UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

JUL 2 0 2017

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OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply To: OCE-101

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Ms. Jeanne L. Olsen
Facility Manager
JH Baxter and Company
85 N. Baxter Road
Eugene, Oregon 97402

Re: NOTICE OF VIOLATION
JH Baxter and Company
ORD 00903 2400

Dear Ms. Olsen:

This Notice of Violation (NOV) is to inform JH Baxter and Company ("Facility") of violations of the Resource Conservation and Recovery Act (RCRA) as amended. These violations were identified as a result of inspections performed by the U.S. Environmental Protection Agency (EPA) on September 29, 2014, at JH Baxter and Company located in Eugene, Oregon. These inspections were performed pursuant to EPA's inspection authority under Section 3007 of RCRA, 42 U.S.C. § 6927.

From the observations made during the inspections, the following RCRA violations were identified at the facility:

Violation 1: Failure to have a curb or berm.

The regulation at OAR 340-100-0002(1) incorporates by reference 40 C.F.R. Part 262. The regulation, 40 C.F.R. § 262.34(a)(1)(iii), allows a generator to accumulate hazardous waste on drip pads for 90 days or less without a permit or without having interim status provided that, among other things, the generator complies with Subpart W of 40 C.F.R. Part 265. The regulation, 40 C.F.R § 265.443(a)(3) requires that drip pads must have a curb or berm around the perimeter.

a. At the time of the inspection, the EPA inspector walked around the edges of the drip pad associated with Retort 85 and did not observe a curb or berm at either the west end and east end.

b. At the time of the inspection, the EPA inspector also did not observe a curb or berm at the east end of the shared drip pad for Retorts 81-84.

There was not a curb or berm around the perimeter of either the drip pad associated with Retorts 81-84 or the drip pad associated with Retort 85. The lack of a curb or berm around the perimeter of a drip pad constitutes a violation of 40 C.F.R § 265.443(a)(3) as incorporated by reference at OAR 340-100-0002(1).

Violation 2: Failure to minimize tracking

The regulation at OAR 340-100-0002(1) incorporates by reference 40 C.F.R. Part 262. The regulation, 40 C.F.R. § 262.34(a)(1)(iii), allows a generator to accumulate hazardous waste on drip pads for 90 days or less without a permit or without having interim status provided that, among other things, the generator complies with Subpart W of 40 C.F.R. Part 265. The regulation at 40 C.F.R. § 265.443(j) requires that drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous constituents off the drip pad as a result of activities by personnel or equipment. At the time of the inspection the inspector observed several instances that indicated the facility was not minimizing tracking off the drip pad. Specifically,

a. The EPA inspector observed a series of dark stain spots on the west portion of the Retort 85 drip pad, consistent with the color of oil/pentachlorophenol and this dark spot staining continued off of the drip pad and onto the soil. The EPA inspector also observed a charge of treated wood on trams being pulled out of Retort 85 onto the drip pad. The charge was being pulled out of the retort by a forklift with a chain attached to the first tram. The freshly treated charge remained on the drip pad for approximately 15 minutes, at which point the forklift was used to pull the charge of treated wood entirely off the drip pad. The EPA inspector noted waste pentachlorophenol wood treating fluid (EPA hazardous waste number F032) on the metal surfaces of the trams that held the charge. The EPA inspector saw some of the wood treating fluid drip from the trams to the soil on the ground off the drip pad. The facility was not minimizing tracking of hazardous waste or hazardous waste constituents off the drip pad from the trams.

b. The EPA inspector observed a forklift being driven on the drip pad associated with Retorts 81-84. The inspector saw a worker use a hose to spray water on the forklift tires while the forklift was parked on the drip pad. The worker then drove the forklift for some distance on the drip pad prior to exiting the drip pad. By washing the tires of the forklift and then driving for some distance on the drip pad prior to exiting the drip pad, it is likely that the tires of the forklift picked up contamination from the surface of the drip pad resulting in the drip pad not being maintained in a way that minimized tracking of hazardous waste or hazardous constituents off the drip pad by equipment.

c. The EPA inspector observed a tram lay-down area directly east of the drip pad and rail track exiting from Retort 81. There were two sizes of trams in this area. The tram lay-down area was not part of the drip pad. There were no berms around the collection of trams. The trams were covered in a black, thick oily substance. According to a facility representative all the trams had been used with pentachlorophenol and creosote. The EPA inspector also observed stained soil and sludge in this area that was the same color and consistency as that observed on the trams. In some areas, the oily substance, waste wood preservative (EPA hazardous wastes numbers F032 and F034), had stained and soaked into the soil, and in other areas the hazardous waste was pooled on the soil surface. Because the trams were stored in an area off the drip pad between uses, and they were covered in hazardous waste that then dripped onto the ground in the tram lay-down area, the drip pad was not being maintained in a way that minimized tracking of hazardous waste or hazardous constituents off the drip pad.

d. The EPA inspector observed a charge of treated wood poles on the rail tracks that extend from Retort 82 that treats with either pentachlorophenol or ACZA. The charge of treated wood was positioned partially on the drip pad and partially off the drip pad. The inspector saw waste wood preservative (EPA hazardous waste numbers F032 and F035) beneath the treated wood poles,

both on the drip pad and on the ground off the drip pad. Because the charge of treated wood had been positioned partially off the drip pad, the facility was not maintaining the drip pad in a way that minimized tracking of hazardous waste or hazardous constituents off the drip pad.

At the time of the inspection neither drip pad was being operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment, a violation of 40 C.F.R. § 265.443(j) as incorporated by reference at OAR 340-100-0002(1).

Violation 3: Failure to hold treated wood on drip pad until drippage has ceased.

The regulation at OAR 340-100-0002(1) incorporates by reference 40 C.F.R. Part 262. The regulation, 40 C.F.R. § 262.34(a)(1)(iii), allows a generator to accumulate hazardous waste on drip pads on-site for 90 days or less without a permit or without interim status provided that, among other things, the generator complies with Subpart W of 40 C.F.R. Part 265. The regulation at 40 C.F.R. § 265.443(k) requires that after being removed from the treatment vessel, treated wood from pressure and non-pressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

a. At the time of the inspection, the EPA inspector observed a load of treated wood poles on the rail tracks that extend from Retort 82, see violation 2.d. The load of treated wood was positioned partially on the drip pad and partially off the drip pad. The inspector saw waste wood preservative (EPA hazardous waste numbers F032 and F034) beneath the treated wood poles, on both areas on and off the drip pad. The waste wood preservative beneath the treated poles on the ground off the drip pad indicated that the treated wood was not held on the drip pad until drippage had ceased, a violation of 40 C.F.R. § 265.443(k) as incorporated by reference at OAR 340-100-0002(1).

Violation 4: Failure to conduct weekly inspections of the drip pad

The regulation at OAR 340-100-0002(1) incorporates by reference 40 C.F.R. Part 262. The regulation, 40 C.F.R. § 262.34(a)(1)(iii), allows a generator to accumulate hazardous waste on drip pads for 90 days or less without a permit or without having interim status provided that, among other things, the generator complies with Subpart W of 40 C.F.R. Part 265. The regulations at 40 C.F.R. § 265.444(b) requires that while a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of any of the following: (1) deterioration, malfunctions or improper operation of run-on and runoff control systems; (2) the presence of leakage in and proper functioning of leakage detection systems, (3) deterioration of cracking of the drip pad surface.

a. At the time of the inspection, the EPA inspector reviewed the weekly drip pad inspection maintenance logs. The inspection log indicated a gap in time from October 28, 2013 to March 28, 2014, during which there was no record of weekly inspections. Failure to conduct weekly inspections of the drip pads for a period of five months is a violation of 40 C.F.R. § 265.444(b) as incorporated by reference at OAR 340-100-0002(1).

Violation 5: Failure to properly label containers.

The regulation at OAR 340-100-0002(1) incorporates by reference 40 C.F.R. Part 262. The regulations at 40 C.F.R. § 262.34 (a)(2) and (a)(3) allows generators to accumulate hazardous waste in containers for ninety days or less provided that, among other things, the container used to manage hazardous waste has the date upon which each period of accumulation begins marked and visible for inspection on each container and while being accumulated on-site, and each container is labeled or marked clearly with the words "Hazardous Waste." At the time of the inspection the inspector observed several instances where the facility had not properly labeled containers of hazardous waste. Specifically,

a. The EPA inspector observed a large waste container that was positioned under the "J-press." The container was used to collect bottom sediment sludge (EPA hazardous waste number K001). There were solids inside the container. The container was not labeled with the words "Hazardous Waste" nor marked with the date that waste was first put in the container. The inspector documented that the facility personnel labeled the container with a hazardous waste label at the time of the inspection, correcting this violation.

b. The EPA inspector observed a drum inside of the Retort 83 door sump. The lid of the drum was slightly open and the inspector could see fluid inside the drum that was consistent with the fluid in the sump. Retort 83 uses only creosote. Waste creosote is EPA hazardous waste F034. The drum was not labeled as hazardous waste, or with the accumulation start date.

Neither the large waste container under the "J-press" nor the drum inside the Retort 83 door sump were labeled as required by 40 C.F.R. § 262.34 (a)(2) and (a)(3) as incorporated by reference at OAR 340-100-0002(1).

Violation 6: Disposal of Hazardous Waste without a permit

The regulation at OAR 340-100-0002(1) incorporates by reference 40 C.F.R. Part 270. 40 C.F.R. § 270.1(c) requires that any person that treats, stores or disposes of hazardous waste must have a permit.

The failure to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as identified in the four instances outlined in Violation 2 above and failure to hold treated wood on the drip pad until drippage ceased, Violation 3 above, constitutes disposal of hazardous waste as defined in 40 C.F.R § 260.10 and § 270.2. Accordingly, the facility has disposed of hazardous waste without a permit in violation of 40 C.F.R. § 270.1(c) which is incorporated by reference at OAR 340-100-0002(1).

Violation 7: Failure to comply with Land Disposal Restrictions (LDRs) treatment standards

The regulation at OAR 340-100-0002(1) incorporates by reference 40 C.F.R. § 268.40 which prohibits certain wastes from being land disposed unless the waste meets the requirements found in the 40 C.F.R. § 268.40 table.

a. At the time of the inspection hazardous waste was being land disposed at the facility in at least the five instances observed in violations two, three and summarized in Violation six of this NOV without meeting the treatment requirements for land disposal of prohibited wastes. Accordingly, the facility has failed to comply with the land disposal restriction requirements prior to placing hazardous waste on the ground as required by 40 C.F.R. § 268.40 and incorporated by reference at OAR 340-100-0002(1).

Violation 8: Treatment and storage of hazardous waste without a permit

The regulation at OAR 340-100-0002(1) incorporates by reference 40 C.F.R. Part 270. The regulation at 40 C.F.R. § 270.1(c)(2)(v) allows owners and operators of waste water treatment units (WWTU) as defined in 40 C.F.R. § 260.10 to operate those units without obtaining a RCRA permit. The definition of a WWTU includes the definition of a tank. A tank is defined, in 40 C.F.R. § 260.10, as a stationary device designed to contain an accumulation of hazardous waste. A tank system is defined as including the ancillary equipment and containment system for a tank. At the time of the inspection the inspector observed at least four areas of the facility where hazardous waste was not being contained by the tanks or the ancillary equipment and/or the tanks and ancillary equipment were leaking. These were:

a. Waste pentachlorophenol wood treating preservative was leaking from the pump house for the Penta-Mix tank.

b. The pipe connected to the base of Tank #32 was leaking waste pentachlorophenol preservative.

c. The exterior of the Tank 32 overflow pot showed evidence of waste wood preservative running down the exterior of the tank and the concrete secondary containment floor.

d. There were cracks in the secondary containment of the WWTU area concrete on the south side of Tank #32. Additionally, the concrete flooring of the secondary containment in this area was scabbled. Waste preservative and water contaminated with waste preservative may be seeping through the crack and scabbled concrete into the underlying soils and thus waste preservative may not be contained by the secondary containment.

Because the hazardous waste is not being contained within the tanks and/or ancillary equipment, the WWTU system is no longer exempt from the hazardous waste regulations.

The rule at OAR 340-100-0002(1) incorporates by reference 40 C.F.R. Part 262. The regulations at 40 C.F.R. § 262.34(a)(1)(ii) allow a generator to accumulate hazardous waste for 90 days or less in tanks or tank systems without a permit or interim status provided he comply with, among other things, Subpart J of 40 C.F.R. Part 265.

At the time of the inspection there was no evidence that the Facility was attempting to comply with 40 C.F.R Subpart J.

Area of Concern 1: Infrequent and incidental drippage

The regulation at OAR 340-100-0002(1) incorporates by reference 40 C.F.R. Part 262. The regulation, 40 C.F.R. § 262.34(a)(1)(iii), allows a generator to accumulate hazardous waste on drip pads for 90 days or less without a permit or without having interim status provided that, among other things, the generator complies with Subpart W of 40 C.F.R. Part 265. The regulation, 40 C.F.R § 265.440(c) states that the requirements of 40 C.F.R subpart W (regulations applicable to drip pads) are not applicable to the management of infrequent and incidental drippage in storage yards provided that, among other things, the owner or operator cleans up the drippage.

A review of JH Baxter's written contingency plan which addresses how the facility will respond to infrequent and incidental drippage indicates that cleaning up the drippage takes priority over other

activities but does not address how the employee is to inspect for and clean up drippage that occurs under the treated wood that is being stored. During the inspection the inspector did not inspect the storage yard for infrequent and incidental drippage. Drippage that occurs under the treated wood that is being stored is regulated in the same way as incidental and infrequent drippage elsewhere at the facility. The EPA recommends that you closely evaluate this part of your process and if necessary address any changes to your process and training as is necessary.

Area of concern 2: Recontamination of on-going cleanup project

The EPA is aware that there is an ongoing cleanup effort at the facility in coordination with the Oregon Department of Environmental Quality (ODEQ). The EPA is concerned that by failing to manage hazardous waste in accordance with the preventative regulations of RCRA, hazardous waste that is generated by JH Baxter's day-to-day operations may cause additional or worsening contamination and impact the cleanup project by negating the efforts to date through recontamination. Accordingly, we have copied the State on this correspondence.

Significant Non-complier

The Hazardous Waste Civil Enforcement Response Policy, dated December 2003, requires EPA to classify violators as to the significance of the violations found. Of most significance are those violations that have caused actual or substantial likelihood of exposure to hazardous waste or hazardous waste constituents or that deviate substantially from a RCRA statutory or regulatory requirement. Based on the violations and concerns outlined in this letter EPA has determined that JH Baxter is a significant non-complier.

Required Action

The above violations may subject JH Baxter and Co. to enforcement action under Section 3008 of RCRA, including the assessment of civil penalties. Within twenty (20) days of receipt of this NOV, EPA requests that you submit a written response and/or photographs that identify actions you have taken or will take to correct the existing violations.

Please send all material submitted in response to this NOV to Cheryl Williams by email at williams.cherylb@epa.gov, or:

Cheryl Williams
U.S. Environmental Protection Agency
Multimedia Inspection and RCRA Enforcement Unit, OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

EPA Reservation of Rights

Notwithstanding this NOV or your response, EPA reserves the right to take any action pursuant to RCRA or any other applicable legal authority. Your response to this NOV does not constitute compliance with RCRA.

Nothing in this NOV or your response shall affect duties, obligations or responsibilities with respect to JH Baxter and Company under local, state or federal law or regulation.

Thank you for your prompt attention to this important matter. If you have questions regarding this NOV, please contact Cheryl Williams of my staff at (206) 553-2137 or williams.cherylb@epa.gov.

Sincerely,

Edward J. Kowalski
Director

cc: Mr. Brian Fuller
Oregon Department of Environmental Quality

Mr. Greg Aitken
Oregon Department of Environmental Quality

McCoy's RCRA Unlawful

handle hazardous waste
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§268.7(a)(7). Thus, when
VTU becomes nonhazardous,

the owner/operator must place a one-time notice in the facility files describing 1) the generation of the subject hazardous waste, 2) the subsequent exclusion of the waste from the definition of hazardous or solid waste, and 3) the disposition of the waste. [RO 13547, 14216] More discussion of this topic is in Section 13.12.3.1.

7.3 Treatment in 90/180/270-day accumulation units

When EPA first promulgated the RCRA regulations in 1980, the agency recognized the potential impact that permitting would have on many generator facilities. To alleviate these concerns, EPA included an exemption from permitting requirements for accumulation of hazardous waste by large and small quantity generators (LQGs and SQGs, respectively). Specifically, §270.1(c)(2)(i) allows LQGs to accumulate hazardous waste for up to 90 days without having to get a RCRA permit. SQGs have, depending on circumstances discussed in Section 6.3.1, either 180 or 270 days. Although generator facilities must still meet certain management standards (as detailed below and in Section 6.3), the Part 270 permitting requirements and the bulk of the Part 264/265 TSD facility provisions do not apply to LQG or SQG facilities.

In addition to accumulation, EPA also allows generator facilities to perform certain types of hazardous waste *treatment* in 90/180/270-day accumulation units without the need for a RCRA permit. With one exception, the standards are the same for waste treatment or storage in 90/180/270-day accumulation units. That exception is the need (in some treatment situations) to establish and follow a waste analysis plan.

In the subsections that follow, we first discuss how EPA has developed the exemption for treatment in 90/180/270-day accumulation units and then examine the specific criteria under which facilities may qualify. As with other sections, we close with numerous examples described in EPA guidance. Remember that treatment residues may still have to be managed as hazardous waste (see Section 5.2), and residues destined for land disposal are subject to LDR treatment standards (see Chapter 13).

7.3.1 History of the accumulation unit treatment exemption

Unlike the other seven treatment-related permitting exemptions discussed in this chapter (which are clearly spelled out in regulatory text), the accumulation unit treatment exemption is not contained in the RCRA regulations [other than an obscure reference in §268.7(a)(5)]. Instead, EPA has explained in *Federal Register* preambles and other guidance documents how it believes the accumulation unit permitting exemption has applied all along. Here is a timeline of EPA's statements/actions on the matter:

- On January 12, 1981 [46 *FR* 2808], the agency stated in preamble language that "[t]he facility specific regulations promulgated today cover not only storage operations, but also many treatment facilities.... [A] determination that a facility is a 'treatment' facility is not relevant to a determination of whether it is, on one hand, a storage facility, or, on the other hand, a disposal facility." In other words (and as clarified in later guidance), just as treatment occurring at a facility does not affect whether it is a storage or disposal facility, treatment activities similarly do not affect the regulatory status of 90/180/270-day units at generator facilities under §262.34. [RO 11261, 14618]

- In the preamble to the March 24, 1986 final SQG rule [51 *FR* 10168], EPA clearly stated that generators in compliance with §262.34 can treat hazardous waste in accumulation tanks and containers without a permit. Although many took this verbiage to apply only to SQGs, the agency subsequently clarified [in RO 11163, 11641, 12811] that this policy applies to all generators: large and small.

- Guidance distributed by the agency in the second half of 1986 explained why treatment could be conducted in accumulation (i.e., storage) units: