BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

In the Matter of:	DOCKET NO. RCRA-10-2018-0348
J.H. Baxter & Company, Respondent.	**CONSENT AGREEMENT AND FINAL ORDER**
Eugene, Oregon Facility.	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928.

1.2. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA granted the State of Oregon final authorization to administer and enforce a hazardous waste program and to carry out such program in lieu of the federal program.

1.3. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may enforce the federally-approved Oregon program.

1.4. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), notification of this action has been given to the Oregon Department of Environmental Quality.

1.5. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,"

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, ORC-113
Seattle, Washington 98101
(206) 553-1037

40 C.F.R. Part 22, EPA issues, and J.H. Baxter & Company (Respondent) agree to issuance of, the Final Order attached to this Consent Agreement (Final Order).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (Complainant) has been delegated the authority pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of RCRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of RCRA together with the specific provisions of RCRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. The requirements of 40 C.F.R. Parts 260 to 268, 270 and 273, and Subpart B of Part 124 as enacted through June 30, 2015, are incorporated by reference in Oregon Administrative Rule (OAR) 340-100-0002(1) and applicable in Oregon, except as otherwise modified or specified by OAR Chapter 340, divisions 100 to 106, 109, 111, 113, 120, 124 and 142, or as modified by OAR 340-100-0002(2)(3) and (4).

3.2. The definitions of 40 C.F.R. § 260.10 apply in Oregon, unless modified by a definition of the same term in OAR 340-100-0010 when used in Divisions 100 to 110 and 120 of OAR Chapter 340.

3.3. 40 C.F.R. § 260.10 defines a "person" as an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a state, or any interstate body.

3.4. 40 C.F.R. § 261.2(a)(1), defines "solid waste" as any discarded material that is not excluded under 40 C.F.R. § 261.4(a) or that is not excluded by a variance granted under 40 C.F.R. §§ 260.30 and 260.31 or that is not excluded by a non-waste determination under 40 C.F.R. §§ 260.30 and 260.34.

3.5. 40 CFR § 261.3 defines "hazardous waste" as a "solid waste" as defined in 40 C.F.R. § 261.2 that has not been excluded from regulation as a hazardous waste under § 261.4(b) and which meets any of the criteria identified in 40 C.F.R. § 261.3(a)(2).

3.6. OAR 340-100-0010(2)(r) defines a "generator" as the person who, by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.

3.7. JH Baxter & Company (Respondent) is a corporation doing business in Eugene, Oregon.

3.8. Respondent is a "person" as that term is defined by RCRA Section 1004(15), 42 U.S.C. § 6903(15).

3.9. At all times relevant to the allegations set forth herein, Respondent has been the "owner" and "operator" of the JH Baxter & Company facility in Eugene, Oregon, (the "Facility"), as those terms are defined at 40 C.F.R. § 260.10. Respondent, at all times relevant to this Consent Agreement, conducted wood treatment operations at the Facility.

3.10. Respondent used creosote, pentachlorophenol, and ammoniacal copper zinc arsenate (ACZA) in wood treatment operations at its Facility. Each of these wood treatment preservatives is a hazardous waste when discarded.

3.11. Respondent is a "generator" as defined by OAR 340-100-0010(2)(r).

3.12. At all times relevant to the allegations set forth herein, Respondent's Facility was not a permitted treatment, storage, disposal facility, or an interim status facility under Section 3005 of RCRA, 42 U.S.C. § 6925.

COUNT 1: Storage of Hazardous Waste without a Permit or Interim Status

3.13. The allegations of paragraphs 3.1 through 3.12 are incorporated as if fully set forth herein.

3.14. 40 C.F.R. § 270.1(c) requires that any person who treats, stores, or disposes of hazardous waste have a permit or interim status.

3.15. The regulation at OAR 340-102-0034(2) requires that a generator shall comply with provisions found in 40 C.F.R. Part 262 and each applicable requirement of 40 C.F.R. § 262.34 (a), (b), (c), (d), (e), and (f).

3.16. 40 C.F.R. § 262.34(a) provides that certain generators may accumulate hazardous waste on-site for 90 days or less without a permit or interim status, provided that the generator complies with the requirements identified at 40 C.F.R. § 262.34(a)(1)-(4).

3.17. 40 C.F.R. § 262.34(a)(1)(iii) provides that a generator may place hazardous waste on a drip pad if it complies with the requirements of that section and subpart W of 40 C.F.R. Part 265 (40 C.F.R. §§ 265.440 - 265.445).

3.18. 40 C.F.R. § 265.443(a)(3) requires that drip pads must have a curb or berm around the perimeter.

3.19. EPA conducted an inspection of the Facility from September 29, 2014, through October 1, 2014, and observed the absence of a curb or berm along the west edge of the perimeter of the drip pad associated with Retort 85.

3.20. Respondent failed to meet the requirements of 40 C.F.R. § 265.443(a)(3).

3.21. 40 C.F.R. § 265.443(i) requires that a drip pad's surface must be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad.

3.22. During the EPA Inspection, the inspector observed an accumulation of soil, debris and other materials on the drip pad associated with Retorts 81 - 84 that was so severe that the condition of the drip pad could not be adequately inspected. Among other things, the inspector could not observe the distinction between the drip pad and surrounding soil, he could not see a painted yellow line that Respondent used to indicate the edge of the drip pad, and he could not determine the presence of a curb or berm (including any change in slope or gradient) at the edge of the drip pad.

3.23. Respondent failed to meet the requirements of 40 C.F.R. § 265.443(i).

3.24. 40 C.F.R. § 265.440(c)(1) provides that the requirements of 40 C.F.R. Part 265 Subpart W are not applicable to the management of infrequent and incidental drippage in storage yards provided that the owner or operator complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of such infrequent and incidental drippage. The required content of the contingency plan (Drippage Contingency Plan) is specified at 40 C.F.R. § 265.440(c)(1)(i) through (iv).

3.25. Respondent's Drippage Contingency Plan includes procedures to minimize tracking off of the drip pads by trams whether they are moved into the wood storage yard or into the tram storage area. Specifically, section 2.1.4.C.iv.b. states that "Trams are to be stored on the drip pad whenever possible. If trams cannot be stored on the drip pad, they will be cleaned and stored in the paved and covered tram storage area adjacent to the drip pad." Section 2.1.4.C.iv.c. states that "Trams must be clean and dry, and must be fully inspected before leaving the drip pad. (1) Tram contamination is to be removed by scraping and/or wiping with absorbent pads, or pressure washed prior to reuse or placement in the tram storage area. Visible preservative and other liquid or solid contamination must be removed from all parts for trams to be considered clean. Contamination includes liquids, sludge, sediment, wood splinters, dirt, rocks, or other debris."

3.26. During the EPA Inspection, the inspector observed that trams were moved from the drip pad associated with retorts 81-84 and into the covered tram storage area. The trams were not cleaned or dried as required by the Drippage Contingency Plan prior to moving off of the drip pads, and the inspector observed that the trams were covered in a black, thick, oily substance consistent with pentachlorophenol and creosote. He also observed that there was a

significant amount of staining on the asphalt surface of the tram storage area. It had the same color and consistency as that observed on the trams. After the inspection, Respondent pressure-washed the area and covered it with metal plates.

3.27. During the EPA Inspection, the inspector observed that trams were moved off of the drip pad associated with retort 85 without first being cleaned. The inspector also observed wood treating fluid (pentachlorophenol) drip from the trams onto the ground.

3.28. Respondent failed to comply with the requirements of 40 C.F.R. § 265.440(c)(1) by failing to comply with the procedures specified in its Drippage Contingency Plan.

3.29. 40 C.F.R. § 262.34(a)(2) requires that a generator clearly and visibly mark the date upon which each period of accumulation begins for inspection on each container holding a hazardous waste.

3.30. 40 C.F.R. § 262.34(a)(3) provides that, while being accumulated on-site, each container and tank storing a hazardous waste be labeled or marked clearly with the words "Hazardous Waste."

3.31. During the EPA Inspection, the inspector observed a large roll-off waste container positioned under the J-press that was used to collect bottom sediment sludge from the treatment of wastewaters from wood preservation processes that use pentachlorophenol. There was waste in the container at the time of the inspection, but it was not labeled with the words "Hazardous Waste" nor marked with the date that waste was first put in the container.

3.32. Bottom sediment sludge from the treatment of wastewaters from wood preservation processes that use pentachlorophenol is a hazardous waste (EPA hazardous waste number K001).

3.33. Respondent failed to comply with the requirements of 40 C.F.R. § 262.34(a)(2) and 40 C.F.R. § 262.34(a)(3).

COUNT 2: Failure to Submit a Closure Plan and Develop a Closure Cost Estimate

3.34. The allegations of paragraphs 3.1 through 3.33 are incorporated as if fully set forth herein.

3.35. Respondent operated the Facility as a hazardous waste management facility by failing to comply with the conditions of 40 C.F.R. § 262.34(a)(1)(iii), 40 C.F.R. § 262.34(a)(2), and 40 C.F.R. § 262.34(a)(3).

3.36. 40 C.F.R. § 265.112 requires, among other things, that owners or operators of a hazardous waste management facility have a written closure plan that identifies the steps necessary to perform partial and/or final closure of the facility at any point during its active life.

3.37. Respondent does not have a written closure plan for its Facility, in violation of 40 C.F.R. § 265.112.

3.38. 40 C.F.R. § 265.142 requires that owners or operators of hazardous waste management facilities have a detailed written estimate, in current dollars, of the cost of closing the Facility in accordance with the requirements in 40 C.F.R. §§ 265.111 through 265.115 and applicable closure requirements in 40 C.F.R. §§ 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, 265.404, and 265.1102.

3.39. Respondent does not have a closure cost estimate for its Facility, in violation of 40 C.F.R. § 265.142.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations and legal conclusions contained in this Consent Agreement. Nothing in this Consent Agreement, or in the execution and implementation of this Consent Agreement or Final Order, or both, shall be taken as an admission of liability by Respondent.

4.3. As required by Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), EPA has taken into account the seriousness of the violations and Respondent's good faith efforts to comply with applicable requirements. After considering these factors, EPA has determined, and Respondent agrees, that an appropriate penalty to settle this action is $64,000 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order, and to undertake the actions specified in this Consent Agreement.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: http://www2.epa.gov/financial/makepayment. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must note on the checks the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the checks, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk U.S. Environmental Protection Agency Region 10, Mail Stop ORC-113 1200 Sixth Avenue, Suite 155 Seattle, Washington 98101 Young.Teresa@epa.gov	Kristin McNeill U.S. Environmental Protection Agency Region 10, Mail Stop OCE-101 1200 Sixth Avenue, Suite 155 Seattle, Washington 98101 McNeill.Kristin@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty by this Consent Agreement and Final Order in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order attached hereto, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order attached hereto.

4.8.2. 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 30 days past due.

4.8.3. 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 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. Under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), failure to take the corrective actions specified in this Consent Agreement within the time specified in this Consent Agreement may subject Respondent to additional civil penalties for each day of continued noncompliance.

4.10. Based on the findings contained in this Consent Agreement, Respondent is also ordered to comply with the following requirements pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a):

4.10.1. Respondent shall not accumulate, store, or treat hazardous waste at the Facility except in accordance with a permit to operate a treatment, storage, or disposal facility pursuant to 40 C.F.R. Part 270, under interim status pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, or by complying with the conditions for accumulation in 40 C.F.R. § 262.34, including but not limited to the provisions in 40 C.F.R. Part 265 Subpart W, pertaining to drip pads, at each location where hazardous waste is generated, accumulated, or treated.

4.10.2. Respondent shall provide notice to the Oregon Department of Environmental Quality (DEQ) that the tram storage area at the facility should be considered an area of contamination and be included in DEQ's Record of Decision (ROD) for Facility cleanup, along with any associated consent judgement or order. Respondent's notice to DEQ shall detail how Respondent will work with DEQ to ensure that the ROD and consent judgment or order address RCRA closure and cost estimate requirements with respect to the tram storage area.

4.10.3. Respondent shall provide a copy of its notice to Oregon DEQ as required under paragraph 4.10.2, with a copy by electronic mail, to:

Kristin McNeill
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
McNeill.Kristin@epa.gov

4.11. The Assessed Penalty, including any additional costs incurred under Paragraph 4.9, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal tax purposes.

4.12. The undersigned representative of Respondent certifies that they are authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.13. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.14. Except as described in Paragraph 4.9, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.15. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.16. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

4.17. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.18. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this Consent Agreement, and to any stated permit action.

4.19. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

8/10/18

FOR RESPONDENT:

Georgia Baxter-Krause

Georgia Baxter-Krause, President
J.H. Baxter & Company

DATED:

8/16/2018

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, ORC-113
Seattle, Washington 98101
(206) 553-1037

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

In the Matter of:	)	DOCKET NO. RCRA-10-2018-0348
J.H. Baxter & Company,	)	**FINAL ORDER**
Respondent.	)	
Eugene, Oregon	)	
Facility.	)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent are ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under RCRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent' obligations to comply with all applicable provisions of RCRA and regulations promulgated or permits issued thereunder.

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, ORC-113
Seattle, Washington 98101
(206) 553-1037

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 23rd day of August, 2018.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, ORC-113
Seattle, Washington 98101
(206) 553-1037

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: J.H. Baxter & Company, Docket No.: RCRA-10-2018-0348**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Nicholas Vidargas
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 155
Seattle, Washington 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 to:

Georgia Baxter-Krause
President
J.H. Baxter & Company
P.O. Box 5902
San Mateo, CA 94402

DATED this 27 day of August, 2018.

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10