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August 30, 2000

Ms. C. Jeanne Tran
Washington State Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

**Re: Interim Stormwater Management Plan Relative to
EPA's RCRA Notice of Violation (NOV)
J.H. Baxter
Arlington, Washington
J-7026-02**

Dear Ms. Tran:

As you are aware, EPA's RCRA NOV issued on April 25, 2000, alleges among other things that stormwater at Baxter's Arlington wood treating facility contains listed F032 dangerous waste. Baxter's response to EPA's NOV refutes this allegation. Baxter is not aware of any ongoing sources of F032 waste to stormwater at the site. We believe that the most likely source of pentachlorophenol (PCP or penta) in surface water is from historical practices at the site, consequent entrapment in surface soils, and subsequent leaching by rainwater. However, in the interest of assuring that these concerns are fully and properly handled under the interim stormwater treatment approached being developed by Baxter, we are stating our analysis of the applicability of the various regulatory processes involved even if they were required (which we deny.) Given this analysis, it is clear that our proposed treatment approach solves the stormwater concern and satisfies even the most conservative regulatory approach.

SHOW CAUSE MEETING WITH EPA REGION 10

On August 17, 2000, we met at Region 10 with representatives of EPA's RCRA program, EPA's Regional Council, representatives from Ecology's Hazardous Waste Program, and Ecology's legal counsel regarding the NOV. We were invited to show cause regarding why an enforcement action by EPA is neither warranted nor appropriate. We had hoped that we would be able to resolve some of the NOV issues during the meeting; particularly issues related to stormwater allegedly containing F032 listed waste. We feel the meeting was beneficial to EPA, Ecology, and Baxter. However, EPA was not willing or prepared to



resolve the stormwater listing issue during the meeting. They promised to carefully consider information presented during the meeting before they made a final decision on issuing additional enforcement actions against Baxter. At the same time, they could not offer a schedule to resolve the issue and suggested Baxter pursue whatever actions Baxter thought appropriate to deal with site stormwater control.

PROBLEM STATEMENT

Earlier this year Baxter removed catch basins and French drains in the production and treated pole yard areas of the facility at the request of Ecology. This has significantly reduced Baxter's ability to handle stormwater during significant rain events. With winter quickly approaching, Baxter has been working on an interim stormwater management system to keep the production area from flooding and allow the facility to continue operation. In general, the plan calls for storage and treatment of excess stormwater in tanks and discharge of the treated stormwater to ground once the existing infiltration system is capable of accommodating more water. Design of this interim system is being developed and will be provided to Ecology shortly under separate cover.

It is clear from the August 17 meeting with EPA that the F032 listing issue will not be resolved between EPA and Baxter before the fall and winter rainy period begins. Ecology has informed Baxter that the agency will not consider an interim stormwater management system until EPA resolves the F032 listing issue so as not to interfere with EPA's position. This puts Baxter in a very difficult situation. Without implementing an interim stormwater management system we are concerned that flooding of the production area may occur this fall. In addition, it is possible that stormwater accumulations will require a shutdown of Baxter's operations. Neither of these potential outcomes will benefit Baxter, the agencies, or the environment.

PROPOSED PROBLEM RESOLUTION

As mentioned earlier, Baxter is not aware of any F032 listed sources entering stormwater generated at the facility. However, in an attempt to address Ecology's concerns regarding interfering with EPA's position, Baxter is willing to manage stormwater in a manner that meets the intent of both RCRA and the State Dangerous Waste Regulations, even though we do not agree that the stormwater is a dangerous waste. The following discussion summarizes our proposal.



Federal WWTU Exemption

The federal regulation contains a categorical exemption from the treatment, storage, and disposal (TSD) requirements for units meeting the definition of a wastewater treatment unit (WWTU) (see 40 CFR 264.1[g][6] and 265.1[c][10]). In 40 CFR 260.10, EPA defines a WWTU as any unit that treats hazardous waste and is subject to Section 307(b) or 402 of the federal Clean Water Act (CWA). The current stormwater permit is a SWDP issued under both state and federal water quality authorities as evidenced by the first page of the permit. Finally, the planned interim stormwater system will consist of a tank and tank system designed to meet the tank definitions in 40 CFR 260.10.

Stormwater at the Baxter Arlington facility is governed by Section 402 of the CWA and the treatment system will be designed to meet the definitions of a tank and tank system. Therefore, the Baxter Arlington facility would be exempt from TSD requirements.

State WWTU Exemption

The state regulations include an exemption that mirrors the federal exemption. WAC 173-303-400(c)(ix) and WAC 173-303-600(3)(n) provide that the owner or operator of a wastewater treatment unit as defined in WAC 173-303-040 is not subject to the state TSD standards.

Under the state Dangerous Waste Regulations, a WWTU is defined as a facility that is part of a wastewater treatment facility which is subject to either:

- ▶ Section 402 or 307(b) of the Federal Clean Water Act; or
- ▶ Chapter 90.48 RCW, State Water Pollution Control Act, provided that the waste treated at the facility is a state-only dangerous waste; and
- ▶ Receives and treats or stores an influent wastewater; and
- ▶ Meets the definition of tank or tank system in this section. (WAC 173-303-040)

As discussed in the previous subsection, Section 402 of the CWA governs stormwater at the Baxter facility and the stormwater system will be designed to meet the definitions of a tank and tank system in WAC 173-303-040. Therefore, as a state-defined WWTU, the Baxter Arlington facility is not subject to the state TSD standards.

The state regulations also contain a conflicting provision that appears to require the owner or operator of a wastewater treatment unit to have a permit-by-rule to qualify for the exemption. (WAC 173-303-400(c)(iv); WAC 173-303-600(3)(j)). Although the provisions in



WAC 173-303-400(c)(ix) and WAC 173-303-600(3)(n) appear to be controlling, the Baxter facility qualifies for this permit-by-rule exemption as well.

Under this provision, wastewater treatment units are exempt from TSD requirements if the units have a permit-by-rule. To qualify for a permit-by-rule, the wastewater treatment units must comply with the requirements of WAC 173-303-802(5) (Attachment 1).

The following subsections describe how Baxter would address each of the items necessary to meet the permit-by-rule requirements.

Water Quality Permit

Based on our interpretation of the exemption language, the interim stormwater management system proposed is a means to satisfy the existing facility SWDP ST-7425 interim treatment requirements. It will qualify for permit-by-rule. We will be submitting detailed plans for this treatment process. We believe this could be recognized by certified letter from Ecology approving the treatment and discharge of treated stormwater from the unit, or by modification of the Draft SWDP to include the interim system.

Notification and Identification Numbers

Baxter has already received a dangerous waste identification number for the site. Baxter will formally notify Ecology of the interim stormwater management system prior to starting operation.

Dangerous Waste Designation

Prior to operating the wastewater treatment unit, Baxter will designate the stormwater in accordance with the dangerous waste designation procedures based on knowledge of the waste and chemical test data, as necessary. The designation will include federally regulated waste and state-only wastes. The stormwater designation will be formalized in writing, submitted to Ecology, and a copy will be kept in the facility records.

Performance Standards

These standards require the owner/operator to design, construct, and operate the stormwater system in a manner that, to the maximum extent practical, prevents the unpermitted or unauthorized degradation of groundwater, surface water, and air or impairs flora and fauna outside the active portion of the facility. In addition, activities that produce excessive noise, negative aesthetic impacts, unstable soil conditions, or endanger the site



workers or the public are prohibited. The process must also treat, detoxify, recycle, reclaim, or recover waste material to the maximum extent economically feasible. Baxter intends to design, operate, and maintain the interim stormwater system in accordance with the performance standards.

Waste Analysis

Stormwater from the facility has been analyzed under the NPDES monitoring program and will continue to be monitored under the SWDP. The sampling and analysis program will be modified, if necessary, to include the interim stormwater system and this written document will meet minimum requirements for Waste Analysis Plans found in WAC 173-303-300.

Security

The interim stormwater WWTU will be surrounded by a fence with a locked gate to prevent unauthorized entry into the treatment facility.

Contingency Plan and Emergency Procedures

Baxter's existing Contingency Plan will be modified to include the interim stormwater management system.

Emergencies

The Baxter facility already has procedures in place to respond to emergencies in accordance with WAC 173-303-360 requirements. These procedures will be followed in the event of an emergency related to the interim stormwater system.

Manifests

Baxter will not be receiving regulated dangerous waste from off site so this section does not apply. Waste residues generated as a result of operating the stormwater treatment system will be designated per the designation procedures and managed in accordance with the generator requirements if the wastes are designated dangerous.

Operating Record

Permit-by-rule facilities only need to comply with paragraph (1)(d) of the facility recordkeeping requirements (WAC 173-303-380). Baxter will submit a formal report to Ecology regarding incidents that require implementation of the Contingency Plan.



Reporting

Baxter will submit a report annually to Ecology. This report will include information on the type and quantity of stormwater managed in the system and the methods used to manage the stormwater. Other reports required in paragraph (3) of the facility reporting section of the dangerous waste regulations will be submitted, if applicable. Baxter will keep copies of all reports at the facility for at least three years.

SUMMARY STATEMENT

We believe that the approach presented in this letter would be consistent with state and federal hazardous waste requirements for the WWTU exemption even though we continue to deny that the stormwater contains F-listed hazardous waste. We are not prepared to designate the stormwater as containing F-listed waste because we believe EPA's interpretation is in error and we are not aware of any current F-listed sources to the stormwater. However, with this proposal, Baxter is making a concerted effort to manage the interim stormwater system as if it did contain regulated hazardous waste. We hope this will provide Ecology with the necessary level of comfort to allow us to proceed expeditiously with the interim stormwater system. Clearly, our plan will improve the quality of stormwater over the prior conditions.



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August 30, 2000

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We look forward to your consideration of our proposal. If you have questions please contact Will Abercrombie at Hart Crowser.

Sincerely,

HART CROWSER, INC.

WILLIAM B. ABERCROMBIE
Principal

LORI J. HERMAN
Principal Hydrogeologist

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Attachment:

Attachment 1 - State Dangerous Waste Regulations Section WAC 173-303-802(5)

cc: Kirk Cook - Ecology
Kevin Fitzpatrick - Ecology
Dave Misko - Ecology
Ron Lavigne - Assistant Attorney General, Ecology
Georgia Baxter - J.H. Baxter
Jim Hanken - Schwabe Williamson & Wyatt
Seth Goldberg - Steptoe & Johnson
Mark Adams - Camp Dresser & McKee

ATTACHMENT 1
STATE DANGEROUS WASTE REGULATIONS
SECTION WAC 173-303-802(5)

- (a) Has a National Pollutant Discharge Elimination System (NPDES) permit;
- (b) Complies with the conditions of that permit;
- (c) Complies with the following regulations:
 - (i) WAC 173-303-060, notification and identification numbers;
 - (ii) WAC 173-303-170 through 173-303-230 when initiating shipments of dangerous waste;
 - (iii) WAC 173-303-283, performance standards;
 - (iv) WAC 173-303-370, manifest system;
 - (v) WAC 173-303-380 (1)(a), operating record;
 - (vi) WAC 173-303-390(2), annual report;
 - (vii) WAC 173-303-390(1), unmanifested waste reports; and
 - (viii) For NPDES permits issued after November 8, 1984, WAC 173-303-646(2), corrective action for solid waste management units;

(d) Accepts the waste only if it meets all federal, state, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance; and

(e) Accepts no EHW for disposal at the POTW.

(5) Totally enclosed treatment facilities or elementary neutralization or wastewater treatment units.

(a) The owner or operator of a totally enclosed treatment facility or an elementary neutralization or wastewater treatment unit that treats state-only dangerous wastes generated on or off site, or federally regulated hazardous wastes generated on site will have a permit by rule, except as provided in (c) of this subsection, if they:

(i) Have an NPDES permit, state waste discharge permit, pretreatment permit (or written discharge authorization from the local sewerage authority) issued by the department, or pretreatment permit (or written discharge authorization) from a local sewage utility delegated pretreatment program responsibilities pursuant to RCW 90.48.165, and the permit or authorization covers the waste stream and constituents being discharged;

(ii) Comply with the conditions of that permit;

(iii) Comply with the following regulations:

(A) WAC 173-303-060, notification and identification numbers;

(B) WAC 173-303-070, designation of dangerous waste;

(C) WAC 173-303-283, performance standards;

(D) WAC 173-303-300, general waste analysis;

(E) WAC 173-303-310, security;

(F) WAC 173-303-350, contingency plan and emergency procedures;

(G) WAC 173-303-360, emergencies;

(H) WAC 173-303-370, manifest system;

(I) WAC 173-303-380 (1)(d), operating record;

(J) WAC 173-303-390, facility reporting.

(b) The owner or operator of a wastewater treatment unit that treats federally regulated hazardous wastes received from off site will have a permit by rule, except as provided in (c) of this subsection, if:

(i) The facility has received a permit (or interim status) for treatment, storage, or disposal of hazardous wastes in accordance with WAC 173-303-800, 173-303-801, and 173-303-804 through 173-303-840; and

(ii) The owner or operator complies with (a)(i) through (iii) of this subsection.

(c) The department may require the owner or operator of a totally enclosed treatment facility or an elementary neutralization or wastewater treatment unit subject to (a) or (b) of this subsection to apply for and obtain a final facility permit or a permit modification in accordance with WAC 173-303-800 through 173-303-840, if:

(i) The owner or operator violates the general facility or performance requirements specified in (a) of this subsection;

(ii) The owner or operator is conducting other activities which require him to obtain a final facility permit;

(iii) The department determines that the general facility or performance requirements specified in (a) of this subsection, are not sufficient to protect public health or the environment and that additional requirements under this chapter are necessary to provide such protection; or

(iv) The owner or operator does not comply with applicable local, state or federal requirements established pursuant to sections 402 or 307(b) of the Federal Clean Water Act, or chapter 90.48 RCW.