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January 3, 2025

David Angeli, Michelle Kerin, Amy Potter
 Angeli & Calfo LLC
 121 SW Morrison St., Ste. 400
 Portland, OR 97204

Re: *United States v. J.H. Baxter & Co., A California Limited Partnership*
 Case No. 6:24-cr-00441-MC-2
 Plea Agreement Letter

Dear Counsel:

1. **Parties/Scope:** This plea agreement is between this United States Attorney's Office (USAO) in coordination with the United States Department of Justice Environmental Crimes Section (collectively, "the government") and defendant J.H. Baxter & Co., A California Limited Partnership ("J.H. Baxter" or "defendant") and thus does not bind any other federal, state, or local prosecuting, administrative, or regulatory authority. This agreement does not apply to any civil or administrative remedy that the Environmental Protection Agency (EPA) or any other regulatory agency may seek.
2. **Charges:** Defendant agrees to plead guilty to Counts 1 and 2 of the Information. Count 1 charges defendant with violating the Resource Conservation and Recovery Act (RCRA), Title 42, United States Code, Section 6928(d)(2)(A) specifically by treating hazardous waste without a permit. Count 2 charges defendant with violating the Clean Air Act, Title 42, United States Code, Section 7413(c)(1) specifically by violating National Emission Standards for Hazardous Air Pollutants (NESHAP) for Wood Preserving Area Sources.
3. **Penalties:** The maximum sentence issuable to an organization under Count 1 is a fine of not more than \$50,000 per day of violation, five years' probation, or both. The maximum sentence issuable to an organization under Count 2 is a fine of not more than \$500,000 or twice the gross pecuniary gain or loss from the offense, five years' probation, or both. Defendant must also pay a mandatory fee assessment of \$400 per count by the time of entry of its guilty plea. *See* 18 U.S.C. § 3013(a)(2)(B).

Angeli & Calfo LLC
Re: J.H. Baxter & Co., A California Limited Partnership
Page 2

4. **Dismissal/No Prosecution:** The government agrees not to bring additional charges against defendant in the District of Oregon arising out of this investigation as known to the government at the time of this agreement.

5. **Elements of the Offense:** For defendant to be found guilty of Count 1 of the Information, the government must prove the following elements beyond a reasonable doubt:

1. The defendant, J.H. Baxter, is a person, who;
2. Treated a waste material;
3. The waste material was an identified or listed hazardous waste pursuant to RCRA;
4. The treatment was done without a permit issued pursuant to RCRA; and
5. The defendant acted knowingly.

For defendant to be found guilty of Count 2 of the Information, the government must prove the following elements beyond a reasonable doubt:

1. The defendant, J.H. Baxter, is a person, who was an owner or operator;
2. Of a stationary source;
3. Who failed to comply with a design, equipment, work practice, or operational standard;
4. In violation of an applicable NESHAP; and
5. The defendant acted knowingly.

6. **Factual Basis and Relevant Conduct:** Defendant has fully discussed the facts of this case and any potential defenses with defense counsel. Defendant has committed each of the elements of the crime to which defendant is pleading guilty and admits there is a factual basis for defendant's guilty plea as set forth herein and that these facts establish each of the foregoing elements beyond a reasonable doubt. Without prejudice to the parties' ability to present additional facts at sentencing, the following facts are true and undisputed:

From approximately 1943 to 2022, J.H. Baxter owned and operated numerous wood treatment facilities, including a facility at 3494 Roosevelt Blvd., Eugene, Oregon ("Facility"). J.H. Baxter was originally formed in California but is licensed to conduct business in Oregon. On corporate filings, J.H. Baxter & Co., Inc. is listed as the general partner for J.H. Baxter & Co., A California Limited Partnership. Unless otherwise indicated, the two entities are referenced herein collectively as "J.H. Baxter." The Facility was closed in January 2022.

Angeli & Calfo LLC
 Re: J.H. Baxter & Co., A California Limited Partnership
 Page 3

J.H. Baxter employed a wood treatment process at the Facility that used several hazardous chemicals to treat and preserve wood. Facility personnel would insert quantities of untreated dimensional or laminated lumber into large, sealable, cylindrical devices called “retorts,” along with treating chemicals. The retorts would be sealed to allow wood to absorb the treating chemicals under pressure. Those chemicals included pentachlorophenol (“penta”), creosote, and ammoniacal copper zinc arsenate (ACZA). ACZA consists of arsenic pentoxide among other constituents. The Facility’s wastewaters, process residuals, preservative drippage, and spent formulations from the wood preserving processes were listed hazardous wastes under RCRA, specifically identified as hazardous waste codes F032, F034, and F035. *See* 40 C.F.R. § 261.31.¹

J.H. Baxter was a large quantity generator of hazardous waste. To properly treat wastewater from its wood treatment process, also called process wastewater, the Facility operated a wastewater treatment unit (WWTU) to treat and evaporate the waste. Generally, in order for a facility to legally treat, store, or dispose of hazardous waste, it must do so pursuant to the terms of a RCRA permit. 42 U.S.C. § 6925. J.H. Baxter’s WWTU, however, operated pursuant to an exemption to RCRA which allowed for the evaporation of process wastewater if the unit met certain requirements. *See* 40 C.F.R. § 264.1(g)(6); and 40 C.F.R. § 260.10. The wood treatment retorts were not part of the WWTU.

For years, when J.H. Baxter’s Facility had too much water on site, including process wastewater and precipitation, J.H. Baxter’s employees at the Facility would transfer hazardous process wastewater to an available wood treatment retort to “boil it off” or evaporate it. The retorts were left to boil until the volume of wastewater within the retort was greatly reduced, at which point J.H. Baxter would remove the remainder from the retort, label it as hazardous waste and ship it offsite for disposal.

Neither the Lane Regional Air Protection Agency (LRAPA) nor the Oregon Department of Environmental Quality (ODEQ), the permitting agencies for air pollution and hazardous waste, respectively, were made aware of this process. J.H. Baxter did not have a permit to treat its hazardous waste in this manner, as required by RCRA. Additionally, in an effort to maximize the boiling rate of the process wastewater, employees were directed to open all vents on the retorts, allowing discharge to the surrounding air. Georgia Baxter-Krause, as president of J.H. Baxter, did not direct the use of retorts to boil off process wastewater but was generally aware of the practice of using the retorts to boil off process wastewater beginning in, at least, 2016.

¹ Because authorized state programs operate in lieu of the federal programs, 42 U.S.C. § 6926(b), the federal government enforces the applicable state law or regulation. The State of Oregon has been authorized to administer the RCRA hazardous waste program, since 1986. 51 Fed. Reg. 3779; *see* 87 Fed. Reg. 13644 (for subsequent updates and approvals). Accordingly, all references to the C.F.R. in this plea letter are to the C.F.R. as adopted by Oregon in Oregon Administrative Rule (OAR) 340-100-002.

Angeli & Calfo LLC
Re: J.H. Baxter & Co., A California Limited Partnership
Page 4

J.H. Baxter's employees at the Facility maintained detailed daily production logs for each retort indicating the customer for whom wood was being treated and the order number. The logs also included the notes "BOILING OFF WATER" or "WATER IN RETORT" to indicate which retorts were being used to boil wastewater each day. Those logs showed that, from approximately January 2, 2019, to October 6, 2019, J.H. Baxter boiled off hazardous process wastewater in its wood treatment retorts on at least 136 known days, which constituted the unpermitted treatment of hazardous waste and was, therefore, unlawful.

Finally, J.H. Baxter's Facility, a stationary source, was subject to the Clean Air Act's National Emission Standards for Hazardous Air Pollutants (NESHAP) for the wood preserving industry, 40 C.F.R. Part 63, Subpart QQQQQQ. Among other requirements, the wood preserving NESHAP requires that the owners and operators of such facilities "at all times . . . must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions." 40 C.F.R. § 63.6(e)(1). J.H. Baxter was subject to the NESHAP as set out in the Facility's "Air Pollution Control Operations and Maintenance Plan," as well as its "Standard Air Contaminant Discharge Permit" issued by LRAPA. When J.H. Baxter used retorts to boil off hazardous process wastewater, in an effort to expedite the evaporation process, employees opened the vents on the retorts and did not employ vacuum pumps. This was done with the knowledge and direction of J.H. Baxter's management at the Facility.

Accordingly, from approximately January 2, 2019, to October 6, 2019, rather than minimizing emissions from the pollution sources, J.H. Baxter increased its emissions when evaporating process wastewater in the wood treatment retorts.

7. **Waiver of Discovery:** As a material term of this offer and agreement, defendant expressly accepts the government's offer to make available the evidence gathered in the investigation of this matter for on-site inspection and the government's production of limited discovery as of the date of this agreement in full satisfaction of the government's discovery obligations in this case. Defendant knowingly, intelligently, and voluntarily waives any right to further production of discovery or information from the government, even though it may be entitled to such production pursuant to the Federal Rules of Criminal Procedure, the standing orders of the Court regarding discovery, and any prior demands for discovery.

8. **Sentencing Factors:** The defendant understands and acknowledges that the Sentencing Guidelines, including Chapter Eight that provides guidance for the sentencing of corporate defendants, will be considered by the court except U.S.S.G. §§ 8C2.2 through 8C2.9, which do not apply to cases involving environmental crimes. Instead, pursuant to U.S.S.G. § 8C2.10, an appropriate fine is to be determined under 18 U.S.C. §§ 3553 and 3572. All other sections of Chapter Eight of the Sentencing Guidelines that are applicable to corporate defendants are applicable to this case, including provisions for probation.

Angeli & Calfo LLC
Re: J.H. Baxter & Co., A California Limited Partnership
Page 5

9. **Acceptance of Responsibility:** Defendant must demonstrate to the Court that it fully admits and accepts responsibility under U.S.S.G. § 3E1.1 for its unlawful conduct in this case. The government reserves the right to change its sentencing recommendation if defendant, between plea and sentencing, commits any criminal offense, obstructs or attempts to obstruct justice as explained in U.S.S.G. § 3C1.1, or acts inconsistently with acceptance of responsibility as explained in U.S.S.G. § 3E1.1.

10. **Joint Sentencing Recommendation:** The parties will jointly recommend that the Court sentence defendant to serve a five-year term of probation and pay a criminal fine of \$1,000,000, so long as defendant demonstrates its acceptance of responsibility as explained above. The parties will jointly recommend that the Court order this fine to be paid jointly and severally with J.H. Baxter & Co., Inc.

11. **Waiver of Appeal/Post-Conviction Relief:** Defendant knowingly and voluntarily waives the right to appeal from any aspect of the conviction and sentence on any grounds, except for a claim that the sentence imposed exceeds the statutory maximum. Should defendant seek an appeal, despite this waiver, the government may take any position on any issue on appeal. Defendant also waives the right to file any collateral attack, including a motion under 28 U.S.C. § 2255, challenging any aspect of the conviction or sentence on any grounds, except on grounds of ineffective assistance of counsel, and except as provided in Fed. R. Crim. P. 33 and 18 U.S.C. § 3582(c)(2).

Defendant expressly agrees that this waiver shall remain effective in the event that the government alters its sentencing recommendation consistently with paragraphs 11, *supra*, or because defendant breaches this agreement as described in paragraph 15, *infra*.

12. **Court Not Bound:** The Court is not bound by the recommendations of the parties or of the presentence report (PSR) writer. Because this agreement is made under Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, defendant may not withdraw any guilty plea or rescind this plea agreement if the Court does not follow the agreements or recommendations of the parties.

13. **Full Disclosure/Reservation of Rights:** The government will fully inform the PSR writer and the Court of the facts and law related to defendant's case. Except as set forth in this agreement, the parties reserve all other rights to make sentencing recommendations and to respond to motions and arguments by the opposition.

14. **Breach of Plea Agreement:** If defendant breaches the terms of this agreement or commits any new criminal offenses between signing this agreement and sentencing, the government is relieved of its obligations under this agreement, but defendant may not withdraw any guilty plea or challenge or rescind the waiver of appeal as provided in paragraph 12, *supra*.

If defendant believes that the government has breached the plea agreement, it must raise any such claim before the district court, either prior to or at sentencing. If defendant fails to raise

Angeli & Calfo LLC
 Re: J.H. Baxter & Co., A California Limited Partnership
 Page 6

a breach claim in district court, it has waived any such claim and is precluded from raising a breach claim for the first time on appeal.

15. **Disclosure of Assets and Restitution:** Defendant agrees fully to disclose all assets in which defendant has any interest or over which defendant exercises control, directly or indirectly, including, but not limited to, those held by a spouse, nominee, or third party. This obligation to the government is ongoing until defendant fully satisfies the financial obligations of the final order and judgment of the Court. Defendant agrees to truthfully complete the Corporate Financial Disclosure Statement provided herein by the earlier of fourteen days from defendant's signature on this plea agreement or the date of defendant's entry of a guilty plea, sign it under penalty of perjury, and provide it to both the government and the United States Probation Office. Defendant further agrees that it will comply with any requests for financial information made by either the government or the United States Probation Office. Defendant agrees to voluntarily provide updates of any material changes in circumstances, as described in 18 U.S.C. § 3664(k), within seven days of the event giving rise to the changed circumstances. The obligations in this paragraph to the government shall cease once the defendant satisfies the financial obligations of the final order and judgment of the Court.

Defendant expressly authorizes the government to obtain a credit report on defendant. Defendant agrees to provide waivers, consents, or releases requested by the government to access records to verify the financial information. Defendant also authorizes the government to inspect and copy all financial documents and information held by the U.S. Probation Office.

The parties agree that defendant's failure to timely and accurately complete and sign the Financial Disclosure Statement, and any update thereto, may, in addition to any other penalty or remedy, constitute defendant's failure to accept responsibility under USSG § 3E1.1.

Defendant agrees to notify the Financial Litigation Program of the USAO before defendant transfers any interest in property with a value exceeding \$1,000 owned directly or indirectly, individually or jointly, by defendant, including any interest held or owned under any name, including, but not limited to, trusts, companies, partnerships, and corporations.

Pursuant to the Order Authorizing Notification to Potential Crime Victims, entered April 10, 2024, by Hon. Michael J. McShane, Case No. 6:24-mc-387, the government has provided notice to potential victims as required by the Crime Victims' Rights Act, 18 U.S.C. § 3771, and has undertaken air modeling and toxicology analysis to determine potential harm to individuals and properties resulting from the above-described criminal activity. To date, the government has received responses from current and former community members with associated restitution requests in the amount of \$10.4 million. The parties will jointly recommend the criminal fine detailed above, but based on currently submitted victim impact information the government will not be seeking a restitution judgment against the defendant. The defendant understands and agrees that the Court will ultimately have sole discretion to determine if defendant is liable for any restitution. If so, the Court shall order restitution to each victim in the full amount of each victim's losses as determined by the Court. Defendant agrees to the entry of an order of

Angeli & Calfo LLC
Re: J.H. Baxter & Co., A California Limited Partnership
Page 7

restitution for all losses suffered by victims of defendant's relevant conduct. *See* 18 U.S.C. §§ 3663(a)(3); 3663A.

Defendant understands and agrees that the total amount of any monetary judgment that the Court orders defendant to pay will be due immediately. Defendant further understands and agrees that pursuant to 18 U.S.C. § 3614, defendant may be resentenced to any sentence which might have originally been imposed if the court determines that defendant has knowingly and willfully refused to pay a fine or restitution as ordered or has failed to make sufficient bona fide efforts to pay a fine or restitution. Additionally, defendant understands and agrees that the government may enforce collection of any fine or restitution imposed in this case pursuant to 18 U.S.C. §§ 3572, 3613, and 3664(m) in any manner permitted under the law, notwithstanding any initial or subsequently modified payment schedule set by the court. Defendant understands and agrees that any monetary debt defendant owes related to this matter may be included in the Treasury Offset Program to potentially offset defendant's federal retirement benefits, tax refunds, and other federal benefits.

Pursuant to 18 U.S.C. § 3612(b)(1)(F), defendant understands and agrees that until a fine or restitution order is paid in full, defendant must notify the USAO of any change in the mailing address within 30 days of the change. Further, pursuant to 18 U.S.C. § 3664(k), defendant shall notify the Court and the USAO of any material change in defendant's economic circumstances that might affect defendant's ability to pay restitution, if awarded, including, but not limited to, new or changed employment, increases in income, inheritances, monetary gifts, or any other acquisition of assets or money.

16. **Interest in Property to Satisfy Criminal Fine:** Until defendant fully satisfies any criminal fine imposed by the Court, defendant hereby agrees to pay, to the Clerk of Court for the District Court of Oregon, the net proceeds stemming from any future sale of the following described real property parcels (collectively hereinafter, "Subject Property") located in Lane County, Oregon:

Parcel 1704270000102, a 6.75-acre parcel with Taxation Account number 1826187;
Parcel 1704270000101, a 8.79-acre parcel with Taxation Account number 1826179; and
Parcel 1704270000100, a 15.70-acre parcel with Taxation Account number 0452274,

which property was used as a wood treatment facility in Eugene, Oregon, and is the property subject to the underlying criminal charges in this case.

In the event of a sale of the Subject Property, defendant agrees to turn over to the Clerk of Court any net proceeds of that sale. Failure to do so could subject defendant to re-sentencing under 18 U.S.C. § 3614.

Net Proceeds, for the purposes of the plea agreement, are defined as the proceeds from the sale of the Subject Property *after* property taxes, prior liens, and costs of sale are paid in full.

Angeli & Calfo LLC
Re: J.H. Baxter & Co., A California Limited Partnership
Page 8

Defendant further agrees:

- a. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Subject Property.
- b. To pay before delinquent all lawful taxes and assessments on the property; to keep the property free and clear of additional charges, liens or encumbrances impairing the security of the agreement.
- c. To keep all structures now or hereafter erected on the Subject Property described herein continuously insured against loss by fire or other hazards in an amount not less than the total criminal fine that is the subject of this plea agreement. The amount collected under any insurance policy may be applied upon the indebtedness hereby secured. Such application of any amount collected under any insurance policy shall not cause discontinuance of any proceedings to enforce the plea agreement.
- d. In the event any portion of the Subject Property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion as may be necessary to fully satisfy the obligation secured hereby, shall be paid to the Clerk of Court to be applied to defendant's criminal fine obligation.
- e. By accepting payment of any sum secured hereby after its due date, the government does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.
- f. At no point has, does, or will the government agree to take any *de jure* or *de facto* interest in the Subject Property. This agreement only demonstrates defendant's agreement with the government that it will pay to the Clerk of Court for the District of Oregon net proceeds to satisfy its criminal fine obligations should the above-described property be sold.

17. **Memorialization of Agreement:** No promises, agreements, or conditions other than those set forth in this agreement and a companion agreement with codefendants J.H. Baxter & Co., Inc. and Georgia Baxter-Krause will be effective unless memorialized in writing and signed by all parties listed below or confirmed on the record before the Court. If defendant accepts this offer, please sign and attach the original of this letter to the Petition to Enter Plea.

18. **Corporate Authorization:** The defendant represents that it is authorized to enter into this Agreement. Before the entry of a guilty plea, the defendant shall provide to the United States a written corporate resolution, to be filed with the Court, in the form of notarized legal documents certifying that the defendant is authorized to enter into and comply with all the provisions of this Agreement. The resolution shall certify that all corporate formalities have been observed. A duly authorized corporate officer will attend the entry of plea and sentencing hearings.

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Angeli & Calfo LLC
Re: J.H. Baxter & Co., A California Limited Partnership
Page 9

19. Deadline: This plea offer expires if not accepted by January 22, 2025, at noon.

Sincerely,

NATALIE K. WIGHT
United States Attorney

/s/ William M. McLaren
WILLIAM M. McLAREN
Assistant United States Attorney

/s/ Karla G. Perrin
KARLA G. PERRIN
Special Assistant United States Attorney

/s/ Rachel M. Roberts
RACHEL M. ROBERTS
Trial Attorney
Environment and Natural Resources Division
Environmental Crimes Section

/s/ Stephen J. Foster
STEPHEN J. FOSTER
Trial Attorney
Environment and Natural Resources Division
Environmental Crimes Section

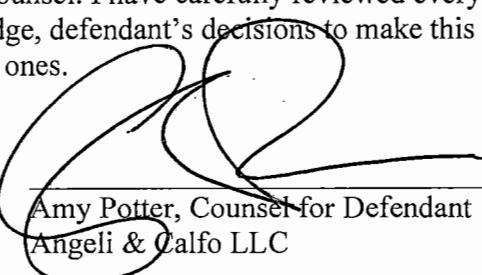
Defendant J.H. Baxter & Co., A California Limited Partnership, through its responsible agents and representatives, has carefully reviewed every part of this agreement with its attorney. Defendant understands and voluntarily agrees to the terms of this agreement. The corporation expressly waives its rights to appeal as outlined in this agreement. The corporation pleads guilty because, in fact, it is guilty.

1/22/25
Date


For J.H. Baxter & Co., A California Limited Partnership, Defendant

I represent the defendant as legal counsel. I have carefully reviewed every part of this agreement with defendant. To my knowledge, defendant's decisions to make this agreement and to plead guilty are informed and voluntary ones.

1/22/25
Date


Amy Potter, Counsel for Defendant
Angeli & Calfo LLC