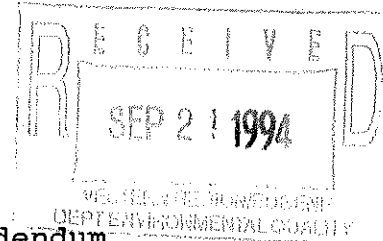


Oregon

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

September 19, 1994

Ms. Georgia Baxter
J.H Baxter & Co.,
a California Limited Partnership
P.O. Box 5902
San Mateo, California 94402



Re: Order Addendum

Dear Georgia:

A fully executed original of the *Second Addendum To Consent Order ECSR-WVR-88-06* is enclosed. The effective date for the addendum is September 16, 1994.

The effective date for the change in overhead rate is May 25, 1994. The next DEQ invoice will include the retroactive overhead charge back to May 25.

Please call me at (503) 229-6540 if you have any questions.

Sincerely,

Ann Levine, Project Manager
Site Response Section

Enclosure

cc w/enc: Jim Benedict, Cable Houston Benedict
Bill Donald, Keystone
Neil Woller, SRS-Eugene
wo/enc: Thomas Miller, SRS Manager
Project file

Post-it® Fax Note	7671	Date	6/21/01	# of pages	27
To	Roger Pennifill	From	Max Rosenberg		
Co./Dept.		Co.	DEQ		
Phone #		Phone #	503-686-7838		
Fax #	212-344-2286	Fax #			



811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
TDD (503) 229-6993

DEQ-1



SECOND ADDENDUM TO CONSENT ORDER ECSR-WVR-88-06

Pursuant to Subsection 7.0. of Consent Order ECSR-WVR-88-06 (Consent Order), DEQ and Respondent agree to amend this Consent Order as follows.

1. The ORS citations in the Consent Order have been renumbered. The following is a list of the old and corresponding current citations that pertain to the Consent Order.

<u>Old ORS</u>	<u>Current ORS</u>
466.540	465.200
466.550	465.210
466.553	465.400
466.567	456.255
466.570	465.260
466.573	465.315
466.580	465.330
466.590	465.380

2. Section 1 is amended to read:

"1. Purpose.

The mutual objective of DEQ and Respondent is to determine the nature and extent of releases of hazardous substances at Respondent's Eugene, Oregon, facility, and to develop, evaluate, and select appropriate removal and/or remedial measures in a manner that complies with the applicable provisions of ORS 465.200 through 465.420 and regulations promulgated thereto, and is protective of human health, safety, and welfare and the environment."

3. Subsection 5.A is amended to read:

"A. Remedial Investigation and Feasibility Study.

Respondent shall perform a remedial investigation and feasibility study (RI/FS) satisfying OAR 340-122-080, the terms and schedules set forth in the Scope of Work contained in Attachment B and Attachment C, attached to and incorporated by reference into this Consent Order, and the terms and schedules set forth in any approved work plan."

4. Subsection 7.C is amended to read:

"C. Project Managers.

(1) To the extent possible, all reports, notices, and other communications required under or relating to this Consent Order shall be directed

to:

DEQ
Project Manager:
Ann Levine
Department of Environmental
Quality
Waste Management and Cleanup
Division, 10th floor
811 S.W. Sixth Avenue
Portland, Oregon 97204
(503) 229-6540

Respondent
Project Manager:
Georgia Baxter
J.H Baxter & Co., a California
Limited Partnership
P.O. Box 5902
San Mateo, California 94402
(415) 349-0201

(2) The Project Managers shall be available and have the authority to make day-to-day decisions necessary to implement the work plan."

5. Effective May 25, 1994, subsection 7.H is amended to read:

"H. Reimbursement of DEQ Oversight Costs.

(1) DEQ shall submit to Respondent a monthly statement of costs incurred by DEQ or the State of Oregon after May 25, 1994, in connection with any activities related to the facility or oversight of Respondent's implementation of this Consent Order.


(2) DEQ or State of Oregon oversight costs payable by Respondent shall be reasonable and be "remedial action costs" within the meaning of ORS 465.200 (16), and shall include both direct and indirect costs. Direct costs include site-specific expenses, DEQ contractor, and DEQ legal costs. Indirect costs are those general management and support costs of DEQ and of the Waste Management and Cleanup Division allocable to DEQ oversight of this Consent Order and not charged as direct, site-specific costs. Indirect costs are based on a percentage of direct personal services costs.

(3) Subject to dispute resolution under Subsection 7.J., within thirty (30) days after issuance of the monthly statement, Respondent shall pay the amount of costs billed by check made payable to the "State of Oregon, Hazardous Substance Remedial Action Fund".

6. All other terms and provisions of Consent Order ECSR-WVR-88-06, the Consent Order Addendum dated October 29, 1990, and the approved Remedial Investigation Work Plan remain in effect and apply to this Second Addendum.

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STIPULATED, AGREED, and APPROVED for issuance:
J.H. BAXTER & CO., a California Limited Partnership
Respondent

By:  Date: September 9, 1994
Georgia Baxter
Vice President, Environmental Services

STIPULATED, AGREED, and so ORDERED:

State of Oregon
Department of Environmental Quality

By:  Date: 9/16/94
Fred Hansen
Director

ATTACHMENT C

FEASIBILITY STUDY SCOPE OF WORK

I. SCHEDULE

Within ninety (90) days of approval of the Phase II Remedial Investigation Report, Respondents shall submit for Oregon Department of Environmental Quality (DEQ) review and approval, a work plan for a Feasibility Study (FS) which addresses soil, ground water, and surface water including sediments.

Within thirty (30) days of receipt of DEQ's written comments, Respondents shall submit a revised FS work plan addressing DEQ's comments.

Respondents shall complete the FS according to the schedule specified in the approved work plan.

It is DEQ's intention to meet the schedule milestones and deadlines in this Consent Order and the approved Work Plan. Any DEQ delay in meeting the deadlines shall correspondingly extend the time for completion by the Respondents.

II. FEASIBILITY STUDY WORK PLAN

Objective: To develop and evaluate remedial alternatives for each contaminated medium, and recommend remedial actions to be taken at the facility.

Scope: The Focused Feasibility Study shall be developed in accordance with OAR 340-122-080 and "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA", OSWER Directive 9355.3-01, 1988, as applicable. The Feasibility Study shall develop an appropriate range of alternatives which meet the standards and criteria listed in OAR 340-122-040, and 340-122-090.

Procedures: The work plan shall include, but not be limited to the following:

1. DEFINITION

a. Define preliminary remedial action objectives (RAOs). Present a discussion of how final RAOs will be developed and refined; how contaminants and media of concern will be identified.

b. Describe the interim remediation activities which have been implemented

A. REPORT PREPARATION

The FS shall follow the outline in Table 6-5 (Pages 6-15) of the CERCLA guidance, as applicable. The report shall present the following for each alternative:

1. Final Remedial Action Objectives.
2. Volumes of affected media and associated contaminant mass and risk.
3. Preliminary remedial action alternatives previously assembled in the work plan.
4. Description and comparison of the remedial action alternatives, estimated cost, and rationale for selection.
5. Performance expectation (i.e., reductions in contaminant concentration levels and risk reduction), reliability, and ability to implement.
6. Identify any permits, rules, other applicable laws, or other requirements necessary for implementation of remedial activities and applicable to the site.
7. Design criteria and rationale.
8. General operation and maintenance requirements; necessary engineering or institutional controls.
9. Monitoring program to assure both short-term and long-term performance of the alternative.
10. Financial assurance mechanism to assure performance.
11. Estimated time for implementation.
12. Evaluation of the short-term and long-term effectiveness and risks of the alternative.
13. Recommendation and justification of the remedial action selected from the developed alternatives.
14. A schedule for implementation of the proposed remedial action.
15. Evaluation of necessity or appropriateness of exemptions under

ADDENDUM TO CONSENT ORDER ECSR-WVR-88-06

The Department of Environmental Quality (DEQ) and J.H. Baxter & Co. (Respondent) mutually agree to amend Consent Order ECSR-WVR-88-06.

1. The purpose of this addendum is to discontinue the quarterly monitoring carried out under NPDES permit No. 100144, Schedule C, and to institute a periodic monitoring program as a part of the Remedial Investigation.
2. An updated groundwater monitoring work plan (the plan) shall be submitted to DEQ for review and comment by December 17, 1990. The updated plan shall be based on the entire groundwater monitoring system now in place. The goal of the groundwater monitoring is to assess the nature and extent of the contamination, to characterize contaminant fate and transport over time, and to assess the progress and effectiveness of investigation and cleanup measures. Upon DEQ approval of the plan, Respondent shall implement the plan. The plan shall be updated as required by changing site conditions.
3. All plans prepared and work conducted as part of the Consent Order shall be consistent with DEQ's "Environmental Cleanup Division Quality Assurance Policy No. 760.00". Respondent shall ensure that each laboratory used by Respondent for analysis performs such analyses in accordance with such provisions.
4. All other terms and provisions of Consent Order ECSR-WVR-88-06 and the approved Work Plan remain in effect and apply to this addendum.

STIPULATED, AGREED, and APPROVED for issuance:
 J.H. BAXTER & CO.
 Respondent

By: *Joe Morgan JR*
 (Signature)
Joe Morgan JR
 (Name)
Vice President Treatment Services
 (Title)

Date: *10/23/90*

CLEARANCE		
TO	INITIAL	DATE
<i>D. Levine</i>	<i>AL</i>	<i>10/20/90</i>
<i>T. Miller</i>	<i>JM</i>	<i>10/26/90</i>
<i>M. Downs</i>	<i>JD</i>	<i>10/26/90</i>
<i>E. Hansen</i>	<i>sigurd</i>	<i>10-26-90</i>
<i>D. Levine</i>	<i>AL</i>	<i>10/22-90</i>

STIPULATED, AGREED, and so ORDERED:
 State of Oregon
 Department of Environmental Quality

By: _____
 Fred Hansen
 Director

Date: _____

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of)
) DEQ No. ECSR-WVR-88-06
 J.H. Baxter & Co.,)
) ORDER
 Respondent.)

Pursuant to ORS 466.570(4), the Director, Oregon Department of Environmental Quality (DEQ), issues this Order to J.H. Baxter & Co. (Respondent). This Order contains the following provisions:

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1. Purpose

The mutual objective of DEQ and Respondent is to determine the nature and extent of releases of hazardous substances at Respondent's Eugene, Oregon facility in accordance with ORS 466.540 through 466.590 and regulations promulgated thereto.

2. Stipulations

A. Respondent consents and agrees:

- (1) To issuance of this Consent Order;
- (2) To perform and comply with all provisions of this Consent Order;
- (3) To not challenge DEQ's jurisdiction to issue and enforce this Consent Order;
- (4) To waive any right Respondent might have, prior to commencement of action by DEQ to enforce this Consent Order, to seek judicial review, or review by the Environmental Quality Commission, of this Consent Order;
- (5) To not litigate, in any proceeding brought by DEQ to enforce this Consent Order or to assess penalties for noncompliance with this Consent Order, any issue other than Respondent's compliance with this Consent Order or conditions precedent to Respondent's compliance with this Consent Order;
- (6) To not assert, in any proceeding brought by DEQ to enforce this Consent Order or to assess penalties for noncompliance with this Consent Order, that performance by Respondent of any interim or removal measure or phase under

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this Consent Order discharges Respondent's duty to fully perform all remaining provisions or phases under this Consent Order; and

(7) To waive any right Respondent might have under ORS 466.570(7) to seek reimbursement of costs incurred under this Consent Order, except as permitted under Paragraph 7.J.(4) of this Consent Order.

B. DEQ and Respondent stipulate that Respondent's rights and duties under this Consent Order shall not be subject to any rules adopted under ORS 466.553 subsequent to issuance of this Consent Order; provided, this stipulation shall not bar DEQ from seeking a modification of this Consent Order or invoking other remedies to address any such rule changes.

3. Findings of Fact.

DEQ makes the following findings without admission of any such facts by Respondent:

A. Respondent is a California corporation licensed to do business in the State of Oregon.

B. Respondent owns and operates a wood treatment and preserving facility on approximately 25 acres, at 85 N. Baxter Rd., Eugene, Oregon. The general location of the facility is shown on Attachment A, attached to and incorporated by reference into this Consent Order.

C. Respondent has operated the subject facility since approximately 1945. The facility operation involves the pressure treatment of wood products with wood preservatives

such as creosote, pentachlorophenol, and ammoniacal copper zinc arsenate. In the past, products containing chromium were also used. The facility includes a retort building, product storage tanks, storage yards for raw and treated wood products, and an impoundment for containment and partial treatment of surface water runoff. Past activities include the use of an on-site pit where wastes containing creosote and/or pentachlorophenol were open burned.

D. On November 20, 1985, DEQ issued a National Pollutant Discharge Elimination System (NPDES) permit to Respondent, for the on-site surface water impoundment. Condition No. 1 of Schedule C of the NPDES permit required the Respondent to initiate groundwater monitoring at the facility. As a result, Respondent has conducted a series of groundwater investigations and an integrated geophysical survey at the facility. Reports submitted by Respondent, dated August 1986, May 1987, and May 1988, confirm soil and groundwater contamination by hazardous substances, including creosote compounds, pentachlorophenol, and arsenic. The sampling results include, but are not limited to, the following:

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<u>COMPOUND</u>	<u>MAXIMUM CONCENTRATION SOILS (Mg/Kg)</u>	<u>MAXIMUM CONCENTRATION GROUNDWATER (Mg/L.)</u>
Acenaphthene	23	2.3
Anthracene	15	1.3
Arsenic	2	0.34
Chrysene	3.3	0.54
Dibenzofuran	0.8	1
Fluoranthene	3	3.1
Fluorene	20	2.2
Napthalene	36	10
Pentachloro- phenol	58	4.3
Phenanthrene	15	5.4
Pyrene	13	2.2

4. Conclusions of Law and Determinations.

Based on the above Findings of Fact and the administrative record, DEQ determines, without admission of any such determinations by Respondent, that:

A. Respondent's plant and property are a "facility" under ORS 466.540(6).

B. Respondent J.H. Baxter & Co. is a "person" under ORS 466.540(13).

C. The substances described in Subsection 3.D. of this Consent Order are "hazardous substances" under ORS 466.540(9).

D. The presence of hazardous substances in soils and groundwater at the facility constitutes a "release" or "threat of release" into the environment under ORS 466.540(14).

E. The activities required by this Consent Order are necessary to protect public health, safety, and welfare and the environment.

F. Respondent J.H. Baxter & Co is a "person" liable for remedial action costs under ORS 466.567.

Based on the above Stipulations, Findings of Fact, and Conclusions of Law and Determinations, DEQ ORDERS:

5. Work to be Performed.

A. Remedial Investigation.

(1) Respondent shall perform a Remedial Investigation (RI) (including an endangerment assessment) satisfying OAR 340-122-080, the terms and schedules set forth in the Scope of Work contained in Attachment B (attached to and incorporated by reference into this Consent Order), and the terms and schedules set forth in any DEQ approved work plan prepared in accordance with the Scope of Work. The RI may be performed in phases, as approved by DEQ in a work plan.

(2) Respondent shall not be obligated to expend in excess of \$250,000 per calendar year in performing the RI and reimbursing DEQ oversight costs under Subsection 7.H. This limitation upon expenditures shall not include: (a) payment of stipulated penalties under Subsection 7.K.; (b) expenditures for any additional work ordered by DEQ; (c) expenditures for additional measures initiated by Respondent; or (d) expenditures for Respondent staff time. In the event that RI costs will exceed this amount, DEQ and Respondent shall undertake good faith negotiations toward ensuring timely completion of the RI. Upon DEQ's request, Respondent shall

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provide DEQ with documentation of costs incurred under this Consent Order. Notwithstanding this Paragraph, DEQ reserves its rights under law to address any emergency at the facility.

B. Additional Measures.

Respondent may elect at any time during the term of this Consent Order to undertake removal or remedial action measures other than those required under this Consent Order. Such other measures shall be subject to prior approval by DEQ.

6. Public Participation.

Upon issuance of this Consent Order, DEQ will provide public notice by a press release to local newspaper(s) of general circulation describing the measures required under this Consent Order; provided, DEQ shall provide Respondent a draft of the press release and consider any comments by Respondent on the draft press release prior to publication. Copies of the Consent Order will be made available to the public.

7. General Provisions.

A. Progress Reports.

Respondent shall deliver to DEQ monthly written progress reports, with two copies accompanying each report, containing: (1) actions taken under this Consent Order during the previous month; (2) actions scheduled to be taken in the next month; (3) sampling and test results; and (4) a description of any problems experienced during the previous

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month. Respondent shall submit a progress report to DEQ every month for the duration of this Consent Order, on or before the tenth (10th) day of each month.

B. DEQ Access and Oversight.

(1) Respondent shall allow DEQ to enter and move freely about all portions of the facility at all reasonable times for the purposes, among other things, of inspecting records relating to work under this Consent Order; observing Respondent's progress in implementing this Consent Order; conducting such tests and taking such samples as DEQ deems necessary; verifying data submitted to DEQ by Respondent; and, using camera, sound recording, or other recording equipment. Respondent shall permit DEQ to inspect and copy all records, files, photographs, documents, and data relating to work under this Consent Order, except that Respondent shall not be required to permit DEQ inspection or copying of items subject to attorney-client and attorney work product privileges.

(2) Respondent shall identify to DEQ--by addressor-addressee, date, and general subject matter-- any document, record, or item withheld from DEQ on the basis of attorney-client or attorney work product privilege. DEQ reserves its rights under law to obtain documents DEQ asserts are improperly withheld by Respondent.

(3) DEQ employees, agents, or contractors, when on Respondent's premises, shall abide by all reasonable and customary safety procedures and protocols established by

Respondent and identified in the approved work plan(s), and shall use their best efforts to avoid disruption of Respondent's normal production activities.

C. Project Coordinators.

(1) To the extent possible, all reports, notices, and other communications required under or relating to this Consent Order shall be directed to:

DEQ	Respondent
Project Coordinator:	Project Coordinator:
Christopher C. Chalfant	Joe Morgan III
Environmental Cleanup Division	Technical Services
Department of Environmental	J.H. Baxter Wood
Quality	Preserving
811 S.W. Sixth Avenue	P.O. Box 5902
Portland, OR 97204	San Mateo, CA 94402
(503) 229-6540	(415) 349-0201

(2) For site access and on-site oversight activities, DEQ, in addition to notifying the Project Coordinator designated above to the extent possible, may contact: Don Mansfield, (503) ⁶⁸⁹~~691~~-3801. (gm 7/31/89)

D. Notice and Samples. Respondent shall make every reasonable attempt to notify DEQ of any excavation, drilling, or sampling to be conducted under this Consent Order at least five (5) working days prior to such activity, but in no event less than twenty-four (24) hours prior to such activity. Upon DEQ's verbal request, Respondent shall provide DEQ with a split or duplicate of any sample taken in connection with this Consent Order.

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E. Quality Assurance. Respondent shall conduct all sampling, sample transport, and sample analysis in accordance with the Quality Assurance/Quality Control (QA/QC) provisions approved by DEQ as part of the work plan(s). Respondent shall ensure that each laboratory used by Respondent for analysis performs such analyses in accordance with such provisions.

F. Records.

(1) Submission upon request. In addition to those reports and documents specifically required under this Consent Order, Respondent shall provide to DEQ, within ten (10) days of DEQ's written request, copies of all nonprivileged QA/QC memoranda and audits, raw data, draft and final plans, reports, task memoranda, field notes, laboratory analytical reports, and any other documents that relate in any way to the facility study or investigation.

(2) Preservation. Respondent shall preserve all records and documents in possession or control of Respondent or its employees, agents, or contractors that relate in any way to activities under this Consent Order, for at least ten (10) years after termination under Section 8 of this Consent Order. Upon DEQ's request, Respondent shall provide copies of such nonprivileged records to DEQ.

(3) Confidentiality. Respondent may assert a claim of confidentiality regarding any documents or records submitted to or copied by DEQ pursuant to this Consent Order. DEQ shall treat documents and records for which a claim of

confidentiality has been made in accordance with ORS 192.410 through 192.505. If Respondent does not make a claim of confidentiality at the time the documents or records are submitted to or copied by DEQ, the documents or records may be made available to the public without notice to Respondent.

G. Other Applicable Laws. All actions under this Consent Order shall be performed in accordance with all applicable federal, state, and local laws and regulations; except that, in accordance with ORS 466.573(2), DEQ in its discretion may exempt the on-site portion of any removal or remedial action from any applicable permitting requirements of ORS 466.005 to 466.385, ORS Chapter 459, or ORS Chapter 468.

H. Reimbursement of DEQ Oversight Costs. DEQ will submit to Respondent a monthly statement of reasonable and actual costs incurred after October 1, 1988 by DEQ or the State of Oregon in connection with any activities related to the facility or oversight of Respondent's implementation of this Consent Order. A sample invoice is attached to this agreement as Attachment C. Costs shall include both direct and indirect costs. Direct costs include direct labor costs, site-specific expenses, DEQ contractor or legal costs, and any other costs related to DEQ oversight of this project; provided, direct costs shall not include the costs of sampling and analysis of split samples exceeding 10 percent (10%) of all Respondent samples. Indirect costs shall be based on that rate charged by DEQ on federal agreements. That rate is currently

22.6 percent (22.6%) of direct salary and other personnel expenses, and will vary as the rate charged on federal agreements varies. Within thirty (30) days of receipt of each monthly statement, Respondent shall pay the amount of such costs by check made payable to the Department of Environmental Quality; provided, Respondent's total obligation for reimbursement of DEQ oversight costs under this Consent Order shall not exceed an amount equal to 12.5 percent (12.5%) of Respondent's expenditures under Subsection 5.A. DEQ reserves the right under ORS 466.550 and 466.580 to seek reimbursement for any DEQ costs exceeding this amount.

I. Force Majeure.

(1) If any event occurs that is beyond Respondent's reasonable control and that causes or might cause a delay or deviation in performance of this Consent Order, Respondent shall promptly notify DEQ's Project Coordinator verbally of the cause of the delay or deviation and its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and the timetable by which Respondent proposes to carry out such measures. Respondent shall confirm this information in writing, within five (5) working days of the verbal notification.

(2) If Respondent demonstrates to DEQ that a delay or deviation has been or will be caused by circumstances beyond the control and despite the due diligence of Respondent, DEQ shall extend times for performance of related activities under

this Consent Order, as appropriate. Circumstances or events beyond Respondent's control include but are not limited to acts of God, unforeseen strikes or work stoppages, fire, explosion, riot, sabotage, or war. Increased cost of performance or changed business or economic circumstances shall be presumed not to be circumstances beyond Respondent's control.

J. DEQ Approvals and Dispute Resolution.

(1) Where DEQ review and approval is required for any plan or activity under this Consent Order, Respondent shall not proceed with the plan or activity until DEQ approval is received. DEQ approval shall not be unreasonably withheld. Any delay in granting or denying approval shall correspondingly extend the time for completion of a related plan or activity by Respondent.

(2) (a) This Paragraph 7.J.(2) shall apply to any dispute between DEQ and Respondent regarding only the following matters under this Consent Order:

- (i) compliance with schedules; extensions; force majeure;
- (ii) performance of and compliance with technical requirements of approved work plan(s) and components thereof;
- (iii) reasonableness of DEQ oversight costs.

(b) In the event of a dispute regarding a matter identified in Subparagraph 7.J.(2)(a), DEQ and Respondent shall select a mutual acceptable, qualified, and

neutral fact-finder. The fees and expenses of the fact-finder shall be borne equally by DEQ and Respondent.

(c) Within ten (10) working days after selection of the fact-finder, DEQ and Respondent shall jointly provide the fact-finder an agreed-upon statement of the precise nature of the dispute and a copy of the procedures to be followed by the fact-finder as set forth in this subsection. Within the same ten (10) day period, DEQ and Respondent shall provide the fact-finder (with copies to each other) their respective positions regarding the dispute and the rationale, information, and documents supporting such position.

(d) Within thirty (30) days of the parties' submissions, or within other such time period as agreed to by the parties and the fact-finder, the fact-finder shall provide DEQ and Respondent a written advisory report setting forth the fact-finder's determination regarding the dispute. DEQ shall consider the advisory report in making a final decision regarding the disputed matter. The advisory report shall not be binding on DEQ; provided, the advisory report shall be admissible in any action commenced by DEQ to enforce this Consent Order or to assess penalties regarding the disputed matter. DEQ's final decision shall be an enforceable part of this Consent Order.

(3) (a) In the event of a dispute under this Consent Order regarding any matter not identified in Subparagraph 7.J.(2)(a), DEQ and Respondent shall provide each

other their respective positions in writing regarding the disputed matter and make every good faith effort to resolve the dispute. DEQ's final decision regarding the disputed matter, after such dialogue, shall be an enforceable part of this Consent Order.

(b) In the alternative regarding any matter not identified in Subparagraph 7.J.(2)(a), DEQ and Respondent by mutual consent may request non-binding review by a neutral fact finder of the matter in dispute in accordance with the procedures set forth in Subparagraphs 7.J.(2)(b) through (d).

(c) The matters not identified under Subparagraph 7.J.(2)(a) and therefore subject to dispute resolution under this Paragraph 7.J.(3) include but are not limited to the following matters under this Consent Order:

- (i) approval of draft and final RI work plans;
- (ii) approval of draft and final RI reports;
- (iii) approval of additional measures;
- (iv) completion of Consent Order;
- (v) access to property and documents;
- (vi) confidentiality
- (vii) timeliness and sufficiency of progress reports;
- (viii) project coordinator notifications.

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(4) If Respondent performs a plan or activity in accordance with DEQ's final decision after the plan or activity was disputed by Respondent in good faith under this Subsection 7.J., Respondent may seek reimbursement under ORS 466.570(7) for its costs of performing the increment of the plan or activity that Respondent would not otherwise have performed but for DEQ's decision; provided, if DEQ refuses to grant all or part of the requested reimbursement, Respondent stipulates that Respondent may recover such costs only if DEQ's final decision regarding the disputed plan or activity was arbitrary and capricious or otherwise not in accordance with law.

K. Stipulated Penalties.

(1) Subject to Subsections 7.I and J., upon any violation by Respondent of any provision of this Consent Order, and upon Respondent's receipt from DEQ of written notice of assessment, Respondent shall pay the stipulated penalties set forth in the following schedule:

(a) Up to Five Thousand Dollars (\$5,000) for the first week of violation or delay and up to Five Thousand Dollars (\$5,000) per day of violation or delay thereafter, for failure to allow DEQ access to the facility.

(b) Up to Five Thousand Dollars (\$5,000) for the first week of violation or delay and up to Two Thousand Dollars (\$2,000) per day of violation or delay thereafter, for:

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- (i) failure to submit a final work plan(s) in accordance with the Scope of Work's schedule;
 - (ii) failure to complete work in accordance with an approved work plan's schedule and requirements;
 - (iii) failure to submit an approvable final report in accordance with an approved work plan's schedule;
- (c) Up to One Thousand Dollars (\$1,000) for the first week of violation or delay and up to Two Thousand Dollars (\$2,000) per day of violation or delay thereafter, for:

- (i) failure to submit draft work plan(s) in accordance with the Scope of Work's schedule;
- (ii) failure to submit amendments to a draft work plan in accordance with the Scope of Work's schedule;
- (iii) failure to submit records in accordance with Subsection 7.F. of this Consent Order.

(2) Respondent shall pay, within thirty (30) days of receipt of DEQ's written notice and assessment, the amount of such stipulated penalty by check made payable to the State of Oregon, Hazardous Substance Remedial Action Fund.

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(3) In assessing a penalty under this section, the Director may consider the matrix and factors set forth in OAR 340-12-042 and 340-12-045. Respondent may request a contested case hearing regarding the penalty assessment in accordance with OAR Chapter 340, Division 11. The scope of any such hearing shall be limited to the occurrence or non-occurrence of the alleged violation, or of conditions precedent to the requirement allegedly violated. Further penalties regarding an alleged violation shall not accrue pending any contested case regarding the alleged violation.

L. Enforcement of Consent Order and Reservation of Rights.

(1) In addition to stipulated penalties under Subsection 7.K of this Consent Order, DEQ may seek any available remedy for failure by Respondent, if any, to comply with any requirement of this Consent Order.

(2) Subject to Section 2 of this Consent Order, Respondent does not admit any liability, violation of law, or factual or legal findings, conclusions, or determinations made by DEQ under this Consent Order.

(3) Subject to Paragraph 2.A.(7) of this Consent Order, nothing in this Consent Order shall prevent Respondent from exercising any rights of contribution or indemnification Respondent might have against any person regarding activities under this Consent Order.

M. Disclaimer of Liability. Notwithstanding any approvals granted by DEQ or other state entities, the State of

Oregon and its commissions, agencies, officers, employes, contractors, and agents shall not be liable for any and all claims arising solely from acts or omissions related to this Consent Order of Respondent or its officers, employes, contractors, agents, receivers, trustees, or assigns. Respondent and its officers, employes, contractors, agents, receivers, trustees, and assigns shall not be liable for any and all claims arising solely from acts or omissions related to this Consent Order of the State of Oregon or its commissions, agencies, officers, employes, contractors, or agents. DEQ shall not be considered a party to any contract made by Respondent or its agents in carrying out activities under this Consent Order.

N. Parties Bound. This Consent Order shall be binding on the parties and their respective successors, agents, and assigns. The undersigned representative of each party certifies that he or she is fully authorized to execute and bind such party to this Consent Order. No change in ownership or corporate or partnership status relating to the facility shall in any way alter Respondent's obligations under this Consent Order, unless otherwise approved in writing by DEQ, which approval shall not be unreasonably withheld. Respondent shall notify and provide a copy of this Consent Order to any prospective successor, purchaser, lessee, assignee, or mortgagee of the facility.

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O. Modification. DEQ and Respondent may modify this Consent Order by mutual written agreement.

8. Duration and Termination.

Upon completion of the provisions of the Scope of Work, Respondent shall submit to DEQ a written notice of completion. This Consent Order shall be deemed satisfied and terminated upon DEQ's issuance of a letter acknowledging satisfactory completion of activities in accordance with this Consent Order.

9. Signatures.

STIPULATED, AGREED, and APPROVED for issuance:

J.H. BAXTER & CO.
Respondent

By: *Joe Morgan III*
Name: Joe Morgan III
Title: Vice President Technical Services

Date: 7/31/89

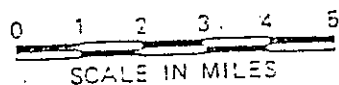
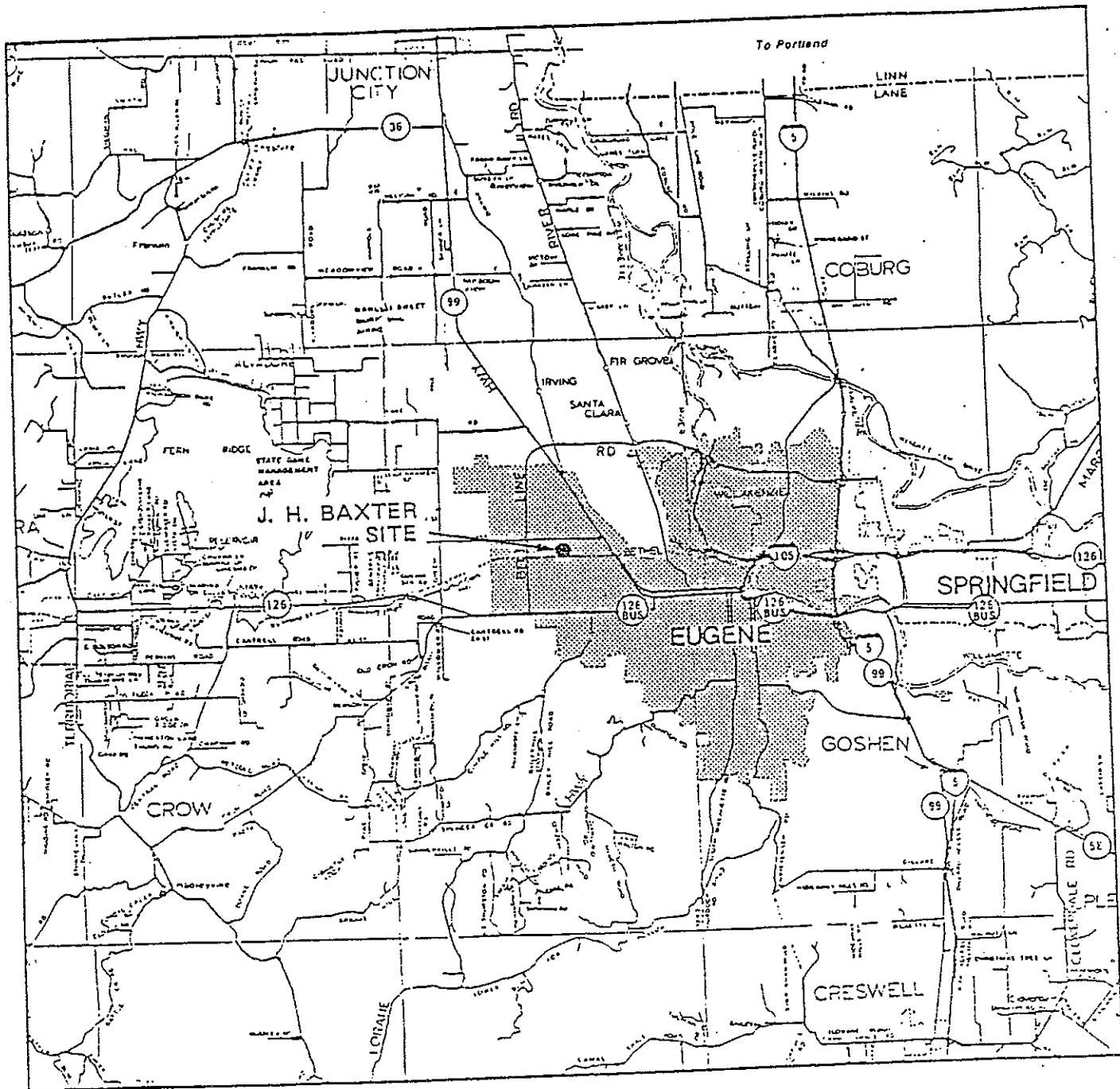
STIPULATED, AGREED, and so ORDERED:

State of Oregon
Department of Environmental Quality

By: *Fred Hansen*
FRED HANSEN
Director

Date: 8/7/89

ATTACHMENT A
SITE LOCATION MAP



ATTACHMENT B

REMEDIAL INVESTIGATION STUDY SCOPE OF WORK

I. SCHEDULE AND OBJECTIVES

- * The remedial investigation under this scope of work will be done in phases.
- * Within 45 days of issuance of this Order, Respondent shall submit for DEQ review and approval, a work plan for a Phased Remedial Investigation Study (RI), to include specifics for phase one addressing soil, ground water, surface water, and air, and a general description and rationale for subsequent phases necessary to complete a satisfactory RI.
- * Within 30 days of receipt of DEQ's written comments, Respondent shall submit amendments to the work plan addressing DEQ's comments.
- * In a like manner, Respondent shall submit a phase two work plan within 45 days of DEQ approval of the phase one report, and any subsequent phases shall be handled in the same manner.

The Remedial Investigation serves as the mechanism for collecting data for site and waste characterization and for conducting treatability testing as necessary to evaluate the performance and cost of the treatment technologies and support the design of selected remedies. The objectives of the remedial investigation are to:

1. Develop information to support the evaluation of remedial alternatives and the selection of a remedy.
2. Identify the hazardous substances which have been released to the environment;
3. Determine the nature and extent of hazardous substances in affected media on and off-site;
4. Determine the direction and rate of migration of hazardous substances;
5. Identify migration pathways; and
6. Identify the environmental impact and risk to human health and/or the environment.