perform closure as provided at 40 C.F.R. § 265.112

58. At the 1999 inspections, Respondent did not have a written closure plan for its Facility in violation of 40 C.F.R. § 265.112.

59. The regulation at WAC 173-303-400(3) incorporates by reference, among other regulations, 40 C.F.R. § 265.118.

COUNT III: FAILURE TO HAVE A COST ESTIMATE FOR CLOSURE

60. The allegations of paragraphs 1. through 59. are incorporated herein by reference.

61. The regulation at WAC 173-303-400(3) incorporates by reference, among other regulations, 40 C.F.R. § 265.142.

62. The regulation at 40 C.F.R. § 265.142 requires that owners or operators of hazardous waste management facilities have a cost estimate for closure.

63. At the 1999 inspections, Respondent did not have a cost estimate for closure for its Facility in violation of 40 C.F.R. § 265.142.

III. TERMS OF SETTLEMENT

64. The allegations of paragraphs 1. through 63. are hereby incorporated as if fully set forth herein.

65. Pursuant to Sections 3008(a)(3) & (g) of RCRA, 42 U.S.C. § 6925(a)(3) & (g), and based on the allegations above, the nature of the violations, Respondent's agreement to perform a SEP, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of THIRTEEN THOUSAND, TWO HUNDRED AND FIFTY-NINE DOLLARS ($13,259.00).

66. In settlement of Counts I through III above, Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited in the

foregoing paragraph, to the performance of the Supplemental Environmental Project, and Respondent shall undertake the following activities:

a. Not treat, store, or dispose of dangerous waste without a permit except in accordance with conditions for accumulation of dangerous waste specified at WAC 173-303-200.

b. Complete closure of the ditch and catch basins in accordance with the closure plan approved by Ecology. Respondent has submitted to EPA and the Washington State Department of Ecology ("Ecology") a closure plan for closure of the ditch and catch basins (see paragraph 17 above) by removal or decontamination ("clean closure") in accordance with 40 C.F.R. Part 265, Subpart G, and WAC 173-303-610(2)(b). In the event that EPA, in consultation with Ecology, concludes that the investigation of the extent of the contamination caused by the disposal of hazardous waste at the ditch and catch basins shows that clean closure is not achievable, Respondent must:

i. Submit to EPA and Ecology a post-closure plan in accordance with 40 C.F.R. § 265.118 and WAC 173-303-400(3);

ii. Establish and maintain a groundwater monitoring program in accordance with 40 C.F.R. Part 265, Subpart F, and WAC 173-303-400(3); and

iii. Establish and maintain financial assurance for post-closure in accordance with 40 C.F.R. § 265.118 and WAC 173-303-400(3).

c. Close the center asphalt strip and aprons (see paragraph 14. above) when the drip pads are closed in accordance with 40 C.F.R. § 264.575, and WAC 173-303-675(6).

d. Establish and maintain institutional controls in accordance with the selection of remedies under the Section 7003 Administrative Order on Consent, Docket No. RCRA-10-2001-0086.

e. All work to be performed pursuant to this CAFO shall be under the direction and supervision of qualified personnel. Respondent shall provide a copy of this CAFO to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this CAFO. Respondent shall provide a copy of this CAFO to any successor(s) in interest prior to any transfer of ownership or operation of the Facility.

67. Attached to this CAFO is a Certificate of Completion (Attachment A). Respondent must execute and submit this Certificate to EPA at the address set forth in paragraph 69. within fourteen (14) days of completing each action set forth in paragraph 66.a.,b.,c., and d.

68. Respondent shall pay the full amount of the assessed penalty no later than thirty (30) days after the date a copy of this CAFO signed by the Regional Administrator is mailed to Respondent.

69. Respondent shall make its payment by mailing a cashier's or certified check payable to "Treasurer, United States of America" to:

U.S. Environmental Protection Agency, Region 10
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

A transmittal letter giving Respondent's name, complete address, and this case docket number must accompany the payment. A copy of the check and of the accompanying transmittal letter shall be delivered or mailed to the Regional Hearing Clerk and to Jennifer G. MacDonald and Cheryl Williams at the at the following address:

U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Seattle, Washington 98101.

70. Failure to make timely payment of the assessed penalty, included any stipulated penalty as set forth below in paragraph 83., may subject Respondent to a civil action pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties as set forth in paragraph 84. below.

71. In accordance with Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), and the regulations governing the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, promulgated pursuant to the Debt Collection Improvement Act of 1996, violation of any portion of this CAFO shall subject Respondent to a civil penalty of up to $32,500 per day, per violation.

72. Unless otherwise specified, any communications with EPA regarding this CAFO shall be in writing and directed to Jennifer G. MacDonald, Assistant Regional Counsel, and Cheryl Williams, RCRA Compliance Officer at the following address:

U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Seattle, Washington 98101.

73. All actions required pursuant to this CAFO shall be undertaken in accordance with all applicable local, state, and federal laws and regulations.

74. Respondent shall undertake the following supplemental environmental project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvements. Within thirty (30) days of receiving a copy of this CAFO signed by the Regional Administrator, Respondent shall commence construction of the roof extension over the retorts and the butt tank tank farm as well as the enclosure of the south and west sides of the butt tank tank farm, as more specifically described in the documents attached hereto as Exhibit A and incorporated herein by reference. Respondent shall complete the SEP within ninety (90) days after commencing construction.

75. The total expenditure for the SEP shall not be less than SIXTY-FOUR THOUSAND, SIX HUNDRED AND TWENTY-FOUR DOLLARS ($64,624.00), in accordance with the specifications set forth in Attachment B. Respondent shall provide Complainant with documentation of the expenditures made in connection with the SEP within thirty (30) days of completion of the SEP.

76. Respondent hereby certifies that, as of the date it signs this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

77. Whether Respondent has complied with the terms of this CAFO as herein required shall be the sole determination of EPA.

78. SEP Completion Report: (a) Respondent shall submit a SEP Completion Report to EPA within thirty (30) days of completion of the SEP. The SEP Completion Report shall contain the following information:

(i) A detailed description of the SEP as implemented;

(ii) A description of any operating problems encountered and the solutions thereto;

(iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks;

(iv) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and,

(v) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

(b) Respondent agrees that failure to submit the SEP Completion Report required by this paragraph shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 83. below.

79. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is operating properly and in conformity with the representations made herein.

80. Respondent shall continuously use or operate the systems installed as the SEP so long as Respondent treats wood in the butt tank and retorts at the facility or for not less than ten (10) years subsequent to installation, whichever is longer.

81. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this CAFO, and Respondent shall provide the documentation of any such underlying research and data to EPA within seven (7) days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this CAFO, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

82. (a) Following receipt of the SEP Completion Report described in paragraph 78. above, EPA will do one of the following: (i) accept the SEP Completion Report; (ii) reject the SEP Completion Report, notify the Respondent, in writing, of deficiencies in the SEP Completion Report and grant Respondent an additional thirty (30) days in which to correct any deficiencies; or (iii) reject the SEP Completion Report and seek stipulated penalties in accordance with paragraph 83. herein.

(b) If EPA elects to exercise option (ii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by the EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this CAFO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraphs 83. and 84. herein.

83. Stipulated Penalties: (a) In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in paragraphs 74. above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 75. above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to paragraph 74., Respondent shall pay a stipulated penalty to the United States in the amount of $38,910.00.

(ii) If the SEP is not completed satisfactorily, but the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least ninety (90) percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not pay any stipulated penalty.

(iii) If the SEP is satisfactorily completed, but the Respondent spent less than ninety (90) percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of $12,800.

(iv) If the SEP is satisfactorily completed, and the Respondent spent at least ninety (90) percent of the amount of money required to be spent for the project, Respondent shall not pay any stipulated penalty.

(v) For failure to submit the SEP Completion Report required by paragraph 78. above, Respondent shall pay a stipulated penalty in the amount of $100 for each day after the SEP Completion Report is due until the report is submitted.

(b) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

(c) Stipulated penalties for subparagraph (v) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

(d) Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 69. above. Interest and late charges shall be paid as stated in paragraph 84. herein.

(e) Nothing in this CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

84. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Respondent shall pay the following amounts:

a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the date a conformed copy of this CAFO is mailed to Respondent; provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the date a conformed copy of this CAFO is mailed to Respondent.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of $15 shall be paid if any portion of the assessed penalty is more than thirty (30) days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than ninety (90) days past due, which nonpayment penalty shall be calculated from the date that a conformed copy of this CAFO is mailed to Respondent.

85. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of RCRA, 42 U.S.C. § 6901 et seq. and the Washington State Dangerous Waste Regulations, Chapter 173-303 WAC."

86. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

87. (a) If any event occurs which causes or may cause delays in the completion of the SEP as required under this CAFO, Respondent shall notify Complainant in writing within ten (10) days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this CAFO based on such incident.

(b) If the parties agree that the delay or anticipated delay in compliance with this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

(c) In the event that the EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.

(d) The burden of proving that any delay is caused by circumstances entirely beyond the control of the Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not, in any event, be a basis for changes in this CAFO or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

88. Respondent hereby agrees that any funds expended in the performance of the SEP shall not be deductible as a business expense for purposes of Federal taxes. In addition, Respondent hereby agrees that, within thirty (30) days of the date it submits its Federal tax reports for the calendar year in

which the above-identified SEP is completed, it will submit to EPA certification that any funds expended in the performance of the SEP have not been deducted from Federal taxes.

IV. General Provisions & Stipulations

89. The allegations of paragraphs 1. through 88. are hereby incorporated as if fully set forth herein.

90. Respondent admits EPA's jurisdictional allegations.

91. Respondent neither admits nor denies specific factual allegations contained in this Consent Agreement.

92. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.

93. Respondent waives any right to contest the allegations and to an adjudicatory hearing on any issue of law or fact set forth in and resolved by this Consent Agreement and waives its right to appeal the accompanying Final Order.

94. Respondent agrees to the issuance of this CAFO and agrees to comply with its terms.

95. Respondent agrees not to claim or attempt to claim a tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

96. Respondent and Complainant shall each bear its own costs and attorney fees.

97. Respondent certifies that, to the best of its knowledge, it is now in compliance with RCRA.

98. Respondent consents to the assessment of the civil penalty, to the issuance of the Final Order.

99. Respondent represents that it is duly authorized to execute this Consent Agreement and that the party signing this Consent Agreement on its behalf is duly authorized to bind Respondent to the terms of this Consent Agreement.

100. Respondent understands that failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of the CAFO may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate.

101. The provisions of this CAFO shall be binding on Respondent, its officers, directors, agents, servants, authorized representatives, successors and assigns.

102. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to RCRA for the violations alleged in this CAFO. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

103. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

FOR RESPONDENT J.H. BAXTER & CO.:

Dated: 9/26/05

Georgia Baxter
(signature)

Georgia Baxter
President & CEO
(print or type name and title)

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dated: 9-27-05

Michael A. Bussell, Director
Office of Compliance and Enforcement

Dated: _____

Jennifer G. MacDonald
Assistant Regional Counsel

FINAL ORDER

Pursuant to the provisions of RCRA, 42 U.S.C. § 6901 et seq., and EPA Region 10 and J.H. Baxter & Co., having entered into the foregoing Consent Agreement, IT IS HEREBY ORDERED that this Consent Agreement and Final Order (Docket No. RCRA-10-2005-0229) be entered, and Respondent shall pay a civil administrative penalty in the amount of THIRTEEN THOUSAND, TWO HUNDRED AND FIFTY-NINE DOLLARS ($13,259.00) in accordance with the terms set forth in the Consent Agreement and comply with its terms.

This Consent Agreement and Final Order shall become effective on the date below.

DATED this 28th day of September, 2005

L. Michael Bogert
Regional Administrator

Attachment A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
J.H. BAXTER & CO.	)	EPA Docket No. RCRA-10-2005-0229
Arlington, Washington	)	
	)	
EPA ID # WAD 05382 3019	)	
	)	CERTIFICATION
Respondent	)	

_____ certifies under penalty of perjury that the following statements are true, accurate and correct:

1. I am _____ of the above-captioned Respondent, J.H. Baxter & Co.

2. The requirements contained paragraph 66.[insert appropriate subparagraph number - a., b., c., or d.] in the Consent Agreement and Final Order issued on _____ to the above named Respondent has been fully and timely complied with.

EXECUTED this _____ day of _____, 200 .

_____
(signature)

_____
(print or type name and title)

Attachment B

J.H. Baxter & Co. Matter
Consent Agreement and Final Order
Docket Number RCRA-10-2005-0229

Supplemental Environmental Projects

Roof Extension for Retorts

The existing roof over the retort will be extended to make it flush with the buildings. The SEP calls for the construction of a clear span open roof extension to match the heights of the existing building resulting in a new, additional roof area of approximately 1,262 square feet. The roof extension will reduce the amount of rain that enters the area in front of the south end of the retorts. Currently, this precipitation mixes with listed hazardous waste in the retort area. Thus, a significant reduction in the total amount of precipitation entering this area of the plant will reduce the total amount of hazardous waste generated at the plant. The total estimated costs for labor and material for this project is $39,842.00.

Improvements to the Butt Tank Tank Farm

The south and west sides of the butt tank tank farm will be enclosed and the roof over the area will be extended through the construction of an extension of the roof over the butt tank tank farm. This enclosure and roof extension will reduce the amount of rain that could reach this area, and, thus, reduce the amount of hazardous waste generated at the plant. The enclosure will be constructed of 26 gauge painted metal and roof extension will be constructed of galvanized painted steel roofing. The estimated costs for labor and material for this project is $24,782.00.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: J.H. BAXTER & CO., DOCKET NO.: RCRA-10-2005-0229,** was filed with the Regional Hearing Clerk on September 30, 2005.

On September 30, 2005 the undersigned certifies that a true and correct copy of the document was delivered to:

Jennifer Mac Donald
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Cheryl Williams
US Environmental Protection Agency
1200 Sixth Avenue, OCE-127
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on September 30, 2005, to:

Sara Beth Watson
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Georgia Baxter
J.H. Baxter & Co.
1700 S. El Camino Real
P.O. Box 5902
San Mateo, CA 94402

DATED this 30th day of September 2005.

Carol Kennedy

Carol Kennedy
Regional Hearing Clerk
EPA Region 10