



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

Certified Mail – Return Receipt Requested

September 24, 2012

Benjamin Hernandez Nieves, Esq.
P.O. Box 8343
Fernandez Juncos Station
San Juan, Puerto Rico 00910-0343

RE: In the Matter of Betteroads Asphalt Corporation
Docket No. CWA-02-2012-3457

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 SEP 24 P 3:09
REGIONAL HEARING
CLERK

Dear Mr. Hernandez Nieves:

Enclosed is a Consent Agreement and Final Order (CA/FO) in the above-referenced matter. The Final Order was fully executed by the Regional Administrator and filed with the Regional Hearing Clerk on September 24, 2012.

Please note that the penalty of \$60,000 is required to be paid in full and received by EPA as set forth in Section VI of the CA/FO.

Sincerely,

Roberto M. Durango
Assistant Regional Counsel

Enclosure

cc: Karen Maples
Regional Hearing Clerk (w/enclosures)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

BETTERROADS ASPHALT CORPORATION
PO Box 21420
San Juan, PR 00928

Betterroads: Cupey Facility
State Road 845, Km 1.6
Rio Piedras, Puerto Rico 00928

NPDES Permit Number PR0021202

Proceeding pursuant to § 309(g)(2)(B) of the Clean
Water Act, 33 U.S.C. § 1319(g)(2)(B).

**CONSENT AGREEMENT AND
FINAL ORDER**

**DOCKET NUMBER
CWA-02-2012-3457**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
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Complainant, the United States Environmental Protection Agency (EPA), and Betterroads Asphalt Corporation ("Respondent" or "Betterroads"), having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (CA/FO) without further litigation is the most appropriate means of resolving this matter,

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

I. PRELIMINARY STATEMENT

1. The following Consent Agreement is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by the Clean Water Act (CWA), 33 U.S.C. § 1251 *et seq.*
2. The Administrator has delegated the authority to make findings of fact, assess civil penalties, and sign Consent Agreements under Section 309(g)(2)(B) to the Regional Administrator of Region 2, who, in turn, has delegated such authority to the Director of the Caribbean Environmental Protection Division (CEPD).

3. EPA is initiating and concluding this proceeding for the assessment of a civil penalty, pursuant to CWA Section 309(g)(2)(B) and 40 C.F.R. § 22.13(b) of 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 (Rules of Practice).
4. The Rules of Practice, at 40 C.F.R. §22.18 (b)(2) and (3), set forth the procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a CA/FO.
5. CWA Section 309(g)(2)(B), and the 2008 Civil Monetary Penalty Inflation Adjustment Rule set forth the maximum amount of CWA class II civil penalties.

II. EPA FINDINGS OF FACT

6. The foregoing Findings of Fact are based on the inspection of Betterroads' Cupey Facility (Facility) EPA officials conducted on May 1, 2009, and a review of the letters, notices, records, reports, and responses Betterroads submitted to EPA.

With Respect to Betterroads

7. Betterroads is a for-profit corporation engaged in the manufacture of asphalt for paving and/or maintaining roadways, runways, and surfaces.
8. Asphalt is a product composed of about 95 percent stone, sand, and gravel, and about 5 percent asphalt cement, a petroleum product.
9. The Standard Industrial Classification Code that best describes Betterroads' operations is 2951.
10. The Puerto Rico Department of State (DOS) electronic corporation registry indicates that Betterroads is registered with the DOS under corporate registration number 4,139.
11. Betterroads' principal place of business is located at Edif. Empresas Diaz 101 Calle Andes, Marginal 65 Infanteria, in San Juan, Puerto Rico 00926.
12. Betterroads is a "person" within the meaning of CWA Section 502(5).

With Respect to the Betteroads' Cupey Facility

13. At all times relevant to this CA/FO, Betteroads owned and operated an asphalt manufacturing facility, where it may either manufacture asphalt and/or store and maintain asphalt paving equipment.
14. The Facility is located at State Road 845, Km. 1.6, in the Cupey Bajo Ward, of San Juan, Puerto Rico.
15. Storm water associated with industrial activity from the eastern portion of the Facility flows through an internal storm water collection system (SWCS) that uses several manholes and catch basins to collect and convey runoff.
16. Storm water associated with industrial activity from the central portion of the Facility flows superficially until it reaches the SWCS.
17. Storm water associated with industrial activity from the western portion of the Facility flows superficially to a storm water retention basin for sedimentation (Retention Pond).
18. Storm water associated with industrial activity that the SWCS and the Retention Pond collect is conveyed to a Concrete Retention and Filtration System (CRFS).
19. The CRFS is composed of a flow regulation chamber, a flat laminar flow conversion chamber, a sedimentation chamber, a coalescing plates pack system, a concrete outlet chamber, and a weir.
20. The CRFS is designed to physically treat the storm water associated with industrial activity from the Facility and to discharge such water through Discharge 001 into the Guaracanal Creek.
21. Discharge 001 is a "point source" within the meaning of CWA Section 502(14).
22. The Facility "discharges pollutants" through discharge 001 into the Guaracanal Creek.
23. The Guaracanal Creek is a "navigable water" of the United States within the meaning of CWA Section 502(7).

With Respect to NPDES Permit Number PR0021202

24. On May 25, 2006, EPA re-issued NPDES Permit Number PR0021202 (NPDES Permit) to Betteroads.

25. The NPDES Permit authorizes the Facility to discharge storm water from discharge 001, in accordance with effluent limitations, monitoring requirements, and other conditions set forth therein.
26. The NPDES Permit became effective on August 1, 2006, and expired on August 1, 2011.
27. Part II.B.2 of the NPDES Permit and 40 C.F.R. § 122.21(d)(2), require Betterroads to submit a new application 180 days before the existing permit expires.
28. On July 29, 2011, Betterroads submitted its NPDES Permit renewal application.
29. On August 1, 2011, the NPDES Permit was continued and its terms and conditions remain fully effective and enforceable, pursuant to 5 U.S.C. § 558(c) and 40 C.F.R. § 122.6.

With Respect to Recent Enforcement at the Facility

30. On May 1, 2009, a duly-authorized EPA enforcement officer conducted a Compliance Evaluation Inspection (Inspection) of the Facility.
31. The findings of the Inspection are summarized in an Inspection Report, dated August 12, 2010, and sent to Betterroads on August 16, 2010.
32. On August 17, 2010, EPA issued Administrative Compliance Order, Docket Number CWA-02-2010-3122 (August 17 ACO), to Betterroads.
33. On October 13, 2010, Betterroads submitted its response to the August 17 ACO, which were followed up with various updating reports.
34. On November 14, 2011, EPA issued a Request for Information to Betterroads (November 14 RFI).
35. On February 2, 2012, Betterroads conducted a dye test of the Retention Pond, SWCS, and CRFS, in the presence of duly-authorized EPA enforcement officers.
36. On April 16, 2012, Betterroads submitted to EPA a report describing the procedures and results of the dye test (Dye Test Report).

With Respect to Discharges Without a NPDES Permit

37. Since on or about August 2006, Betterroads commenced to allegedly recirculate water from the CRFS into the Retention Pond with three submersible pumps.

38. Part I, Special Condition 4 and Part II.B.5 of the NPDES Permit require Betterroads to operate and maintain all water pollution control equipment, facilities and systems of treatment and control (and related appurtenances) in such a manner as to be in compliance with the applicable Rules and Regulations, and the NPDES Permit.
39. EPA's review of the Dye Test Report, other records Betterroads submitted, and EPA's own observations during the dye test, revealed that the Retention Pond was leaking at approximately seven locations around the northern and western boundaries, and at approximately five locations at the concrete barrier into the Guaracanal Creek.
40. Betterroads failed to properly operate and maintain the Retention Pond, in violation of Part I, Special Condition 4 and Part II.B.5 of the NPDES Permit.
41. Part I, Table A-1 of the NPDES Permit authorizes Betterroads to discharge storm water from outfall serial number 001 into the Guaracanal Creek.
42. As described above, Betterroads discharged storm water associated with industrial activity from the Retention Pond into the Guracanal Creek.
43. Betterroads' discharges from the Retention Pond into the Guaracanal Creek are not authorized under Part I, Table A-1 of the NPDES Permit, and are, therefore, a violation of Sections 301 and 402 of the CWA.

With Respect to Other NPDES Permit Requirements

44. Part I, Special Condition 11(C) of the NPDES Permit requires Betterroads to modify its Best Management Practices Plan (BMP Plan).
45. EPA's findings during the May 1, 2009 Inspection and other information on file, revealed that Betterroads' BMP Plan needs to be updated.
46. Betterroads will update its BMP Plan, in compliance with Part I, Special Condition 11(C) of the NPDES Permit.

With Respect to Compliance with the CWA

47. EPA and Betterroads have jointly developed a Work Plan that incorporates the implementation of a Retention Pond Low Permeability System (LPS) and modifications to its BMP Plan to properly address all the above-referenced violations.
48. On August 7, 2012, EPA and Betterroads signed an Administrative Order on Consent, CWA-02-20012-3123, which includes a compliance schedule to bring Betterroads into compliance with all the requirements of the NPDES Permit and the CWA.

III. EPA CONCLUSIONS OF LAW AND JURISDICTION

49. Betterroads is subject to the provisions of the CWA.

50. CWA Section 301(a), provides in part that "[e]xcept as in compliance with this section and [CWA Section 402], the discharge of any pollutant by any person shall be unlawful."

51. Part II.B.1(a) of the NPDES Permit requires Betterroads to comply with all conditions of the NPDES Permit, establishes that any noncompliance with the NPDES Permit constitutes a violation of the CWA, and is grounds for an enforcement action.

52. As described above, Betterroads failed to comply with the terms and conditions of its NPDES Permit, in violation of CWA Sections 301 and 402.

53. CWA Section 309(g)(1)(A), provides in part that EPA may assess a class II civil penalty when it finds that "any person has violated any permit condition or limitation implementing [an NPDES Permit] issued under section [402]".

54. Part II.B.1.c of the NPDES Permit provides that any person who violates a NPDES Permit condition implementing CWA Section 301, is subject to a civil penalty.

55. EPA has jurisdiction over the subject matter of this action, pursuant to CWA Section 309.

IV. CONSENT AGREEMENT

56. Paragraphs 1 through 55 are re-alleged and incorporated by reference herein.

57. EPA and Betterroads agree that it is in the public interest to resolve the issues alleged in this ORDER without further litigation and the expense and effort that litigation entails.

58. Based upon the foregoing and pursuant to CWA Section 309(g)(2)(B), it is hereby agreed by and between EPA and Betterroads, and Betterroads voluntarily and knowingly:

V. TERMS OF SETTLEMENT

59. For the purpose of this proceeding, Betterroads:

- a. admits the jurisdictional allegations of this CA/FO;
- b. neither admits or denies the factual allegations contained herein;

- c. waives its right to contest the allegations, a judicial or administrative hearing, or to appeal this CA/FO; and
- d. consents to the payment of the civil penalty in the amount of *sixty thousand dollars (\$60,000.00)*, as stated in Paragraph 60 below.

VI. PAYMENT OF CIVIL PENALTY

60. Betterroads shall pay a civil penalty in the amount of *sixty thousand dollars (\$60,000.00)* to the "Treasurer, United States of America."

61. Respondent agrees to pay the above stated amount in *six payments*, as follows:

- a. an initial payment of TEN THOUSAND DOLLARS (\$10,000.00) shall be received within ninety (90) calendar days from the date that the attached Final Order is signed by the Regional Administrator of EPA Region 2;
- b. a second payment of TEN THOUSAND DOLLARS (\$10,000.00) shall be received within one hundred and eighty (180) calendar days from the date that the attached Final Order is signed by the Regional Administrator of EPA Region 2;
- c. a third payment of TEN THOUSAND DOLLARS (\$10,000.00) shall be received within two hundred and seventy (270) calendar days from the date that the attached Final Order is signed by the Regional Administrator of EPA Region 2;
- d. a fourth payment of TEN THOUSAND DOLLARS (\$10,000.00) shall be received within three hundred and sixty (360) calendar days from the date that the attached Final Order is signed by the Regional Administrator of EPA Region 2;
- e. a fifth payment of TEN THOUSAND DOLLARS (\$10,000.00) shall be received within four hundred and fifty (450) calendar days from the date that the attached Final Order is signed by the Regional Administrator of EPA Region 2; and
- f. a sixth and final payment of TEN THOUSAND DOLLARS (\$10,000.00) shall be received within five hundred and forty (540) calendar days from the date that the attached Final Order is signed by the Regional Administrator of EPA Region 2.

62. The checks (cashier's or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described below:

CHECK PAYMENTS:

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

WIRE TRANSFERS:

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

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ON-LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information through WWW.PAY.GOV.
Enter sfo 1.1 in the search field. Open form and complete required fields.

Betterroads shall also send copies of this payment to each of the following:

Roberto M. Durango, Esq.
Assistant Regional Counsel
U.S. EPA, Region 2
Office of Regional Counsel – Caribbean Team
City View Plaza II – Suite 7000
48 RD. 165 Km. 1.2
Guaynabo, P.R. 00968-8069;

and

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

The initial payment must be received at the above address on or before ninety (90) calendar days calendar days after the date of signature of the Final Order at the end of this document (the date by which payments must be received shall hereafter be referred to as the “due date”).

63. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
64. Further, if the payments are 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.
65. In addition, pursuant to CWA Section 309(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. You may also be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
66. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Betterroads's federal or Commonwealth of Puerto Rico taxes.

VII. GENERAL PROVISIONS

67. The provisions of this CA/FO shall be binding upon Betterroads, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Betterroads of its obligation to comply with this CA/FO.
68. Betterroads waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
69. Except for the specific violations alleged herein, nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Betterroads's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Betterroads's violation of any applicable provision of law.
70. This CA/FO shall not relieve Betterroads of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
71. This CA/FO constitutes a settlement by Complainant of all claims for civil penalties pursuant to the CWA for the violations by Betterroads alleged herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Betterroads. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Betterroads to comply with such laws and regulations.
72. Each undersigned representative of the Parties to this CA/FO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
73. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

FOR BETTEROADS ASPHALT COROPORATION:

BY:  _____

Arturo Diaz, Jr.
President
Betteroads Asphalt Corporation
P.O. Box 21420
San Juan, Puerto Rico 00928-1420

DATE: 8/10/2012



FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

BY: 

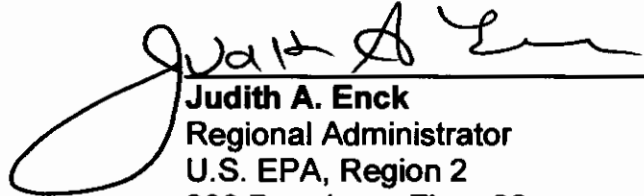
DATE: Sept 18, 2012

José C. Font
Acting Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II-Suite 7000
48 RD. 165 Km. 1.2
Guaynabo, PR 00968-8069

VIII. FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

DATED: 9/27/12



Judith A. Enck
Regional Administrator
U.S. EPA, Region 2
290 Broadway, Floor 26
New York, NY 10007-1866

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

BETTERROADS ASPHALT CORPORATION
PO Box 21420
San Juan, PR 00928

Proceeding pursuant to § 309(g)(2)(B) of the Clean
Water Act, 33 U.S.C. § 1319(g)(2)(B).

**CONSENT AGREEMENT AND
FINAL ORDER**

**DOCKET NUMBER
CWA-02-2012-3457**

CERTIFICATE OF SERVICE

I hereby certify that, on the date noted below, the foregoing fully executed **Consent Agreement and Final Order**, bearing the above-referenced docket number was sent in the following manner:

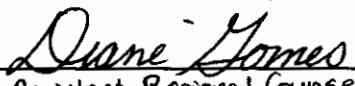
Original and Copy by **Overnight**:

Karen Maples
Regional Hearing Clerk
U.S. EPA, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by **Certified Mail and PDF**:

Benjamin Hernandez Nieves, Esq.
P.O. Box 8343
Fernandez Juncos Station
San Juan, Puerto Rico 00910-0343

Dated: 9-24-12


Assistant Regional Counsel