

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III



IN THE MATTER OF:

Kerrigan Paving and Tar & Chip, Inc.  
8665 Sudley Rd.  
Manassas, VA 20110

and

Gorman Paving, Inc.  
9532 Liberia Ave.  
Manassas, VA 20110,

Respondents.

CWA Section 311 Class I  
Consent Agreement and Final Order  
Under 40 CFR § 22.13(b) and 22.18(b)(2)

Docket No.: CWA-03-2012-0045

**CONSENT AGREEMENT**

**Legal Authority**

1. This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(i) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 CFR §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 3, who has in turn delegated them to the Director of the Hazardous Site Cleanup Division, Region 3 ("Complainant").

**Stipulations**

2. For the practical purpose of resolving this matter amicably, avoiding the expense of litigation and for the purposes of this Consent Agreement only, Respondents admit the jurisdictional allegations set forth in the Consent Agreement.
3. Respondent Kerrigan Paving and Tar & Chip, Inc. ("Kerrigan Paving") is a corporation organized under the laws of Virginia with a place of business located at 8665 Sudley Road, Manassas, Virginia 20110.
4. Respondent Gorman Paving, Inc. ("Gorman Paving") is a corporation organized under the laws of Virginia with a place of business located at 9532 Liberia Avenue, Manassas, Virginia 20110.
5. Both Respondents are a "person" within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. §1321(a)(7) and 40 CFR §112.2.

6. On May 1, 2010, Kerrigan Paving was the person in charge or operator of a tanker truck owned by Gorman Paving, that was transporting emulsified asphalt at or near 6200 Georgetown Road (SR 674) in Broad Run, Fauquier County, Virginia.
7. The tanker truck was an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. §1321(a)(10), and 40 CFR §112.2 (“facility”).
8. Emulsified asphalt is an oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. §1321(a)(1), and 40 CFR §110.1.
9. Broad Run and its tributaries are navigable waters of the United States as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 CFR §110.1.
10. Section 311(b)(3) of the Act prohibits the discharge of oil or a hazardous substance into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.
11. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. §1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 CFR §110.3 to include discharges of oil that violate applicable water quality standards or cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

#### Allegations

12. Respondent neither admits nor denies the specific factual allegations, conclusions of law, and determinations set forth in this Consent Agreement, except as provided in Paragraph 2, above.
13. On May 1, 2010, Respondents discharged between 400 and 1000 gallons of oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. §1321(a)(1), and 40 CFR §110.1, from the facility into or upon an unnamed tributary of Broad Run.
14. Respondents’ May 1, 2010 discharge of oil from the facility caused a sheen upon or discoloration of the surface of the unnamed tributary of Broad Run or deposited a sludge or emulsion beneath the tributary’s surface and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R §110.3, which implements Sections 311(b)(3) and (b)(4) of the Act.
15. Respondents’ May 1, 2010 discharge of oil from the facility into or upon an unnamed tributary of Broad Run in a quantity that has been determined may be harmful under 40 CFR §110.3 violated Section 311(b)(3) of the Act.

**Waiver of Rights**

16. Respondents waive the right to a hearing under Section 311(b)(6)(B)(i) of the Act and to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. §1321(b)(6)(G)(i), and consent to the issuance of a Final Order without further adjudication.

**Penalty**

17. The Complainant proposes, and Respondents consent to, the assessment of a civil penalty of \$11,725.
18. The proposed penalty was calculated after consideration of the applicable statutory penalty factors in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including the seriousness of the violation; the economic benefit to the violator; the degree of culpability; the nature, extent, and degree of success of the Respondents' mitigation efforts; the economic impact of the penalty on the violator; and other matters as justice may require.

**Payment Terms**

19. Payment shall be made according to the following schedule:

Payments	Principal	Interest	Total Payment	No. days post receipt of signed Agreement
Pay 1	\$ 3,918.20	\$ -	\$ 3,918.20	30
Pay 2	\$ 3,898.47	\$ 19.73	\$ 3,918.20	180
Pay 3	\$ 3,908.33	\$ 9.88	\$ 3,918.21	270
Totals	\$ 11,725.00	\$ 29.61	\$ 11,754.61	

20. Payment shall be made by a cashier's or certified check, by an electronic funds transfer ("EFT"), or by on-line payment.
- A. If paying by check, Respondents shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF-311." If paying by check, Respondents shall note on the check the title and docket number (CWA-03-2012-0045) of this case.

- B. Payments sent by U.S. Postal Service must be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

C. Payments sent by a private delivery service must be addressed to:

U.S. Environmental Protection Agency  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Attn: Natalie Pearson (314/418-4087)

D. If paying by EFT, field tag 4200 of the Fedwire message shall read: “(D 68010727 Environmental Protection Agency).” For an international transfer of funds, the SWIFT address is FRNYUS33. Make the transfer to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045

E. If paying through the Department of Treasury's Online Payment system, please access “www.pay.gov,” and enter sfo 1.1 in the search field. Open the form and complete the required fields and make payments. Note that the type of payment is “civil penalty,” the docket number “CWA-03-2012-0045” should be included in the “Court Order # or Bill #” field, and “3” is the Region number.

F. Payment by the Respondents shall reference Respondents’ names and addresses, and the EPA Docket Number of this CAFO (CWA-03-2012-0045). A copy of Respondents’ check or a copy of Respondents’ electronic fund transfer shall be sent simultaneously to:

Wojciech Jankowski  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC50)  
1650 Arch Street  
Philadelphia, PA 19103-2029

Ms. Lydia Guy  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC00)  
1650 Arch Street  
Philadelphia, PA 19103-2029

#### **Interest and Late Fees**

21. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondents’ failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including additional interest, penalties, and/or administrative costs of handling delinquent debts.


22. Interest on the civil penalty will begin to accrue on the date that this CAFO is mailed or hand-delivered to the Respondents. EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days of the date interest begins to accrue. Interest on the portion of a civil penalty not paid within the thirty (30) calendar day period will be assessed at the rate of the U.S. Treasury Tax and Loan Rate in accordance with 40 C.F.R. § 13.11(a).
23. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
24. A penalty charge of six percent per year will be assessed monthly on any portion of the penalty that remains delinquent more than ninety (90) calendar days under 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent under 31 C.F.R. § 901.9(d).
25. Failure by Respondents to pay the penalty assessed by the Final Order according to the schedule of payments above may subject Respondents to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

#### **General Provisions**

26. The Final Order shall be binding upon Respondents and Respondents' officers, directors, agents, servants, employees, and successors or assigns. The undersigned officer of Respondent represents and warrants that he or she has the authority to bind the Respondent, and its successors or assigns to the terms of this Consent Agreement.
27. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. §1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondents' liability for federal civil penalties for the violations and facts stipulated to and alleged herein.
28. Respondents shall bear their own legal costs and attorney's fees.
29. The Effective Date of this Consent Agreement is the date on which the Final Order is filed with the Regional Hearing Clerk.

**For Respondent, Kerrigan Paving and Tar & Chip, Inc.**

Date: December 6, 2011

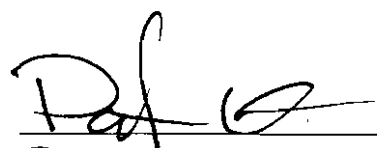
By: 

Name: JIM KERRIGAN

Title: President

**For Respondent, Gorman Paving, Inc.**

Date: 12-29-11

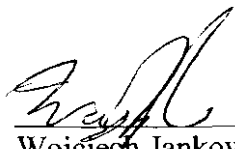
By: 

Name: PATRICK M. GORMAN

Title: President

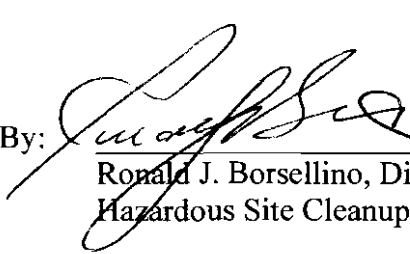
**For the Complainant, U.S. Environmental Protection Agency, Region III**

Date: 12/20/11

By:   
Wojciech Jankowski  
Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Hazardous Site Cleanup Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: January 4, 2012

By:   
Ronald J. Borsellino, Director  
Hazardous Site Cleanup Division

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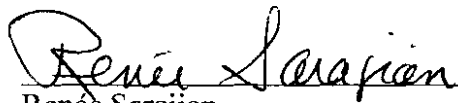
**FINAL ORDER**

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

Nothing in the foregoing Consent Agreement relieves Respondent from otherwise complying with the applicable requirements set forth in the Clean Water Act.

Respondent is ordered to comply with the terms of the foregoing Consent Agreement.

Date: 12/5/11



Renee Sarajian  
Regional Judicial Officer/Presiding Officer