



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

May 24, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Benjamín Hernández Nieves, Esq.
P.O. Box 8343
Fernández Juncos Station
San Juan, Puerto Rico 00910-0343

RE: In the Matter of Betterroads Asphalt Corporation
Docket No. CWA 02-2010-3814

Dear Mr. Hernández Nieves:

Enclosed is a copy of the duly executed Consent Agreement and Final Order for the abovementioned matter. The Final Order was signed by the Regional Administrator's designee on today. Please ask your client to pay the civil penalty as instructed on pages 5 and 6 of the Consent Agreement. Please keep this copy of the executed agreement for your files.

If you have any questions, please do not hesitate to call me. You may call me at (212) 637-3244 or e-mail me at orrell.nadine@epa.gov.

Sincerely,

Nadine Orrell
Assistant Regional Counsel

U.S. ENVIRONMENTAL PROTECTION AGENCY
2011 MAY 25 A 11:13
MAIL ROOM
GENERAL MAIL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007-1866

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARINGS
DIVISION
2011 MAY 25 A 11:13

IN THE MATTER OF:

Betterroads Asphalt Corporation
Marginal 65 Inf Urb Monterrey
P.O. Box 21420
San Juan, Puerto Rico 00928

Respondent

CWA SECTION 311 CLASS II
CONSENT AGREEMENT
AND FINAL ORDER

DOCKET NO.
CWA-02-2010-3814

CONSENT AGREEMENT

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by §§ 311(b)(6)(B) and 311(j)(1)(C) of the Clean Water Act (the "Act"), 33 U.S.C. §§1321(b)(6)(B) and 1321(j)(1)(C). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 2, who has in turn delegated these authorities to the Director of the Emergency and Remedial Response Division for Region 2 ("Complainant").

The Betterroads Asphalt Corporation ("Respondent") neither admits nor denies the allegations and findings contained in the Consent Agreement and Final Order ("CA/FO") and does not admit any liability to the United States arising out of the matters alleged in the CA/FO;

Complainant and Respondent have agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

NOW THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed as follows:

Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Respondent is a corporation organized under the laws of the Commonwealth of Puerto Rico and doing business in Puerto Rico. The Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.
2. Respondent is the owner and operator, within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. §1321(a)(6), and 40 CFR §112.2, of bulk oil storage facilities, located at Carr. 845, Km 1.4, Cupey Bajo, Rio Piedras, Puerto Rico 00926; Carr 127, Bo. Magas, Guayanilla, Puerto Rico 00656; and Calle C, Lote # 39, Luchetti Industrial Park, Bayamon, Puerto Rico 00961 ("Facilities").
3. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the Facilities.
4. The Facilities have an aggregate aboveground storage capacity of greater than 1320 gallons of oil in containers, with a shell capacity of at least 55 gallons.
5. The Cupey Bajo Facility is bordered by the Guaracanal Creek. The Guaracanal Creek discharges to the Rio Piedras River. The Guayanilla Facility performs over-water

transfers of oil in the Guayanilla Port Harbor. The Bayamon Facility is located approximately five hundred meters from the Diego Creek.

6. Violations occurring at these Facilities could reasonably be expected to impact navigable waters of the United States, subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

7. Each of the Facilities is 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.

8. The Facilities are non-transportation-related onshore facilities within the meaning of 40 CFR §112.21, Appendix A, subject to 40 CFR Part 112, the Spill Prevention Control and Countermeasures Rule.

9. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharge of oil...from vessel and from onshore and offshore facilities, and to contain such discharges...”

10. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(5) authority to issue the above referenced regulations for non-transportation-related onshore facilities.

11. EPA subsequently promulgated regulations, codified at 40 CFR Part 112, as amended by 67 Fed. Reg. 47140, *et. seq.*, July 17, 2002, (“the SPCC regulations”), pursuant to these

delegated statutory authorities, and pursuant to its authorities under the Act, 33 U.S.C. § 12521, *et. seg.*, which set forth certain procedures, methods and requirements upon each other and operator of a facility meeting the description in Paragraphs 7 through 8 above if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantities as EPA has determined in 40 C.F.R. Part 110 may be harmful to the public health or welfare or the environment of the United States.

12. Based on the above and pursuant to Section 311(j) of the Act and its implementing regulations, the Respondent is subject to 40 C.F.R. Part 112, the SPCC regulations.

13. On September 27, 2010, the Complainant issued an Administrative Complaint, Docket No. CWA-02-2010-3814, pursuant to Section 311(b)(6)(B)(ii) of the Act , 33 U.S.C. 1321(b)(6)(B)(ii).

14. The September 27, 2010, Complaint alleged that the Respondent violated the SPCC regulations and proposed a civil penalty of \$64,000. The Complaint is herein incorporated by reference.

Waiver of Rights

15. Respondent waives the right to appeal any Final Order in this matter pursuant to Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. §1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

16. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or

communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

Jurisdiction

17. For the purpose of this proceeding, Respondent a) admits the jurisdictional statements contained herein; b) admits the jurisdictional allegations of the Complaint as applied to the Facilities; and c) neither admits nor denies the specific factual allegations contained in the Complaint and Findings of Fact incorporated by reference herein.

Penalty

18. Respondent consents to the assessment of a civil penalty of \$41,000 (forty-one thousand dollars). Within forty-five (45) days of the signature date of the Final Order (at the end of this document), the Respondent shall pay the civil penalty by means of a cashier's or certified check, by wire transfer or by overnight mail.

Payment Terms

19. If paying by check, Respondent shall submit a cashier's or certified check made payable to "Environmental Protection Agency," noting on the check "AOSTLF-311" and docket number "ACWA-02-2010-3814" The check should be sent to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York at the following:

33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental
Protection Agency"

Overnight mail should be sent to the following address:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

20. Respondent shall submit copies of the check or the wire transfer to:

Nadine Orrell, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway - 16th Floor
New York, New York 10007

and

Karen Maples, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway - 16th Floor
New York, New York 10007

21. Failure by Respondent to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the total amount of the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 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.

- a. If the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date;
- b. Pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. Section 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter;
- c. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
- d. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or state taxes.


General Provisions

22. The provisions of the Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.
23. 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 promulgating regulations 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 total penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the Administrative Complaint.

BETTERROADS ASPHALT CORPORATION

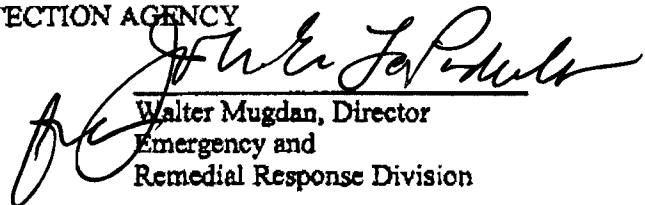
Date: 5/12/2011



Eng. Miguel A. Guerra
Vice President, Operations
Betterroads Asphalt, Corp.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 5/16/11



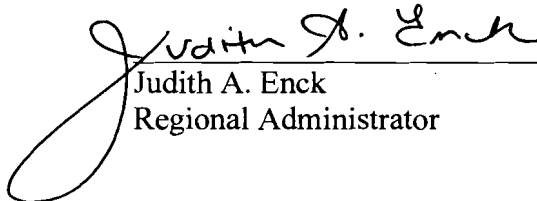
Walter Mugdan, Director
Emergency and
Remedial Response Division

FINAL ORDER

Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. §1321(b)(6) and the delegated authority of the undersigned, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, codified at 40 CFR Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties are adopted as Findings in this Final Order.

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

Date: 5/27/11



Judith A. Enck
Regional Administrator

REGION 2

IN THE MATTER OF

Better Roads Asphalt Corporation
Marginal 65 Inf Urb Monterrey
P.O. Box 21420
San Juan, Puerto Rico 00928

Respondent

CWA SECTION 311 CLASS II
CONSENT AGREEMENT
AND FINAL ORDER

Docket No. CWA-02-2010-3814

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket-number, in the following manner to the respective addresses below:

Original and One Copy By Hand:

U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th Floor, Office of Regional Hearing Clerk
New York, N.Y. 10007-1866

Copy by Certified Mail, Return Receipt Requested:

Benjamín Hernández Nieves, Esq..
P.O. Box 8343
Fernández Juncos Station
San Juan, Puerto Rico 00910-0343

Date: May 24, 2011

Ana Madera
Secretary