



EPA REGION 2
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION

March 13, 2024

Via Certified Mail – Return Receipt Requested

Mr. Tom Bolt
Boltnagi, PC
Merchants Financial Center
4608 Tutu Park Mall, Suite 202
St. Thomas, Virgin Islands 00802-1816

**Re: Information Request Pursuant to Section 308 of the Clean Water Act
South End Asphalt LLC: Asphalt Producing Facility
13 H Estate Bethlehem, St. Croix, U.S. Virgin Islands 00841
Request for Information ID: CEPD-CWA-02-IR-2024-001
NPDES ID: VIU086433**

Dear Mr. Bolt:

The United States Environmental Protection Agency (“EPA” or “Agency”) is charged with the protection of human health and the environment under the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1241 *et seq.* Section 301(a) of the CWA, 33 U.S.C. § 1311(a), provides in part that except as in compliance with Section 402 of the CWA, 33 U.S.C. § 1342, the discharge of any pollutant by any person shall be unlawful.

Pursuant to the United States Virgin Islands (“USVI”) Water Pollution Control Act (“VIWPCA”), 12 V.I.C. § 181, *et seq.*, the Government of the USVI promulgated regulations known as Territorial Pollutant Discharge Elimination System (“TPDES”), Title 12, Chapter 7, Subchapter 184. Section 185(a) of the VIWPCA, 12 V.I.C. §185(a), states in part, that except as provided in Chapter 7 and any rule and regulations promulgated hereto, the discharge of pollutants without a permit into waters of the USVI by any person shall be unlawful. Pursuant to Section 184-21(a) of the Code of U.S. Virgin Islands Rules (“CVIR”), no person shall discharge any pollutant into waters of the USVI without a TPDES permit.

Pursuant to Section 184-45(a)(1)(ii) of the CVIR, and EPA regulations at 40 C.F.R. § 122.26(c)(1), as applicable, operators of certain industrial activities that discharge storm water into waters of the United States and/or waters of the USVI are required to apply for and obtain coverage under a permit.

CITY VIEW PLAZA II BUILDING, 7TH FLOOR
ROUTE 165 GUAYNABO, PR 00968

On June 16, 2022, an EPA official performed a National Pollutant Discharge Elimination System (“NPDES”) Inspection (“Inspection”) of the asphalt producing facility located at 13 H Estate Bethlehem, St. Croix, U.S. Virgin Islands (“Facility”). The findings of the Inspection were included in the NPDES Inspection Report (“Inspection Report”), dated August 11, 2022, which was transmitted by cover letter dated August 16, 2022, to a company named *Virgin Islands Asphalt Products Corporation* (“VIAPCO”), which was the operator of the Facility at the time of the Inspection. Enclosed please find a copy of the Inspection Report.

You are receiving this Request for Information letter (“RFI Letter”) under EPA’s understanding that you are the Registered Agent of a company named *South End Asphalt LLC* (“SEA”), which EPA also understands that SEA became the owner and/or operator of the Facility on or about August 3, 2022. Please be informed that Section 308(a) of the CWA, 33 U.S.C. §1318(a), provides that whenever it is necessary to carry out the objectives of the CWA, including determining whether a “person”¹ is in violation of Section 301 of the CWA, or a permit issued under Section 402 of the CWA, EPA shall require the submission of any information reasonably necessary to make such a determination. Under the authority of Section 308 of the CWA, EPA may require the submission of information necessary to assess the compliance status of any “facility”² and its related appurtenances.

A. REQUEST FOR INFORMATION

EPA is hereby requesting information from SEA pursuant to the authority granted under Section 308(a) of the CWA concerning the Facility. This information will be used to determine SEA’s past and present compliance with Sections 301(a) and 402 of the CWA.

Please review and follow the instructions in Enclosure 1 (Instructions and Definitions); review the information being requested in Enclosure 2 and submit the information requested therein; and submit a signed and dated Statement of Certification (Enclosure 3), which is to be signed and dated by a SEA authorized officer pursuant to the signatory requirements in 40 C.F.R. § 122.22. This statement certifies that the response submitted to the EPA is complete and contains all documents and information responsive to this RFI Letter that are known to you, following a complete and thorough review of all information and sources available to you.

B. ACKNOWLEDGEMENT OF RECEIPT AND DELIVERY OF INFORMATION

Please acknowledge receipt of this letter upon receipt by sending an electronic mail to José A. Rivera, Team Leader, Clean Water Act Team, at rivera.jose@epa.gov. EPA requests that SEA submits all the requested information within thirty (30) calendar days of receipt of this letter.

¹ The term “person” includes corporations, as defined 40 C.F.R. § 122.2.

² The term “facility” is defined in 40 C.F.R. § 122.2 and means NPDES “point source” or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

The electronic delivery of SEA's response to this RFI Letter is strongly encouraged. To the extent possible, any documents to be submitted in response to this RFI Letter should be in Portable Document Format ("PDF"). The requested information must be sent to the following EPA Region 2 designated official:

José A. Rivera, BSCE
Team Leader
Clean Water Act Team
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
Email: rivera.jose@epa.gov.

If you are without access to a computer and must submit the response by U.S. mail, SEA should notify Mr. José A. Rivera at (787) 977-4842, or by email at rivera.jose@epa.gov, when it sends a document in such a manner.

Please be advised that SEA is under a continuing obligation to supplement its response if information not known or not available to SEA as of the date of submission of its response should later become known or available to SEA. In this instance, SEA must supplement the response to EPA within ten (10) business days.

If at any time in the future SEA becomes aware of additional information or find that any portion of the submitted information is false, misleading or misrepresents the truth, SEA must notify EPA of this fact immediately and provide a corrected response within ten (10) business days. If any part of the response is found to be untrue, SEA may be subject to criminal prosecution.

C. RESPONSIBILITY TO RESPOND TO THIS RFI LETTER

Failure to comply in all respects with this RFI Letter may result in the initiation of an enforcement action under Section 309 of the Act, 33 U.S.C. § 1319, under which injunctive relief and penalties may be sought.

This RFI Letter is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3401-3420. SEA may, if so desire, assert a business confidentiality claim covering all or part of the information requested by this letter. A business confidentiality claim may be asserted by placing on (or attaching to) the information, at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret" or "proprietary" or "company confidential." Information covered by such a claim will be disclosed by EPA only in accordance with and by means of procedures set forth in Sub-Part B, 40 C.F.R. Part 2.

If no such claim accompanies the information contained in the response to the RFI Letter when it is received by EPA, it may be made available to the public by EPA without further notice to SEA. You should read the above-cited statutory and regulatory provisions carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified. If SEA desires confidential treatment of information only until a certain date or until the occurrence of a certain event, SEA's response should state so.

EPA encourages you and SEA personnel to become familiar with the Small Business Resource Information Sheet ("Information Sheet"). This Information Sheet provides information to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies. The Information Sheet is available at <https://www.epa.gov/sites/default/files/2017-04/documents/smallbusinessinfo.pdf>.

If you have any questions concerning this matter, please contact Mr. José A. Rivera, Team Leader, Clean Water Act Team, at (787) 977-4842, or through email at rivera.jose@epa.gov.

Sincerely,

HECTOR

VELEZ-CRUZ

Digitally signed by
HECTOR VELEZ-CRUZ

Date: 2024.03.13
12:49:32 -04'00'

Héctor L. Vélez Cruz, Esq.

Acting Director

Caribbean Environmental Protection Division

Enclosures

ENCLOSURE 1

INSTRUCTIONS

In responding to this RFI Letter, please apply the following instructions, definitions, and information:

- a. Please use the RFI ID Number CEPD-CWA-02-IR-2024-001 when referring to this RFI Letter.
- b. The signatory of the response to the RFI Letter should be an officer or agent who is authorized to respond on behalf of SEA pursuant to NPDES signatory requirements regulations codified at 40 C.F.R. § 122.22.
- c. A complete separate response must be made to each individual question in this RFI. Identify each answer with the number of the question to which it is addressed and precede each answer with the question to which it is addressed.
- d. Interpret “and” as well as “or” to include within the scope of the question as much information as possible. If two interpretations of a question are possible, use the one that provides more information.
- e. In preparing your response to each question, consult with all present and former employees, agents and/or contractors whom you have reason to believe may be familiar with the matter to which the question pertains, regardless of whether the source is in your immediate possession.
- f. In answering each question, identify all contributing sources of information.
- g. If you are unable to answer a question in a detailed and complete manner or if you are unable to provide any of the information or documents requested, indicate the reason for your inability to do so. If you have reason to believe that there is an individual who may be able to provide more detail or documentation in response to any question, state that person's name and last known address and phone number and the reasons for your belief.
- h. If anything is deleted from a document produced in response to this Request for Information, state the reason for and the subject matter of the deletion.
- i. For each document produced in response to this Request for Information, indicate on the document or in some other reasonable manner, the number of the question to which it applies. If a document is requested but is not available, state the reason for its unavailability.
- j. For terms referred in this RFI Letter, you will find its meaning in Section 402(4) of the Act, 33 U.S.C. § 1342 and the NPDES regulations at 40 C.F.R. § 122.2.

ENCLOSURE 2

INFORMATION REQUESTED

Officials and Members

1. Submit the name, position, electronic mail and telephone number of the SEA officers or agents that meet the signatory requirements in 40 C.F.R. § 122.22 (see <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-122/subpart-B/section-122.22>).
2. Submit the name, electronic mail and telephone number of the on-site manager for the Facility.
3. Submit the name, position, electronic mail and telephone number of the employee(s) responsible for the implementation, maintenance and inspections of storm water controls at the Facility.

Outfalls, Sampling Points, and Storm Water Monitoring

4. Submit a description (e.g., location, identification) and legible photographs for every storm water discharge outfall at the Facility.
5. Submit a description (e.g., location, identification) and legible photographs for every storm water discharge sampling location at the Facility.
6. Submit a facility map depicting the location of the storm water sampling locations for the Facility.
7. Submit the names, position, electronic mail, and telephone number for each SEA employee responsible for monitoring of storm water discharges for the Facility.

Rain Gauge and Rain Data Logs

8. Indicate if a rain gauge had been installed for the Facility. Indicate the date when the rain gauge was installed and its operational status.
9. Submit a copy of the manufacturers' installation procedures for the rain gauge installed at the Facility.
10. Submit a legible photograph depicting the rain gauges installed at the Facility.
11. Submit a copy of the rain data log for the Facility since August 11, 2022.

ENCLOSURE 2 (contd.)

12. Submit the names, position, electronic mail, and telephone number for each SEA employee responsible for reading and recording data for the rain gauge installed at the Facility.
13. Submit any written standard operating procedure, plan, and process for reading and recording rain data for the Facility that was developed by SEA for the Facility.

Storm Water Pollution Prevention Plan (SWPPP) / Storm Water Best Management Plan (BMP)

14. Submit a copy of the SWPPP, including attachments/appendixes thereto, that was developed by SEA for the Facility.
15. Submit a copy of the BMP, including attachments/appendixes thereto, that was developed by SEA for the Facility.

Documentation

16. Submit a copy of any TPDES application (i.e., individual permit application forms, Notice of Intent form) prepared and submitted by SEA to DPNR for the Facility.
17. Submit a copy of any written communication between SEA and DPNR concerning storm water permitting for the Facility.

ENCLOSURE 3

STATEMENT OF CERTIFICATION

I certify that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my personal inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and 18 U.S.C. §§ 1001, 1341 and 1404.

(Signature)

(Printed Name)

(Title)

(Date)