

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF PUERTO RICO**

*In re*

BETTERROADS ASPHALT, LLC.,

66-0208913

Debtor.

CASE NO. 17-04156-ESL11

Chapter 11

**PROOF OF CLAIM OF THE UNITED STATES OF AMERICA,  
ON BEHALF OF  
THE U.S. ENVIRONMENTAL PROTECTION AGENCY**

1. The United States of America files this Proof of Claim at the request of the U.S. Environmental Protection Agency (“EPA”), against Debtor Betterroads Asphalt, LLC (“Betterroads LLC” or “Debtor”), for the recovery of response costs incurred or to be incurred by the United States under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-9675.

2. This proof of claim concerns claims by the United States concerning response costs incurred at the PROTECO Superfund Site in Peñuelas, Puerto Rico (the “Site”). The Site is the location of a former hazardous waste landfill.

3. Debtor is liable under CERCLA for the response costs incurred and to be incurred at the Site by EPA because Debtor arranged for the disposal of hazardous substances at the Site.

**Factual Background**

4. Operations at the hazardous waste landfill began in 1975 under the name Servicios Carbareon, Inc. The company changed its name to Protección Técnica Ecológica Corp. in 1985. This company was succeeded by Resources Management, Inc., doing business as PROTECO. The two companies are collectively referred to herein as “PROTECO.”

5. PROTECO accepted a variety of hazardous wastes at the landfill from multiple sources, including electroplating sludge, wastewater treatment plant sludge, slurries, petroleum wastes, pesticide wastes, and pharmaceutical and manufacturing wastes.

6. Betterroads LLC is a limited liability company principally engaged in the manufacturing of asphalt plant mix and asphalt paving.

7. Betterroads LLC was formerly a corporation known as Betterroads Asphalt Corporation.

8. In June 2014, Betterroads Asphalt Corporation changed its corporate structure to a limited liability company and its name to Betterroads Asphalt, LLC.

9. Betterroads Asphalt, LLC is a successor to Betterroads Asphalt Corporation.

10. In March 1985, Betterroads Asphalt Corp. arranged for the disposal at the PROTECO landfill of approximately 57 cubic yards of solid hazardous substances (described as toluene-contaminated soil, containing asphalt, hexane, and varsol) and 33,500 gallons of liquid hazardous substances (described as toluene-contaminated liquid, containing asphalt, hexane, and varsol).

### **CERCLA Liability**

11. Debtor is a liable party at the Site under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) because it or its predecessor arranged for the disposal of hazardous substances at the Site and there has been a release, or the threat of release, of hazardous substances at the Site.

12. The Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

13. Hazardous substances under Sections 101(14) and 102(a) of CERCLA, 42 U.S.C. §§ 9601(14) and 9602(a), have been found in the soil and groundwater at the Site.

14. Toluene and hexane are designated as hazardous substances under Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), and listed as hazardous substances in 40 C.F.R. § 302.4, CERCLA's implementing regulations.

15. Varsol is a characteristic hazardous substance because it exhibits the characteristics of a hazardous substance identified in 40 C.F.R. §§ 261.20 through 261.24.

16. EPA has incurred response costs at and in connection with the Site that are not inconsistent with the National Contingency Plan ("NCP") promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. Part 300. EPA anticipates that it will incur additional response costs in the future.

17. Debtor is jointly and severally liable to the United States for all response costs at the Site, including unreimbursed past costs of \$525,971.82, and all future response costs at the Site not inconsistent with the NCP.

18. There are approximately 13 potentially responsible parties ("PRPs") that have been notified by EPA of their potential liability for cleanup costs at the Site.

### **Additional Terms**

19. The United States is not required to file a proof of claim with respect to Debtor's injunctive obligation to comply with work requirements and compliance obligations imposed by court orders (including Consent Decrees) or by environmental statutes, regulations, administrative orders, licenses, or permits, because such obligations are not claims under 11 U.S.C. § 101(5). Debtor and any successor entity must comply with such mandatory requirements. The United States reserves the right to take future actions to enforce any such obligations of Debtor. While the United States believes that its position will be upheld by the appropriate court, the United States has included the aforementioned obligations and

requirements in this Proof of Claim in a protective fashion, to safeguard against the possibility that Debtor will contend that it does not need to comply with such obligations and requirements, and the appropriate court finds that it is not required to do so. Therefore, a protective contingent claim is filed in the alternative for such obligations and requirements, but only in the event that the appropriate court finds that such obligations and requirements are claims under 11 U.S.C. § 101(5), rather than obligations and requirements that must be complied with. Nothing in this Proof of Claim constitutes a waiver of any rights by the United States or an election of remedies with respect to such rights and obligations.

20. Pursuant to 28 U.S.C. § 959(b), Debtor is required to manage and operate estate property in accordance with non-bankruptcy law, including all applicable environmental statutes and regulations. Further, any successor entity will be subject to liability under environmental law with respect to any property it owns or operates. The United States is not required to file a proof of claim relating to property of the estate other than for: (i) response costs incurred before the petition date; and (ii) civil penalties for days of violations occurring before the petition date.

21. This Proof of Claim reflects certain known liabilities of Debtor to the United States. The United States reserves the right to amend this claim to assert subsequently discovered liabilities.

22. This Proof of Claim is also filed to the extent necessary to protect the United States' rights with respect to any insurance proceeds received by Debtor, and any funds held in escrow by Debtor, in connection with the matters discussed herein.

23. This Proof of Claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the Debtor by EPA or any other federal agency.

24. The United States has not perfected any security interest on its claims against the Debtor.

25. This claim is filed as a general unsecured claim except to the extent of (i) any rights of setoff that secure the claims, (ii) any secured/trust interest in insurance proceeds received by the Debtor on account of environmental liability to the United States, and (iii) any administrative expense priority relating to property of the estate, post-petition violations of law, or otherwise. In addition, if appropriate, the United States will file any application for administrative expense priority at the appropriate time.

26. No judgments against the Debtor have been rendered on this Proof of Claim.

27. Additional documentation in support of this Proof of Claim is too voluminous to attach, but is available upon request.

Respectfully submitted,

AS TO LEGAL ISSUES ONLY:

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