

SAFETY EVALUATION REPORT
PROPOSED LICENSE AMENDMENT, TRANSFER OF CONTROL, AND RELEASE OF
FACILITY IN RIO PIEDRAS, PUERTO RICO, FOR NRC BYPRODUCT MATERIALS
LICENSE NUMBER 52-19845-01, BETTEROADS ASPHALT CORPORATION

DATE: March 8, 2017

DOCKET NO.: 030-19320

LICENSE NO.: 52-19845-01

LICENSEE: Betteroads Asphalt Corporation
P.O. Box 21420, San Juan, PR 00928-1420

TECHNICAL REVIEWER: Dennis Lawyer

SUMMARY AND CONCLUSIONS

Betteroads Asphalt Corporation holds a byproduct materials license issued by U.S. Nuclear Regulatory (NRC). Under NRC Materials License 52-19845-01, Betteroads Asphalt Corporation is authorized to possess and use byproduct material for purposes of using portable gauging devices for measuring physical properties of materials at their facilities in Rio Piedras, Puerto Rico and Aguada, Puerto Rico, and at temporary job sites in the NRC's areas of regulatory jurisdiction.

By letter dated December 12, 2016, Agencywide Documents Access and Management System (ADAMS) Accession Number ML16356A456, Puerto Rico Asphalt, LLC requested the NRC's consent to a direct transfer of control of the above license from Betteroads Asphalt Corporation to Puerto Rico Asphalt, LLC. Betteroads Asphalt Corporation transferred all of its nuclear gauges and activities requiring the materials license to Puerto Rico Asphalt, LLC, a Puerto Rico Corporation on September 23, 2016. As a part of the transfer of control, Puerto Rico Asphalt, LLC requested a mailing address change and a change in the authorized locations used on the license, which would require the release of one facility. All assets and facilities associated with licensed operations were transferred to Puerto Rico Asphalt, LLC as a change in ownership. Betteroads Asphalt Corporation and Puerto Rico Asphalt, LLC completed this transaction without first requesting and obtaining the NRC's prior written approval as required by 10 CFR 30.34(b) and section 184 of the Atomic Energy Act of 1954, as amended (the Act).

The request for consent was reviewed by NRC staff. The NRC staff applied the guidance in NUREG-1556, Volume 15, Revision 1, "Consolidated Guidance About Materials Licenses - Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses," dated June 2016, and determined that this transaction is a direct transfer of control. The NRC staff finds that the information submitted by Puerto Rico Asphalt, LLC sufficiently describes and documents the transaction and commitments made by Puerto Rico Asphalt, LLC.

Puerto Rico, LLC also requested a license amendment to authorize the additional locations of use and mailing address. Neither Betteroads Asphalt Corporation nor Puerto Rico, LLC requested and obtained a license amendment prior to changing the locations of use as is required under 10 CFR 30.34(c). NRC staff reviewed this license amendment request in

accordance with NUREG-1556, Volume 1, Revision 2, "Consolidated Guidance About Materials Licenses – Program-Specific Guidance About Portable Gauge Licenses," dated June 2016. The NRC staff finds that the information submitted by Puerto Rico Asphalt, LLC sufficiently describes and documents the addition of the new facilities.

The locations stated in the December 12, 2016, letter did not include the facility in Rio Piedras, Puerto Rico. Effectively, Puerto Rico Asphalt, LLC requested release of this site for unrestricted use. The NRC staff sent a letter requesting additional information to support the unrestricted release of the facility on January 5, 2017, ADAMS Accession number ML17012A290. The applicant responded by letter dated February 9, 2017, ADAMS Accession number ML17053B395, providing the additional information needed for the unrestricted release of the Rio Piedras, Puerto Rico facility. This information was reviewed by NRC staff and was reviewed in accordance with NUREG-1757, Volume 1, Revision 2, "Consolidated Decommissioning Guidance: Decommissioning Process for Materials Licensees." The staff finds that the information submitted by Puerto Rico Asphalt, LLC provided sufficient information to allow the unrestricted release of the Rio Pedras, Puerto Rico facility.

As required by 10 CFR 30.34(b) and section 184 of the Act, NRC staff has reviewed the application and finds that the transfer of control, addition of the new facilities, and unrestricted release of the Rio Pedras, Puerto Rico facility are in accordance with the Act. The staff finds that Puerto Rico Asphalt, LLC is qualified to use byproduct material for the purpose requested, and has the equipment, facilities, and procedures needed to protect public health and safety, and promote the common defense and security.

SAFETY AND SECURITY REVIEW

According to the data obtained from the NRC's Web Based Licensing (WBL), Betterroads Asphalt Corporation has been an NRC licensee since February 1, 1982. The NRC conducted a main office inspection of Betterroads Asphalt Corporation on February 14, 2013, for NRC Materials License No. 52-19845-01 and no violations were identified during the inspection. The commitments made by Puerto Rico Asphalt, LLC state that under the transaction the following did not change:

- A. the radiation safety officer listed on the NRC license;
- B. the personnel involved in licensed activities;
- C. the equipment authorized in the NRC license;
- D. the radiation safety program authorized in the NRC license; or
- E. the maintenance of required surveillance records and decommissioning records.

Puerto Rico Asphalt, LLC did state that it changed the facilities and locations where gauges are stored and the mailing address of the licensee. Puerto Rico Asphalt, LLC requested to add other facilities in Caguas, Puerto Rico; Ponce, Puerto Rico; and Salinas, Puerto Rico to the license, and effectively requested the removal of the facility at Rio Piedras, Puerto Rico. All of these changes require a license amendment. The facility at Auada, Puerto Rico will remain.

The licensed activities were transferred to Puerto Rico Asphalt, LLC and the name on the license will reflect the new company name. The transfer in ownership occurred on September 23, 2016. A pre-licensing visit was performed on January 30, 2017, because Puerto Rico Asphalt, LLC is not considered a known entity. The pre-licensing visit followed the guidance provided by the NRC's Office of Federal and State Materials and Environmental Management Programs (FSME) "Checklist to provide a basis for confidence that radioactive materials will be used as specified on the license," September 3, 2008, revision. The purpose of this aspect of the review is for the NRC to obtain reasonable assurance from new license applicants or NRC license transferees that the licensed material will be used for its intended purpose and not for malevolent use. Based on the pre-licensing visit the NRC has confirmed that there is reasonable assurance that Puerto Rico Asphalt, LLC will use the licensed material for its intended purpose and not for malevolent use.

Betterroads Asphalt Corporation is not required to have decommissioning financial assurance based on the types and amount of material authorized in NRC Materials License No. 52-19845-01.

REGULATORY FRAMEWORK

Section 184 of the Atomic Energy Act of 1954, as amended, prohibits the transfer of control of any license unless the Commission finds that the transfer is in accordance with the Act and consents to the transfer in writing.

Betterroads Asphalt Corporation's NRC Materials License No. 52-19845-01, was issued under 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material."

10 CFR 30.34(b) states: "No license issued or granted pursuant to the regulations in this part and parts 31 through 36, and 39 nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing."

10 CFR 30.34(c) states, in part: "Each person licensed by the Commission pursuant to the regulations in this part and parts 31 through 36 and 39 shall confine his possession and use of the byproduct material to the locations and purposes authorized in the license."

As previously indicated, the staff evaluation associated with the transfer of control is based on guidance in NUREG-1556, Volume 15, Revision 1. The central issue when determining whether a license is transferred is whether the authority over the license has changed. Puerto Rico Asphalt, LLC's request for consent describes a direct transfer of control of the NRC license held by Betterroads Asphalt Corporation, resulting from ownership change from Betterroads Asphalt Corporation to Puerto Rico Asphalt, LLC. Following the sale, Puerto Rico Asphalt, LLC assumed the licensed activities, and, as such, the transfer requires the NRC's consent.

As previously indicated, the staff evaluation associated with the new locations of use and the release of the facility at Rio Piedras, Puerto Rico was performed in accordance with the guidance in NUREG-1556, Volume 1, Revision 2, "Consolidated Guidance About Materials

Licenses – Program-Specific Guidance About Portable Gauge Licenses,” dated June 2016 and NUREG-1757, Volume 1, Revision 2, “Consolidated Decommissioning Guidance: Decommissioning Process for Materials Licensees.” Following the amendment, the new locations of use will be added to NRC Material License No. 52-19845-01 and the facility at Rio Piedras, Puerto Rico will be removed.

DESCRIPTION OF TRANSACTION

The transaction is described in ADAMS accession number ML16356A456. After completion of the sale, Puerto Rico Asphalt, LLC assumed the activities described under the license and is in control of all licensed activities under NRC Materials License No. 52-19845-01. With the exception of Betterroads Asphalt Corporation and Puerto Rico Asphalt, LLC’s failure to request and obtain the NRC’s prior written approval of the license transfer, the NRC staff finds that the request for consent adequately provides a complete and clear description of the transaction, and is consistent with the guidance provided in section 5 of NUREG-1556, Volume 15, Revision 1. The amendment which reflects Puerto Rico Asphalt, LLC as the licensee, will include the new locations of use, remove the facility at Rio Piedras, Puerto Rico, and change the mailing address.

TRANSFeree’S COMMITMENT TO ABIDE BY THE TRANSFEROR’S COMMITMENTS

The NRC staff finds that the information submitted by Puerto Rico Asphalt, LLC sufficiently describes and documents the commitments made by Puerto Rico Asphalt, LLC, and is consistent with the guidance in NUREG-1556, Volume 15, Revision 1.

UNRESTRICTED RELEASE OF THE RIO PEDRAS FACILITY

In the letter dated December 12, 2016, Puerto Rico Asphalt, LLC did not include the Rio Pedras, Puerto Rico, site. Puerto Rico Asphalt, LLC effectively requested the release of this site for unrestricted use. Puerto Rico Asphalt, LLC provided in a letter dated February 9, 2017, the latest leak test reports for all of the nuclear gauges that they possess. The leak tests were performed on the 15 nuclear gauges that they possess. The leak tests were performed on December 14, 2016, and January 26, 2017, which is within the 12 month frequency required by the sealed source and device registry for the devices possessed by Puerto Rico Asphalt, LLC. The provided results were all less than the 0.005 microcurie criteria as stated in Condition 13.D., which demonstrates that the sources were not leaking. Puerto Rico Asphalt, LLC and previously Betterroads Asphalt Corporation only possessed sealed sources and Puerto Rico Asphalt, LLC demonstrated that the most recent leak tests are current and demonstrate that the sealed sources did not leak while in their possession. The Staff reviewed this information in accordance with NUREG-1757, Volume 1, Revision 2, Section 8 and concludes that the facility meets the criteria in 10 CFR 20.1402.

ADDITION OF NEW FACILITIES FOR AUTHORIZED USE

In the December 12, 2016, letter, Puerto Rico Asphalt, LLC stated that they had an additional three locations of use for the storage of the nuclear gauges. Puerto Rico Asphalt, LLC provided a schematic of the storage location at each site and the specific address, the GPS location of each facility, and the purpose of rooms near the storage area. Based on the schematics, the NRC staff has determined that the submitted information is in accordance with NUREG-1556,

Volume 1, Rev 2, "Consolidated Guidance About Material Licenses," Section 8.9, Facilities and Equipment. The NRC staff determined that the submittal adequately described the proposed area of storage, that it would be an adequate facility for the storage of nuclear gauges, and that it would be sufficient for the protection of the nuclear gauges and the public.

ENVIRONMENTAL REVIEW

An environmental assessment for transfer of control is not required since this action is categorically excluded under 10 CFR 51.22(c)(21). An environmental assessment of releasing the Rio Piedras, Puerto Rico location is not required since this action is categorically excluded under 10 CFR 51.22(c)(20)(ii). An environmental assessment for the amendment is not required to add locations of use associated with the use of sealed sources and the use of gauging device because these actions are categorically excluded under 10 CFR 51.22(c)(14)(viii).

CONCLUSION

The NRC staff has reviewed the request for consent submitted by Puerto Rico Asphalt, LLC with regard to a direct transfer of control of NRC Materials License No. 52-19845-01 pursuant to 10 CFR 30.34(b), and consents to the proposed direct transfer of control.

The submitted information sufficiently describes the transaction; documents the transferee's commitments and demonstrates that personnel have the experience and training to properly implement and maintain the license and that they will maintain the existing records. The submitted information also demonstrates that the licensee will abide by all existing commitments in the license, consistent with the guidance in NUREG-1556, Volume 15, Rev 1.

The NRC staff has reviewed the request for an amendment to add the locations of use and release for unrestricted use the facility at Rio Piedras, Puerto Rico and consents to adding the new locations and releasing the facility at Rio Piedras, Puerto Rico.

Therefore, the staff concludes that the proposed transfer of control, license amendment, and release of the facility for unrestricted use at Rio Piedra, Puerto Rico would not alter the previous findings, made under 10 CFR Part 30, that licensed operations will not be inimical to the common defense and security, or to the health and safety of the public.

