

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:	Chapter 11
Betterroads Asphalt LLC,	Case No.
Debtor.	17-04156-ESL11

SETTLEMENT AGREEMENT

WHEREAS, on June 9, 2017 (“Petition Date”), various parties filed an involuntary petition for relief under Title 11 of the United States Code (the “Bankruptcy Code”) against Betterroads Asphalt, LLC (“Debtor”), in the United States Bankruptcy Court for the District of Puerto Rico (the “Bankruptcy Court”), which has been administered as *In re: Betterroads Asphalt, LLC*, Case No. 17-04156 (ESL) (the “Bankruptcy Case”);

WHEREAS, the United States, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a proof of claim (the “EPA Proof of Claim”), contending that the Debtor is liable under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-9675, for costs incurred and to be incurred by the United States in response to releases and threats of releases of hazardous substances at or in connection with the PROTECO Superfund Site located in Peñuelas, Puerto Rico (the “Site”), because EPA alleges that the Debtor or its predecessor arranged for the disposal of hazardous substances at the Site;

WHEREAS, the Debtor is not currently an owner or operator of the Site and was not previously an owner or operator of the Site;

WHEREAS, the EPA Proof of Claim was in the amount of \$525,971.82, and all future response costs at the Site not inconsistent with the National Contingency Plan, promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. Part 300;

WHEREAS, in the EPA Proof of Claim, EPA asserts the aforementioned response cost liability as a general unsecured claim;

WHEREAS, the EPA Proof of Claim sets forth the United States' position that the Debtor's obligation to comply with work obligations, including but not limited to cleanup obligations, under court orders, administrative orders, environmental statutes, regulations, licenses, and permits is not dischargeable pursuant to Section 1141 of the Bankruptcy Code;

WHEREAS, the Debtor disagrees with the United States' contentions and, but for this settlement (the "Settlement Agreement"), would dispute the EPA Proof of Claim;

WHEREAS, the Debtor and EPA (the "Parties") wish to resolve their differences with respect to the EPA Proof of Claim as provided herein;

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving these matters;

NOW, THEREFORE, without the admission of liability or the adjudication of any issue of fact or law, and upon the consent and agreement of the Parties by their attorneys and authorized officials, it is hereby agreed as follows:

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334, and 42 U.S.C. §§ 9607 and 9613(b).

2. With respect to the Site, the United States on behalf of EPA shall have an allowed claim of \$1,095,567 (the “EPA Allowed Claim”), to be considered an allowed claim within Class 6 General Unsecured Claim under the Debtor’s First Amended Plan of Reorganization, which was confirmed on June 9, 2021 (the “Plan of Reorganization” or “Plan”) and paid per the terms provided for such class under the Plan.

3. The EPA Allowed Claim shall receive the same treatment under the Plan of Reorganization, without discrimination, as all other allowed Class 6 General Unsecured Claims, with all attendant rights provided by the Bankruptcy Code and other applicable law, and it shall not be entitled to any priority in distribution over other allowed Class 6 General Unsecured Claims. In no event shall the EPA Allowed Claim be subordinated to any other allowed Class 6 General Unsecured Claim pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims, including, without limitation, Sections 105, 510, and 726(a)(4) of the Bankruptcy Code.

4. EPA may, in its sole discretion, deposit any portion of any cash distributions it receives pursuant to this Settlement Agreement, and any portion of the proceeds of any non-cash distributions it receives pursuant to this Settlement Agreement, into a special account established by EPA for the Site within the Hazardous Substance Superfund pursuant to Section 122(b)(3), 42 U.S.C. § 9622(b)(3), to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred to the Hazardous Substance Superfund.

5. Only the amount of cash received by EPA and net cash received upon sale of any non-cash distributions pursuant to this Settlement Agreement for the EPA Allowed Claim, and not the total amount of the EPA Allowed Claim, shall be credited as a recovery by EPA for the Site, which credit shall reduce the liability of the potentially responsible parties at the Site, other than the Debtor, by the amount of the credit.

6. Any cash distributions to the United States pursuant to this Settlement Agreement and the Plan shall be made at <https://www.pay.gov> or by FedWire Electronic Funds Transfer in accordance with instructions, including a Consolidated Debt Collection System (“CDCS”) number, to be provided to the Debtor by the Financial Litigation Unit of the United States Attorney’s Office for the District of Puerto Rico.

Non-cash distributions to the United States shall be made to:

U.S. EPA
Cincinnati Finance Center
26 W. Martin Luther King Drive
MS: Norwood
Cincinnati, Ohio 45268

At the time of any cash or non-cash distribution pursuant to this Settlement Agreement and the Plan, the Debtor shall transmit written confirmation of such distribution to the United States at the addresses specified below, and email confirmation of such distribution to the EPA Cincinnati Finance Office at cinwd_acctsreceivable@epa.gov, with a reference to Bankruptcy Case Number 17-04156, the CDCS number, and Site/Spill ID Number A27M:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
Ref. DOJ File No. 90-11-3-12289

Andrea Leshak
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866

7. Notwithstanding any other provision of this Settlement Agreement, and except as provided under applicable non-bankruptcy law, there shall be no restrictions on the ability and right of EPA to transfer or sell all or a portion of any securities distributed to it pursuant to the Plan of Reorganization, to sell its right to all or a portion of any distributions under the Plan to one or more third parties, or to transfer or sell to one or more third parties all or a portion of the EPA Allowed Claim.

8. In consideration of the distributions made under the terms of this Settlement Agreement and the Plan, except as specifically provided in Paragraphs 9-11, EPA covenants not to file a civil action or take administrative action against the Debtor pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to the Site.

9. The covenant set forth in Paragraph 8 extends only to the Debtor and does not extend to any other person. Nothing in this Settlement Agreement is intended as a covenant for any person or entity other than the Debtor and the United States. EPA and the Debtor expressly reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, that they may have against all other

persons, firms, corporations, entities, or predecessors of the Debtor for any matter arising at or relating in any manner to the Site. Further, nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to enter into any settlement that gives rise to contribution protection for any person not a party to this Settlement Agreement.

10. The covenant set forth in Paragraph 8 does not pertain to any matters other than those expressly specified therein. The United States expressly reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtor with respect to all matters other than those set forth in Paragraph 8. The United States also specifically reserves, and this Settlement Agreement is without prejudice to, any action based on a failure to meet a requirement of this Settlement Agreement. In addition, the United States reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtor with respect to the Site for liability under federal or state law for acts by the Debtor that occur after the date of lodging of this Settlement Agreement.

11. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States to take any response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable statute or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to such authority, provided, however, that nothing in this sentence affects the covenant set forth in Paragraph 8. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable statute or regulation, or to

excuse the Debtor from any disclosure or notification requirements imposed by CERCLA or any other applicable statute or regulation.

12. The Debtor covenants not to sue and agrees not to assert or pursue any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, with respect to the Site, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, or Section 7002(a) of RCRA, 42 U.S.C. § 6972(a); or (iii) any claims arising out of response activities at the Site. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

13. Notwithstanding any other provision of this Settlement Agreement, the Debtor reserves, and this Settlement Agreement is without prejudice to, claims against the United States in the event any claim is asserted by the United States against the Debtor pursuant to any of the reservations set forth in Paragraph 10, other than for failure to meet a requirement of this Settlement Agreement, but only to the extent that the Debtor's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

14. The Parties hereto agree, and by entering this Settlement Agreement the Bankruptcy Court finds, that this Settlement Agreement constitutes a judicially-approved settlement pursuant to which Debtor has, as of the Effective Date, resolved its alleged liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42

U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are all response actions taken or to be taken, and all response costs incurred or to be incurred, at or in connection with the Site by the United States or any potentially responsible parties, provided, however, that, if EPA exercises rights under the reservations in Paragraph 10, other than for failure to meet a requirement of this Settlement Agreement, the “matters addressed” in this Settlement Agreement shall no longer include those response costs or response actions that are within the scope of the exercised reservation. “Effective Date” means the date on which this Settlement Agreement is approved by the Bankruptcy Court.

15. This Settlement Agreement constitutes a judicially-approved settlement pursuant to which Debtor has, as of the Effective Date, resolved its alleged liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

16. This Settlement Agreement shall be subject to approval of the Bankruptcy Court. The Debtor shall promptly seek approval of this Settlement Agreement under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code.

17. This Settlement Agreement shall be lodged with the Bankruptcy Court and shall thereafter be subject to a period of public comment following publication of notice of the Settlement Agreement in the *Federal Register*. After the conclusion of the public comment period, the United States will file with the Bankruptcy Court any comments

received, as well as the United States' responses to the comments, and at that time, if appropriate, the United States will request approval of the Settlement Agreement. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement disclose facts or considerations that indicate that the Settlement Agreement is not in the public interest.

18. If for any reason (a) the Settlement Agreement is withdrawn by the United States as provided in Paragraph 17, or (b) the Settlement Agreement is not approved by the Bankruptcy Court, (i) this Settlement Agreement shall be null and void, and the Parties shall not be bound under the Settlement Agreement or under any documents executed in connection herewith, (ii) the Parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith, and (iii) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

19. This Settlement Agreement constitutes the sole and complete agreement of the Parties with respect to the matters addressed herein.

20. This Settlement Agreement may not be amended except by a writing signed by each of the Parties and approved by the Bankruptcy Court.

21. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

22. The Bankruptcy Court (or, upon withdrawal of the Bankruptcy Court's reference, the United States District Court for the District of Puerto Rico) shall retain jurisdiction over the subject matter of this Settlement Agreement and the Parties for the

duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling each of the Parties to apply at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.

The undersigned party hereby enters into this Settlement Agreement in *In re
Betteroads Asphalt LLC*, Case No. 17-04156 (Bankr. D.P.R.).

FOR THE UNITED STATES OF AMERICA:

Ellen M. Mahan
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

**DONALD
FRANKEL**

Digitally signed by DONALD
FRANKEL
Date: 2023.03.21 14:25:50
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Date: 3/21/23

By: _____


Donald G. Frankel
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
402 Atlantic Avenue
Suite 236
Boston, MA 02110
617-947-9590
donald.frankel@usdoj.gov

The undersigned party hereby enters into this Settlement Agreement in *In re
Betteroads Asphalt LLC*, Case No. 17-04156 (Bankr. D.P.R.).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: _____ By: **Pat Evangelista**
 Digitally signed by Pat Evangelista
Date: 2023.03.13 15:57:06 -04'00'

Pat Evangelista
Director
Superfund and Emergency Management
Division
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007

Date: _____ By: **ANDREA LESHAK**
 Digitally signed by ANDREA LESHAK
Date: 2023.03.13 17:14:26 -04'00'

Andrea Leshak
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway, 17th Floor
New York, NY 10007

The undersigned party hereby enters into this Settlement Agreement in *In re
Betteroads Asphalt LLC*, Case No. 17-04156(Bankr. D.P.R.).

FOR THE DEBTOR:

Date: JAN 10 2023

By: 
Designated Officer