UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

APR 25 2000

Reply To
Attn Of: WCM-126

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Georgia Baxter,
Executive Vice President
J.H. Baxter & Co.
P.O.Box 5902
San Mateo, CA 94402

Re: **NOTICE OF VIOLATION**
J.H. Baxter & Co.
Arlington Facility
WAD 05382 3019

Dear Ms. Baxter:

The purpose of this Notice of Violation (NOV) is to inform J.H. Baxter & Company (J.H. Baxter) of violations of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6901 *et seq.*, identified during inspections conducted by the United States Environmental Protection Agency (EPA) at the J.H. Baxter facility located at 6520 188th NE, Arlington, WA 98223 ("the Facility"). These inspections took place on August 16, 1999, and November 17, 1999.

The following RCRA violations were observed at the Facility during the August 16, 1999 inspection, unless otherwise noted:

Operation of Drip Pads/Storage and Disposal of Hazardous Waste without a Permit or Interim Status

The regulations at 40 CFR § 262.34(a)(1)(iii) allow a generator to accumulate hazardous waste on drip pads without a permit or interim status for 90 days or less provided that the generator complies with Subpart W of 40 CFR Part 265. If a generator fails to meet the conditions set forth in 40 CFR § 262.34, they must have a permit or interim status to store the hazardous waste it accumulates, as required by Section 3005 of RCRA and 40 CFR § 270.1. In addition, Section 3005

Section 3005 of RCRA and 40 CFR § 270.1 require that owners and operators of facilities that store hazardous waste for more than 90 days or dispose of hazardous waste have a permit or interim status. Facilities that store or dispose of hazardous waste must also comply with applicable requirements set forth in 40 CFR Part 265.

For new drip pads, Subpart W of 40 CFR Part 265 requires owners and operators to ensure that its drip pads are designed, installed and operated in accordance with one of the following:

> (a) all of the applicable requirements of 40 CFR §§ 265.443(except 40 CFR § 265.443(a)(4)), 265.444 and 265.445; or
>
> (b) all of the applicable requirements of §§ 265.443 (except 40 CFR § 265.443(b)), 265.444 and § 265.445.

See 40 CFR § 265.442.

In other words, the regulation at 40 CFR § 265.442 provides owners and operators of new drip pads the option of complying with either 40 CFR § 265.443(b) or 40 CFR § 265.443(a)(4). Thus, in relevant part, to comply with 40 CFR § 265.442, new drip pads must among other things:

> (1) have a synthetic liner that is constructed of materials that prevent release into the adjacent subsurface soil, or groundwater or surface water during the active life of the facility, and that is installed to cover all surrounding earth that could come in contact with waste or leakage (i.e., comply with 40 CFR § 265.443(b)(1)); or
>
> (2) the drip pad must be constructed with a hydraulic conductivity specified in the regulation and the owner or operator must obtain and keep on file at the facility a written assessment, updated annually, of the drip pad which attests to the extent which the drip pad meets the design and operating requirements of 40 CFR §265.443 (i.e., comply with 40 CFR § 265.443(a)(4)).

Of these two sets of requirements, in (1) and (2) above, existing drip pads must meet the requirements in 40 CFR § 265.443(a)(4).

All drip pads must meet additional requirements in 40

CFR § 265.443 including, among other things, that the drip pads must:

(1) be designed and operated to convey, drain and collect liquid resulting from drippage or precipitation in order to prevent run-off (40 CFR § 265.443(d));

(2) be evaluated to determine that the drip pad meets the requirements of 40 CFR § 265.443(a) through (f), and the owner or operator must obtain a statement from an independent, qualified registered professional engineer certifying that the Subpart W requirements are met (40 CFR § 265.443(g)); and

(3) be 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 (40 CFR § 265.443(j)).

An EPA inspector observed the door of the retort swing up to open and a cloud of steam containing (Pentachlorophenol) PCP wood preservative, which is F032 listed hazardous waste, be released. The cloud extended beyond the 12-foot wide drip pad as well as toward the roof which covers the drip pads. The steam (F032) also was observed to rise from the charge of treated poles as it cooled on the drip pad. During both of the inspections, the inspectors noticed dark stains on the aprons outside the south end of the drip pads, near the retort door and the sumps. This stain was present down the length of the aprons decreasing in width as it extended to the north, consistent with the steam dispersed from the retort door openings and cooling of the treated poles.

In addition, a Facility representative explained that the Facility's practice is to spray the drip pads with water from a hose to clean the drip pads. This water spray from cleaning the drip pads, and waste from the dripping poles which is on the drip pads, are washed into sumps at the north end of the retorts. The Facility representative also explained that as a worker sprays off the drip pads toward the retort door some over spray carries onto the loading area or aprons.

EPA collected samples from the aprons that are on either side of the drip pads and the center asphalt strip between

the drip pads on November 17, 1999. The analytical results of these samples show high levels (up to 120,000,000 ug/kg) of PCP had been deposited outside of the drip pads on the aprons and center asphalt strip. The steam and over spray on the aprons center asphalt berm constitutes "disposal" under 40 CFR § 260.10. This PCP is F032 listed hazardous waste because it is generated by the wood preserving processes at J.H. Baxter.

The drip pads at the Facility do not have synthetic liners that are installed to cover all surrounding earth that could come in contact with waste or leakage, as required by 40 CFR § 265.443(b)(1)(iii). J.H. Baxter has also not obtained and kept on file at the Facility a written assessment updated annually of the drip pads, reviewed and certified by an independent qualified registered professional engineer which attests to the extent to which the drip pads meet the design and operating requirements of 40 CFR § 265.443, as required by 40 CFR § 265.443(a)(4). As set forth above, if J.H. Baxter is operating new drip pads, it must comply with one of these requirements.

If J.H. Baxter is operating existing drip pads, it must comply with all of the requirements in 40 CFR § 265.443, except 40 CFR § 265.443(b). See 40 CFR § 265.441. Since J.H. Baxter has not obtained and kept on file at the Facility a written assessment updated annually of the drip pads, reviewed and certified by an independent, qualified registered physical engineer which attests to the extent to which the drip pads meet the design and operating requirements of 40 CFR § 265.443, as required by 40 CFR § 265.443(a)(4), it is not in compliance with 40 CFR § 265.441.

In addition, the drip pads and associated collection system have not been designed and operated to convey, drain and collect liquid resulting from drippage or precipitation in order to prevent run-off as required by 40 CFR § 265.443(d).

Also, during the inspection, Facility representatives could not produce any documentation to show that the drip pads had been evaluated to determine that the drip pads meet the requirements of 40 CFR § 265.443(a) through (f) and that J.H. Baxter had obtained a statement from an independent, qualified registered professional engineer certifying the drip pads meet the requirements of 40 CFR § 265.443, Subpart

W. See 40 CFR § 265.443(g).

Finally, in order to enter or leave the tank farm system associated with the drip pads, employees must take one of the two sets of stairs which are located to the east of each retort. To use the stairs located between the two retorts, employees must walk across one of the two 12-foot wide drip pads, unless they walk the entire 165-foot length of the drip pads down the center asphalt strip between the drip pads. During the inspections, EPA inspectors observed people walking across the drip pads to gain access to the tank farm system using the stairs located between the two retorts. During the inspections, Facility representatives also led the inspectors into the tank farm system by walking across the drip pad associated with retort number 3 to reach the stairs between the two retorts. In addition, EPA inspectors noticed tire tracks in the PCP staining on the aprons on either side of the drip pads and beyond the end of the drip pads. Thus, Facility personnel and equipment track hazardous waste or hazardous constituents off the drip pads as a result of activities by personnel or equipment and so J.H. Baxter does not meet the requirement for drip pads found at 40 CFR § 265.443(j).

In summary, J.H. Baxter is not in compliance with 40 CFR § 265.442 because it has not met either alternative requirement for new drip pads found at 40 CFR §§ 265.443(b)(1)(iii) or 265.443(a)(4). Since J.H. Baxter is not in compliance with 40 CFR § 265.443(a)(4), even if it operates an existing drip pad it is not in compliance with 40 CFR § 265.441. In addition, J.H. Baxter is not in compliance with 40 CFR §§ 265.443(d), 265.443(g) and 265.443(j). For these reasons, J.H. Baxter does not meet the design, installation and operating requirements for drip pads set forth in 40 CFR Part 265, Subpart W.

In addition, if J.H. Baxter is operating an existing drip pad (instead of a new drip pad), J.H. Baxter must comply with other requirements in 40 CFR § 265.441 which, among other things, include the requirement that the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of 40 CFR Part 265, Subpart W. The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered physical engineer that attests to the results of the evaluation. This

assessment must be reviewed, up-dated and re-certified annually until all upgrades, repairs or modifications necessary to achieve compliance with all the standards of 40 CFR § 265.443 are complete. As discussed above, J.H. Baxter does not meet the requirements of Subpart W and J.H. Baxter has not obtained the required certifications.

Thus, J.H. Baxter is operating drip pads and is disposing of hazardous waste on the soil without a permit or interim status in violation of Section 3005 of RCRA, and 40 CFR § 270.1(c) and WAC 173-303-800, and is not in compliance with other applicable requirements for storage and disposal of hazardous waste found in 40 CFR Part 265.

Storage Treatment of Hazardous Waste in a Tank System without a Permit or Interim Status

Storage and Treatment in a Tank System

Section 3005 of RCRA prohibits the treatment, storage or disposal of hazardous waste without a permit or interim status and the regulations at 40 CFR § 270.1(c) and WAC 173-303-800 require a RCRA permit for the treatment, storage or disposal of any hazardous waste identified or listed in 40 CFR Part 261.

Drippage from the poles treated with PCP falls into the sumps located under the retort doors and onto the drip pads. The drippage that falls on the drip pads is washed from the drip pads into the sumps located under the retort doors. The waste that collects in the sumps then flows into the tank farm system associated with the drip pads where it is treated and stored. This waste is generated by the wood preserving process and is F032 listed hazardous waste.

Wastewater from washing the equipment that is used to move the charges into and out of the retorts and off of the drip pads flows into a sump in the wash rack building through underground ancillary piping to the sump in the northeast corner of the tank farm system associated with the drip pads where it is treated and stored. This wastewater is generated by the wood preserving process and is F032 listed hazardous waste.

The tank farm system associated with the drip pads is hosed down and the wash water flows into the sump in the

northeast corner of the tank farm. This wash water contains F032 listed hazardous waste and is treated and stored in the tank farm.

Wastewater, process residuals and spent formulation is removed from the butt tank and sent through ancillary piping into the sump in the northeast corner of the tank farm system associated with the drip pads where it is treated and stored. This waste is generated by the wood preserving process and is F032 listed hazardous waste.

This tank farm system which is associated with the drip pads, stores and treats the F032 listed hazardous waste that flows into it. J.H. Baxter is storing and treating F032 listed hazardous waste in a tank system without a permit or interim status as required by Section 3005 of RCRA, and is subject to the applicable requirements found in 40 CFR Part 265, Subpart J, and WAC 173-303-640.

Failure to Meet the Tank System Requirements

The regulation at 40 CFR § 265.190(c) requires that tanks, sumps, and other collection devices used in conjunction with drip pads must meet the requirements for tank systems set forth in 40 CFR Part 265, Subpart J. The regulations at 40 CFR Part 265, Subpart J, and WAC 173-640, among other things, require that the owner/operator obtain and keep on file an assessment of the tank system reviewed and certified by an independent, qualified registered professional engineer that attests to the tank system integrity (WAC 173-303-640(2)(a) and 40 CFR § 265.191) and secondary containment be maintained free of cracks (WAC 173-303-640(4)(e)(i)(C) and 40 CFR § 265.193(e)(1)(iii)).

During the inspection, J.H. Baxter could not provide an assessment of the tank farm system associated with the drip pads that meets the requirements of 40 CFR Part 265, Subpart J. The tank farm system associated with the drip pads treats and stores F032 listed hazardous waste. Also, cracks were observed in the secondary containment of the tank farm system associated with the drip pads. In addition, the cracks in the secondary containment were not noted in the weekly inspection checklists for the four weeks prior to EPA's August inspection, as required by 40 CFR § 265.195 and WAC 173-303-640(6)(b)(iii).

J.H. Baxter has not obtained or kept on file a certified assessment of the tank system nor maintained the secondary containment free of cracks as required by 40 CFR §§ 265.191 and 265.193(e)(1)(iii) and WAC 173-303-640(2)(a) and 173-303-640(4)(e)(i)(C). J.H. Baxter is thus, operating a tank storage and treatment system without a permit or interim status.

Storage or Disposal of Hazardous Waste in Surface Impoundments Without a Permit or Interim Status

Section 3005 of RCRA prohibits the treatment, storage or disposal of hazardous waste without a permit or interim status, and 40 CFR § 270.1(c) and WAC 173-303-800 require a RCRA permit for the treatment, storage and disposal of any hazardous waste as identified or listed in 40 CFR Part 261 and Chapter 173-303 WAC.

Discharge monitoring reports submitted by J.H. Baxter show that PCP from J.H. Baxter's wood preserving process, which is F032 listed hazardous waste, is detected in at least french drains 13, 14, 23, 24, and 25. Additionally, J.H. Baxter has compiled four years of composited storm water data from the water ponded around french drains numbered 10, 11, and 16 through 22, which are located on the untreated wood portion of the Facility. Composite data of samples show that PCP from J.H. Baxter's wood preserving process, which is F032 hazardous waste, is in the water. The location of these latter french drains is in the portion of the Facility with the lowest elevation. The ground throughout the Facility has been contoured to create drainage depressions to help storm water flow out of the way of Facility operations and into the french drains. Storm water at the Facility tends to pond near the french drains in these drainage depressions. The drainage depressions at the Facility are surface impoundments under RCRA. J.H. Baxter is storing or disposing of hazardous waste in surface impoundments without a permit or interim status in violation of Section 3005, and 40 CFR § 270.1(c) and WAC 173-303-800, and is not in compliance with the other applicable requirements for the treatment and storage of hazardous waste found in 40 CFR Part 265.

Disposal of Hazardous Waste in a Landfill Without a Permit or Interim Status

Section 3005 of the Solid Waste Disposal Act prohibits the treatment, storage or disposal of hazardous waste without a permit or interim status and 40 CFR § 270.1(c) and WAC 173-303-800 require a RCRA permit for the treatment, storage and disposal of any hazardous waste identified or listed in 40 CFR Part 261.

EPA inspectors noticed staining on the aprons that are located on either side of the drip pads and on the center asphalt strip. Results of the analysis of samples collected from the stained areas confirm that the staining is PCP. This PCP is from the wood preserving process and is F032 listed hazardous waste.

EPA inspectors were told by Facility representatives that the french drains are cleaned out every two to four years due to the build-up of silt, and the sludge that is removed from the drains is put on the surface soil in the treated log storage area. The sludge removed from the french drains that have received PCP from the wood preserving process is F032 listed hazardous waste.

J.H. Baxter's tank farm system associated with the drip pads treats F032 by running the wastewater and other liquids it receives through a number of treatment units. Some of the liquid that goes through the treatment system leaves the tank farm system via the cooling tower. Results of the analysis of a sample taken by Washington Department of Ecology on March 7, 1996, of the water from the down spout of the roof over the cooling tower showed PCP of 35,000 ppb. This wastewater flowing down the down spout of the roof that is over the cooling tower and any cooling tower/evaporator drift is F032 listed hazardous waste. Any liquid which drains from the cooling tower down-spout or any cooling tower/evaporation drift which falls on the ground constitutes disposal of hazardous waste in a landfill.

J.H. Baxter is storing or disposing of hazardous waste (F032) in a landfill without a permit or interim status in violation of Section 3005, and 40 CFR § 270.1(c) and WAC 173-303-800, and is not in compliance with the other applicable requirements for the treatment and storage of hazardous waste

found in 40 CFR Part 265 and Chapter 173-303 WAC.

Land Disposal Contrary to Restrictions

The regulations found at 40 CFR § 268.30(a) and 173-303-140 prohibit land disposal of F032 except after treatment in accordance with 40 CFR Part 268, Subpart D.

J.H. Baxter has disposed of listed hazardous waste F032 on the ground throughout the Facility without first treating the waste to meet the land disposal restriction requirements found at 40 CFR § 268.30(a).

Filter press sludge is K001 listed hazardous waste. EPA inspectors found no documentation required by 40 CFR § 268.7 or WAC 173-303-140 in the file to support that J.H. Baxter had notified the receiving facility that they were shipping listed waste K001 and the waste did not meet the LDR treatment standards found in 40 CFR Part 268 or WAC 173-303-140.

Storage of Hazardous Waste without a Permit or Interim Status because of Failure to Meet Conditions for Accumulation of Hazardous Waste for 90 Days or Less

White Bags

The regulations at 40 CFR § 262.34(a) and WAC 173-303-200(1)(b) provide that a generator may accumulate hazardous waste for 90 days or less in containers so long as it complies with, among other things, 40 CFR Part 265, Subpart I, and WAC 173-303-630, respectively. The regulations at 40 CFR § 265.173(a)and WAC 173-303-630(5)(a) require that a container holding hazardous waste must always be closed except when necessary to add or remove waste. Containers stored for less than 90 days must also have clearly and visibly marked the container with the words "Hazardous Waste" or "Dangerous Waste" and the date which accumulation began as required by 40 CFR 262.34(a)(2) & (3) and WAC 173-303-200(1)(c) & (d).

Outside of the wash rack station was a large yellow dumpster just north of which EPA inspectors observed several open large white bags containing various amounts of gravel, wood particles and other waste resulting from drippage of

F032 listed hazardous waste in the area of the Facility where treated wood is stored. These bags were not closed and waste was not being added or removed. Additionally, the bags were not labeled with the date accumulation began or the words "Hazardous Waste" or "Dangerous Waste". The Facility representative indicated that this waste is disposed of as listed hazardous waste F032.

The management of this hazardous waste is not in accordance with the conditions set forth in 40 CFR § 262.34(a) and WAC 173-303-200(1)(b). Thus this hazardous waste is being managed in a container subject to 40 CFR Part 265, Subpart I, and WAC 173-303-630 without a permit or interim status in violation of Section 3005 of RCRA and WAC 173-303-800, and other applicable requirements for storage of hazardous waste found in 40 CFR Part 265 and Chapter 173-303 WAC.

Sump in the Northeast Corner of the Tank Farm

The regulations at 40 CFR § 262.34(a)(3) and WAC 171-303-200(1)(d) allow a generator to accumulate waste on-site for 90 days or less provided that, among other things, each container and tank is labeled or marked clearly with the words "Hazardous Waste" or "Dangerous Waste".

During the inspection of the tank farm, a Facility representative explained how the tank farm is hosed down and the wash water flows into the northeast corner of the tank farm and into a sump in that location. This sump is either a tank or a surface impoundment that receives F032 listed hazardous waste. The Facility representative told us that the sump is cleaned out once a quarter, but the sump was not labeled with the words "Hazardous Waste" or "Dangerous Waste" in accordance with 40 CFR § 262.34(a)(3) and WAC 173-303-200(1)(d). Thus, if this sump is a tank, then this hazardous waste is being managed in a tank without a permit or interim status in violation of Section 3005 of RCRA, and WAC 173-303-800 and other applicable requirements for storage of hazardous waste found in 40 CFR Part 265 and WAC 173-303. If this sump is a surface impoundment, then this hazardous waste is being managed in a surface impoundment without a permit or interim status in violation of Section 3005 of RCRA, and WAC 173-303-800 and other applicable requirements for storage of hazardous waste found in 40 CFR Part 265 and Chapter 173-303 WAC.

Storage of Hazardous Waste without a Permit or Interim Status because of Failure to Properly Manage Waste in a Satellite Accumulation Area

The regulations at 40 CFR § 262.34(c)(1) and WAC 173-303-200(2) allow a generator to accumulate waste on site at the point of generation, without a permit or interim status provided that it complies with certain conditions. These conditions include, in relevant part, the requirements that:

1) a container holding hazardous or dangerous waste always be closed except when it is necessary to add or remove waste and must not be opened, handled or stored in a manner which may rupture the container or cause it to leak (40 CFR § 265.173 and WAC 173-303-630(5));

2) such a container be marked with the words "Hazardous Waste" or "Dangerous Waste" (40 CFR § 262.34(c)(1)(ii) and WAC 173-303-200(2)(a)(ii)); and

3) when more than fifty-five (55) gallons of waste is accumulated the container holding the excess accumulation must be marked with the date that the excess amount began accumulating (40 CFR § 262.34 (c)(2) and WAC 173-303-200(2)(b)).

If these conditions are not met the owner and operator of the facility is in violation of Section 3005 of RCRA, and WAC 173-303-800 and other applicable requirements for storage of hazardous waste found in 40 CFR Part 265 and Chapter 173-303 WAC.

Drums of Glove and Absorbent Pads

In the tank farm system associated with the drip pads, EPA inspectors observed two drums in a satellite accumulation area that a Facility representative said contained gloves and absorbent pads contaminated with listed hazardous waste F032. Both drums were on wheeled castors and the lids were resting on the top of the drums in such a manner that the lids could fall off if the drums were bumped. Thus, the drums were open and stored in a manner which may cause them to leak contrary to 40 CFR § 265.173(b) and WAC 173-303-630(5)(b).

The Facility representative stated that one of these two drums in the satellite accumulation area that contained gloves and absorbent pads contaminated with listed hazardous waste F032 had been filled on August 14, 1999. Neither of the two containers was labeled with the date that the excess accumulation of waste began accumulating in accordance with 40 CFR § 262.34(c)(1)(ii) and WAC 173-303-200(2)(a)(ii).

Drum of Mineral Spirits

A fifty-five (55) gallon drum containing used ignitable mineral spirits solvent (Chevron T-325) was located on a pad outside the product storage area of the maintenance shop in the northeast corner of the Facility. The mineral spirits solvent is hazardous waste because of the characteristic of ignitability (D001). See 40 CFR § 261.21 and WAC 173-303-090. The lid on this drum was resting on the top of the drum in such a manner that it could fall off should it be bumped into, and so the drum was stored in a manner which may cause it to leak. J.H. Baxter's management of this drum does not meet the condition in 40 CFR § 265.173(b) and WAC 173-303-630(5)(b) in accordance with 40 CFR § 262.34(c). In addition, this container was not labeled in accordance with 40 CFR § 262.34(c)(1)(ii) and WAC 173-303-200(2)(a)(ii).

Drum Containing Pressed Sludge

Another drum was located near a filter press in the tank farm system associated with the drip pads. This drum contained pressed sludge from a filter in the tank farm treatment system and was designated as a satellite accumulation area. Although it was labeled F032, this pressed sludge is K001 listed hazardous waste. The lid was not closed in accordance with 40 CFR § 265.173(a) and WAC 173-303-630(5)(a).

Drum Containing Floor Sweeping in the Butt Tank Area

In the building that is associated with the butt tank, EPA inspectors observed a drum that contained floor sweepings contaminated with PCP from the butt treatment wood preserving process and that is F032 hazardous waste. This drum was in a satellite accumulation area and was not closed in accordance with 40 CFR § 265.173(a) and WAC 173-303-630(a).

Drum On the Center Asphalt Strip

During the inspection, EPA inspectors noted that waste that had been swept from the drip pads was being accumulated in a fifty-five (55) gallon drum that was on the center asphalt strip between the drip pads. This waste includes F032 listed hazardous waste. The drum did not have a label marked "Hazardous Waste" or "Dangerous Waste" in accordance with 40 CFR § 262.34(c)(1)(ii) and WAC 171-303-200(2)(a)(ii).

Blue Plastic Container of Aerosol Cans

During the inspection, EPA inspectors noticed that the blue plastic containers used to collect paint aerosol cans in the log peeler and framing satellite accumulation areas did not have lids and were not closed in accordance with 40 CFR § 265.173(a) and WAC 173-303-630(5)(a). These aerosol cans are hazardous waste because they are reactive (D003). See 40 CFR § 261.23 and WAC 173-303-090.

Summary

In each of the above listed instances, J.H. Baxter did not meet the conditions in 40 CFR 262.32(c) and WAC 173-303-200(2)(b), and therefore J.H. Baxter is in violation of Sections 3005 of RCRA and WAC, 173-303-800 and other applicable requirements in 40 CFR Part 265 and Chapter 173-303 WAC.

Storage of Hazardous Waste without a Permit or Interim Status

Section 3005 of RCRA prohibits the treatment, storage or disposal of hazardous waste without a permit. The regulations at 40 CFR § 270.1(c) and WAC 173-303-800 require a RCRA permit for the treatment, storage and disposal of any hazardous waste identified in 40 CFR Part 261 and WAC 173-303-800.

EPA inspectors observed a pile of approximately 20 poles (old skids) on the side of the Facility where untreated wood is staged. At the base of the pile were large splinters of wood that had fallen from the poles. The pile sat directly on the ground and there was some puddling of water around the pile. No cover or roof was over the pile. A Facility representative called this a waste pile and explained that

the majority of these skids were not useable in their current condition. The Facility representative told the inspectors that these poles are disposed of as listed hazardous waste F032 (see 40 CFR § 261.31). The poles may also be characteristically hazardous. These poles are being managed in a waste pile subject to 40 CFR Part 265, Subpart L, and WAC 173-303-660, without a permit or interim status in violation of Section 3005 of RCRA, WAC 173-303-800, and other applicable requirements for storage of hazardous waste found in 40 CFR Part 265 and Chapter 173-303 WAC.

Required Action

The above violations may subject J.H. Baxter to enforcement action under Section 3008 of RCRA, 42 U.S.C. § 6928, including the assessment of civil penalties. Within thirty (30) days of receipt of the NOV, EPA requests that J.H. Baxter submit a written response that identifies all actions that the Facility has taken or will take to correct the violations and the time-frame for completing such action.

Please send all material submitted in response to this NOV to:

Jamie Sikorski, Manager
RCRA Compliance Unit
U.S. Environmental Protection Agency
1200 Sixth Avenue
M/S WCM-126
Seattle, WA 98101

A copy of this material should be sent to:

Dave Misko,
HWTR Compliance Supervisor
3190 160th Ave. S.E.
WA State Department of Ecology
Northwest Regional Office
Bellevue, WA 98008-5452

Technical Assistance

The regulation at 40 CFR § 273.22(c) requires used oil containers to be labeled. At the time of these inspections, however, this regulation was not in effect in the State of Washington. To assure that all site personnel, emergency

responders and potential future inspectors have knowledge of the contents of used oil containers, J.H. Baxter should consider labeling the black drum located in the outbuilding at the northeast corner of the Facility with the words "Used Oil".

EPA Reservation of Rights

Notwithstanding this NOV or J.H. Baxter's response, EPA reserves the right to take any action pursuant to RCRA, the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), or any other applicable legal authority, including without limitation, the right to seek injunctive relief, implementation of response actions or corrective measures, cost recover, monetary penalties, and punitive damages. J.H. Baxter's response shall not affect J.H. Baxter's duties, obligations or responsibilities with respect to the Facility under local, state, or federal law or regulation.

Thank you for your prompt attention to this important matter. Please direct any question you may have regarding this NOV to Cheryl Williams, RCRA Compliance Officer, at (206)553-2137. If your questions are of a legal nature, please have your attorney contact Jennifer MacDonald, Assistant Regional Counsel, at (206)553-8311.

Sincerely,

Richard Albright, Director
Office and Waste and Chemicals Management

Enclosure

cc: Dave Misko, Ecology