

**ORIGINAL**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2**

IN THE MATTER OF

Aguakem Caribe, Inc.,

Respondent

Proceeding under Section 3008 of the Solid Waste  
Disposal Act, as amended, 42 USC § 6928

**SUPPLEMENT TO PREHEARING  
EXCHANGE**

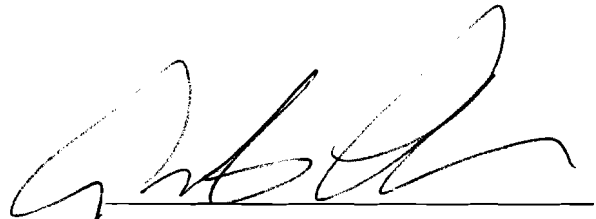
Docket No. RCRA-02-2009-7110

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2010 NOV -5 P 3:10  
RESIDENTIAL HEARING  
-ENR/

**I. RESPONDENT'S ADDITIONAL SUPPLEMENT TO ITS  
INITIAL PREHEARING EXCHANGE**

Respondent Aguakem Caribe, Inc., through its undersigned attorneys, hereby supplements its Initial Prehearing Exchange for the above-captioned matter.

Respectfully submitted, in New York, New York this 1st day of November, 2010.



Armando Llorens  
FURGANG & ADWAR  
Attorneys for Respondent  
1325 Avenue of the Americas, 28<sup>th</sup> Fl.  
New York, New York 10019  
(212) 725-1818  
armando@furgang.com

### **1. Addition To Respondent's List of Witnesses And Submission Of Documents**

1. Eduardo Guzman - Mr. Guzman, who is the outside auditor of Respondent, will testify regarding audited financial statements he prepared on behalf of Aguakem Caribe, Inc. Mr. Guzman will also testify regarding Aguakem Caribe's financial viability and ability to pay an EPA fine.
2. Eduardo Gonzalez, EPA - Mr. Gonzalez will be called to testify regarding communications between the EPA and Aguakem, including communications received by him from Aguaken and/or counsel for Aguakem.
3. Angel Rodriguez, EPA - Mr. Rodriguez will be called to testify regarding communications between the EPA and Aguakem, including communications received by him from Aguaken and/or counsel for Aguakem.

### **Addition to List Of Documents**

1. 2010 Audited Financial Statement of Aguakem Caribe. Inc.

### **CERTIFICATE OF SERVICE**

I certify that on this date a copy of this Preliminary Exchange was served upon:

Original and copy to:

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

copy to:

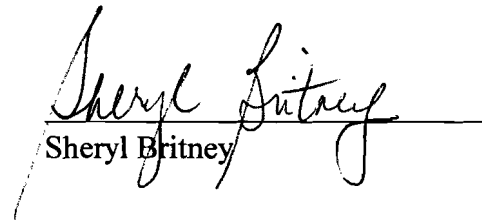
Lourdes del Carmen Rodriguez, Esq.  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de Leon Avenue

San Juan, PR 00907

copy to:

Administrative Law Judge  
The Honorable Barbara A Gunning  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Franklin Court Building  
1099 14<sup>th</sup> Street, N.W. Suite 350  
Washington, D.C. 20005  
Attn: Mary Angeles

by first class mail.

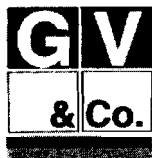
  
Sheryl Britney



*AGUAKEM CARIBE, INC.*  
*AUDITED FINANCIAL STATEMENTS*  
*JUNE 30, 2010*

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# GUZMAN VILLANUEVA & CO., CPA, CSP

*Certified Public Accountant*

*P.O. Box 7785, Ponce, P.R. 00732-7785 Tel. (787) 848-6640 Fax (787) 848-6779*

To the Board of Directors  
Aguakem Caribe, Inc.

We have audited the accompanying balance sheet of Aguakem Caribe, Inc., as of June 30, 2010, and the related statements of income and accumulated deficit and of cash flows for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

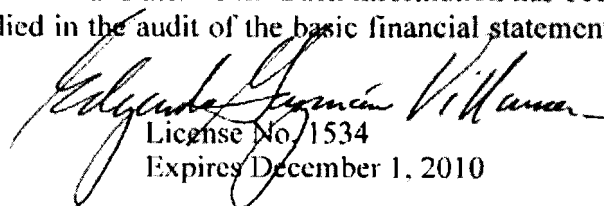
We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatements. An audit includes examining, on a test basis, evidence that supports the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Notes 1 and 9 to the financial statements, the Company had sustained accumulated losses amounting to (\$682,834) as of June 30, 2010; which raise substantial doubt about its ability to continue as a going concern. Management's plans regarding those matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

In our opinion, except for the matters discussed in Note 1 and 9, the financial statements referred to above presents fairly, in all material respects, the financial position of Aguakem Caribe, Inc., as of June 30, 2010 and the results of its operations and of its cash flows for the year then ended in conformity with generally accepted accounting principles.

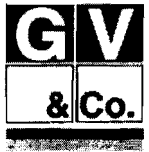
Our audit was made for the purpose of forming an opinion on the basic financial statements taken as a whole. The Overhead Operating Costs & General, Selling and Administrative Expense Schedules on page 5 are presented for the purposes of additional analysis and is not a required part of the financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements taken as a whole.

August 24, 2010  
Ponce, Puerto Rico

  
License No. 1534  
Expires December 1, 2010

Stamp #2528728 "Colegio de Contadores  
Públicos Autorizados de Puerto Rico" was  
affixed to the original of this report.

*AGUAKEM CARIBE, INC.*  
*BALANCE SHEET*  
*JUNE 30, 2010*



ASSETS

Current assets:

Accounts receivable - trade (net)	\$ 146,677
Inventories (Note 1)	<u>98,646</u>
Total current assets	245,323

Fixed assets: (Note 1)	153,220
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Other assets:

Deferred tax asset (Note 9)	\$194,907
Prepaid expenses	16,689
Accounts receivable -- Affiliates (Note 2)	149,395
Accounts receivable -- Others (net of reserve of \$46,759) (Note 3)	<u>8,357</u>
Total other assets	<u>369,348</u>
Total assets	<u>\$ 767,891</u>

The accompanying notes are an integral part of the financial statements.

*AGUAKEM CARIBE, INC.*  
*BALANCE SHEET*  
*JUNE 30, 2010*



LIABILITIES AND SHAREHOLDERS' EQUITY

Liabilities

Current liabilities:

Bank overdraft	\$ 27,158
Demand credit line (Note 3)	92,751
Current portion of long-term debt (Note 4)	128,393
Trade payable	135,806
Other accrued expenses (Note 5)	<u>98,179</u>

Total current liabilities 482,287

Long-term liabilities:

Loans payable (Note 4)	<u>\$191,614</u>
Total long-term liabilities	<u>191,614</u>

Total liabilities 673,901

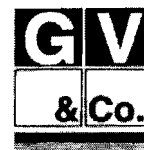
Shareholders' equity:

Common Stock, \$100.00 par value, subscribed	\$170,647
Class A Common Voting Stocks, \$100.00 par value, subscribed	5,000
Class B Preferred Non Voting, Non Cumulative Stocks, \$100.00 par value, subscribed	5,000
Additional paid-in-capital	273,364
Accumulated deficit	<u>(360,021)</u>
Total shareholders' equity	<u>93,990</u>

Total liabilities and shareholders' equity \$ 767,891  
=====

The accompanying notes are an integral part of the financial statements.

**AGUAKEM CARIBE, INC.**  
**STATEMENTS OF INCOME AND ACCUMULATED DEFICIT**  
**FOR THE YEAR ENDED JUNE 30, 2010**



Sales - net		\$1,246,291
Direct operating cost:		
Materials:		
Beginning inventory	\$ 170,138	
Purchases	<u>536,327</u>	
Materials available for production	706,465	
Ending inventory	<u>( 98,646)</u>	
Cost of materials	607,819	
Labor	103,474	
Overhead	<u>234,762</u>	
Total operating cost		<u>946,055</u>
Gross Profit		300,236
General, selling and administrative expense		<u>275,991</u>
Income from operations		24,245
Other income/(expense)		
Interest-net	( 18,885)	
Others	<u>3,137</u>	
Total other income/(expense)		<u>( 15,748)</u>
Net income before PR Income Tax		8,497
PR Income tax (Note 7, 9)		<u>( 1,027)</u>
Net income		7,470
Accumulated deficit, at beginning		<u>( 367,491)</u>
Accumulated deficit, at end		<u><u>\$( 360,021)</u></u>

The accompanying notes are an integral part of the financial statements.





*AGUAKEM CARIBE, INC.*  
*OVERHEAD OPERATING COSTS & GENERAL,*  
*SELLING AND ADMINISTRATIVE EXPENSE SCHEDULES*  
*FOR THE YEAR ENDED JUNE 30, 2010*

***Overhead Operating Costs:***

Warehouse rent	\$100,800
Depreciation	64,667
Repair & maintenance	27,000
Supplies & materials	18,595
Insurances	17,525
Equipment rent	5,485
Others	<u>690</u>
 Total overhead operating costs	 \$234,762 <u>-----</u>

***General, Selling and Administrative Expenses:***

Salaries & fringe benefits	\$ 82,631
Professional services	69,054
Depreciation	37,357
Office rent	18,000
Vehicle expense	15,910
Telephone	11,371
Property, municipal & other taxes	8,393
Travel expense	8,332
Office supplies	7,178
Bank charges	4,107
Bad debt expense	1,576
Insurance	1,474
Promotion	1,162
Others	<u>9,446</u>
 Total general, selling and administrative expense	 \$275,991 <u>-----</u>

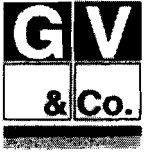


*AGUAKEM CARIBE, INC.*  
*STATEMENT OF CASH FLOWS*  
*FOR THE YEAR ENDED JUNE 30, 2010*

Cash flow from operating activities:	
Net income	\$ 7,470
Adjustments to reconcile net income to net cash provided by operating activities:	
Depreciation	102,024
Decrease in merchandise inventories	71,492
Decrease in accounts receivable	214,633
Increase in credit line	4,888
Increase in current portion of long-term debt	97,607
Decrease in trade accounts payable	(203,171)
Increase in other accrued expenses	<u>2,127</u>
Total adjustments to net income	<u>289,600</u>
Net cash provided by operating activities	297,070
Cash flow from investing activities:	
Increase in fixed assets	( 70,934)
Increase in other assets	<u>( 50,747)</u>
Net cash used in investing activities	(121,681)
Cash flow from financing activities:	
Decrease in long-term debt	<u>(175,247)</u>
Net cash used in financing activities	<u>(175,247)</u>
Net increase in cash	142
Cash at beginning of year	<u>( 27,300)</u>
Bank overdraft at end of year	<u><u>\$( 27,158)</u></u>

The accompanying notes are an integral part of the financial statements.

**AGUAKEM CARIBE, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**JUNE 30, 2010**



1) Organization

Aguakem Caribe, Inc., is a corporation organized under the corporate laws of the Commonwealth of Puerto Rico on June 14, 1995. Its principal place of business is located at Villa Street in Ponce, Puerto Rico. It is engaged in distributing water treatment solution products and other related products to Puerto Rico and the Caribbean Basin Countries.

A) Significant Accounting Policies

Financial statements are prepared under generally accepted accounting principles using accrual method of accounting under which income is recorded as earned and cost are recorded as incurred.

Accounts receivable are considered due at 30 days.

Inventories are recorded at cost, not in excess of fair market value using first-in first-out method. Inventories as of June 30, 2010 are comprised as follow:

Ferric Chloride Solution	\$ 20,921
Finished products	19,663
Hydrochloric Acid	13,076
ACS	11,806
Polymers	9,323
Metabisulfite	9,063
Super Sorb	7,083
Others	<u>7,711</u>
Total	\$ 98,646 =====

Concentration of credit risk:

The Company maintains its cash amounts in a commercial bank. Accounts are guaranteed by the Federal Deposit Insurance Corporation (FDIC) up to \$250,000. The balances, at times, may exceed federal insured limits.

Concentration of sales to governmental agencies:

Company sales to Puerto Rico Aqueduct Sewerage Authority, a governmental agency, for the year ended June 30, 2010 amounted to \$514,605; representing 41% of the total sales.



**AGUAKEM CARIBE, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**JUNE 30, 2010**

1) Organization (Continued . . .)

Fixed assets are recorded at cost and are depreciated under the straight line method using estimated useful live of assets and other contractual covenants. Depreciation for the year has been provided as follows:

<u>Description</u>	<u>Estimated Cost</u>	<u>Useful Life</u>	<u>Dep. for the Year</u>	<u>Acc. Dep.</u>	<u>Book Value</u>
Process equipment	\$ 401,654	10	\$ 39,398	\$367,418	\$ 34,236
Research & dev.	135,104	10	13,225	132,125	2,979
Vehicles	174,333	5	13,951	163,209	11,124
Office & lab. equip.	60,794	10	4,944	54,936	5,858
Leaschold Imp.	82,682	5	12,855	24,426	58,256
Design & engineering	28,100	5	5,607	11,128	16,972
Totes & Drums	<u>161,699</u>	2.5	<u>12,044</u>	<u>137,904</u>	<u>23,795</u>
Totals	<u>\$1,044,366</u>		<u>102,024</u>	<u>891,146</u>	<u>\$153,220</u>

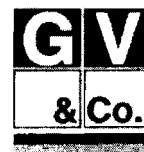
B) Going Concern

The Company had sustained a net accumulated loss amounting to (\$682,834) as of June 30, 2010. The Company management believes that approximately \$441,000 of such accumulated loss, representing 64.6% of total loss, is attributable to the damages claimed against Checkpoint for breach of contract. In addition, during 2007 and 2008, the company had to moves their production facilities from the Port of Ponce to new facilities leased to La Huella Taína, an affiliated company, affecting their production output. Although the Company is currently in negotiations with potential future customers and additional line of business, this situation raises substantial doubt about its ability to continue as a going concern. Although management is working with its indebtedness and is currently evaluating methods to reduce costs, improve profit margins and increase capital, the ability of the Company to continue as a going concern is dependent on increasing gross sales and gross margins, obtaining additional capitalization and or restructuring of debt. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

2) Accounts receivable -Affiliates

Accounts receivable Affiliates as of June 30, 2010 are comprised as follows:

Accounts receivable from La Huella Taína	\$49,804
Accounts receivable from Officer	<u>99,591</u>
Total	<u>\$ 149,395</u>



**AGUAKEM CARIBE, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**JUNE 30, 2010**

3) Demand Credit Line

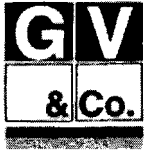
BPPR "Flexi-Linea" - payable at 1/60 of principal plus a monthly interest at 3.75% over prime-rate. \$92,751

4) Long Term Debts

Long term debts as of June 30, 2010 are comprised as follows:

• Loan payable to Scotiabank de PR in monthly installments of interest at 1% over prime rate. No payments term nor due date. Collateralized by stockholder's personal assets.	\$150,000
• Cinetica Quimica - Payable in monthly installments of \$4,000.00	111,886
• Accrued legal claim payable in bi-monthly installments of 1,000.00.	23,000
• PQP debt	19,140
• Loan payable to Imperial Credit Corp. in monthly installments of \$938.99 each, including principal and interest at 7.55%. Due on April 2011.	10,128
• Loan payable to Reliable Financial in monthly installments of \$340.00 each, including principal and interest at 7.95%, collateralized by vehicle Toyota Tacoma for \$16,800.00, due on November 2011.	5,371
• Loan payable to Banco Bilbao Vizcaya in monthly installments of \$449.37 each, including principal and interest at 5.89%, collateralized by vehicle Mitsubishi Endeavor for \$27,200, due on July 2010.	<u>482</u>
	Total 320,007
	Less: Current Portion <u>(128,393)</u>
	Total long term debt <u>\$191,614</u>

**AGUAKEM CARIBE, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**JUNE 30, 2010**



4) Long Term Debts . . . (continued)

Future minimum loans payments are disclosed as follows:

<u>Year ended</u>		
June 2011		\$ 128,393
June 2012		11,474
June 2013		6,000
June 2014		5,000
June 2015 and thereafter		<u>169,140</u>
	Total	\$320,007 =====

5) Other accrued expenses

Other accrued expenses as of June 30, 2010 are comprised as follows:

Accrued excise tax claim (Note 10)	\$ 90,000
Municipal tax payable	6,478
Other accrued expenses	<u>1,701</u>
Total	\$ 98,179 =====

6) Lease Agreement

On December 2006, the Company relocated its operations to a new facility owned by La Huella Taína, Inc. (an affiliated company), located at Villa Street in Ponce, Puerto Rico. Since January 2008, a monthly rent charge of \$8,400 was recorded for the use of the 8,400 square feet building and facilities; rent amounted to \$100,800 in 2010. No formal lease agreement has been made.

**AGUAKEM CARIBE, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**JUNE 30, 2010**



7) Puerto Rico Tax Exemptions

Under the provisions of sections 2 (d) (i) and 11 (b) (3) of law #135 of December 2, 1997, as amended, Industrial Incentive Act of Puerto Rico, the Company obtained effectively on January 1, 2008 a twenty (20) years partial tax exemption. The tax exemption covers industrial development income directly derivates from coagulants with blend for water treatment and sludge treatment for municipal, industrial and agricultural use and animal feed, real and personal property taxes on assets used for such operations up to 90% of taxable assets, and municipal licenses and other taxes up to 60% of sales volume.

In order to achieve with the tax exemption requirements, the company should maintain a minimum of sixteen (16) direct employees and make an investment in machinery and equipment of \$300,000 in the next twelve (12) months following the exemption decree granted. In case that the employees were less than sixteen (16), the corporate income tax rate will be increased one percent for each employee below the sixteen (16). If the employees were below ten (10), the exemption decree will be cancelled and operation activities will be fully taxable.

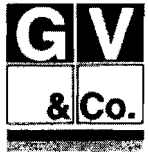
In case that the investment in machinery and equipment were below of \$300,000; the corporate income tax rate and the municipal license tax will be adjusted to 50% beginning on the expiration date of the original decree.

Additionally, during the construction and/or installation of the new machinery and equipment, the property directly related to this construction and/or installation will be fully exempt for real and personal property tax. The Company should notify to the "Oficina de Exención Contributiva Industrial" and the "Centro de Recaudación de Ingresos Municipales" not later than the settle of the company income tax return or personal property tax for the applicable year. The exemption expiration date will be the date in which the construction and/or installation concludes.

Also, the company and its contractors and subcontractors will be fully exempted for any municipal construction tax, license, contribution, duty and right established by municipal regulation, except municipal license tax.

The tax exemption does not cover for workmen compensation, vehicle licenses and excise taxes for certain expendable and consumable items.

**AGUAKEM CARIBE, INC.**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**JUNE 30, 2010**



8) Contingencies

The Company has a legal claim against Checkpoint, a company for which it removed and accepted byproduct for breach of contract for the amount of \$4.5 million. The case is in the early stage of litigation process.

The Company is a defendant in various civil actions. The Company intends to vigorously defend from these actions which considers groundless. The ultimate resolutions of these matters are not ascertainable at this time.

9) Deferred Tax Asset and Operating Loss Carry Forward

As of June 30, 2010 the Company has available (\$682,834) of operating loss carry forward to offset future taxable income.

Deferred tax asset in the accompanied balance sheet amounting to \$194,907 arose from the tax benefit of net operating loss carryover as required by Financial Accounting Standard Board #109 - Accounting for Income Taxes and are due as follows:

<u>Due on Year Ended</u>	<u>Deferred Tax Asset</u>
June 30, 2011	\$ 7,888
June 30, 2013	165,717
June 30, 2014	5,450
June 30, 2015	11,777
June 30, 2016	4,075

Deferred tax asset were estimated based upon current applicable taxable rates.

10) Provision for excise taxes claim

During the year 2004 the Puerto Rico Treasury Department imposed the Company \$260,440 for excise taxes including penalties and interest. The Company filed for an Administrative hearing at the Puerto Rico Treasury Department. The Company believes the excise taxes are exempt as part of the Company's Industrial Incentive Act of Puerto Rico. The Administrative Hearing was held on July 2007. On the Hearing it was accepted by the Treasury Department that sales to companies under the Industrial Incentive Act of Puerto Rico are exempted for excise purposes, therefore, the financial exposure is substantially reduced for Aguakem Caribe, Inc. The provision has been reduced to \$90,000.