

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of

Aguakem Caribe, Inc.

Respondent

Prehearing Exchange

Docket No. RCRA-02-2009-7110

PROTECTOR ENVIRONMENTAL-REG. II
2009 NOV 18 P 12:15
HEARING CLERK

**COMPLAINANT'S REQUEST FOR CLARIFICATION ON MATTERS TO BE
ADDRESSED DURING THE HEARING**

To THE HONORABLE COURT:

As part of the prehearing process the Parties submitted a joint stipulation of facts, exhibits and testimony, which narrows down the issues before this Honorable Court since most of the evidence and/or testimony has been stipulated.

The Parties stipulated the following facts as admitted and requiring no further proof:

- a. Respondent Aguakem Caribe, Inc. is a corporation organized and authorized to do business under the laws of the Commonwealth of Puerto Rico.
- b. Respondent is a "person" (as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.
- c. Mr. Jorge J. Unanue is the President of Aguakem Caribe, Inc.
- d. Respondent has been in the chemical manufacturing industry since at least 1995.
- e. Respondent manufactures a variety of chemical products that are used in private and public owned potable and wastewater treatment plants.
- f. Respondent's former facility, located in a warehouse

identified as an area in Building 6 on the Puerto de Ponce, a property owned by the Port of Ponce Authority ("PPA"), is located in PR-12, Santiago de los Caballeros Ave., Ponce, Puerto Rico (hereinafter the "Facility").

- g. Respondent's former Facility, constitutes a "facility," within the meaning of 40 C.F.R. § 260.10.
- h. Respondent had a lease agreement for the former Facility with PPA, since approximately June 28, 1995 to approximately May 23, 2005, thereafter the lease agreement continued on a month to month basis until September 2006, at which time the Municipio of Ponce sought and received a judicial order of eviction. The parties negotiated an extension of time for Aguakem to remain in the Facility through December 2006.
- i. Respondent began operations at its former facility around January 1996.
- j. The Facility consisted of the following areas: Office; Laboratory; Tank farm; Secondary containment system; Process Area; Storage Area and Unloading/loading dock.
- k. Respondent was the operator of the Facility from at least June 28, 1995 to approximately December 28, 2006.
- l. Respondent removed equipment and materials from its Facility to its current facility prior to December 28, 2006.
- m. The Respondent did not obtain an EPA ID number for the operations it conducted at the Facility.
- n. On June 27, 2007, EPA entered into an Administrative Order on Consent (AOC) with PPA and Respondent, under Section 104 of CERCLA, 42 U.S.C. Section 9604.

All except one of Complainant's exhibits were stipulated as *admissible* into evidence:

i. CE1¹ Administrative Complaint, Docket No. RCRA-02-2009-7110.

ii. CE2. Respondent's Answer to the Complaint, Request for Hearing, dated October 23, 2009.

¹Complainant's exhibits will hereinafter be identified as CX.

- iii. CE3. RCRA Compliance Evaluation Inspection Report, of Port of Ponce—"Puerto de Ponce" by Eduardo R. González and Zolymar Luna, dated September 30, 2008 with attachments. Inspection conducted on February 2, 2007.
- iv. CE4. RCRA Compliance Evaluation Inspection Report, Aguakem, signed by Eduardo R. González and Jesse Avilés, dated May 1, 2008 with attachments. Inspection conducted on February 2, 2007.
- v. CE5. RCRA Section 3007 Request for Information, addressed to Mr. Jose Manuel Unanue, dated May 12, 2008, ref. No. CEPD-RCRA-08-3007-0000-002, with attachments.
- vi. CE6. Notice of Violation (NOV)/RCRA § 3007 Request for Information, addressed to Jose A. Hernandez, Port of Ponce Authority's (PPA) Executive Director, dated September 30, 2008.
- vii. CE7. PPA's response to EPA's NOV and Request for Information dated December 12, 2008 and signed by Jorge A. Hernandez, with partial attachments (contracts from 1995-2005 between PPA and Aguakem). Note: the contracts are in Spanish, translations will be provided of the contracts prior to hearing)
- viii. CE8. Second RCRA Section 3007 Request for Information, addressed to Mr. Jose Manuel Unanue, dated May 6, 2009, Ref. No. CEPD-RCRA-09-3007-0000-01.
- ix. CE9. Respondent's response letter to EPA's Second Request for Information, dated June 30, 2009, and signed by Mr. Jorge Unanue (without attachments).
- x. CE10. EPA's Emergency Response Team Pollution Report, Aguakem Abandoned Waste, dated February 12, 2007 from OSC Angel Rodriguez.
- xi. CE11. EPA's Emergency Response Team Pollution Report, Aguakem Abandoned Waste, dated April 2, 2008, from OSC Angel Rodriguez.
- xii. CE13. Administrative Agreement and Order on Consent for a Removal Action, In the matter of the Aguakem Chemical Site, Municipality of Ponce and Aguakem Caribe, Inc. Index Number CERCLA-02-2007-2017.
- ivx. CE14. Monthly Progress Report (October 10, 2008), from Caribe Environmental Services, dated October 10,

2008 and addressed to Angel C. Rodriguez, with attachments.

Complainant included as part of its exhibits Respondent's answer to the complaint, and other documents generated or submitted by the Respondent, which Complainant intends to use when it cross examines Mr. Jorge Unanue and or other witnesses as Complainant deems appropriate.

The following testimony, regarding most of Complainant's proposed witnesses, except the testimony of Mr. Angel Rodriguez, was stipulated as admitted and requiring no proof:

That Mr. Eduardo Gonzalez is a Senior Environmental Engineer, under the RCRA Response and Remediation Branch, Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region 2. That he has conducted numerous CEI in Puerto Rico; has vast experience in the RCRA penalty calculation method used in the present case; participated in the Inspections conducted at Respondent's Facility; has vast experience as an Inspector under the RCRA program; received PP's [Puerto de Ponce] response to a RCRA NOV, which included the lease agreements between PP and the Respondent and that Mr. Gonzalez reviewed the proposed penalty and found it met the statutory RCRA requirements.

That Ms. Zolymer Luna will testify that she is an Environmental Engineer under the RCRA Response and Remediation Branch Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region. That Ms. Luna

participated in the Inspections conducted at Respondent's Facility; she reviewed Respondent's Information request response and calculated the proposed penalty using the statutory provisions under RCRA.

That Mr. Jesse Aviles will testify that he is Environmental Scientist under the RCRA Response and Remediation Branch Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region 2 and that he will testify as to his participation in the Inspections conducted at Respondent's Facility.

The Respondent stated he would not stipulate as to the findings of violations, part of the testimony of each of the above witnesses and he expressed that the witnesses be made available for cross-examination and possibly, direct testimony.

However, as a result of the stipulations, Complainant's stipulated exhibits, include the Compliance Evaluation Inspection ("CEI") reports, prepared, reviewed and signed by Complainant's witnesses, Mr. Gonzalez, Ms. Luna and Mr. Aviles. The reports include the *findings of violations* at Respondent's former facility at Puerto de Ponce. Although this part of their testimony was not stipulated, the documents as such were stipulated as *admissible*.

In addition, as part of Complainant's case we would present as a witness Mr. Angel Rodriguez, who will testify about the CERCLA removal he conducted at Respondent's former facility and

as to the Administrative Order on Consent approved and signed by Respondent. Although Respondent did not stipulate the testimony of Mr. Rodriguez, he did stipulate as to the admissibility of the Administrative Order and the two reports generated by Mr. Rodriguez.

Also, it appears that there is no controversy as to how the proposed penalty was calculated, nor that it was done following the RCRA statutory requirements. Respondent has stipulated the penalty calculation that is part of the Complaint as an attachment, and has also indicated it stipulates the testimony of Mr. Gonzalez and Ms. Luna, that the proposed penalty was done in accordance with the RCRA provisions; that Mr. Gonzalez reviewed the proposed penalty calculation and found that it met the RCRA requirements. Thus, it is Complainant's understanding that the proposed penalty of \$332,963 is not at issue in this matter.

It is Complainant's position that the admissibility of the testimony and the aforementioned documents meets Complainant's burden of presentation and persuasion that the violation occurred and that the relief sought is appropriate. 40 C.F.R. § 22.24 (a), Consolidated Rules of Practice.

However, in order for both parties to be fully and adequately prepared for the scheduled hearing on December 6, 2010, and to avoid any misunderstanding as to the scope and extent of the Joint Stipulations agreed upon by the Parties,

Complainant feels the need to file the present Motion for Clarification before this Honorable Court.

Respectfully submitted in San Juan, Puerto Rico, November 17, 2010.



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In the Matter of Aguakem Caribe, Inc.

CWA-02-2009-7110

Respondent

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing **Complainant's Request for Clarification**, dated November 17, 2010, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and copy, **UPS** to:

Karen Maples
Regional Hearing Clerk
Region 2
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, NY 10007-1866.

Copy by **UPS** to:

Attorney for Respondent:
Armando Llorens, Esq.
FURGANG & ADWAR
1325 Avenue of the Americas, 28th Floor
New York, New York 10019
[Phone: (212) 725-1818]

Copy by **UPS** to:

Administrative Law Judge:
The Honorable Barbara Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Franklin Court Building
1099 14th Street, N.W., Suite 350
Washington, D.C. 20005
[Phone: (202) 564-6255 Att: Mary Angeles, Legal Staff Assistant]

11/17/2010
Date

[Signature]