

Date: February 10, 2022

To: Lydia Emer, Administrator, Land Quality Division

From: Susan Turnblom, Western Region Cleanup Program SMT
Don Hanson, Western Region Cleanup Program DEH

Through: Michael Kucinski, WR Cleanup and Emergency Response Program Manager MEK
Ned Fairchild, HQ Cleanup Program Manager NAF

Subject: Request for Orphan Site Designation – J H Baxter & Co. – Eugene
ECSI #0055

The purpose of this memorandum is to request official designation of J H Baxter & Co. – Eugene as an Orphan Site, under Oregon Revised Statute (ORS) 465.381. This designation will enable DEQ to use the Orphan Site Account to fund site investigation, stabilization, and cleanup activities. ORS 465.381(6)(a) allows DEQ to use the Orphan Site Account for DEQ expenses at sites where the responsible party is “unknown or is unwilling or unable to undertake all required removal or remedial action.” As described in this memorandum, DEQ has determined that the party potentially liable for contamination at this site is unwilling (and likely unable) to undertake required remedial actions.

Background

The 31-acre J H Baxter & Co. property at 85 Baxter St. in Eugene (the “Site”) has been home to an active wood treatment facility (the “Facility”) since 1943. Historical spills and operational practices have caused soil and groundwater contamination. The Facility has also had past violations of its air quality and water quality permits, and numerous hazardous waste violations. The local community has complained of odors and expressed concern over related health effects of the Facility’s emissions. Since 1989 DEQ, the EPA and the Lane Regional Air Protection Agency (LRAPA) have investigated the Facility, issued enforcement actions, and required on-site cleanup of contamination. In 2018 EPA RCRA issued a Consent Agreement and Final Order to J H Baxter & Co. requiring cleanup of the tram storage area at the Facility as part of the on-site remedial action subsequently selected in 2019 (see below).

In accordance with OAR 340-122-0115 (26) The ‘Facility’ or ‘Site’ includes the J H Baxter facility itself, as well as “any area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.” At this site, this includes the on-site and off-site areas, including residential neighborhoods near the Facility, where contamination from the Facility has migrated.

In October 2019, DEQ issued a Record of Decision, which required on-site cleanup as well as off-site soil sampling. Also in 2019, LRAPA initiated the Cleaner Air Oregon regulatory process. J H Baxter & Co. must complete all required Cleaner Air Oregon steps as a condition of their permit to operate.

Summary of Site Issues

J H Baxter & Co. and its consultants sampled soil near the Facility in 2020. While sampling results did not identify contamination that could be an immediate threat to the health of nearby residents, the results indicated more detailed, yard-specific sampling was necessary to further evaluate the magnitude and extent of contamination. Baxter’s consultant took soil samples from seven residential yards in September and October of 2021. Six yards had dioxin levels that exceed DEQ’s residential soil risk-based concentration of 4.7 parts per trillion (ppt). Three of these yards had dioxin levels over 40 ppt. According to the Oregon Health Authority, a

dioxin concentration in soil at or above 40 ppt poses a risk to children younger than six years old who play in the soil every day for a year or more. This includes an increased risk of reproductive effects later in life and potential thyroid hormone abnormalities. Therefore, DEQ has determined that the contaminated soil in the three yards in the Locality of the Facility with dioxin levels over 40 ppt needs to be removed as quickly as possible.

On January 21, 2022 DEQ sent a Consent Order and Scope of Work to J H Baxter & Co. for off-site elements of the Remedial Action prescribed in the ROD, including the immediate cleanup of the three properties with dioxin levels over 40 ppt and for the continued off-site sampling to delineate the extent of contamination and identify other properties that need cleanup.

Site Owner/Operator Information

The Site address is 85 Baxter Street, Eugene, OR 97402.

J H Baxter & Co., a California Limited Partnership is the only known potentially responsible party. The mailing address is PO Box 5902, San Mateo, CA 94402.

On January 26, 2022, Georgia Baxter, President of J H Baxter & Co., verbally declined to enter into the scope of work for the off-site elements of the ROD citing financial limitations to fund the work. Follow-up email correspondence from Georgia Baxter, dated January 26, 2022, suggests J H Baxter & Co. is unable to undertake the required actions. In response to concerns Georgia Baxter expressed in a conversation with DEQ about oversight costs in December 2020, DEQ sent an Ability to Pay (ATP) packet on January 4, 2021 to J H Baxter & Co. and the completed paperwork was not returned, so an ability to pay determination has not yet been made. Based on J H Baxter & Co.'s lack of cooperation with DEQ's request for ATP documentation, DEQ has determined J H Baxter & Co. is an unwilling (and likely unable) potentially responsible party. Another request to complete ATP paperwork was made on February 1, 2022.

Unpaid DEQ oversight costs attributable to J H Baxter & Co. – Eugene site cleanup exceed \$200,000 and J H Baxter & Co. has stopped making payments. A lien letter was sent to J H Baxter & Co. on January 28, 2022 and the lien will be filed on February 16, 2022.

Immediate Action is Critical

DEQ has determined that contamination at the J H Baxter & Co. – Eugene site, and specifically off-site residential soil contamination, poses significant current and ongoing threats to human health and the environment, and that immediate investigative, removal, and/or remedial actions are needed to reduce or eliminate these threats. DEQ recommends using funds from the Orphan Site Account to evaluate, design, and implement appropriate response actions.

With the approval of Orphan designation for this site, DEQ's Business Office will begin using the Orphan Site Account to pay for Account-eligible activities. This approval will also enable the transfer of any appropriate prior expenses from HSRAF to DEQ's Orphan Site Account. If further investigation identifies parties responsible for contamination who are able to pay Orphan costs that DEQ incurs at the site, DEQ will seek reimbursement of these costs from those parties.

Please sign below to approve this request for designation of the J H Baxter & Co. – Eugene site as an Orphan Site, and to authorize use of the Orphan Site Account.

Lydia Emer

Lydia Emer, Administrator
Land Quality Division

02/10/2022

Date

Accounting & Financial Addendum Orphan Site Project Addition

Orphan Site Name: J. H. Baxter Company - Eugene

Cost Incurred¹:

Direct Costs: See Accounting Schedule on page 2

LQ Indirect: See Accounting Schedule on page 2

Total Billable \$200,163.40

Amount Invoiced: See Accounting Schedule on page 2

Amount Recovered: See Accounting Schedule on page 2

Amount to transfer to Orphan Site Account: \$200,163.40

Site Information

ECSI Number: 0055

ECSI Site Name: J. H. Baxter Company -
Eugene

Existing project number(s) to be declared orphan	
Business Office Number:	138200
Business Office Title:	J. H. Baxter Company - Eugene
Billable Costs Incurred:	See Accounting Schedule on page 2
Invoiced:	See Accounting Schedule on page 2
Received:	See Accounting Schedule on page 2
Transfer Previous Costs?:	Yes
Special Transfer Instructions:	Only transfer allowable invoiced costs that are unpaid
Comments:	Please set up a new project number.
QTime ID:	Please set up new Qtime time center.
QTime Title:	J. H. Baxter Company – Offsite Industrial Orphan

Approved: Lydia Emer
Land Quality Division Administrator

¹ Costs incurred are through December 31st, 2021 accounting.

DEQ Time Reporting System Accounting Schedule

Database Instance:

Criteria: Qtime Nbrs: 25261 Project Nbrs: -00

<u>ProjectName</u>	J. H. Baxter Company - Eugene	<u>Qtime #(s)</u> :	25261
<u>Project #(s)</u>	138200-00	<u>ECSI Site ID</u> :	55
<u>Project</u>	Active	<u>OERS #</u> :	
<u>Site Type</u> :	HSRAF - Site Response	<u>LUST Log #</u> :	
<u>Region</u> :	WR	<u>Is Orphan Site</u> :	No

Invoicee: Attn: Georgia Baxter
 J. H. Baxter & Co., A California LP
 PO Box 5902
 San Mateo, CA 94402-5902

	<u>Invoicee</u>		<u>Project</u>	
	Billing Period Costs 12/2021	Costs To Date	Billing Period Costs 12/2021	Costs To Date
Expenditures:				
Personal Services	\$3,551.77	\$260,472.09	\$3,551.77	\$260,472.09
Attorney General	\$193.60	\$7,097.10	\$193.60	\$7,097.10
Travel	\$0.00	\$2,126.42	\$0.00	\$2,126.42
Services and Supplies	(\$80.60)	\$729.43	(\$80.60)	\$729.43
Contract Payments	\$10,790.00	\$72,755.00	\$10,790.00	\$72,755.00
Capital Outlay	\$0.00	\$0.00	\$0.00	\$0.00
Agency Indirect Cost	\$732.19	\$53,476.77	\$732.19	\$53,476.77
LQD Indirect Cost	\$7,316.65	\$410,169.28	\$7,316.65	\$410,169.28
Cleanup Law Rewrite	\$0.00	\$4,149.78	\$0.00	\$4,149.78
Total Expenditures:	\$22,503.61	\$810,975.87	\$22,503.61	\$810,975.87
Assessments:	\$1,471.97	\$4,707.60	\$1,471.97	\$4,707.60
Payments:	\$0.00	\$615,520.07	\$0.00	\$615,520.07
Total Balances:		\$200,163.40		\$200,163.40

Six Month Summary

	6/2021	7/2021	8/2021	9/2021	10/2021	11/2021
Total Costs	\$669,039.55	\$692,389.36	\$719,946.11	\$763,561.61	\$778,346.65	\$788,472.26
Total Payments	\$595,698.46	\$595,698.46	\$615,520.07	\$615,520.07	\$615,520.07	\$615,520.07

Signature: Susan M. Turnblom
Susan M. Turnblom (Feb 9, 2022 18:52 PST)
Email: susan.turnblom@deq.oregon.gov

Signature: Donald E. Hanson
Donald E. Hanson (Feb 10, 2022 07:59 PST)
Email: don.hanson@deq.state.or.us

Signature: Michael E. Kucinski
Michael E. Kucinski (Feb 10, 2022 08:01 PST)
Email: michael.kucinski@deq.oregon.gov

Signature: Ned A. Fairchild
Ned A. Fairchild (Feb 10, 2022 12:54 PST)
Email: ned.fairchild@deq.state.or.us