

CERTIFICATE OF SERVICE


I hereby certify that transcript by Administrative Law Judge Barbara A. Gunning, in the matter of **Aguakem Caribe, Inc.**, Docket No. RCRA-02-2009-7110, was filed on January 6, 2011. I served copies of the transcript as indicated below:

First Class Mail -

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Administrative Law Judge (1900)
U.S. Environmental Protection Agency
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Dated: January 12, 2011

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

	:
IN THE MATTER OF:	:
AGUAKEM CARIBE, INC.	:
Respondent	: COMPLAINT COMPLIANCE
Proceedings under Section	: ORDER, AND NOTICE OF
3008 of the Solid Waste	: OPPORTUNITY FOR HEARING
Disposal Act, as amended,	: Docket No. RCRA-
49 U.S.C. 6928	: 02-2009-7110

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2011 JAN -6 P 3:42
HEARINGS
INTERVIEW

Hearing

was taken on December 7, 2010 at Federico Degetau
Federal Building, 1560 Carlos Degetau Building,
Courtroom 11, Fourth Floor, San Juan, Puerto Rico at
9:25 a.m.

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APPEARANCES:
UNITED STATES ADMINISTRATIVE
LAW JUDGE:
BARBARA GUNNING

REPRESENTING UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY,
REGION 2
LOURDES DEL CARMEN RODRIGUEZ, ESQ.
ROBERTO MATEO DURANGO, ESQ.
REPRESENTING RESPONDENT:
ARMANDO LLORENS, ESQ.

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I N D E X

WITNESS: EDUARDO GONZALEZ

DIRECT EXAMINATION BY: MS. RODRIGUEZ

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CROSS EXAMINATION BY: MR. LLORENS

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RECROSS EXAMINATION BY: MR. LLORENS

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WITNESS: JESSIE AVILES

DIRECT EXAMINATION BY: MS. RODRIGUEZ

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1 THE JUDGE: A little early. Everyone
2 ready to begin? Excellent. Okay. I guess
3 we can we go on the record. Pardon me?

4 MS. RODRIGUEZ: Are we going to go
5 on for the record?

6 THE JUDGE: Yes, I was just going do
7 a little introduction.

8 MS. RODRIGUEZ: All right.

9 THE JUDGE: Okay. First off, any
10 problems picking up any of the voices?

11 THE COURT REPORTER: No.

12 THE JUDGE: Excellent. Okay. Good
13 morning. My name is Barbara Gunning. I am a
14 United States administrative law judge
15 assigned to the United States Environmental
16 Protection Agency and today is Tuesday,
17 December 6th and we are in San Juan, Puerto
18 Rico. The hearing name is Aguakem. That is
19 A-G-U-A-K-E-M Caribe, C-A-R-I-B-E, Inc.,
20 Docket number 02-2009-7110 and counsel, could
21 you please identify yourselves for the
22 record.

23 MS. RODRIGUEZ: Yes, Your Honor,
24 first of all, December 7th.

25 THE JUDGE: Oh, thank you.

1 MS. RODRIGUEZ: This is Attorney
2 Lourdes Del Carmen Rodriguez, attorney for
3 the complainant, the United States
4 Environmental Protection Agency, Region 2,
5 the Caribbean Environmental Protection
6 Division.

7 MR. MATEO DURANGO: Good morning,
8 Your Honor, my name is Roberto Durango and I
9 am here on behalf of the complainant, the
10 United States Environmental Protection
11 Agency.

12 MR. LLORENS: Yes. Good morning,
13 Your Honor. This is Armando Llorens appearing
14 for the respondent, Aguakem Caribe.

15 THE JUDGE: Very good. I have one
16 request. An air conditioning unit is just
17 right over here to my right and when that is
18 on it is a little difficult to hear everybody
19 but please feel free to be seated. Also I
20 want to introduce on my left is Jennifer
21 Wolf, a staff attorney within our office at
22 the office of administrative law judges.

23 Before traveling here there was
24 some discussion between the parties and I had
25 requested that if there were going to be a

1 settlement, that we have a firm settlement
2 and I am not adverse to settlement even
3 though I have traveled here to Puerto Rico
4 and have the parties engaged in last minute
5 discussions or are we ready to proceed with
6 the litigated matter?

7 MS. RODRIGUEZ: Your Honor, no. The
8 parties have not engaged in any type of
9 settlement discussion. After we spoke with
10 you, Your Honor, we have not heard anything
11 else from the Respondent and so we are ready
12 to continue to have the hearing.

13 THE JUDGE: Okay. Thank you.

14 MR. LLORENS: Yes, Your Honor, that
15 is correct. As stated earlier to EPA and I
16 think to staff attorney at EPA, there was
17 some question of trying to get financing to
18 see if we could even approach discussing
19 settlement. Nothing has progressed on that
20 front so the Respondent simply is not in a
21 position to engage in settlement talks at
22 this time.

23 THE JUDGE: Okay. If at any time
24 during the course of the hearing, for
25 whatever reason, the parties would like to

1 pursue settlement discussions, please feel
2 free to bring that to my attention and I
3 would be very happy to give you a short
4 recess to pursue that and an amicable
5 agreement is always preferable but otherwise
6 we are prepared to go forward.

7 Now, just to go over a few
8 housekeeping matters. Usually I have a short
9 mid morning break, lunch break obviously. I
10 don't know what is available within the
11 facility. They have a cafeteria?

12 MS. RODRIGUEZ: Yes.

13 THE JUDGE: Okay. So an hour should
14 be sufficient for lunch and the courtroom, I
15 am not sure if it closes sharply at five. If
16 not, we have to make sure that this ends by
17 Friday and so if we are running behind
18 schedule at some point we may just have to
19 get permission to stay later beyond five
20 o'clock and then, of course, at mid
21 afternoon, there is usually a short break. If
22 at any time any of the witnesses need a short
23 break, do we have water available for them if
24 necessary?

25 MS. RODRIGUEZ: Yes, we went to get

1 water since we didn't know if there was going
2 to be water in the courtroom so we have some
3 bottles of water.

4 THE COURT: That will be terrific.
5 Okay. I think that would help. Usually the
6 witnesses get quite dry while testifying.

7 Now, I don't know if the parties
8 are prepared to make a short opening
9 statement. It is certainly not needed but if
10 you wish to do so, feel free. The same thing
11 with closing statements, not required.

12 MR. LLORENS: Your Honor, at least
13 for the Respondent, I would like to reserve
14 whether I choose to make an opening statement
15 or after the close of the EPA's case.

16 THE JUDGE: Okay.

17 MS. RODRIGUEZ: Your Honor, I mean,
18 before, I do make just a very short opening
19 statement, we do have a copy of the exhibits
20 pursuant to the regulations for the honorable
21 judge and we wanted, we already spoke with
22 the attorney. This is a copy of the exhibits
23 and a copy of the joint set of stipulated
24 facts and exhibits. Also we have included the
25 copy in the record, penalty policy as part of

1 the documents that we are submitting so we
2 have a copy for the judge.

3 THE JUDGE: Okay. Now, do you have
4 a copy also for the court reporter who then
5 transfers it to -

6 MS. RODRIGUEZ: Yes. I have a copy
7 of the documents that are going to be
8 introduced into evidence on our behalf and we
9 will be referring to them and you also I
10 provided a copy of the joint set of
11 stipulated facts. In case you make
12 reference, he knows the document that we are
13 referring to.

14 THE JUDGE: Okay. Now, the problem
15 is he is going to need to mark one on them
16 whether accepted or rejected.

17 MS. RODRIGUEZ: These are the ones
18 that will be submitted for identification.

19 THE JUDGE: Excellent.

20 MS. RODRIGUEZ: Or exhibit,
21 whatever.

22 THE JUDGE: And then the witnesses
23 can just use that set.

24 MS. RODRIGUEZ: Right. May I
25 approach you?

1 THE JUDGE: Yes, please. Thank you.

2 MR. LLORENS: Your Honor, just, I
3 understand that we will be introducing these
4 exhibits into the record but I am hoping that
5 I will receive a marked copy that is marked
6 as exhibit in this proceeding. Yes, I have
7 copies from the pre-hearing exchange but I
8 understand that we will be marking Exhibit 1
9 or 2 or whatever, however they are referred
10 to in the binder. I don't know if counsel has
11 copies that are marked for this particular
12 proceeding.

13 MS. RODRIGUEZ: Since you have
14 copies, just mark them as we go along and
15 know which ones are marked.

16 MR. LLORENS: That is fine for now
17 but maybe during the proceeding maybe someone
18 could provide us with --

19 THE JUDGE: Okay. The rules do
20 provide for that at the time of hearing.

21 MS. RODRIGUEZ: I know. I am
22 wondering, being with the Environmental
23 Protection Agency, I try not to do so many --

24 MR. LLORENS: I understand.

25 MS. RODRIGUEZ: Not do so many

1 copies.

2 MR. LLORENS: And just for the
3 record, if you give it to me

4 MS. RODRIGUEZ: Okay. Sure.

5 THE JUDGE: Okay. Thank you. Now,
6 also EPA will do its case in chief, direct,
7 go through its entire case. Respondent will
8 be afforded the opportunity to do the same
9 and then EPA will have a short rebuttal if
10 necessary or desired.

11 MS. RODRIGUEZ: Right.

12 THE JUDGE: I want to remind the
13 parties that cross examination of the
14 witnesses is limited to the direct testimony
15 and any further redirect is limited to what
16 is raised on cross. Okay.

17 Now, to the best of my knowledge
18 there are no pending motions at this time?

19 MS. RODRIGUEZ: No, Your Honor.

20 MR. LLORENS: None from Respondent,
21 Your Honor.

22 THE JUDGE: Excellent. Okay. Well,
23 I guess we can begin. If either party chooses
24 to make an opening statement, EPA going
25 first, this would be a good time.

1 MS. RODRIGUEZ: Your Honor, I just
2 want to see where the water is.

3 THE JUDGE: If not, fine. We can, if
4 Respondent wishes to make one, if not, we can
5 go directly to the testimony.

6 MS. RODRIGUEZ: Your Honor, I prefer
7 -

8 MR. LLORENS: Go ahead, I am sorry.

9 MS. RODRIGUEZ: I would like to go
10 directly to the testimony.

11 MR. LLORENS: Respondent would like
12 to reserve the right to make an opening
13 statement after the close of EPA's case.

14 THE JUDGE: Okay. So we will convert
15 it to closing statement. How is that?

16 MR. LLORENS: Good.

17 THE JUDGE: Okay.

18 MS. RODRIGUEZ: Yes, Your Honor, we
19 call EPA, Complainant as our first witness,
20 Mr. Eduardo Gonzalez.

21 THE WITNESS: Good morning.

22 THE JUDGE: Good morning.

23 Please have a seat in the witness
24 box.

25 MS. RODRIGUEZ: Your Honor, before

1 we begin, I had mentioned before we started
2 that we have some blown pictures that are
3 part of one of the exhibits and if Brother
4 Counsel would have no objection, we could
5 place them in the tripod so whenever either
6 your client or anybody wants to make
7 reference, either in cross or direct, it
8 would be much easier for that to be here.

9 THE JUDGE: Now, do these directly
10 correspond to the supplemental pre-hearing
11 exchange that was filed?

12 Ms. RODRIGUEZ: Here are the color
13 pictures that were submitted initially in the
14 joint stipulated motion and they are not all
15 of them, it is just some, the ones that we
16 are going to be using during the direct
17 examination.

18 THE JUDGE: Okay. How many of them
19 are there?

20 MR. MATEO DURANGO: I believe there
21 are seven, Your Honor.

22 MS. RODRIGUEZ: That is a blow up
23 of the layout of the facility that EPA found.

24 MR. MATEO DURANGO: These are blow
25 ups from Exhibit Number 3.

1 COURT: Okay so these are
2 demonstrative exhibits?

3 MS. RODRIGUEZ: Yes, exactly. They
4 are part of the one that we have.

5 COURT: And counsel, you had an
6 opportunity to review them?

7 MR. LLORENS: Your Honor, we just
8 briefly looked at these right now. As long
9 as there is a representation that these are
10 the accurate copies of the exhibits that were
11 submitted in the pre-hearing exchange, I
12 wanted to note just for the record that
13 counsel for EPA mentioned that these
14 documents were submitted with our joint
15 stipulation. They were referred to but I do
16 not believe they were submitted with the
17 joint stipulation, at least I didn't see them
18 and again this just goes to completeness of
19 the record. I would like that the exhibits
20 which I understand these are going to be
21 exhibits in there, that perhaps at the end of
22 the proceeding, the Respondent's counsel be
23 provided the official record with the
24 exhibits.

25 COURT Okay. Now, is this the

1 supplemental pre-hearing exchange that was
2 dated November 2, 2010?

3 MS. RODRIGUEZ: That is correct,
4 Your Honor.

5 THE COURT: Okay and my

6 MS. RODRIGUEZ: We did provide
7 copies of them, of course not blown up copies
8 to Respondent's attorney and they were part
9 of the supplemental which were actually the
10 ones that we have provided initially in
11 Exhibit 3 which we did stipulate which is an
12 inspection report, were in black and white.
13 So, in the supplemental, we included them in
14 color to make it easier both for respondent
15 and for this Honorable Judge to know what
16 actually, you know, is a more accurate.

17 THE COURT: My copy of the service
18 shows that it was served by UPS on counsel.

19 MR. LLORENS: Your Honor, I am not
20 questioning that. What I am questioning is
21 that in the joint stipulation to those
22 stipulated exhibits and facts for this
23 hearing, for this proceeding, these exhibits
24 were not included. I am not questioning the
25 admissibility. I am not even objecting to

1 demonstrative evidence. I just want to make
2 the record clear that at some point we will
3 be making a full record of this hearing that
4 the exhibits be provided, a full record be
5 provided to Respondent and Respondent's
6 counsel. It is true, I have copies of them
7 but I want the official record.

8 THE COURT: Okay. So what we need to do
9 is have photo copies of, again, in other
10 words, re-duplicate.

11 MS. RODRIGUEZ: He does have copies of
12 those colored ones. So you want another set
13 of copies?

14 MR. LLORENS: I am sorry --

15 THE COURT: We don't provide for it
16 so that if it is requested, it should be
17 granted.

18 MR. MATEO DURANGO: No problem, one
19 will suffice. I can hand him a copy of
20 Exhibit 3.

21 THE COURT: Well, no, at some point
22 you want a complete filing.

23 MR. LLORENS: Yes, it is just, Your
24 Honor, the record is going to be what happens
25 in this hearing, not what we can exchange or

1 proffer to.

2 THE COURT: Correct.

3 MR. LLORENS: And I just want a
4 copy of the record that is going to be the
5 record.

6 THE COURT: Right and the rules do
7 provide for that, basically what you have
8 just provided me and the court reporter.
9 Okay.

10 MS. RODRIGUEZ: I know, Your Honor,
11 it is just that, you know, for me it is very
12 hard since I am very pro environment and --

13 THE COURT: I understand that but I
14 am bound by the Rules of Procedure and --

15 MS. RODRIGUEZ: I understand, Your
16 Honor.

17 THE COURT: They will provide for
18 that. We are not going to belabor this
19 point.

20 MS. RODRIGUEZ: Okay.

21 THE COURT: I think what we should
22 do is as it is introduced, we will go through
23 the process of admitting it each and every
24 photograph into the record since there has
25 been some question about this.

1 MS. RODRIGUEZ: Yes, Your Honor.

2 THE COURT: And I think it would
3 just, even though it may consume a little bit
4 more time, it would probably be easier,
5 especially in light of the discussion about
6 the stipulated documents and testimony. So,
7 I think it would probably be much smoother at
8 this stage if we just pretend there is no
9 stipulations.

10 And also, the same request then I
11 would make from Respondent, that whatever he
12 submits and provides, that we receive a copy
13 as he has requested from us.

14 THE COURT: That would be excellent.
15 Okay, now the witness has been sworn in and
16 if you could proceed, please.

17 Yes. Good morning, Your Honor.
18 This is Attorney Lourdes Del Carmen Rodriguez
19 representing complainant, the Caribbean
20 Environmental Protection Division of the
21 United States Environmental Protection
22 Agency, Region 2.

23 Whereupon,

24 EDUARDO GONZALEZ
25 was called as a witness, having been duly

1 sworn, was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. RODRIGUEZ:

4 Q Could you please state your name
5 for the record.

6 A Yes. My name is Eduardo Gonzalez.

7 Q And where are you employed?

8 A I am employed at the Environmental
9 Protection Agency in the Caribbean office.

10 Q And where is that office located,
11 please?

12 A The office is located in San Juan,
13 Puerto Rico.

14 Q And how long have you worked for
15 EPA?

16 A I have been working for EPA for the
17 last twenty three years.

18 Q And could you please tell us where
19 did you work before working for EPA.

20 A Well, I used to work in a
21 consulting firm.

22 Q Yes, please slowly so we can have
23 it for the record and it will be better.

24 A Before that I used to work for the
25 local Environmental Quality Board of Puerto

1 Rico, government office. Before that on a
2 special assignment I used to work for the
3 Puerto Rico Aqueduct and Sewer Authority.

4 Q And how long did you work in those
5 places?

6 A Pretty much around six months each.

7 Q Each. Okay. Now, could you tell us
8 what kind of post high school education do
9 you have?

10 A Yes. I have a B.S. in chemical
11 engineering from the University of Puerto
12 Rico. I also have a double Master's degree in
13 chemical engineering and applied chemistry
14 from Columbia University in New York. I have
15 a PhD candidate from the New York City
16 Institute of Technology. I have an MBA in
17 financial accounting from the University of
18 Puerto Rico, Rio Piedras campus.

19 Q And do you hold any license?

20 A I do. I have like a professional
21 license and I do also have diplomate
22 engineering international license.

23 Q Could you tell us when did you get
24 your bachelor in science in chemical
25 engineering?

1 A My bachelors, I got my degree in
2 1986. My Master's in applied chemistry and
3 chemical engineering was in New York in 1992
4 and my MBA was in 2002.

5 Q Okay. Mr. Gonzalez, could you tell
6 us what is your title at EPA?

7 A My responsibility?

8 Q I am sorry, yes. What is your
9 title and what position do you hold in EPA?

10 A When I was working in New York I
11 was like a project manager for the New
12 York/New Jersey area. In Puerto Rico I am
13 employed as an environmental engineer for the
14 Caribbean area.

15 Q Okay and what are your duties as an
16 environmental engineer, please?

17 A My duties and responsibilities
18 include to conduct, to, you know, to
19 implement the RCRA statutory requirements, to
20 conduct inspections, to direct, to manage
21 corrective actions, to deal with permitting,
22 compliance and to develop enforcement cases.

23 Q Could you tell us if you are
24 familiar with the RCRA and the Federal
25 regulations that implement RCRA?

1 A Yes, I do.

2 Q And could you tell us how you
3 became familiar with them?

4 A Well, I became familiar with the
5 RCRA program through training, meetings,
6 conducting inspections, we work also with our
7 work force in the national level on a weekly
8 basis.

9 Q And as an environmental engineer,
10 what type of facilities do you usually
11 inspect?

12 A Well, we inspect all kinds of
13 facilities, including facilities that manage
14 hazardous waste and non hazardous waste and
15 different categories like generators and in
16 all kinds of industrial sectors.

17 Q And could you tell us approximately
18 how many facilities have you inspected while
19 you have been in EPA?

20 A Yes. To be clear, could be around
21 300, 250.

22 Q I ask you, are you familiar with a
23 company named Aquakem Caribe, Inc.?

24 A Yes, I do, I am familiar.

25 Q Okay and how did you become

1 familiar with Aquakem?

2 A We have a request, a notification
3 from the Port Authority of Ponce in order for
4 us to conduct like an inspection of the
5 situation that they discovered there.

6 Q And could you tell us around what
7 year, what time was this?

8 A That was in, close in January, 2007
9 and we visited the facility in February,
10 2007.

11 Q And where was the facility located?

12 A The facility is located at the port
13 of Ponce, Ponce, Puerto Rico.

14 Q Okay, and specifically the Aquakem,
15 the Aquakem facility, where within the port
16 of Ponce was it located?

17 A The location of Aquakem was a
18 warehouse building, number six, within the
19 Port Authority premises.

20 Q Okay after you received that
21 notice, were you assigned to work in the
22 case?

23 A Yes, I was.

24 Q And what was the first thing you
25 did?

1 A The first thing we did, you know,
2 we tried to get some information background
3 about the company. We didn't have much about
4 the RCRA program and then we conducted a
5 physical inspection at the facility.

6 Q When you say we, who do you refer
7 to? What were you referring to?

8 A Okay. We have local enforcement
9 officers, Miss Solimar Luna and Mr. Jessie
10 Aviles, that they also belong, both are
11 enforcement officers of the RCRA Program.

12 Q Okay and when was that inspection
13 conducted?

14 A That was approximately, and nearby
15 February, 2007.

16 Q Okay and do you know whether the
17 RCRA Program has been delegated to the state
18 or not?

19 A No, no. Puerto Rico doesn't have a
20 delegated RCRA Program.

21 Q Okay. So you said that Miss Luna
22 and Mr. Aviles also participated with you in
23 the inspection, correct?

24 A Yes.

25 Q Okay and could you tell us how did

1 you conduct the inspection?

2 A The way we conduct our enforcement
3 inspections, compliance evaluation
4 inspections, we have like an opening meeting
5 and there we get to know the facts and the
6 problem at the facility or the situation and
7 then we walk through the facility. We take
8 pictures. We take notes, we document, we do
9 like a document review session and in some
10 cases we have like a closing meeting to let
11 them know about the potential findings or
12 problems at the facility.

13 Q Besides the enforcement officers
14 you mentioned and yourself, was there anybody
15 else present during your inspection?

16 A Yes, it was a person named Mr.
17 Quinones. He was the auxiliary director of
18 the Port Authority of Ponce and he served us
19 as the Port Authority representative and he
20 accompanied us through all the facility.

21 Q Okay and just for the record,
22 besides that inspection to that facility, did
23 you conduct any other inspection to any other
24 facility under the name Aquakem Caribe?

25 A Yes, we learned when we went to the

1 Port Authority location that Aquakem has
2 moved to another location nearby in Ponce and
3 we decided to inspect and visit the other
4 facility at Canas.

5 MS. RODRIGUEZ: Okay, Your Honor,
6 may I approach?

7 THE COURT: Yes.

8 MS. RODRIGUEZ: I would like to mark
9 for identification the appendices one, two,
10 three and four of Exhibit, Complainant's
11 Exhibit, jointly stipulated 3 which are
12 specifically the photographs and what is
13 attached which is a site plan. For the
14 record, Respondent's attorney has already
15 taken a look at the blown up pictures we have
16 of those attachments.

17 (Whereupon document was marked
18 as Exhibit No. 3 for
19 Identification)

20 MR. LLORENS: For the record,
21 respondent has no objection to the entry of
22 the appendices referred to by counsel for
23 EPA.

24 THE COURT: Okay. Now, I have a
25 practical question here regarding the

1 numbering of these documents. It is being
2 introduced differently than -

3 MS. RODRIGUEZ: I understand. I
4 know.

5 THE COURT: How you format it.

6 MS. RODRIGUEZ: I know and it would
7 be what we had presented and it is marked as
8 Complainant's Exhibit 3 but for the record,
9 it would be, you know, first we are
10 identifying it as -- it is actually admitted
11 into evidence then we will mark that as
12 Exhibit, you know, 1 for the hearing.

13 MR. LLORENS: Your Honor, for
14 expediency sake, I just note for the record
15 that as we go by, we could side bar. I have
16 no objection to the documents that she just
17 introduced. If she wants to go ahead and
18 mark them as entered, now with the right
19 numbers or for the sake of expediency, there
20 is no objection

21 THE COURT: In other words, it would
22 be Exhibit 3 and we would leave it at that?

23 MR. LLORENS: Yes, Your Honor.

24 THE COURT: That would probably be
25 very helpful down the road.

1 MS. RODRIGUEZ: Okay and just for
2 the record, Exhibit 3, what we would be
3 handing is part of the attachments to the
4 compliance evaluation inspection of the
5 facility, the former facility.

6 THE COURT: So we will have Exhibit
7 3?

8 MS. RODRIGUEZ: Yes.

9 THE COURT: Okay. Now, I cannot see
10 the photographs from this angle. Is there any
11 way we can either elevate that or ask one of
12 the -

13 MS. RODRIGUEZ: We can have one of
14 the enforcement officers just -

15 THE COURT: Well, that may become a
16 little taxing.

17 MS. RODRIGUEZ: Exhibit 3. Is it
18 okay if I approach?

19 THE COURT: Yes.

20 MS. RODRIGUEZ: Your Honor. Do we
21 need to keep -

22 THE COURT: Yes, the court reporter
23 can then mark it as Exhibit 3 and hopefully
24 everything will come into the record and will
25 follow numerically.

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EXAMINATION CONTINUED

BY MS. RODRIGUEZ:

Q I am handing over to the witness Complainant Exhibit 3. Can you identify the document?

A This document is known as what we call compliance inspection report.

Q And did you sign that document?

A Yes, I did sign this document.

Q Now, we need from that, can you find the graph for the facility?

MS. RODRIGUEZ: I am sorry for the delay, Your Honor. We are trying to make it so that the Respondent can also see it and Your Honor. Can you see it?

THE COURT: Is everyone able to see it? Do you want to turn it around a little bit?

THE WITNESS: Yes.

THE COURT: Or forward back maybe.

MS. RODRIGUEZ: Yes. He has a copy which he can reference in the document that I have provided also.

THE COURT: And these are the documents found -

1 MS. RODRIGUEZ: Yes.

2 THE COURT: The facility layout?

3 MS. RODRIGUEZ: Yes, Your Honor.

4 THE COURT: And what is the other
5 one?

6 MS. RODRIGUEZ: It is the facility
7 layout and a site location graph.

8 THE COURT: Okay.

9 MS. RODRIGUEZ: The other one makes
10 reference to the photographs that we are
11 going to introduce as part of the exhibit of
12 that -

13 THE COURT: Of that exhibit?

14 MS. RODRIGUEZ: Attachments of that
15 exhibit so in order to be easier to when we
16 refer to any of the photographs, we can
17 directly, you know, make reference where that
18 photograph is on the graph.

19 THE COURT: Okay.

20 MR. LLORENS: The witness will
21 testify as to the exhibit.

22 THE COURT: Right.

23 MS. RODRIGUEZ: Yes.

24 EXAMINATION CONTINUED

25 BY MS. RODRIGUEZ:

1 Q Now, could you tell us, Mr.
2 Gonzalez, what is the site location and
3 facility layout graphs?

4 A What is the layout?

5 Q Yes, the -

6 A This is like a schematic in order
7 for us to identify the areas that we
8 inspected where we took field notes with
9 photographs and to come back to the office
10 and prepare the report and --

11 Q A little bit louder, please.

12 A Yes, and that is what we found and
13 the conditions at the time we first inspected
14 the facility and so we identified all the
15 areas and that is what we have in that layout
16 of the warehouse number six.

17 Q And what would you refer to these
18 areas?

19 A This area, we name it like an area
20 of concern or areas of interest where we
21 found, we may call it abandoned chemical
22 materials or there were some concerns
23 regarding potential risk to the environment,
24 to the public, or to the workers and that is
25 why we identified it that way.

1 Q And so what do you mean when you
2 say areas of interest?

3 A Areas of interest are areas that we
4 can define it.

5 Q In general, in general.

6 A We can define that they are, could
7 be a potential violation, could be a
8 potential threat or there is a problem that
9 we need probably to evaluate.

10 Q Now, in the document that you have
11 and that we have, could you tell us what
12 appendix three to that inspection report is?

13 A In the compliance, in the
14 compliance, the evaluation inspection report,
15 appendix three is a photo log of all the
16 photos we took at the time of the inspection.

17 Q Now, Mr. Gonzalez, do you know who
18 took those photos?

19 A These ones were taken by the
20 enforcement officer, Jessie Aviles at the
21 time of the inspection.

22 Q And when were they taken?

23 A They were taken at the time that we
24 conducted the first inspection that was
25 February 2, 2007.

1 Q Okay and were you there?

2 A I was there, yes, I was.

3 Q And please take a look at the
4 pictures and your inspection report and do
5 you, from being there during the inspections,
6 do these photographs accurately depict the
7 conditions of the facility as you remember
8 them during the inspection?

9 A Yes, they do.

10 Q And could you tell us why were they
11 taken, why did you take pictures during the
12 inspection?

13 MR. LLORENS: Objection, he
14 testified that Mr. Aviles took the pictures.
15 I don't think he could testify as to why Mr.
16 Aviles took the pictures.

17 THE COURT: Please restate your
18 question.

19 EXAMINATION CONTINUED

20 BY MS. RODRIGUEZ:

21 Q Does EPA take pictures, are you
22 aware during the inspections?

23 A Yes, as an enforcement officer
24 doing a compliant ocular inspection, we take
25 photos as evidence of the condition existing

1 at the time of the inspection.

2 Q Now, we have pictures that were are
3 going to go one by one and we are going to
4 first identify them for the record. I would
5 like you to just explain what you see in
6 those pictures and if you could if you, I
7 don't know whether he can stand up and make
8 reference where you found each one of the
9 pictures that I am going to be discussing.

10 MS. RODRIGUEZ: May I approach, Your
11 Honor?

12 THE JUDGE: Yes.

13 EXAMINATION CONTINUED

14 BY MS. RODRIGUEZ:

15 Q Now, in the document that is
16 submitted, photograph three, appendix Exhibit
17 3.

18 MR. LLORENS: For the record, when
19 you are referencing appendix three, this is
20 Exhibit 3, is it not?

21 THE JUDGE: Exhibit 3, you are
22 correct. It is number three picture,
23 photograph.

24 MS. RODRIGUEZ: Photograph, I am
25 sorry, Your Honor, of one of the attachments.

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MR. LLORENS: There was a reference to opinions and in fact the witness, this might be confusing. If we can just stick to the references.

MS. RODRIGUEZ: Yes, we will make it part of Exhibit 3.

THE JUDGE: With a cover sheet of appendix one.

EXAMINATION CONTINUED

BY MS. RODRIGUEZ:

Q Now, Mr. Gonzalez, could you please stand up and point.

THE JUDGE: May I see the photograph?

MS. RODRIGUEZ: Sure.

EXAMINATION CONTINUED

BY MS. RODRIGUEZ:

Q Could you point out where you would have taken this picture.

A Yes, that picture was taken outside of the building in this location over here.

Q Three?

A Yes, Number 3.

Q Okay.

1 MR. LLORENS: Just for the record,
2 he pointed, the witness pointed to the
3 picture, area three of the diagram.

4 MS. RODRIGUEZ: Yes.

5 THE JUDGE: Okay. So it is the
6 diagram facility layout, building 6.

7 MS. RODRIGUEZ: It is a photograph
8 identified layout, Your Honor. There are
9 two, one of the facility and the other one is
10 a photograph identified layout.

11 THE JUDGE: Okay.

12 MS. RODRIGUEZ: And he pointed to
13 area number three.

14 THE JUDGE: Which is on the facility
15 layout.

16 MS. RODRIGUEZ: Right. Here it is,
17 Your Honor.

18 THE JUDGE: Yes.

19 MS. RODRIGUEZ: Because they are two
20 separate ones.

21 THE JUDGE: Yes.

22 MS. RODRIGUEZ: Facility layout and
23 the photograph identified there.

24 EXAMINATION CONTINUED

25 BY MS. RODRIGUEZ:

1 Q Now, Mr. Gonzalez, could you tell
2 us during the inspection what you found and
3 what the photograph refers to.

4 A This is like a copy, this is a
5 container with a capacity of about one cubic
6 yard, or a thousand forty liters of what is
7 known as totes. As you can see, it was
8 placed outside of the facility on top of
9 tongue, what we call it a water way. A water
10 way, that we have the Caribbean Sea in the
11 vicinity of the facility at less than two
12 hundred and fifty meters from the distance.
13 The container was filled with, labeled with
14 ferrous chloride.

15 Q I am sorry, could you spell that.

16 A Ferrous Chloride.

17 Q Ferrous chloride?

18 A Ferrous chloride. As you can see
19 it was rusted, deteriorated. It was open and
20 on top of that they got a corrosive label and
21 it was placed outside of the facility.

22 Q Okay. Now, in your inspection that
23 you have. Let's look at photograph six and
24 again can you identify in the photograph the
25 layout.

1 A Number six?

2 Q Yes. In the document that I have in
3 front you, where is number six? I want you
4 to identify where it is here so that the
5 respondent and the judge can see where that
6 photo was taken.

7 A That would be located at the north
8 side of the area where they have the big
9 containers, the totes located in that area,
10 within that area nine and ten.

11 Q Is it marked there, the photograph?

12 A Yes.

13 THE JUDGE: Is that facility --

14 MS. RODRIGUEZ: The photograph
15 identified layout number six, Your Honor.

16 THE JUDGE: Okay.

17 EXAMINATION CONTINUED

18 BY MS. RODRIGUEZ:

19 Q Now, the photograph identified as
20 photograph six, could you please tell us what
21 it reveals.

22 A This is the view of the stack
23 totes. Those are containers with a volume of
24 over a thousand liters.

25 Q I think what he didn't get was the

1 stacks and then you mentioned the word totes?

2 A T-O-T-E-S. That is like stored on
3 top of the other.

4 Q Stacks?

5 A Exactly.

6 THE JUDGE: Is those plastic
7 containers that are square like?

8 MS. RODRIGUEZ: Yes.

9 THE WITNESS: Ahum and you can see
10 the labels, corrosive, substances material
11 and some of them were deteriorated, some of
12 them were open and you can see there are
13 plenty of them.

14 EXAMINATION CONTINUED

15 BY MS. RODRIGUEZ:

16 Q Now, looking at that picture, where
17 would you be standing in the facility?

18 A At one of the entrance, exits of
19 the facility and taking a picture and seeing
20 from this side to the end.

21 THE JUDGE: Okay. This side can't
22 quite identify in the record so.

23 EXAMINATION CONTINUED

24 BY MS. RODRIGUEZ:

25 Q Be more specific. You just

1 stated that if you look at the facility graph
2 that you have in front of you over here.

3 A Yes.

4 Q Where would you be standing taking
5 that picture?

6 A If I am here.

7 Q If you could you please show it to
8 the judge.

9 THE JUDGE: You have to remember
10 that when someone is reading this transcript
11 and you say, "over here, over there", the
12 record is not going to, they don't have that
13 diagram at that moment necessarily before
14 them so your testimony has to be more
15 descriptive.

16 THE WITNESS: Okay.

17 THE JUDGE: Thank you.

18 THE WITNESS: So -

19 EXAMINATION CONTINUED

20 BY MS. RODRIGUEZ:

21 Q Where is the entrance? Where is
22 the entrance in that picture? No, this one,
23 I am sorry, the graph.

24 A Okay.

25 THE JUDGE: Okay. Now, we have the

1 facility layout or photograph, identified
2 layout?

3 MS. RODRIGUEZ: Photograph
4 identified layout which is the layout also of
5 the facility.

6 THE JUDGE: Okay.

7 EXAMINATION CONTINUED

8 BY MS. RODRIGUEZ:

9 Q So where is the entrance, where is
10 the entrance of the facility?

11 A Okay.

12 Q North, south in that picture?

13 A As you can see, there is an
14 indication, the north side of the picture of
15 the layout.

16 Q The arrow?

17 A This is the north, the arrow.

18 THE JUDGE: In the upper left
19 corner?

20 THE WITNESS: That would be
21 indicated in the north side area.

22 THE JUDGE: Okay.

23 THE WITNESS: If we came through
24 this area.

25 EXAMINATION CONTINUED

1 BY MS. RODRIGUEZ:

2 Q You have to mention where,
3 remember. Would that be the south?

4 A That would be to the north.

5 Q The south?

6 A South. No, this is south, north,
7 that would be -

8 Q East?

9 A East.

10 Q Okay. West?

11 A West, exactly. That would be west,
12 that area.

13 Q Now, taking that, as you enter from
14 the west.

15 A From the west.

16 Q That would be where the photo
17 reflects where it was taken?

18 A Yes, it does.

19 Q Towards?

20 A From north, it is taken from the
21 west towards the east of the building
22 location.

23 Q The east or the north?

24 A From the east. This is the north.
25 You know, that would be the east, this will

1 be the west, north, south so it will be from
2 the -

3 Q Okay. So let's continue with the
4 photo. Continue what the photo reveals.

5 A As we can see in the picture, we
6 have all these containers with a capacity of
7 1,040 liters containing, abandoned, you know,
8 materials, substances, labeled as corrosive
9 substances that there were plenty of them and
10 they contained, they were in different level
11 of deterioration. In some cases they were
12 open. In some cases they were, you know,
13 rusted and in some cases they were bent and
14 in some cases there were some leaks in some
15 of them.

16 MS. RODRIGUEZ: Let the record
17 reflect that I am showing the respondent a
18 picture, this.

19 THE JUDGE: Okay. So this is
20 photograph six?

21 MS. RODRIGUEZ: Yes.

22 THE JUDGE: And let the record
23 reflect when I was referring to the term
24 photograph, it is not the actual color
25 photograph, but a photo copy, color photo

1 copy of the photograph.

2 MS. RODRIGUEZ: Yes.

3 EXAMINATION CONTINUED

4 BY MS. RODRIGUEZ:

5 Q Now, in the document that you have,
6 could you take a look at photograph nine.

7 A Yes.

8 MS. RODRIGUEZ: Your Honor, now I am
9 showing a blown up copy of photograph nine.

10 THE JUDGE: Okay.

11 EXAMINATION CONTINUED

12 BY MS. RODRIGUEZ:

13 Q Now, before you tell what you see
14 in photograph nine, as you previously
15 discussed, where in the photograph identified
16 that layout was photograph nine taken? Is it
17 identified?

18 A Yes, that is would be placed there,
19 on this area over here.

20 Q Now, look at the photograph and see
21 where that photo was taken. It is
22 photograph nine.

23 MS. RODRIGUEZ: Let the record show
24 that the witness is pointing to, in the
25 photograph identified layout, to an item

1 marked number nine.

2 MR. LLORENS: I object to that, Your
3 Honor. What has he just testified that
4 reflects to what he is pointing to as opposed
5 to counsel --

6 THE JUDGE: That would be helpful.
7 If you could just say that, if you could tell
8 us where you are looking on the photograph,
9 identify that.

10 THE WITNESS: Yes, in the layout
11 could be identified in the number nine area.

12 THE JUDGE: Okay.

13 THE WITNESS: That would be on the
14 north side of the area.

15 THE JUDGE: Thank you.

16 EXAMINATION CONTINUED

17 BY MS. RODRIGUEZ:

18 Q Now, looking at the photograph,
19 please, yes, could you tell us what that
20 consists of or what the picture reflects.

21 A This is a container that we know as
22 a tote that have a capacity of one cubic yard
23 approximately and that was open because it
24 had material inside and you can see the
25 deteriorated conditions around all these

1 containers, inside the warehouse building
2 six.

3 Q Okay. Now, in the inspection
4 layout, in the photograph layout that you
5 have, could you please identify photograph
6 ten.

7 A Yes, photograph ten is located also
8 at the north side of the building, number ten
9 here.

10 Q Would you please for the record,
11 say where you are pointing.

12 A That was in the north side of the
13 building area and it is marked there number
14 ten in the layout.

15 Q Now, I am showing you photograph
16 ten. Could you please explain to us what
17 photograph ten reflects.

18 A As we can see, we have another
19 container, fully opened. With material inside
20 of it. It wasn't identified so that is what
21 we see in the picture.

22 Q Now, could you please check in the
23 north layout in photograph eleven, where was
24 it taken?

25 A Yes, it was taken in this area,

1 where we have the south area of the building,
2 south view which is number eleven in the
3 layout.

4 Q Now, I am showing you picture,
5 photograph number eleven. Now, could you
6 please explain to us what you see in the
7 picture.

8 A This is like a wood shed structure
9 partially demolished that we can see spills
10 and residuals of chemical.

11 Q Where are those?

12 A On the floor.

13 Q Okay.

14 A Surface area.

15 Q And could you point in the picture
16 to where they are.

17 A Yes, all this area. Like a green
18 colored, white colored powder.

19 THE JUDGE: Where specifically?

20 MS. RODRIGUEZ: On the floor, on the
21 surface floor.

22 EXAMINATION CONTINUED

23 BY MS. RODRIGUEZ:

24 Q Could you explain for the record
25 what color are those spills that you see?

1 A Yes, the powder was white, the
2 building was blue and then yellow at the
3 bottom.

4 Q I am talking to what you see on the
5 floor, what you find on the floor.

6 A On the floor we see is like a spill
7 material. It is like a white powder on the
8 surface of the floor.

9 Q Okay and what else do you see
10 there?

11 A We see that has been demolished,
12 the secondary containment in this area
13 contained liquid.

14 Q What area? In the picture where
15 specifically is that secondary containment?

16 A We can see this area, the yellow
17 colored area, that could contain any leak or
18 any spill inside that area has been broken so
19 there is no containment system in this wood
20 shed.

21 Q Okay. Now, in the first layout
22 could you please identify where photograph
23 twelve was taken.

24 A Referring back to the layout, photo
25 number twelve was taken in this location at

1 the south side of the warehouse.

2 Q Is it identified in the layout that
3 you see?

4 A Yes, it is identified as number
5 twelve.

6 Q Now, I am showing you a blown up
7 picture of photograph twelve. Could you
8 please tell us what the photo shows.

9 A As we can see in the picture we
10 have a floor heavily infected with a white
11 powder that it means like some spill occurred
12 in this area. We also see that a secondary
13 containment that may contain any spill in the
14 specific area is broken.

15 Q Could you identify -

16 A It is broken the blue color
17 containment area is broken so it doesn't
18 collect any spill residuals on the floor.

19 Q Okay. And can you identify
20 photograph 13 in the photograph layout and
21 where it was taken.

22 A That was taken at the south side of
23 the warehouse identified as number thirteen
24 in the layout.

25 Q I am showing you photograph 13. Can

1 you please explain to us what photograph
2 thirteen shows.

3 A As we see in photograph thirteen,
4 this is like an above ground tank area.

5 Q I am sorry, I am sorry?

6 A Above ground tank.

7 Q Above ground tank.

8 A Above ground tank area that a
9 secondary containment is broken. We can point
10 it out, this blue -

11 Q In the picture, where is the
12 secondary containment?

13 A Secondary containment is all this
14 that you can see around the tanks. We see
15 like a yellow brown granular material being
16 spilled on the surface floor and we can see
17 that some of the tanks has some residual
18 materials inside.

19 Q Now, Mr. Gonzalez, taking all
20 together the description you have given of
21 these photographs, can you tell us what they
22 actually show.

23 A What all these pictures or
24 photographs show is abandoned material left
25 behind at the warehouse, containers with

1 materials, chemical material and in different
2 level of deterioration, rusted, broken, open,
3 leaking.

4 Q And when you say abandoned, what
5 are you talking about?

6 A What I mean by abandoned is that it
7 was not under control for any person, owner,
8 or operator at the facility. They were all
9 alone with no supervision. That is why we
10 call it abandoned.

11 Q And were they hazardous waste?

12 A We identified through labeling a
13 couple of the contents of the containers and
14 they were corrosive chemicals or by the
15 chemicals formulas, they were, you know,
16 possibly corrosive solvents, oxidizers and
17 everything was identified through, you know,
18 through the labels that we have identified
19 them.

20 Q Now, the inspection that you
21 participated and you have the exhibit three
22 here which is a copy of the inspection, now
23 could you tell us what, you know, the
24 inspections, what the inspection revealed,
25 what findings the inspection revealed?

1 A Well, the inspection report, as
2 part of the evaluation and assessment we put
3 together like an inventory, EPA of all the
4 materials being abandoned at the warehouse.

5 Q Were you part of the enforcement
6 officers who did that?

7 A Yes. We did the preliminary and
8 then there was another specific inventory of
9 the materials.

10 Q And could you find that in the
11 inspection report?

12 A Yes, in page eight, page eight of
13 the compliance inspection report there is a
14 whole list of the material description, type
15 of container and the quantity.

16 Q And for the record, could you just
17 read part of it.

18 A As we can read from the inventory,
19 page nine of the compliance evaluation
20 inspection report, we have like corrosive
21 material in plastic containers, about one
22 cubic yard capacity and the quantity, a
23 hundred fifteen containers. We have also,
24 but we couldn't identify, like unknown
25 substances that were in different type of

1 containers, 55 gallon drums, five gallon
2 containers and we have like for example
3 corrosive chemical name APAC, 55 gallons. We
4 found at least eight 55 gallon drums. It is
5 a whole list of, material description, the
6 type of container and the quantity.

7 Q And just could you summarize what
8 kind of chemicals did you find?

9 A Some of the chemicals are
10 corrosive. We found some of them like we can
11 identify like, you know, probably oxidizers
12 and I that is pretty much what it is.

13 Q And do you know, before you did the
14 inspection, do you know what type of facility
15 was there, in what business, I mean, what
16 type of facility was Aquakem?

17 A Aquakem is like a chemical
18 manufacturing company that manufactures
19 chemical products for water treatment, for
20 potable water and waste water treatment.

21 Q Now, the chemicals that you found,
22 do they in any way would be chemicals used
23 during the process at the Aquakem facility?

24 MR. LLORENS: Objection, what is the
25 foundation for him answering that question?

1 THE JUDGE: In other words, you are
2 asking for the relevance?

3 MR. LLORENS: I would ask him how
4 he would know what is used for water
5 treatment. Maybe he is an expert and I don't
6 know but I haven't heard testimony that he
7 is an expert on water treatment chemical
8 plants.

9 MS. RODRIGUEZ: He has expressed
10 and there was no objection at the beginning,
11 the experience he has on the RCRA Program and
12 I am just asking in general terms whether he
13 has any knowledge of what type of chemicals
14 were used in that -

15 THE JUDGE: How about if we lay a
16 foundation then for this line of questioning
17 if you want to explore that a little bit.

18 MS. RODRIGUEZ: Okay.

19 EXAMINATION CONTINUED

20 BY MS. RODRIGUEZ:

21 Q Now, did you know what type of
22 facilities operated there?

23 A It is like a water treatment
24 chemical company.

25 Q Okay. Now, in the three hundred or

1 so inspections that you said you have
2 performed, have you performed before any type
3 of inspection in this kind of facility?

4 A Yes, I have. I have conducted other
5 water treatment chemical facilities in the
6 area.

7 Q Around how many?

8 A In this case specifically?

9 Q How many?

10 A This type of facility, could be
11 two.

12 Q Two and what type of chemicals, if
13 any, did you find were used in that type of
14 facility?

15 A They use like aluminum, aluminum
16 salts. They used ferric, ferric salts and
17 some other what we know as coagulants for the
18 water treatment of water.

19 Q Now, with your prior experience in
20 the other inspections, did you find any of
21 those same chemicals in the former facility,
22 the Aquakem facility?

23 A Yes, we found it.

24 Q Okay. Now, how did you document
25 the findings that you made in the inspection?

1 A Well, we walked through the area
2 and we take field notes and after we collect
3 our field notes, we prepare a formal report.

4 Q I am sorry?

5 A We prepare a compliance evaluation
6 inspection report.

7 Q Is that the document, Complainant's
8 Exhibit 3 that you have in front of you?

9 A Yes, this is the document which is
10 known as the compliance evaluation
11 inspection.

12 Q Did you prepare it?

13 A I did prepare this report.

14 Q Did you review it?

15 A I reviewed it.

16 Q And did you sign the document?

17 A And I did sign the document.

18 Q And is your signature in that copy?

19 A Yes, it is, in this copy.

20 Q And does this document reflect a
21 true and accurate depiction of what you find
22 and saw during the inspection?

23 A Yes, I do.

24 MS. RODRIGUEZ: Your Honor, I would
25 like then to introduce into evidence the

1 Complainant's stipulated Exhibit 3.

2 THE JUDGE: Okay. Counsel, any
3 objection?

4 MR. LLORENS: No objection.

5 THE JUDGE: Please mark Exhibit 3 as
6 received.

7 EXAMINATION CONTINUED

8 BY MS. RODRIGUEZ:

9 Q Now, Mr. Gonzalez, what other steps
10 did you take after the inspection?

11 MR. LLORENS: I am going to object.
12 I mean, what was that question, what steps
13 did he take after the inspection?

14 EXAMINATION CONTINUED

15 BY MS. RODRIGUEZ:

16 Q After you conducted the inspection
17 as an enforcement officer with EPA, what, if
18 any other steps did you take regarding the
19 Aquakem facility or Aquakem Caribe, Inc.?

20 A Since we found potential problems,
21 and abandoned chemicals and we didn't have
22 the information, we prepared what we named
23 our information request letter.

24 Q And when you say that you prepared
25 the information request letter, to whom did

1 you send it?

2 A We send the information request
3 letter to Aguakem's President.

4 Q And to anybody else?

5 A We also send it out to as the owner
6 of the port to the Port Authority of Ponce.

7 Q Okay and who signed the information
8 request?

9 A The information request was signed
10 by our division director, Mr. Carl Soderberg.

11 Q And could you tell us what is the
12 purpose of the information request?

13 A The information request letter is
14 used as an instrument to collect additional
15 information for us to make the evaluation of
16 the compliance of the facility and to know
17 any specific information about the findings
18 that we don't have it at the time of the
19 inspection.

20 Q So what information did you seek to
21 obtain from the information request?

22 A We wanted to know the information
23 about the material left behind. We wanted to
24 know what was the origin of it. We wanted to
25 know what was inside the containers. We

1 wanted to know, whether we needed a plan to
2 deal with them and the nature of the action.
3 You know, the nature of the action to, you
4 know, to come to this point where we found
5 this, all this abandoned material, chemical
6 material.

7 Q Now, what was the date of the
8 information request? Do you remember when
9 the information request was sent?

10 A I believe it was May, 2008.

11 Q 2008.

12 MS. RODRIGUEZ: And Your, Honor, if I
13 could approach?

14 THE JUDGE: Yes.

15 MS. RODRIGUEZ: For identification
16 stipulated Exhibits 5 and 6. Your Honor, may
17 I approach the witness?

18 THE JUDGE: Yes.

19 MS. RODRIGUEZ: I am showing the witness
20 for the record, Exhibit 5 and Exhibit 6.

21 EXAMINATION CONTINUED

22 BY MS. RODRIGUEZ:

23 Q Now, can you tell me what Exhibit 5
24 first of all is?

25 A Exhibit 5 is the information

1 request letter sent to Aquakem on May 12,
2 2008.

3 Q Who is it addressed to?

4 A It is addressed to Mr. Jose Manuel
5 Unanue, business manager of Aquakem.

6 Q Okay and at what address?

7 A P.O. Box 177 Mercedita, Puerto
8 Rico, 00715.

9 Q And could you please take a look at
10 the document. Now, who prepared that
11 document?

12 A I prepared this document.

13 Q Okay and is that a true and exact
14 copy of the document you prepared?

15 A Yes, it is an exact copy of the
16 letter that I prepared.

17 Q Now, I would like to introduce into
18 evidence complainant's Exhibit 5, stipulated
19 Joint Exhibit 5.

20 THE JUDGE: Any objection?

21 MR. LLORENS: No objection, Your Honor.

22 THE JUDGE: Please mark Exhibit 5 as
23 received.

24

25 (Whereupon Exhibit Number 5

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Identification)

EXAMINATION CONTINUED

BY MS. RODRIGUEZ:

Q Now, could you take a look at
Exhibit 6, please and can you tell us what it
is. Who is it addressed to?

A Exhibit 6, it is what we know as
another request for information letter and
this time we included a notice of violation
and it is addressed to Jose Hernandez, Safety
Director of Port of Ponce Authority.

Q And could you please take a look at
it and review the document. Who prepared the
document, Mr. Gonzalez?

A I prepared this document.

Q And is the document a true and
accurate document that you prepared and was
sent?

A Yes, this letter is accurate from
the letter that I prepared.

MS. RODRIGUEZ: Your Honor, I would like
to introduce into evidence Exhibit, Joint
Exhibit 6.

THE JUDGE: Okay.

1 MR. LLORENS: No objection.

2 THE JUDGE: Is there a date on that
3 document?

4 MS. RODRIGUEZ: No, Your Honor. It is
5 signed but it doesn't have a date.

6 THE JUDGE: Okay. Thank you. Please mark
7 the exhibit as received.

8 (Whereupon the above mentioned document
9 was marked and received as Exhibit No. 6
10 for Identification.)

11 EXAMINATION CONTINUED

12 BY MS. RODRIGUEZ:

13 Q Mr. Gonzalez, did EPA receive a
14 response to the information request sent to
15 Aquakem?

16 A Yes, we did. We received a
17 response to the information request letter
18 from Aquakem.

19 Q And did you receive another
20 response to the one sent to the Puerto Rico
21 Ports Authority? I mean the Ponce Ports.

22 A Yes, we did receive a response from
23 the Port of Ponce Authority.

24 MS. RODRIGUEZ: Your, Honor, if I can
25 approach? For identification purposes, Your

1 Honor, regarding Complainant's Exhibit 7, I
2 am showing the witness Exhibit 7.

3 EXAMINATION CONTINUED

4 BY MS. RODRIGUEZ:

5 Q Can you tell us what it is.

6 A Exhibit 7 is the response to the
7 information request letter from the Port
8 Authority of Ponce.

9 Q Did you review that?

10 A Yes, I did review the response from
11 the Port Authority of Ponce.

12 Q Is that a true and accurate
13 document of the response sent by the Port of
14 Ponce?

15 A Yes, it is an accurate and exact
16 copy of the response.

17 Q Will you please for the record
18 state to whom it was addressed?

19 A The letter, the response was
20 addressed to my person, Mr. Eduardo Gonzalez
21 and it was signed by Mr. Jorge Hernandez,
22 Executive Director, Port Authority of Ponce.

23 Q And could you just tell us briefly
24 what did the response included, whether it
25 included anything.

1 A Yes, they included the action that
2 they will be taking as part of the letter
3 that EPA sent to them like we notified them,
4 being owners of the port about the violations
5 and the information requested. They also
6 included the lease agreements between the
7 Port Authority of Ponce and Aquakem and the
8 renewal of those agreements for the tenants
9 and owner of the port.

10 A And could you please, anything else
11 as part of the document?

12 Q They were just proposing the action
13 to be taken about the problem at the
14 warehouse number six and they were, you know,
15 concerned about the waste being abandoned
16 there.

17 MS. RODRIGUEZ: Your Honor, I would like
18 to introduce into evidence Complainant's
19 Exhibit 7.

20 MR. LLORENS: No objection.

21 THE JUDGE: Okay. Now, I observe that
22 the vast majority of this document is in
23 Spanish. Is the cover letter a summary of
24 that document?

25 MS. RODRIGUEZ: Yes, and the purpose for

1 submitting that is just for the purposes of
2 establishing that Port of Ponce did comply
3 with the information request. It will be
4 just for that purpose. If we do, we won't
5 make any more reference to the Spanish
6 document. So we will translate them for the
7 record.

8 MR. LLORENS: I must object then to the
9 entry, the admission of this document. I
10 would like the whole document to go in. I
11 have many questions for the witness about
12 that document.

13 MS. RODRIGUEZ: Your Honor, counsel was
14 aware that it was in Spanish.

15 MR. LLORENS: I am not objecting to its
16 entry. I am objecting to just a portion of
17 it being entered. I want the entire document
18 to be admitted.

19 MS. RODRIGUEZ: I am entering the whole
20 document.

21 THE JUDGE: You are moving to have it
22 admitted? At this stage it would be admitted
23 strictly for the purpose of showing his
24 response was received without any
25 translation.

1 MR. LLORENS: Your Honor -

2 THE JUDGE: The contents would not be
3 admitted into the record so with that
4 qualification, then it will be received but
5 for the very limited purpose of establishing
6 that a response was received, not the
7 contents of it.

8 MR. LLORENS: Well, if that is the
9 purpose, I would move to strike the witness'
10 testimony. I would stipulate that the
11 document was received and I would say that
12 the testimony is irrelevant. It goes beyond
13 the scope of the foundation of the document
14 for which it is intended to support. He spoke
15 about what is in the document beyond the
16 purposes of saying it was received. He talked
17 about the content of what he thought it meant
18 so I would move to strike his testimony for
19 purposes only to evidence that a response was
20 received. I wouldn't stipulate that a
21 response was received and move to strike his
22 testimony.

23 THE JUDGE: Is any of this covered in the
24 translated version?

25 MS. RODRIGUEZ: No, Your Honor. As you

1 know, if counsel agrees with that then we
2 just accept the letter which is in English
3 that it was received; that the Port of Ponce
4 actually responded to the information
5 request.

6 THE JUDGE: Okay. So document 7 will be
7 marked as received but only as to the English
8 portion.

9 MS. RODRIGUEZ: And then we would request
10 that his testimony be allowed only as to that
11 he reviewed it and that he received it.

12 MR. LLORENS: No, Your Honor. That is
13 precisely what I am objecting to. He is
14 basically testifying that he reviewed it and
15 relied on it in his process at the EPA, at
16 which point that makes the entire --

17 MS. RODRIGUEZ: Your Honor -

18 THE JUDGE: No, just a moment. Okay. Let
19 him finish.

20 MR. Llorens: That makes the entire
21 document relevant to what he is testifying.
22 Either his entire testimony needs to be
23 stricken and at this point I am not sure why
24 we need it, while I am stipulating that the
25 document was received by the EPA and I don't

1 understand why we would need any of his
2 testimony relating to that document.

3 THE JUDGE: Yes?

4 MS. RODRIGUEZ: Your Honor, again, first
5 of all I have to note that this is one of the
6 documents that we did stipulate in the joint
7 stipulation of exhibits. He was aware of the
8 document. He was aware of all that included
9 the document. The only purpose for submitting
10 this is that and we can limit that scope;
11 that it was received and that that was the
12 information, the response submitted by Port
13 of Ponce on that date.

14 MR. LLORENS: Your Honor, I am not
15 objecting to the document being admitted. I
16 am asking that his testimony be stricken.

17 THE JUDGE: Well, all testimony, no.

18 MR. LLORENS: No, just the testimony with
19 regard to that document.

20 THE JUDGE: How about if we go back and
21 review the testimony that describes this
22 document. If the court reporter.

23 MS. RODRIGUEZ: If it would make it much
24 easier so we can move along, I would then
25 just, I wouldn't have any objection if we

1 just leave and you can strike the reset, as
2 to that part where he states that that was
3 the response from the Port of Ponce without
4 going any further to whatever other testimony
5 he provided.

6 MR. LLORENS: That is fine.

7 THE JUDGE: Okay. So it is admitted and
8 strictly the only testimony admitted
9 concerning this document is that it was
10 received. Okay. Both parties agreed to that.

11 (Whereupon Exhibit 7
12 was marked for
13 Identification)

14 MR. LLORENS: Yes, Your Honor.

15 THE JUDGE: Okay.

16 EXAMINATION CONTINUED

17 BY MS. RODRIGUEZ:

18 Q Now, Mr. Gonzalez, did EPA send any
19 other information request or any other
20 document to Aquakem Caribe, Inc.?

21 A Yes. EPA did. We sent like a second
22 information request letter based on the first
23 one because we didn't get the information we
24 needed to evaluate the case.

25 MS. RODRIGUEZ: Your, Honor, may I

1 approach the witness?

2 THE JUDGE: Yes.

3 MS. RODRIGUEZ: I am providing what is
4 known as complainant's Exhibit 8.

5 EXAMINATION CONTINUED

6 BY MS. RODRIGUEZ:

7 Q Now, can you tell me what the
8 document is.

9 A Exhibit 8 is like named as the
10 second information request letter to Aquakem
11 Caribe, Inc. and it is dated May 6, 2009.

12 Q And who was it addressed to?

13 A It was addressed to Mr. Jose Manuel
14 Unanue, President Aquakem Caribe.

15 MS. RODRIGUEZ: Okay. We would ask that
16 the Exhibit 8 be admitted into evidence.

17 MR. LLORENS: No objection.

18 THE JUDGE: Please mark Exhibit 8 as
19 received.

20 (Whereupon the above mentioned
21 document was marked as Exhibit
22 No. 8 for Identification.)

23 EXAMINATION CONTINUED

24 BY MS. RODRIGUEZ:

25 Q Now, did Aquakem respond to the

1 second information request?

2 A Yes, Aquakem did respond to the
3 second information request, the letter from
4 EPA.

5 Q And do you know when they
6 responded?

7 A I believe it was in December of
8 2009.

9 Q Sorry?

10 A December, 2009.

11 MS. RODRIGUEZ: Your, Honor, I am showing
12 complainant for identification purposes,
13 Complainant's Exhibit 9.

14 EXAMINATION CONTINUED

15 BY MS. RODRIGUEZ:

16 Q Can you tell me what that is and
17 what date it has?

18 A This is the response to the second
19 EPA request for information letter from
20 Aquakem dated June 30, 2009.

21 Q You previously stated December.

22 A Yes, it was some previous response
23 submitted by Aquakem on June 30, 2009.

24 Q Is that the response that Aquakem
25 submitted to the EPA second information

1 request?

2 A Yes, this is the response to the
3 second information request letter from EPA.

4 Q Could you tell us who signed that
5 response?

6 A The letter was signed by Mr. Jorge
7 Unuane, President, Aquakem Caribe.

8 Q And I ask you, did you review that
9 respond?

10 A Yes, I did review it.

11 MS. RODRIGUEZ: I would like to introduce
12 into evidence Complainant's Exhibit 9, Your,
13 Honor.

14 THE JUDGE: Any objection counsel?

15 MR. LLORENS: No objection, Your Honor.

16 THE JUDGE: Please mark Exhibit 9,
17 Plaintiff's Exhibit 9 as received.

18 (Whereupon the above mentioned
19 document was marked as Exhibit
20 No. 9 for Identification.)

21 MS. RODRIGUEZ: Let the record reflect
22 that I am handing the Exhibit 9 to Mr.
23 Gonzalez.

24 EXAMINATION CONTINUED

25 BY MS. RODRIGUEZ:

1 Q Mr. Gonzalez, could you tell us
2 what the response stated?

3 A The second response from Aquakem
4 stated the elaboration process or
5 manufacturing of the product. They provided
6 some general information, chronological
7 events of the list when they were
8 manufacturing at the Port of Ponce Authority
9 and provided some information about the
10 products, materials, safety, data sheets.

11 Q What products did they use?

12 A Um?

13 Q What products, did they mention
14 what products they used while they were?

15 A Yes, they mentioned some products.
16 They mentioned some iron, iron salts,
17 aluminum, aluminum salts, alumina, aluminum,
18 iron crystals and pellets, hydrochloric acids
19 and water to transform them into coagulants
20 to be used in potable water and wastewater
21 treatment plants.

22 Q Does the information request
23 response state when Aquakem left the
24 facility?

25 A Yes, it does.

1 Q What is the date?

2 A I believe they cited December 28,
3 2006.

4 Q Does it mention how long they were
5 operating or since when they were operating
6 at that facility?

7 A Yes, they mentioned in the letter
8 since 1995.

9 Q Now, the chemicals that had been
10 identified in that response that you just
11 went over, were they related in any way
12 related to the chemicals in the hazardous
13 waste, the waste that you found at the
14 facility when you did your inspection?

15 MR. LLORENS: I am just, I don't like to
16 make the same objections, but she is
17 referring now to waste that was found and I
18 am not going to stop it. Just as a general
19 form issue, I would object to the
20 presumptions that anything was waste or
21 abandoned or what not. Just for the record I
22 try to stay out of the way.

23 MS. RODRIGUEZ: Chemicals.

24 MR. LLORENS: I try to stay out of the
25 way.

1 MS. RODRIGUEZ: I will rephrase, Your
2 Honor.

3 THE JUDGE: Yes, if you could rephrase
4 it.

5 MS. RODRIGUEZ: I will rephrase, Your
6 Honor.

7 THE JUDGE: Yes, if you could rephrase
8 it.

9 MS. RODRIGUEZ: Yes, Your Honor.

10 EXAMINATION CONTINUED

11 BY MS. RODRIGUEZ:

12 Q The day when you viewed the
13 chemicals you mentioned that were found
14 during the inspection?

15 A Yes, they did.

16 Q Now, those chemicals, are they
17 ordinarily a hazardous waste?

18 A In the majority of the cases they
19 are corrosive chemicals.

20 MR. LLORENS: Objection, not responsive
21 to the question.

22 EXAMINATION CONTINUED

23 BY MS. RODRIGUEZ:

24 Q Are they hazardous waste in the
25 normal day to day operation of Aquakem as in

1 manufacturing, as the business that he
2 conducts?

3 A Yes, they are hazardous.

4 MR. LLORENS: Objection, not responsive.

5 THE JUDGE: Pardon me?

6 MR. LLORENS: I find the answer not
7 responsive to the question. I object to the
8 answer of the witness as not responsive to
9 the question of counsel.

10 THE JUDGE: Okay. Maybe you could explain
11 a little bit.

12 MR. LLORENS: Her question asked him was
13 the materials that were listed there
14 hazardous waste for Aquakem and he did not
15 respond to that.

16 MS. RODRIGUEZ: No, I did not ask that.
17 I rephrased my question.

18 MR. LLORENS: I thought the second
19 question was that.

20 THE JUDGE: Right now we are having
21 enormous outside noise so if we could -

22 MS. RODRIGUEZ: I will rephrase the
23 question, Your Honor.

24 THE JUDGE: Okay.

25 EXAMINATION CONTINUED

1 BY MS. RODRIGUEZ:

2 Q Now, you have just listed, you have
3 mentioned the list of chemicals that Aquakem
4 has provided in its information request,
5 right?

6 A Yes.

7 Q Previously you had stated chemicals
8 that were found when you conducted the
9 inspection a the former facility of Aquakem.
10 Is that correct?

11 A Yes, it is correct.

12 Q Now, I ask you, those chemicals in
13 the ordinary process, in the day to day
14 operation, just day to day operations for one
15 minute of Aquakem, would they be considered
16 while they are using it as hazardous waste?

17 A Well -

18 Q As waste.

19 A Well, these chemicals are products
20 and if they are abandoned because of the
21 hazard characteristics of them -

22 Q If they are abandoned?

23 A Abandoned.

24 MR. LLORENS: I object, Your Honor, he is
25 not just not answering her question.

1 THE JUDGE: Okay. I think what we need to
2 do is qualify this within the context of this
3 hearing which is the EPA rules and if you
4 could refer to the definitions.

5 MS. RODRIGUEZ: That is where I am going,
6 Your Honor, but first I want to set, you
7 know, the grounds so that I can discuss, you
8 know, the EPA regulations.

9 THE JUDGE: Perhaps maybe it would be
10 better to start at this stage to set that
11 foundation rather than the end question.

12 MS. RODRIGUEZ: Okay, Your Honor. I will
13 do so.

14 EXAMINATION CONTINUED

15 BY MS. RODRIGUEZ:

16 Q Now, under your experience on the
17 record, what --

18 THE JUDGE: Right now we are
19 experiencing, someone is using a big blower
20 directly outside this window. I guess it is
21 ongoing and we -

22 MS. RODRIGUEZ: I think it is part of the
23 construction.

24 THE JUDGE: Construction.

25 MS. RODRIGUEZ: Construction, Your Honor.

1 THE JUDGE: Well, there seems to be a
2 momentary lapse so maybe we can take
3 advantage of it. I realize it is difficult
4 to concentrate with that noise.

5 EXAMINATION CONTINUED

6 BY MS. RODRIGUEZ:

7 Q Mr. Gonzalez, under the RCRA
8 statute, do we have regulations regarding the
9 hazardous waste in the management of
10 hazardous waste?

11 A Yes, we do. We do have regulation
12 regarding the management of hazardous waste.

13 Q And do you know where the
14 regulations are?

15 A Yes, I do.

16 Q Do you know the citation, at least
17 what part?

18 A 40, 40 CFR.

19 Q Okay and could you define under
20 RCRA what hazardous waste is.

21 A In general anything that is
22 abandoned, thrown away and not used, expired,
23 not used for the purposes of the product
24 being manufactured could be considered, it is
25 considered a waste.

1 Q And when you mentioned abandoned,
2 abandoned, what does abandon mean?

3 A Abandon is not under the control of
4 the owner, of the operator and there is no
5 supervision about the management for those
6 wastes.

7 Q And is that what you were referring
8 to in your previous answer right now, I mean,
9 when I asked you what waste, abandoned waste
10 was?

11 MR. LLORENS: Your Honor -

12 THE JUDGE: Objection?

13 MR. LLORENS: I am going to object more
14 to sort of to steer us back. I think, if we
15 could actually refer to the CFR that talks
16 about discarded materials and there is
17 actually a definition in the CFR. Your Honor,
18 I believe one of the basis to be set before
19 it gets to its ultimate, I think that she is
20 not asking for what the EPA rates, define
21 abandoned or discarded materials. I would
22 object only, I don't object as a general
23 manner. I know we are trying to get over
24 there. We would save a lot of objections.

25 THE JUDGE: Will be in the CFR as used

1 within the regulatory scheme. So we are
2 going to use them, this background as
3 necessary. At least it would be our
4 understanding of what this witness is
5 testifying to as to his beliefs, what is the
6 foundation for that. So I will allow the
7 questioning.

8 MR. LLORENS: Thank you, Your Honor.

9 THE JUDGE: In fact, I appreciate this so
10 we can move this along.

11 EXAMINATION CONTINUED

12 BY MS. RODRIGUEZ:

13 Q So now, we were talking now, go
14 back now to the chemicals mentioned in the
15 response. You had previously stated and
16 again I am asking you that those were the
17 chemicals - let me just rephrase it so we
18 don't have to go back and listen to it.

19 Those chemicals that you mentioned
20 are the chemicals that are used in the type
21 of business, manufacturing business that
22 respondent uses.

23 A That is correct.

24 Q And those chemicals were also found
25 in the inspection you conducted at the

1 facility.

2 A That is also correct.

3 Q Okay. Now, those chemicals, the
4 ones that you found at the facility, under
5 the definition and under the understanding
6 and the terms that you just described, would
7 you consider those chemicals found at the
8 inspection a waste?

9 A Yes, they are considered waste.

10 Q Why would they be considered waste
11 when you found them during the inspection?

12 A Well, the condition in which we
13 found them that they provide us evidence that
14 they were abandoned and they were
15 deteriorated, they were not in use and there
16 was no plans to use them. We didn't see any
17 persons supervising or taking care of them.

18 Q So under regulations that would
19 consider them waste at that time?

20 A Yes. It is considered solid waste.

21 Q Okay. Now going back to the
22 inspection now, specifically you still have
23 Exhibit 3.

24 A I do.

25 MS. RODRIGUEZ: Your, Honor, I am

1 handing over to the court reporter
2 Complainant Exhibit 9. We still have that
3 and was admitted into evidence Exhibit 3.

4 EXAMINATION CONTINUED

5 BY MS. RODRIGUEZ:

6 Q Now, could you go back to page nine
7 of that exhibit.

8 THE JUDGE: That is Exhibit 9?

9 MS. RODRIGUEZ: Yes, Your Honor.

10 THE JUDGE: Page 9?

11 MS. RODRIGUEZ: I am sorry, page 9 of
12 Exhibit 3.

13 EXAMINATION CONTINUED

14 BY MS. RODRIGUEZ:

15 Q And can you tell me what that page
16 states?

17 A Page 9 of Exhibit 3 which is known
18 as the compliance evaluation inspection. We
19 have the inventory of chemicals that we found
20 at the warehouse number six at the Port
21 Authority of Ponce.

22 Q Now, those chemicals correspond or
23 are they the same, some are the same as the
24 one mentioned in the response to the
25 information request?

1 A Yes, they are.

2 Q Now, Mr. Gonzalez, could you tell
3 us in the inspection that you made, during
4 your inspection, what specific RCRA
5 violations did you find?

6 A Yes, among the RCRA violations that
7 we identified at the time of inspection, we
8 found that the owner didn't make a hazardous
9 waste determination. This is the corner
10 stone of the statutory program because we
11 need to make sure that anything which is
12 abandoned, not in use, discarded will be
13 disposed of in a proper manner and not be
14 dumped in a solid waste landfill.

15 Q What do you mean when you say,
16 owner?

17 A The owner of the chemicals or
18 operator.

19 Q Okay and what other findings did
20 you make?

21 A We also identified, I will mention
22 owner or operator, did they post a risk of
23 explosion to the business or any violent
24 reaction among the chemicals.

25 Q And what other, the findings?

1 A We also found some violation
2 regarding to the use, oil regulations,
3 requirements.

4 Q Now, with regards to the failure to
5 make a hazardous waste determination, I am
6 going to be handing you--

7 MS. RODRIGUEZ: Your, Honor, it has
8 already been admitted into evidence, it is
9 the complaint with the attachments, which is
10 Complainant Exhibit 1.

11 THE JUDGE: Okay.

12 MS. RODRIGUEZ: I think it was not
13 marked.

14 THE JUDGE: Because it wasn't actually
15 admitted yet.

16 MS. RODRIGUEZ: So I will just, I am
17 handing this over to the witness and, Your
18 Honor, if you don't mind, can we have a brief
19 recess?

20 THE JUDGE: Yes.

21 MS. RODRIGUEZ: Do you wish we could
22 recess now?

23 THE JUDGE: Well, how about if we just
24 finish this document quickly.

25 MS. RODRIGUEZ: Okay. It is going to be a

1 while.

2 THE JUDGE: To review Exhibit 1?

3 MS. RODRIGUEZ: Yes because we are going
4 to be making reference to different things in
5 Exhibit 1.

6 THE JUDGE: Okay.

7 MR. LLORENS: Well, I would suggest we
8 go, lucky the noise has stopped and maybe we
9 won't be lucky later so.

10 THE JUDGE: Right, why don't we take a
11 short five minute break?

12 MR. LLORENS: Okay.

13 MS. RODRIGUEZ: Maybe longer because we
14 have to go all the way to the ladies and we
15 have to ask for a key.

16 THE JUDGE: Ten minutes.

17 MS. RODRIGUEZ: Okay.

18 (Whereupon a recess was taken)

19 THE JUDGE: Please be seated.

20 MS. RODRIGUEZ: Your Honor, may I request
21 I continue from the table sitting down?

22 THE JUDGE: That would not pose a
23 problem.

24 MS. RODRIGUEZ: Yes, I know. I guess I
25 can't tolerate anymore high heels.

1 THE JUDGE: I just want to remind the
2 witness that he is still under oath.

3 THE WITNESS: Okay. Thank you.

4 EXAMINATION CONTINUED

5 BY MS. RODRIGUEZ:

6 Q Now, Mr. Gonzalez, I think we left
7 off where you were describing the different
8 RCRA violations you found during the
9 inspection, right? Now, with reference to
10 the failure to make hazardous waste
11 determination, I handed to you Exhibit 1
12 which is the administrative complaint.

13 A That is correct. I have the
14 administrative complaint.

15 Q Okay. Now as to the failure to make
16 a hazardous waste determination, could you
17 please describe why would respondent need to
18 make such a determination?

19 A As part of the RCRA requirements
20 when a person, will abandon, will not use,
21 will discard, could be any product and that
22 product may contain hazardous ingredients or
23 hazardous, you know, chemicals, it is the
24 responsibility of the owner/operator of those
25 waste to make a hazardous waste determination

1 and what is that, they need to determine the
2 hazard characteristics, if they are hazardous
3 waste or it is not a hazardous waste in order
4 to determine the final disposition.

5 Q But are they required to do that
6 with the product?

7 A Yes, this is like the corner stone
8 of the program that requires every person or
9 every owner/operator that generate a waste,
10 it is required by law to make a hazardous
11 waste determination on every waste treatment.

12 Q And would they be subject to the
13 RCRA requirements?

14 A Yes, they may have some products
15 that they decided not to use or to abandon,
16 they are required to make a hazardous waste
17 determination on each waste of abandoned
18 material and manage the proper final
19 disposition.

20 Q And when did those products become
21 waste?

22 A The products become waste at the
23 time that the product is abandoned or
24 discarded, is not in use, it is expired, it
25 is spilled or there is no more use for it.

1 Q Now, going back to the document
2 that I submitted to you, the administrative
3 complaint, now during the inspection, could
4 you tell us the facts that supported the
5 violation for hazardous waste? I am sorry,
6 failure to make a hazardous waste
7 determination?

8 A As part of the inspection we found
9 a lot of material or products being
10 abandoned, broken, opened, leaking on the
11 floor that needed to be managed properly
12 according to the RCRA statutory and they
13 needed to make a hazardous waste
14 determination at least over fifteen waste
15 streams. They had different characteristics.
16 They could be corrosive, they could be
17 oxidized or they could be paint waste. All
18 different kinds.

19 Q And what happens if you don't make
20 a hazardous waste determination?

21 A This is a violation of the RCRA
22 statutory and they have a penalty imposed on
23 those RCRA violations.

24 Q And what are the results besides
25 the penalties, is there anything else if you

1 don't - what is the purpose of having to
2 make a hazardous waste determination?

3 A The purpose to make a hazardous
4 waste determination is for the protection of
5 the human, health and environment and to
6 avoid all this hazardous chemicals waste
7 being dumped in a local landfill.

8 Q Okay.

9 A Which is not designed to control or
10 to dispose of those chemicals.

11 Q I am sorry, I didn't -

12 A Which is not designed, the landfill
13 to collect those kind of chemicals.

14 Q Now, with respect to the second
15 violation, you mentioned that it was a
16 failure to minimize risks of a fire,
17 explosion or release. Now, what regulatory
18 provisions would they have violated?

19 A They have violated the 40 CFR, 262,
20 134, 240 CFR, 5265.

21 Q And what would that require, I
22 mean, what facts would have supported that
23 violation?

24 A The facts that supported this
25 violation were the conditions that we found,

1 the containers. Again, they were opened,
2 strong odors coming out from the open
3 containers. They were placed on top of water
4 waste or sumps that discharges directly to
5 the Caribbean Sea which is in the vicinity of
6 the facility. The incompatibility of the
7 waste and the releases of the waste and the
8 quantity posing a risk to the public, to the
9 workers and to the environment.

10 Q And under the regulation, what is
11 the facility required to do?

12 A The facility is required to
13 maintain, and operate, to minimize the
14 possibility of fire, explosion or any
15 releases of hazardous waste or hazardous
16 waste contingency and that would threaten the
17 human and the environment.

18 Q Now, with respect to the third
19 violation which you said it was a failure to
20 comply with the used oil requirements. What
21 regulatory provisions did they violate?

22 A They violated the 40 CFR, part
23 279.22.

24 Q And what facts during the
25 inspection supported that violation?

1 A There are some requirements for the
2 management of used oil and we found a
3 container without the proper label where the
4 used oil was and that was part of the
5 abandoned chemical waste.

6 Q Now, Mr. Gonzalez, regarding the
7 findings that you found during the
8 inspection, what did you, and the document
9 that you have, what did EPA do with regards
10 to those findings?

11 A Well, since we documented every
12 RCRA violations, we proceed to prepare a
13 penalty calculation based on our penalty
14 policy under RCRA.

15 Q And why did you proceed to
16 calculate the penalty against the respondent?

17 A We prepared the penalty because we
18 cannot allow these type of cases or any
19 facility abandoning chemical waste
20 indiscriminately and that way we use this as
21 deterrent in order to make them comply.

22 Q Did you use the facts found during
23 the inspections and the documents that you
24 had and that you have described to calculate
25 the penalty?

1 A Yes, I did. I used it as evidence.
2 I used as a guidance my professional
3 judgement in order to calculate each penalty
4 for each violation identified.

5 Q Now, did you in the complaint, did
6 you calculate the proposed penalties for
7 count one, two and three in the complaint?

8 A Yes, I did record that and I
9 computed the penalty for each count for
10 violation.

11 Q Okay. Now, you mentioned there
12 were three violations. Did those three
13 violations correspond to the three counts in
14 the complaint?

15 A Yes, they do correspond to the same
16 counts in the complaint.

17 Q Now, Mr. Gonzalez, what is the
18 maximum allowed penalty under Section 3008 of
19 RCRA?

20 A For any violation after March 15,
21 2004, the maximum penalty, it is \$32,500 per
22 violation.

23 Q And under the Section 3008 of RCRA,
24 what is the statutory factors that you must
25 consider in calculating the penalty?

1 A That would be the seriousness of
2 the violation.

3 Q Anything else?

4 A And the potential risk to human,
5 health and environment.

6 Q Now, at the time you performed
7 these penalty calculations, was that penalty
8 applicable, the penalty policy that you
9 mentioned?

10 A Yes, we follow the RCRA penalty
11 policy in order to calculate the penalty
12 amounts for each count.

13 MS. RODRIGUEZ: Your, Honor, may we
14 approach?

15 THE JUDGE: Yes.

16 MS. RODRIGUEZ: Your Honor, we mentioned
17 in our exchange --it is a public document and
18 it is the RCRA 2003 penalty policy and we
19 would like to use it for identification
20 purposes.

21 THE JUDGE: This is not being introduced?

22 MS. RODRIGUEZ: No.

23 THE JUDGE: Okay. This is a public
24 document that I can take notice of.

25 MR. LLORENS: Is it the policy?

1 MS. RODRIGUEZ: Yes. May the record
2 reflect that I am providing the policy to Mr.
3 Gonzalez.

4 EXAMINATION CONTINUED

5 BY MS. RODRIGUEZ:

6 Q Now, Mr. Gonzalez, can you tell me
7 what that is, the document that I handed to
8 you?

9 A This is the RCRA civil penalty
10 policy dated June, 2003.

11 Q And how does that policy respond to
12 the policy that you just mentioned? Is that
13 the same policy?

14 A It is the same policy.

15 Q Is that the policy or the guidance
16 that you used when you calculated the
17 penalty?

18 A This is the guidelines I used in
19 preparing the penalty for the violations.

20 MS. RODRIGUEZ: Your, Honor, we move to
21 submit that into evidence.

22 THE JUDGE: Okay.

23 MS. RODRIGUEZ: It hasn't been marked as
24 any exhibit. I don't know.

25 MR. LLORENS: What are we moving?

1 MS. RODRIGUEZ: The penalty policy.

2 THE JUDGE: Whether it comes in or out,
3 it is kind of superfluous because I take
4 administrative notice of the policy anyway.
5 If you would like to admit it as a document
6 and there is no objection, it doesn't matter
7 to me.

8 MS. RODRIGUEZ: We know, Your Honor, I
9 mean, if not, I will hand that afterwards to
10 the respondent in case he doesn't have it.

11 MR. Llorens: I have it. I have no
12 objection. I just don't think it is
13 necessary.

14 THE JUDGE: Okay.

15 EXAMINATION CONTINUED

16 BY MS. RODRIGUEZ:

17 Q Now, Mr. Gonzalez, going back to
18 the complaint that you prepared. Could you
19 tell us what the first factor, let's talk
20 first in general. What is the first factor
21 you considered in determining the penalty?

22 A The first factor that we considered
23 is the gravity, the gravity factor. Gravity,
24 like gravity.

25 Q And under gravity what do you

1 consider?

2 A The maximum penalty for violation
3 and we considered potential for harm or the
4 situation was found and the extent of the
5 deviation from the regulation.

6 Q When you say regulation, what
7 regulation are you referring to?

8 A RCRA regulations.

9 Q Now, could you please tell us,
10 under the penalty policy, what does potential
11 for harm mean?

12 A Potential for harm is when there are
13 some existing conditions that actually pose a
14 risk to the human health any worker of the
15 environment based on the conditions that we
16 identify such as Aquakem, all those chemical
17 waste being abandoned at the site without any
18 proper management or collection.

19 Q And can you explain what the policy
20 means by harm to the regulatory program?

21 A Harm to the regulatory program means
22 that they didn't comply with any requirement
23 from the law, from the statutes, federal
24 statutes.

25 Q Now, according to the policy, how do

1 you qualify the degree of potential harm?

2 A We qualify it as a major.

3 Q In general, I am not talking about
4 Aquakem, I am talking in general.

5 A In general, okay.

6 Q Yes. How do you quantify?

7 A We quantify it based on the existing
8 conditions, as in major, moderate or minor.

9 Q Okay and can you explain the
10 different categories with respect to the
11 potential for harm. We are talking about the
12 policy in general.

13 A When it is major it is like a
14 significant, you know, significant risk or
15 like moderate or a very low risk.

16 Q And you said moderate, I am sorry,
17 major, is it major and moderate?

18 A No, major is significant risk.

19 Q And what comes after that?

20 A Moderate.

21 Q Moderate?

22 A Moderate is like a less than
23 significant risk but it is not like a low risk
24 so we have the three levels.

25 Q Three. Can you tell us what the

1 policy means by the extended deviation from
2 the regulatory requirement?

3 A It is like a significant deviation
4 from the regs; that they didn't comply like
5 they make partial. It has complied with or
6 they complied with minor violations.

7 Q Okay and how do you quantify the
8 extent of deviation?

9 A We quantify as a major, moderate and
10 low.

11 Q A what?

12 A And low.

13 Q Low and can you explain -

14 A Minor, I am sorry, minor.

15 Q Can you explain what each of these
16 categories means with respect to the extent of
17 deviation like what is major, what is moderate
18 and minor?

19 A Yes. As a major it is substantive,
20 not complying with the requirements. Moderate
21 would be like less significant and minor would
22 be like a very, you know, complying but with
23 minor things that they don't comply.

24 Q Now, once you decide what categories
25 for potential of harm and the extent of

1 deviation, what do you do afterwards, where do
2 you go once you determine those facts?

3 A After we determine the quality of
4 the violation.

5 Q And the extent of the deviation?

6 A And the extent of deviation, we go
7 to the matrix. There is a matrix as an
8 attachment to Exhibit one and we need to show,
9 assert that we describe the extent of
10 deviation and the potential for harm.

11 Q Okay. Remember, we are talking
12 about the penalty policy.

13 A Exactly.

14 Q Okay. Now, according to the policy,
15 are there any other factors that you consider
16 when you calculate the penalty?

17 A Yes, we do consider some adjustment
18 factors.

19 Q And what are those adjustment
20 factors that you can consider?

21 A That we would be good faith, that
22 could be negligence, that could be no
23 compliant history and some kind of economic
24 benefits.

25 Q Now, you have Exhibit 1 which has

1 been accepted into evidence which is the
2 administrative complaint. What is the
3 document?

4 THE JUDGE: No, I don't believe it has
5 been moved into the record yet.

6 MS. RODRIGUEZ: I am sorry.

7 I show you Exhibit 1. Now we are
8 referring to Exhibit 1 that I showed you. I
9 think it was admitted when we discussed, when
10 we showed the photographs, Your Honor.

11 THE JUDGE: I don't recall. I don't have
12 it marked as being moved into the record.

13 MS. RODRIGUEZ: I am sorry, I am sorry.
14 That is the inspection report, Your Honor. I
15 am sorry. I am mistaken.

16 EXAMINATION CONTINUED

17 BY MS. RODRIGUEZ:

18 Q Could you tell us what that is, the
19 document that you have in front of you?

20 A Exhibit number one is the complaint
21 compliance order and notice of opportunity for
22 hearing.

23 Q Issued against, do you know who it
24 was issued against?

25 A Issued against Aguakem Caribe, Inc.,

1 the respondent.

2 Q Okay and what does complaint
3 include?

4 A The complaint includes -

5 Q Look over, does it have any other
6 documents?

7 A It has an attachment.

8 Q I am sorry?

9 A Attachments.

10 Q It has attachments?

11 A Attachment one which is the penalty
12 calculation.

13 Q Okay.

14 A It has attachment two which is the
15 penalty assessment gravity matrix and a multi
16 day matrix.

17 Q Okay. Now, I ask you, did you
18 prepare the document?

19 A I did prepare the complaint.

20 Q And did you prepare it and reviewed
21 it?

22 A I prepared it and I reviewed it.

23 Q And did you prepare it with anybody
24 else or reviewed it with anybody else?

25 A I review it and prepare it with my

1 other enforcement officers.

2 Q Can you please identify?

3 A Yes, with Miss Luna, Somilar Luna
4 and Mr. Jessie Aviles.

5 Q Now, is that document, does that
6 document reflect the true and exact copy of
7 the complaint that you prepared to be sent?

8 A Yes, it does.

9 MS. RODRIGUEZ: Your, Honor, at this time
10 we would like to introduce into evidence
11 Complainant's Exhibit 1 if there is no
12 objection from Respondent.

13 MR. LLORENS: That is the complaint?

14 MS. RODRIGUEZ: Yes.

15 MR. LLORENS: No objection.

16 THE JUDGE: Okay. No objection. Please
17 mark Complaint's Exhibit 1 as received.

18 (Whereupon Complainant's Exhibit

19 No. 1 was marked as received.)

20 EXAMINATION CONTINUED

21 BY MS. RODRIGUEZ:

22 Q Now, Mr. Gonzalez, now we are going
23 to go into this. Now, you have described how
24 you calculated the penalty. Now, in
25 calculating the penalty, the specific penalty

1 for respondent's violation that you mentioned
2 before. How many counts, you have done each
3 one in different counts, right?

4 A Yes, but they would have three
5 counts.

6 Q Okay and what were the factors that
7 you considered to determine the proposed
8 penalty?

9 A The first count, failure to make a
10 hazardous waste determination was based on all
11 the abandoned chemicals that we found at the
12 time of inspection.

13 Q The first, what factors, when I mean
14 factors, maybe I should rephrase my, what
15 factors pursuant to the penalty policy did you
16 consider?

17 A The seriousness of the violation and
18 the risk.

19 Q And how did you do that, please?

20 A Well, the seriousness of the
21 violation, it is when we found a facility that
22 it doesn't really comply with any requirements
23 of the statute.

24 Q And what would that, if the facility
25 does not comply, what effect does it have?

1 A They have the factor, like the
2 potential for harm, the deviation from the
3 rest.

4 Q Okay. Now, going back to count one.

5 A Okay.

6 Q The failure to make a hazardous
7 waste determination. What was your assessment
8 for the potential of harm?

9 A Based on the evidence and conditions
10 we found at the Aguakem, it was considered a
11 major.

12 Q And can you tell us why?

13 A Because of the conditions and the
14 amount of hazardous waste being abandoned at
15 the facility.

16 Q And what was your assessment of the
17 extent of the deviation?

18 A The extent of the deviation, you
19 know, they didn't really perform as required
20 by the statute. They needed to make an
21 appropriate determination of the waste.

22 Q And what was your assessment to the
23 extent of that?

24 A It was major, too.

25 Q And now could you tell us why?

1 A Well, we got all these chemicals and
2 now hazardous waste because they were
3 abandoned or discarded and they didn't do what
4 was required by RCRA statutory to make the
5 proper determination and disposal.

6 Q Was there one or more instances of
7 violation of this count?

8 A There were plenty. There were many
9 violations of this type.

10 Q How many did you find for count one?

11 A For count one we found at least,
12 like segregating them, you know, they are like
13 gravity violations or waste and we segregated
14 them, fifteen.

15 Q Fifteen and could you tell us what
16 the total gravity based penalty for count was
17 one?

18 A The gravity base for the penalty was
19 32,500.

20 Q For the total, I am saying the total
21 gravity?

22 A Oh, the total?

23 Q Yes, the total gravity base penalty
24 for count one.

25 A For count one, it was 140,598.

1 MS. RODRIGUEZ: Could you excuse us
2 just for one minute?

3 THE JUDGE: Yes.

4 EXAMINATION CONTINUED

5 BY MS. RODRIGUEZ:

6 Q And how did you come to that amount?

7 A Well, the penalty is calculated by
8 different factors. We have the gravity which
9 is the potential for harm and the extent of
10 deviation from the RCRA regulations and that
11 will count the maximum penalty which is
12 32,500. We should have counted 32,500 for each
13 waste stream and we identify fifteen of them
14 so we took our discretionary authority of EPA
15 under RCRA and we decided to count, instead of
16 fifteen by 32,500, only fourteen of them by a
17 multi day matrix.

18 Q And what does that mean?

19 A Fourteen, fourteen.

20 Q And can you explain in detail what
21 does that mean in the amount of money you
22 assessed for each multi day?

23 A Well, if I use the gravity for every
24 fifteen waste stream, it could have been like
25 32,500 times fifteen waste stream so we put

1 some faith, you know, a good faith effort and
2 we decided to take just one count of 32,500
3 and the other waste stream counted
4 for 3,869.

5 Q And how did you come up with that
6 amount of money, 3,869?

7 A We took in the matrix, we took the
8 cell which is considered a major for harm, a
9 major for external deviation of the regs and
10 we took the mid point on the cell. It could
11 have been up to \$6,000 for waste stream.

12 Q And pursuant to the calculation that
13 you have there, did you multiply fourteen, you
14 said, you stated that you multiplied fourteen?

15 A Fourteen -

16 Q By 3,869?

17 A By 3,869.

18 Q And then just one count was for 32--

19 A 32,500.

20 Q Okay. Now, what was that based on,
21 the use of that, how you calculated that?

22 A We based that on good faith effort
23 because if we count every waste stream by
24 \$32,500, this count could have been over
25 \$150,000.

1 Q And when you say good faith effort,
2 you mean good faith effort of whom?

3 A EPA.

4 Q Now, in this count number one, did
5 you calculate economic benefit?

6 A Yes, we did calculate economic
7 benefits.

8 Q And what was the amount of the
9 economic benefit that you calculated?

10 A The economic benefit was calculated
11 to be \$19,266.

12 Q Okay. Now, was the economic benefit
13 added to the gravity component?

14 A Yes, the economic benefit was added
15 to the gravity component.

16 Q Did you discuss any adjustment
17 factors?

18 A We, you know, EPA considered a
19 judgement factor of negligence of ten percent
20 which is 8,656.

21 Q And why did you consider this
22 adjustment?

23 A This adjustment was based on all the
24 efforts done by the agency trying to reach the
25 operator and the owner, visiting the owner of

1 the facility and trying for them to take
2 action about the products or waste abandoned
3 at the warehouse and we didn't get any quick
4 response for that action.

5 Q So when you say adjustment factor of
6 8,000, was this an increase or a decrease?

7 A It was an increase to the penalty
8 for negligence.

9 Q So what was the total penalty
10 calculation then for count one?

11 A For count one the total penalty is
12 \$114,598.00.

13 Q And could you sort of describe the
14 different amounts, what constituted that, what
15 came up to that amount?

16 A Okay. The first part of the penalty
17 is the gravity component. That gravity was
18 32,500 for the maximum amount that is
19 permitted by law. The other fourteen waste
20 streams were calculated by 3,869. From that
21 amount we added and we took the ten percent
22 for the negligence adjustment factor and we
23 added what we call the second, the other
24 factor, economic benefit which is that the
25 facility didn't pay what every other facility

1 would have paid for taking care of those
2 wastes, it was avoid the cost.

3 Q Now, what did the total come up to?

4 A \$114,598.

5 Q Now, turning now to count two of the
6 complaint, the failure to minimize the risk of
7 fire, explosion, or release. Now what was the
8 potential for harm in that count?

9 A EPA decided that the potential for
10 harm was a major.

11 Q Major. Now, could you tell us why?

12 A It presented, it posed a risk to the
13 human health, to the workers and the
14 environment and they were like broken
15 containers, opened containers, leaking
16 containers without excuse all over the floor
17 of the warehouse. The warehouse was open, was
18 not under control of any employee from the
19 facility, I mean Aguakem and they were
20 abandoned and that is why and the proximity of
21 the Caribbean Sea which is very nearby the
22 warehouse.

23 Q Now, what was the extent of the
24 deviation for this count?

25 A The extent of deviation from the

1 regulation was a major, too because they
2 didn't minimize the risk of explosion, of
3 releases of these chemicals or fire.

4 Q Okay.

5 A They didn't prevent that. It is a
6 major.

7 Q Did you use the high point in the
8 major?

9 A For the gravity component we used
10 the high point in the major cell matrix which
11 is 32,500.

12 Q And why?

13 A Because this is considered a major
14 deviation and potential harm.

15 Q Was there more than one instance a
16 violation in this count?

17 A Yes, they were.

18 Q How many instances of violation were
19 in Count Number 2?

20 A They all did, you know, they could
21 be counted individually but we didn't do that.
22 It was amounted all together and we just give
23 them the maximum penalty which is
24 32,500 but we do have some multi base.

25 Q How many instances?

1 A You know, since the day that they
2 left the building, the warehouse until the day
3 that for authority of EPA, stabilized the
4 situation so we have like forty two days,
5 forty three days counting, not counting the
6 first day that we found the violation.

7 Q Now, the specific day, when you say
8 they left, you mean, when was that, when they
9 left?

10 A When they move out of the warehouse
11 which is dated December 28, 2006.

12 Q Okay.

13 A And when the site, you know, the
14 warehouse was stabilized.

15 Q Who stabilized this site?

16 A EPA Removal

17 Q I am sorry.

18 A EPA Removal Support Team.

19 Q So you took that date when the EPA
20 removal -

21 A Stabilized the risky situation.

22 Q Now, could you tell us how did you
23 calculate then the multiple instances of
24 violation?

25 A So, since it lasted 43 days, the

1 first day we don't count it. We took the
2 maximum penalty, 32,500 and the other days we
3 have, the attachment team what we call multi
4 day matrix and we selected again major for
5 potential harm, major for extent of the
6 deviation and we took the mid point of that
7 cell.

8 Q Okay and why did you do that?

9 A We again considering, considering
10 other factors like, you know, the way it had
11 been stabilized; that the waste, you know,
12 even though it was released, it was contained
13 inside the building so we decided to take the
14 mid point as a good faith effort.

15 Q Mr. Gonzalez, did you calculate any
16 economic benefit for this count?

17 A We didn't calculate economic
18 benefits.

19 Q And did you discuss any adjustment
20 factors in this count?

21 A Yes, we again took the adjustment
22 factors to this penalty for negligence, for
23 not taking strong action about the waste.

24 Q And what did you apply, you know, as
25 an adjustment factor?

1 A The efforts, you know, we went and
2 visited them like twice, we informing them. We
3 give them the opportunity to take care of the
4 chemicals.

5 Q And can you tell us what was the
6 total penalty amount for count two?

7 A For this count it was 214,497.

8 Q Could you rephrase that? How much
9 was it?

10 A 214,497.08.

11 Q Okay. And could you tell us how
12 much was for gravity?

13 A For the gravity we got 32,500.

14 Q Total, the total amount for gravity
15 component.

16 A Gravity component is like 32,500
17 gravity component.

18 Q And for getting 214,495, you said
19 you used the adjustment for negligence and
20 what was that?

21 A We got 42 days multiplied by
22 3,869.00.

23 Q And how much did that come up to?

24 A It came out to 162,498.

25 Q Okay and then -

1 A We took the ten percent of that and
2 then we calculated the final total penalty for
3 discount.

4 Q Now, turning to count three of the
5 complaint, failure to comply with the used oil
6 requirement. What was the potential for harm?

7 A The potential for harm for the used
8 oil requirement was minor.

9 Q Okay and what was the extent of the
10 deviation?

11 A Extent of deviation we considered it
12 major.

13 Q Why?

14 A Because they didn't comply with the
15 used oil regulations.

16 Q Did you use the high point in the
17 matrix?

18 A I think we used the mid point. The
19 high point of the matrix was taken, that is
20 why.

21 Q And what was the gravity based
22 penalty for this violation?

23 A It was 3,868.

24 Q Was there more than one instance of
25 violation?

1 A No, it was just one instance.

2 Q And did you calculate an economic
3 benefit for this violation?

4 A We did not calculate economic
5 benefits for this count.

6 Q And did you discuss any adjustment
7 factors?

8 A We didn't use any adjustment factors
9 for this count.

10 Q Did you apply any adjustment
11 factors?

12 A We didn't apply any adjustment
13 factors.

14 Q So what was the total penalty for
15 count three?

16 A For count three we have 3,868.

17 Q Now, what was the total proposed
18 penalty calculated for counts one, two and
19 three, please?

20 A The final proposed penalty, it was
21 \$332,963.00.

22 Q And what you just, all that you have
23 described, does that exact, the description of
24 how you calculated the penalty, is that
25 reflected in the document that is attached to

1 the complaint?

2 A Yes, it does. The complaint follow
3 all the steps taken to come down to give a
4 final proposed penalty.

5 Q And the attachment, where you say
6 the narrative of the calculation of the
7 penalty.

8 A It was explained.

9 Q Is that a true and accurate account
10 on how you calculated the penalty?

11 A Yes, it does.

12 MS. RODRIGUEZ: Your Honor, I lost track.
13 Did we admit the document into evidence?

14 THE JUDGE: Yes.

15 MS. RODRIGUEZ: We did, okay. I have no
16 more questions for the witness, Your Honor.

17 THE JUDGE: It is right now five of
18 twelve. It could be an ideal time to break for
19 lunch before we go into cross of this witness
20 unless you believe that would be a very short
21 period?

22 MR. LLORENS: No, it is not going to be.

23 THE JUDGE: Okay. Then this would be an
24 ideal time to break. How about if we re-
25 assemble at one P.M.?

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MS. RODRIGUEZ: Yes, Your Honor.

THE JUDGE: Excellent. Thank you.

(Whereupon at 11:55 A.M. luncheon recess was taken)

A F T E R N O O N S E S S I O N 1:00
p.m.

THE JUDGE: If the witness would like to take the stand, please and again I remind the witness that he is still under oath.

THE WITNESS: Thanks.

MR. LLORENS: Good afternoon, Your Honor.
Good afternoon, Mr. Gonzalez.

CROSS EXAMINATION
BY MR. LLORENS:

Q Mr. Gonzalez, correct me if I am wrong but I believe this morning you testified that the EPA gave Aguakem an opportunity to remove its chemicals from the former facility, did I get that right?

A Yes.

Q I thought I heard you testify this morning that the EPA had provided the

1 respondent, Aguakem Caribe, the opportunity to
2 remove its chemical from the former facility.
3 Did I hear you correctly?

4 A I would say, yes.

5 Q You did, that is what you testified
6 to. Can you tell me when the EPA gave Aguakem
7 an opportunity to remove its chemicals from
8 the former facility?

9 A Well, on the date of the inspection,
10 that was on February 2, 2007 we also visited
11 the new facilities of Aguakem and we spoke
12 with Jose Unanue. We did an inspection of
13 that area, at that facility and we also have
14 like a closing meeting, closing conference,
15 you know, like a closing meeting, closing
16 conference and there at that time, he didn't
17 tell us what we call the action plan. We were
18 telling them about our observations at the
19 facility and we didn't get any feedback about
20 telling us that he will be taken care of those
21 abandoned chemicals.

22 Q Did you say to Aguakem Caribe that
23 Aguakem Caribe could come in and collect its
24 materials at the former facility?

25 A We discussed it; that he is the

1 owner, I mean, the operator and owner of those
2 chemical wastes.

3 Q Okay but did you tell Aguakem Caribe
4 that they could come in and take the
5 materials?

6 MS. RODRIGUEZ: Your Honor, he has already
7 responded.

8 MR. LLORENS: I don't think he has, Your
9 Honor.

10 MS. RODRIGUEZ: Yes, he has.

11 THE JUDGE: I will allow him one more time
12 to answer but I believe it was answered that
13 we discussed it. That is what I heard.

14 EXAMINATION CONTINUED

15 BY MR. LLORENS:

16 Q Okay. I am going to take that
17 answer. What did you say in that discussion?

18 A In that discussion we asked him, to
19 Jose Unanue, a couple of questions about the
20 origin of the waste, the waste, origin, about
21 the existing condition at the warehouse,
22 building 6 at the Port Authority and we did
23 mention that they had some chemicals left
24 behind.

25 Q Did you say anything else?

1 A We asked about what they were going
2 to do about that.

3 Q Did you ask Mr. Jose Unanue what he
4 was going to do about the chemicals being
5 there?

6 A The chemicals left behind in the
7 warehouse.

8 Q And what did he say?

9 A He didn't clearly respond and all
10 the answers that I got from my closing
11 conference were short answers or he need to
12 find out about the situation.

13 Q Okay. Did you ever submit to Aguakem
14 anything in writing that expressed that they
15 would have the opportunity to remove the
16 chemicals from the former facility?

17 A We submitted the information request
18 letter identifying, you know, pretty much the
19 situation at the warehouse.

20 Q Okay. Are we making reference to
21 the May 12, 2008 information request letter?

22 A Yes.

23 Q Okay. Other than the May 12, 2008
24 information request letter, did the
25 Environmental Protection Agency state to

1 Aguakem Caribe that they could remove their
2 chemicals from the former facility?

3 A What I recall, we sent out a second
4 information request letter. I don't remember
5 the right date. Isn't it the 7th but, you
6 know, requesting then again about the first
7 one.

8 Q Okay. Prior to May 12, 2008,
9 whatever is contained in that information
10 request, is there anything in writing that the
11 EPA submitted to Aguakem that indicated that
12 Aguakem Caribe could take the chemicals from
13 the former facility?

14 A From the records I think, when they
15 needed to remove the chemicals from the
16 building, it was like an administrative
17 concern between the parties that the Port
18 Authority, EPA and Aguakem was invited,
19 included, participate in the administrative on
20 consent order.

21 Q Okay. Are you making reference to a
22 June, 2007 administrative order on consent
23 between the Environmental Protection Agency,
24 Aguakem Caribe and the municipality of Ponce,
25 Puerto Rico?

1 A If that is the date on the order,
2 yes.

3 Q Okay. Is it your testimony that that
4 administrative order on consent to notify
5 Aguakem Caribe that they could remove their
6 materials from the former facility?

7 MS. RODRIGUEZ: Your Honor, he is putting
8 words into the witness. The witness --

9 THE JUDGE: Pardon me?

10 MS. RODRIGUEZ: The witness has not stated
11 that. I mean, and the order is clear and if he
12 wants this submitted and presented, he hasn't
13 even identified it and he is, you know, he
14 already responded. Now, he

15 THE JUDGE: Well, I don't believe we have
16 clear a yes or no on the question but before
17 moving on to the administrative order on
18 consent, I do want to instruct the witness to
19 answer yes or no as to whether there was a
20 prior written statement from the EPA. So I am
21 asking the witness the question, was there a
22 prior written statement from the EPA?

23 THE WITNESS: Yes. EPA, you know, EPA
24 issued what we call like a federal notice or
25 federal interest to all the parties. That

1 would include Aguakem, Port Authority of
2 Ponce. That is a minimum threat posed to the
3 human health and development and they had the
4 opportunity to take action to that situation
5 and they were notified, what we call the FNFI.

6 EXAMINATION CONTINUED

7 BY MR. LLORENS:

8 Q Do you have the date when that was
9 submitted?

10 A That was February 9, 2007.

11 Q Okay. Do you know what is stated in
12 that notice?

13 A EPA have identified like to me a
14 potential risk to human health and the
15 environment and to control the potential
16 hazardous waste spill which affects water and
17 waterways in the area and identified Aguakem
18 as a potential responsible party and here they
19 had the opportunity to take action on that
20 situation.

21 Q Okay. Were you reading from
22 something?

23 A Yes, I have my documents.

24 Q Can you tell me what you are reading
25 from?

1 A I am reading from the Exhibit 3, the
2 Compliance Evaluation Inspection, page eight
3 at the end, last paragraph.

4 Q Okay. Now, did EPA send Exhibit 3
5 to Aguakem Caribe?

6 MS. RODRIGUEZ: Excuse me?

7 EXAMINATION CONTINUED

8 BY MR. LLORENS:

9 Q Did EPA send Exhibit 3 to Aguakem
10 Caribe?

11 THE JUDGE: How about if we identify it in
12 some way other than Exhibit 3.

13 MR. LLORENS: What we are referring to,
14 Your Honor is what has been titled RCRA
15 Compliance Evaluation Inspection. It has been
16 marked as Exhibit 3.

17 MS. RODRIGUEZ: Your Honor, that was not
18 part of the direct, whether we had or did not,
19 he has not set the basis whether we had to
20 submit it to the respondent.

21 THE JUDGE: Okay. That could probably be a
22 first, something that is more appropriately
23 addressed as a legal argument but I am going
24 to allow a fair amount of latitude on cross
25 since the documents that have been admitted

1 are coming into the record and even though the
2 testimony may have not touched on every aspect
3 of each and every report, the document itself
4 has now been admitted so I will allow a fair
5 amount of latitude on cross.

6 EXAMINATION CONTINUED

7 BY MR. LLORENS:

8 Q Do you have an answer?

9 A Can you repeat it, please.

10 Q Did the EPA ever submit to Aguakem
11 Caribe the RCRA Compliance Report?

12 A It was never requested by Aguakem
13 and we didn't submit it.

14 Q So the answer is, no?

15 A Is no.

16 Q Okay. So this wouldn't be a written
17 document that the EPA sent to Aguakem Caribe
18 that informed them of the opportunity to
19 remove the materials from the former
20 facilities, is that correct?

21 MS. RODRIGUEZ: Your Honor, he was first
22 making reference to the FNFI and that is where
23 if I recall the witness stated that the
24 respondent was notified through the FNFI, not
25 the I inspection report. Now, he is putting

1 words into the witness. I mean, the witness
2 hasn't stated that that was how they were
3 notified.

4 THE JUDGE: Okay. Counsel, what is the
5 acronym you are using here, FNFI?

6 THE WITNESS: It is the Federal Notice of
7 Federal Interest, FNFI.

8 MS. RODRIGUEZ: And that is what counsel
9 actually asked and what the witness testified.
10 He did not make any reference that that was
11 the submitted, you know, that actually was
12 notified during the inspection report. He
13 just asked whether he was reading from
14 something and, of course, he -

15 THE JUDGE: Right, we did go off on a
16 tangent.

17 MS. RODRIGUEZ: Right.

18 THE JUDGE: So I think it would be better
19 to return to the FNFI.

20 MS. RODRIGUEZ: FNFI.

21 THE JUDGE: FNFI.

22 EXAMINATION CONTINUED

23 BY MR. LLORENS:

24 Q Do you have knowledge of what was
25 stated in the FNFI?

1 A In the FNFI, they described the risk
2 associated with the abandonment of those
3 chemicals and there is another section in the
4 FNFI that would give you the opportunity to
5 take action and it is a time limit offer to
6 the owner, in this case to the responsible
7 parties. If they not, EPA will take over and
8 we do the controlling, stabilizing and
9 disposal of the chemicals.

10 Q Who would have a copy of this
11 letter?

12 A I think Aguakem should have one,
13 Ponce Port Authority should have another copy
14 and EPA should have a copy.

15 MR. LLORENS: I have never seen that
16 document.

17 MS. RODRIGUEZ: What were you referring
18 to?

19 MR. LLORENS: The FNFI. Is that part of
20 our record?

21 MS. RODRIGUEZ: Well, that was something
22 that your client received so I guess you
23 should ask your client.

24 MR. LLORENS: So it is not in the record.

25 MS. RODRIGUEZ: No, I haven't presented it

1 into evidence. It was brought up during the
2 process. I didn't bring that during the
3 direct, Your Honor.

4 MR. LLORENS: Okay.

5 THE JUDGE: When we state objections, if
6 in the future we can just object to me
7 individually rather than to each other. That
8 would probably be helpful.

9 EXAMINATION CONTINUED

10 BY MR. LLORENS:

11 Q Okay. Did the FNFI expressly state
12 to Aguakem that they had the opportunity to
13 remove the materials from the former facility?

14 A It did.

15 Q It says that expressly?

16 A It did. It is clearly written that
17 they have the opportunity to do the clean up
18 instead of EPA taking over because of the risk
19 associated with the conditions at the
20 warehouse.

21 Q Okay. Other than the FNFI, do you
22 recall any communication from the EPA that
23 stated to Aguakem that they would have the
24 opportunity to remove the chemicals from the
25 former facility?

1 A In general when they signed it, the
2 Administrative And Consent Order and again
3 they should have given, you know, the
4 opportunity again to take, you know, to take
5 action and minimize the risk associated with
6 the warehouse.

7 Q Okay. So if I am understanding your
8 testimony correctly, you are saying that the
9 Administrative Order On Consent states that
10 Aguakem Caribe would have the opportunity to
11 remove the materials from the former facility?

12
13 A Yes, I do.

14 Q Now, I believe you testified that
15 you first heard of Aguakem Caribe when you
16 received a telephone communication from the
17 Port Authority of Ponce.

18 A That is correct.

19 Q Do you remember the date of that
20 telephone conversation?

21 A I believe it was January, 2007 at
22 the end.

23 Q Okay. Do you remember what was said
24 to you in that conversation?

25 A Well, the conversation wasn't

1 directed to me. It could have been directed to
2 my director or to my management and then I was
3 directed to attend the concern.

4 Q Okay so you didn't have personal
5 knowledge of the telephone communication?

6 A No.

7 Q How did you come to know about the
8 telephone communication?

9 A EPA management informed me about the
10 situation and they wanted to act about the
11 complaint and the description of the situation
12 at the warehouse so that is why I just
13 continue with my visit.

14 Q Okay but you were not told any of
15 the specifics of the communication, the
16 telephone communication?

17 A Well, no.

18 Q Okay. You were just told there was a
19 situation at this facility, to go take a look?

20 A Exactly. That is correct.

21 Q So that is what you did, you went
22 out on February 2, 2007 and inspected the
23 facility?

24 A That is correct.

25 Q Okay. I believe you testified

1 earlier that on that date you determined that
2 the materials had been abandoned or disposed
3 of. Am I recalling your testimony correctly?

4 A No.

5 Q No. What did you say about that?

6 A What we did, it was an assessment of
7 the existing conditions of the facility, in
8 this case the warehouse and we needed to
9 collect additional information in order to
10 complete assessment of the compliance status
11 and that is why the same day we went and visit
12 Aguakem at the new facilities.

13 Q On February 2, 2007, is it your
14 testimony now that you made no determination
15 as to whether the materials were abandoned or
16 disposed of?

17 A We didn't conclude it at that time
18 because we already assessed it, whatever it
19 was over there at the time of the inspection
20 and we brought it to Jose Unanue the same day
21 in the afternoon that we visit him about the
22 conditions that they were like deteriorated,
23 they were open, leaking, they were, not
24 abandoned, they were over there and we didn't
25 have any supervision of those waste.

1 Q When did you conclude that the
2 materials were abandoned or disposed of?

3 A Well, since we didn't get any action
4 proposed at the closing meeting on the same
5 date of the inspection after talking to Jose
6 Unanue, we proceeded to refer the case to the
7 emergency team of EPA.

8 Q On what date did you determine to do
9 that?

10 A On the same day of inspection, after
11 the closing meeting we referred the case
12 because of the risk posed by the warehouse to
13 our emergency team.

14 Q You referred the case on February 7,
15 2007?

16 A We spoke and before that, yes.

17 Q Was that the day you referred it to
18 the -

19 A Yes, I did.

20 Q Okay so how many hours did you give
21 Aguakem Caribe to take action with regard to
22 the facility?

23 A Well, we are talking about February
24 2, 2007 and February 9, 2007, he was informed
25 about the potential risk and the opportunity

1 to take action and minimize those risks.

2 Q Right and then you referred it to
3 the EPA unit that deals with that on what day?

4 A That is correct.

5 Q On the same day?

6 A On the same day that I make my call.

7 Q So the day that you informed Aguakem
8 Caribe that they could remove the materials is
9 the same day you referred the removal
10 operation to an EPA unit? That is your
11 testimony?

12 A Yes, that is correct because of the
13 risk present at the warehouse.

14 Q Okay. How many hours did you give
15 Aguakem Caribe to remove the materials from
16 the former facility?

17 MS. RODRIGUEZ: Your Honor, he has already
18 responded. This is the third time he asked
19 that question.

20 THE JUDGE: Okay. I am somewhat confused.
21 I am hearing two dates, February 2nd and
22 February 7th. Is it, I am not understanding
23 correctly?

24 THE WITNESS: Okay. February 2nd is the
25 date of the inspection, the first, February

1 2nd.

2 THE JUDGE: Is the inspection date?

3 THE WITNESS: Inspection date, you are
4 correct, yes.

5 THE JUDGE: And what date did you refer
6 it?

7 THE WITNESS: On February 9th is the date
8 that it was given, a notification for the
9 opportunity to clean up or to move the
10 chemicals from the warehouse.

11 EXAMINATION CONTINUED

12 BY MR. LLORENS:

13 Q And your referral was on February
14 7th, is that correct?

15 A The inspection February 2nd, and the
16 notification was on February 9th.

17 Q And your referral to the EPA Unit
18 was on February 7th?

19 A No, no. I referred the case on the
20 same date of inspection.

21 THE JUDGE: Okay, wait a minute. On the
22 what date of inspection?

23 THE WITNESS: February 2nd.

24 THE JUDGE: Okay.

25 THE WITNESS: I may have mixed the dates.

1 I am sorry.

2 THE JUDGE: Okay. I am still, I am at a
3 total loss now, I am not either understanding
4 or I am not hearing the right words. On
5 February 2nd, two

6 THE WITNESS: Yes.

7 THE JUDGE: The inspection?

8 THE WITNESS: Ahum.

9 THE JUDGE: On what day did you have the
10 closing meeting?

11 THE WITNESS: On the same day in the
12 afternoon.

13 THE JUDGE: On the same day?

14 THE WITNESS: On the same day.

15 THE JUDGE: Okay. On what day did you
16 refer it to for removal?

17 THE WITNESS: On the same day.

18 THE JUDGE: February 2nd?

19 THE WITNESS: Second.

20 THE JUDGE: Okay. So what is February 9th
21 and February 7th, what are those dates?

22 THE WITNESS: February 9th is the day that
23 EPA handed in the FNFI which is the Notice of
24 Federal Interest for them to take the action
25 to, you know, to clean up, to clean up the

1 warehouse.

2 THE JUDGE: Okay and did anything happen
3 on the 7th?

4 THE WITNESS: No.

5 THE JUDGE: No, okay. Okay.

6 EXAMINATION CONTINUED

7 BY MR. LLORENS:

8 Q Didn't you meet with Aguakem Caribe
9 on February 7th? Didn't you inspect the Canas
10 facility on February 7th?

11 A No, I did not.

12 Q You didn't meet with Jose Manuel
13 Unanue on February 7th?

14 A No, on February 2nd.

15 Q The second?

16 A The second, everything was done on
17 February 2nd.

18 Q I am going to go back to this issue
19 of when you concluded that the materials had
20 been abandoned or disposed of? Do you recall
21 the date on which you made that determination?

22 A On February 2nd after the closing
23 meeting, we didn't have any interest, any
24 feedback like responsibly taking care of the
25 situation that we identified at the warehouse

1 so we didn't see any intention from the owner
2 of the chemical waste at the warehouse to be
3 taking care of.

4 Q Did you speak to the owner?

5 A Well, I spoke to the person in
6 charge, Jose Unanue at that time.

7 Q The person in charge of the what?

8 A Of the management and the relocation
9 activities.

10 Q How do you know that?

11 A Because he say so.

12 Q He was in charge of the relocation
13 activities?

14 A He say so, yes.

15 Q Okay. Did you not receive a
16 communication from Aguakem Caribe on February
17 7, 2007?

18 A You mean like a letter, formal
19 letter?

20 MR. MATEO DURANGO: Objection, assuming
21 facts not in evidence.

22 MR. LLORENS: I am asking.

23 THE JUDGE: I will allow it.

24 THE WITNESS: I don't recall.

25 EXAMINATION CONTINUED

1 BY MR. LLORENS:

2 Q Okay. Did you not receive an
3 electronic communication from Aguakem Caribe
4 on February 7, 2007?

5 A I may have received it.

6 Q Okay. Do you recall receiving -

7 A I may recall receiving but I don't
8 recall the exact date and time.

9 Q Okay but you recall receiving the
10 communication from Aguakem Caribe?

11 A Yes.

12 Q Do you recall what that
13 communication was in reference to?

14 A I do not.

15 Q Do you recall if it was about the
16 former facility?

17 MS. RODRIGUEZ: He already has answered,
18 Your Honor.

19 THE JUDGE: Asked and answered.

20 EXAMINATION CONTINUED

21 BY MR. LLORENS:

22 Q Do you recall if it offered
23 cooperation with the EPA?

24 A I do not.

25 Q Okay. I would like to go back to my

1 question about when you determined that the
2 facility, that the material in the facility
3 had been abandoned or disposed of and you may
4 have answered it but I am sorry, I don't
5 recall. Do you recall the date?

6 A Well, I was there on February 2, and
7 conducted inspection. I also visited the new
8 facilities. I asked him about those chemical
9 waste products, you may call it and then he
10 was again notified on February 9th like what
11 is he going to do about that so the non action
12 or taking an action definitely define those
13 chemical products abandoned as a solid waste.

14 Q Okay so you are saying, what date,
15 February 9th?

16 A February 9th.

17 Q Okay. On February 9th, --

18 A Yes.

19 Q And the basis of your determination
20 was what?

21 MS. RODRIGUEZ: Your Honor, he has already
22 stated on numerous occasions that he made the
23 determination first of all, first --

24 MR. LLORENS: Objection, Your Honor.

25 MS. RODRIGUEZ: Your Honor.

1 THE JUDGE: Just let her finish.

2 MR. LLORENS: She shouldn't testify.

3 MS. RODRIGUEZ: I am not testifying.

4 MR. LLORENS: If she just states the
5 objection.

6 THE JUDGE: One at a time and Miss
7 Rodriguez was speaking.

8 MS. RODRIGUEZ: Your Honor, we can go back
9 on the record. He has asked that question on
10 several occasions and he has responded when he
11 made that determination. He has already stated
12 that and as a matter of fact he even stated it
13 before, prior in another question so maybe we
14 can go to the record.

15 MR. LLORENS: My question is, what was the
16 basis of the determination?

17 THE JUDGE: We have moved on and I will
18 allow the determination but this has been
19 asked in various forms and this will be the
20 last time we go to this question.

21 EXAMINATION CONTINUED

22 BY MR. LLORENS:

23 Q Okay.

24 A When was the examination done, first
25 opportunity was on February 2nd, that he

1 didn't really responded that he will be taking
2 care of those, you may want to call it
3 products and then again a second opportunity
4 because of the risk posed at the time that we
5 were there, he got the FNFI for a second time
6 telling him that what he going to do about
7 those. That was two times opportunity that he
8 had to really act and take care of whatever,
9 at that time back he may have called it
10 products but they were abandoned, we didn't
11 see any action taken from the Aguakem and that
12 is why we needed to take action because of the
13 risk.

14 Q Was there any other basis besides
15 what you just testified to, just to close the
16 door on this.

17 A I think they had the opportunity to,
18 you know, relevant to the Administrative Order
19 On Consent when they were agreeing to, you
20 know, to take part to really, you know, do
21 something about those chemical wastes.

22 Q Okay. You testified that you had, I
23 believe you testified that you had done two
24 inspections of water treatment facilities
25 previously?

1 A Yes, I did.

2 Q Do you remember the dates of those
3 inspections?

4 A I have been in the Caribbean office
5 for the last ten, twelve years and I have been
6 conducting inspections on a routine basis and
7 it is really hard for me to recall the exact
8 dates and the facility, you know, that I did
9 several inspections.

10 Q But you remember there were two but
11 you don't remember when or where?

12 A Not exactly when.

13 Q How about where, do you remember
14 where?

15 A Well, Puerto Rico.

16 Q No, what were the facilities that
17 you inspected?

18 A They manufacture chemicals for water
19 treatment.

20 Q For water treatment?

21 A Ahum.

22 Q Okay. Do you remember the locality
23 of where those -

24 MS. RODRIGUEZ: Your Honor

25 MR. MATEO DURANGO: Objection, relevance.

1 THE JUDGE: Many of these questions are
2 repeats.

3 MR. LLORENS: I don't think I have asked
4 where, the locality.

5 MR. MATEO DURANGO: Objection, relevance.

6 MR. LLORENS: The relevance is, I am
7 trying to determine which ones he went to.
8 Knowing that we might be able to find out
9 which facilities he has inspected.

10 THE JUDGE: Okay. Once again, please
11 address not directly but each other. It
12 becomes argumentative at that point.

13 MS. RODRIGUEZ: The objection will be that
14 the witness has already responded to his
15 question that he doesn't remember and he
16 stated in Puerto Rico.

17 THE JUDGE: Okay. The objection is
18 sustained.

19 EXAMINATION CONTINUED

20 BY MR. LLORENS:

21 Q Do you recall what the purpose of
22 those inspections were?

23 A Those were like core programs
24 inspections, routine program inspections.

25 Q Did you make any determinations

1 during those inspections as to whether the
2 materials had been abandoned or disposed of?

3 A I don't recall the details about the
4 action we took.

5 Q Do you recall if any of your work
6 for EPA, whether you made a determination of
7 whether materials had been abandoned or
8 disposed of?

9 A Yes, I do.

10 Q Okay, can you tell me when you have
11 done that.

12 A We have done it. You know, many
13 occasions, on occasions company that really
14 left behind chemical products that they, when
15 they be gone, abandoned, they are considered
16 as solid waste and some of them are hazardous
17 waste.

18 Q Do you have a specific recollection
19 of a situation?

20 A Well, we have a couple of sites but
21 do I need to answer that?

22 THE JUDGE: Yes.

23 THE WITNESS: All right. We have cases
24 like Duramex case in which we found -

25 THE JUDGE: You don't necessarily have to

1 identify the company.

2 THE WITNESS: Okay. Thank you. Yes, we
3 have a facility that we have found products
4 that has been left behind that it had never
5 been reclaimed, that never has been taken back
6 and that is why when they sometime, you know,
7 when they pose a risk, we really need to take
8 action about that.

9 EXAMINATION CONTINUED

10 BY MR. LLORENS:

11 Q Okay. Do you recall the period of
12 time in this Duramex situation, how long the
13 product had been untouched?

14 A Same procedure. We went to the
15 facility, we try to talk to the owners or
16 operators and when we evaluate that risk, we
17 send them like a field notice of interest, a
18 FNFI and they have an amount of time to take
19 action, to take back the product, if they not,
20 EPA will do the action.

21 Q How did you become aware that the
22 former facility Aguakem had stopped moving
23 materials from the former facility on December
24 28, 2006?

25 A We learned it on the same visit

1 that, on the same inspection date, February 2,
2 2007 that we visited the Port Authority.

3 Q The Port Authority was the source of
4 that information?

5 A Yes, they were.

6 Q Okay. Did they tell you why Aguakem
7 had stopped moving materials on December 28,
8 2006?

9 A Yes, I knew.

10 Q What did they tell you?

11 A They say that they will renovate the
12 port as part of the Port of the Americas and
13 they needed to renovate the whole area and the
14 lease, the tenant lease has expired and they
15 needed Aguakem to move out of the warehouse.

16 Q Okay. Did they say anything about
17 why Aguakem stopped moving materials from the
18 former facility on December 28, 2006?

19 A They make it known, the Port of
20 Ponce representative did mention that they
21 were moving out of the port but they didn't
22 mention anything else. The lease agreement,
23 that it was expired a long time ago.

24 Q Right. Did they inform you that
25 Aguakem had communicated to them that there

1 was an issue about potential lead
2 contamination?

3 MS. RODRIGUEZ: Objection, Your Honor.
4 First of all the facts were not presented in
5 the direct and he has already responded what
6 Port of Ponce told him and then he said, he
7 mentioned that it was the lease. Now he is
8 putting facts that have not been presented to
9 the witness. He is bringing the facts. We have
10 not presented that.

11 THE JUDGE: Counsel?

12 MR. LLORENS: Your Honor, he testified
13 that he was informed by the Port Authority, he
14 is just giving a recitation and I am just
15 asking whether there was communication
16 regarding lead contamination. If the answer is
17 no, the answer is no. The answer is yes, the
18 answer is yes.

19 THE JUDGE: Just a moment.

20 MS. RODRIGUEZ: I am sorry, objection.
21 What is the relevance? He has not shown
22 relevance as to the actual days being brought
23 before this court.

24 MR. LLORENS: The relevance, Your Honor, I
25 think is patent.

1 MS. RODRIGUEZ: Sorry?

2 MR. LLORENS: Patent. The position of the
3 respondent throughout this case has been that
4 he never intended to abandon or dispose of the
5 materials; that the situation arose because of
6 what it believed to be lead contamination at
7 the facility, that it informed me, the owner
8 of the land that this was an issue. Please
9 resolve the issue so we can complete the
10 removal of the materials.

11 MS. RODRIGUEZ: Your Honor, and he will
12 have his opportunity when he presents the
13 evidence that he has to prove that but we have
14 not brought that on our direct and it would be
15 bringing facts right now that were not raised
16 during the direct nor have we in any way
17 brought that. He will have his opportunity
18 when he presents his evidence and his case.

19 THE JUDGE: I agree and I am going to
20 sustain the objection.

21 EXAMINATION CONTINUED

22 BY MR. LLORENS:

23 Q In your direct my recollection is
24 that you testified that the material for the
25 former facility was left, my recollection, all

1 alone without supervision. Do you recall
2 having testified about that?

3 A Yes, I do.

4 Q Okay. What did you mean by without
5 by supervision?

6 A When I went to the facility I asked
7 in this case, the person represented by the
8 authority, executive, auxiliary executive
9 director who was the owner or who was taking
10 care of those waste in the warehouse and they
11 say they belong to Aguakem.

12 Q Okay but the owner of the facility
13 as opposed to the operator of the facility was
14 the Port Authority, correct?

15 A The owner is the Port Authority.

16 Q Okay. Were they not supervising
17 these facilities?

18 A They could have been supervising the
19 perimeters, the structures but they were not
20 supervising the waste or the chemicals inside
21 the building.

22 Q Well, did something prevent them
23 from doing that?

24 A They were not responsible or they
25 were not the owners so they needed to know

1 what to do with it.

2 Q They were not responsible?

3 MS. RODRIGUEZ: Your Honor -

4 THE JUDGE: Is there an objection?

5 MS. RODRIGUEZ: Asked and answered, Your
6 Honor.

7 THE JUDGE: Okay. I will allow the
8 question again.

9 EXAMINATION CONTINUED

10 BY MR. LLORENS:

11 Q Did you say that the Port Authority
12 was not responsible for it?

13 MS. RODRIGUEZ: Now he is putting words,
14 Your Honor, he did not say that.

15 EXAMINATION CONTINUED

16 BY MR. LLORENS:

17 Q What did you mean by the phrase, not
18 responsible?

19 THE JUDGE: Okay. We are going to be
20 treating this individual as a hostile witness
21 at this point and in more ways than one but I
22 am going to allow a fair amount of latitude,
23 to, one move this on, and two, because it is a
24 hostile witness. Maybe the exact words were
25 not used but I believe that for this

1 particular case we are going to the core of
2 the question so I will allow it.

3 EXAMINATION CONTINUED

4 BY MR. LLORENS:

5 Q My question was, did you say that
6 the Port Authority was not responsible for
7 supervising the materials?

8 A The Port of Ponce were responsible.

9 Q Okay but they weren't supervising?

10 A That is correct.

11 Q Okay and was that a violation by the
12 Port Authority?

13 A It is a violation.

14 Q A violation of what?

15 A Same violation that we did mention
16 in the past because they needed to make, you
17 know, because they are the owner of the
18 property, they will also be responsible and
19 they were cited with a notice of violation
20 letter that was sent to the Port Authority of
21 Ponce that in the absence of the presence of
22 Aguakem they needed to take care of those
23 chemical materials abandoned.

24 Q Did the Port Authority respond to
25 the notification that you just testified

1 about?

2 A Yes, they did. They did respond.

3 Q What did they say?

4 A We, at EPA identified the violations
5 which are typically the same that we did
6 mention before and they took responsibility
7 for the chemical waste abandoned at the
8 warehouse.

9 Q Did the EPA provide the Port
10 Authority an opportunity to remove the
11 materials from the former facility?

12 A Yes, we did, EPA did.

13 Q And how did the Port Authority
14 respond to that opportunity?

15 A They went into the administrative
16 order of consent to clean out the chemical
17 materials abandoned at the warehouse.

18 Q Okay, Aguakem mentioned that
19 administration order on consent as well,
20 didn't it?

21 A I think, yes, they did.

22 Q So to the degree that the Port
23 Authority availed itself of the opportunity
24 provided by the EPA to remove the materials,
25 so did Aguakem, correct?

1 A That is correct.

2 Q All right, so did the Port Authority
3 abandon or dispose of the materials?

4 A They were responsible because they
5 are the owner of the property.

6 MR. LLORENS: Objection, not responsive to
7 the question.

8 THE JUDGE: Please answer.

9 THE WITNESS: Can you repeat the question.

10 EXAMINATION CONTINUED

11 BY MR. LLORENS:

12 Q Did the Port Authority abandon or
13 dispose of the materials at the former
14 facility?

15 A We went after the owner and the
16 operator and we sent letters so they were
17 responsible.

18 MR. LLORENS: Your Honor, that is not a
19 response.

20 THE JUDGE: Right. Yes or no?

21 THE WITNESS: Can you repeat the question
22 for me, please?

23 EXAMINATION CONTINUED

24 BY MR. LLORENS:

25 Q Did the Port Authority of Ponce

1 abandon or dispose the materials at the former
2 facility?

3 A They did not.

4 Q They did not abandon them?

5 A Ahum.

6 Q And the Port Authority of Ponce took
7 exactly the same action as did Aguakem Caribe,
8 correct?

9 MS. RODRIGUEZ: Your Honor, objection. I
10 mean, what is he referring to, I am sorry? I
11 believe I lost the previous question.

12 THE JUDGE: What action?

13 MS. RODRIGUEZ: Yes.

14 THE JUDGE: Okay.

15 MS. RODRIGUEZ: What is he talking about
16 when he says -

17 EXAMINATION CONTINUED

18 BY MR. LLORENS:

19 Q Did Aguakem Caribe and the Port
20 Authority of Ponce take the same action with
21 regard to the materials at the former
22 facility?

23 A At the point that they were notified
24 and at the point that they have the
25 Administrative Order of Consent they took the

1 same actions.

2 Q At some other point did they take
3 some different action?

4 A Yes, they did.

5 Q What was the different action?

6 A At the beginning of the inspection
7 Port Authority showed responsibility and they
8 wanted to take action about the chemical
9 material being abandoned at the warehouse.
10 That is why we were called. That is why we
11 were notified; that they needed to know what
12 to do with those abandoned chemicals at the
13 warehouse.

14 Q Okay so what they did differently
15 was to inform you of the situation?

16 A They did.

17 Q And that is the difference between
18 the two parties, Aguakem Caribe and the Port
19 of Ponce, is that correct?

20 A Yes.

21 Q Okay. Do you know if Aguakem
22 Caribe ever notified the EPA about anything
23 regarding the former facility at any time?

24 MR. MATEO DURANGO: Objection. I believe
25 the Court already ruled on this question.

1 THE JUDGE: Well, that is assuming it is
2 going in a certain direction which has not
3 been established yet. It is a rather wide
4 open question.

5 MR. LLORENS: I know where I can't go. I
6 am going where I have been allowed to go.

7 THE JUDGE: Right.

8 THE WITNESS: Yes, Aguakem has responded
9 to EPA in different occasions responding to
10 our Information Request Letters, yes.

11 EXAMINATION CONTINUED

12 BY MR. LLORENS:

13 Q With regard to your determination
14 that Aguakem Caribe had abandoned or disposed
15 of the materials at the former facility, did
16 you interview Aguakem Caribe about that?

17 A I did interview Jose Unanue.

18 Q Okay.

19 A On the same day of the inspection.

20 Q Other than that, did you have any
21 other communication regarding your
22 determination?

23 A I don't recall because it was
24 referred to the emergency team program.

25 THE JUDGE: To the whom?

1 THE WITNESS: To the emergency respond
2 program.

3 THE JUDGE: Okay.

4 THE WITNESS: From EPA.

5 EXAMINATION CONTINUED

6 BY MR. LLORENS:

7 Q I am going to ask you, I think it
8 was Exhibit 1.

9 A Yes.

10 Q I am going to ask you a few
11 questions about a point in your testimony.
12 This is Exhibit 1. Do you have it in front of
13 you?

14 A Yes, I do.

15 Q My recollection was that you
16 testified that you prepared this?

17 A Yes, I did prepare this.

18 Q What do you mean by prepared? Did
19 you write it?

20 A I write it along with another co-
21 worker and I review it, I revise it before we
22 sign by our division director.

23 Q Okay. This is the essence, the
24 essence of what we are seeing here, is what
25 you prepared, correct?

1 A Yes.

2 Q Okay. Now, I point you to page
3 three, number twelve and I am going to ask you
4 to read it. I point you to the section that
5 says "That allegedly had left abandoned
6 chemical products and equipment at PPA's
7 property in a building identified as Building
8 6." Who alleged that the respondent had "left
9 abandoned chemical products"? Who made that
10 allegation?

11 A That was referring to Aguakem.

12 Q I understand that but you prepared
13 this you just testified, and you use the word,
14 "That allegedly had left abandoned chemical
15 products." What I want to know is who made
16 that allegation?

17 A Let me read it please.

18 Q Pardon me?

19 MS. RODRIGUEZ: If he will allow the
20 witness, he said, to read it.

21 MR. LLORENS: Of course.

22 THE JUDGE: The paragraph.

23 MR. LLORENS: I am sorry.

24 THE WITNESS: Okay. Do you want me to
25 read it?

EXAMINATION CONTINUED

BY MR. LLORENS:

Q No, I am asking you who made the allegation?

A Port of Ponce.

Q Did they make it on the January 29, 2007 notification?

A Yes, they did.

Q Okay. On your paragraph thirteen you reference a compliance evaluation inspection. My question with reference to that is what other types of inspections are there besides a compliance evaluation inspection?

A This is the only type of inspection review, compliance.

Q That is the only type?

A Yes.

Q So there is no other evaluation, there is no other inspections?

A They have other actions but they will call it like inspection.

Q Okay.

A Inspection is like formal enforcement, you know, that action.

1 Q Okay. I just was wondering if there
2 was some other type of inspection. In that
3 same paragraph and you continue, "The purpose
4 of the inspection was to evaluate Respondent's
5 compliance at its former facility." Can I ask
6 you, compliance with what?

7 A Compliance with the RCRA
8 requirements, the statutory.

9 Q The RCRA requirements with regard to
10 what?

11 A To the management of solid waste.

12 Q Okay. Had you on February 2, 2007
13 made a determination that there was solid
14 waste in the former facility?

15 A After the closed meeting on that day
16 with Aguakem representatives, they didn't show
17 any interest in recuperating or taking back
18 the chemical waste. Yes, I did.

19 Q Prior to the inspection which I
20 think was prior to the meeting that you are
21 referring to, had you made a determination
22 that there was solid waste at the facility?

23 A I did -

24 MR. MATEO DURANGO: Objection, asked and
25 answered.

1 THE JUDGE: I will allow it.

2 THE WITNESS: I did not.

3 EXAMINATION CONTINUED

4 BY MR. LLORENS:

5 Q Okay. So what was the basis of
6 having a compliance inspection to determine if
7 they would comply with the requirements
8 regarding solid waste if you had not made a
9 determination that there was solid waste at
10 the facility?

11 A This is like a typical EPA
12 procedure. We just go to the -- and I want to
13 add that we do inspect the facility that
14 generate hazardous waste or solid waste and a
15 facility that doesn't generate hazardous
16 waste. So we go investigate the situation and
17 we give an opportunity to the owner or
18 operator in this case to describe or to take
19 action about anything being placed in that
20 area and in this case the warehouse. That is
21 why I went personally to the Aguakem
22 representative to get the feedback about what
23 would be the action plan that they are going
24 to be taking.

25 Q Had you or the EPA ever inspected

1 Aguakem Caribe's former facility before
2 February 2, 2007?

3 A We had not.

4 Q Okay. So the reason you were there
5 to inspect presumably was because of what the
6 Port Authority had told you.

7 A A notification from the Port
8 Authority.

9 Q Okay. Now, at the inspection itself
10 I think you testified you discovered
11 violations of the EPA regulations, am I right?

12 A What I said was potential
13 violations.

14 Q Potential violations, you found
15 potential violations?

16 A Ahum.

17 Q What factor would you have to
18 consider to make this potential violations
19 into actual violations?

20 A That we need to get the feedback
21 from the owner or operator of those wastes to
22 know the specific nature of those chemical
23 products or waste.

24 Q All right. Now, in paragraph
25 sixteen of the complaint, Exhibit 1, you

1 recount what was stated in the meeting with
2 Mr. Jose Manuel Unanue.

3 A Ahum.

4 Q Okay, so this says findings during
5 both inspections, right?

6 A Yes.

7 Q Okay. Now, you said that you had, I
8 may have misunderstood your testimony before
9 but I think you said that you didn't do the
10 inspection of the other facility, is that
11 right?

12 A I did both.

13 Q You did them both?

14 A Yes.

15 Q Did you do the inspection of the
16 Aguakem facility in the same time frame that
17 you had the closing meeting?

18 A I did the inspection first, no.
19 What we do, we have an opening meeting and
20 then we do the inspection, is like a tour of
21 the facility. We take preliminary notes,
22 photos as needed and then we have like a
23 closing meeting.

24 Q Okay but it was a continuous period
25 of time, is what I am saying. How long did the

1 inspection last, at the Canas facility?

2 A It took us, EPA and other
3 enforcement officers the whole day.

4 Q You were at the Canas facility the
5 whole day?

6 A No, I was in the Canas facility in
7 the afternoon, late afternoon.

8 Q Okay. Late afternoon. How long did
9 the inspection at the Canas facility take?

10 MS. RODRIGUEZ: Your Honor, the Canas
11 facility, they are assuming facts not brought
12 into evidence. The Canas facility is not
13 subject to this administrative complaint.

14 MR. LLORENS: Your Honor, it is in the
15 complaint.

16 THE JUDGE: It is in the complaint. I
17 will allow the question.

18 MS. RODRIGUEZ: But not the inspection,
19 what happened, not violations or anything.

20 THE JUDGE: Right but the facts are
21 alleged in the complaint so I will allow the
22 question.

23 EXAMINATION CONTINUED

24 BY MR. LLORENS:

25 Q How long did the inspection at the

1 Canas facility take?

2 A It too us from the morning in the
3 Port Authority area, we conducted the whole
4 walk through area and then I don't recall the
5 exact time but it was around late afternoon,
6 could be three, four we went to the Canas
7 facility, the new Aguakem facility.

8 Q Okay and when did you finish the
9 inspection at the Canas facility?

10 A Around six.

11 Q And when did you have the closing
12 conference?

13 A At the end, before we were leaving.

14 Q Like at six o'clock more or less and
15 how long did that take?

16 A It would take whatever is needed to
17 discuss the issues.

18 Q How long did this one take?

19 A I cannot recall.

20 Q Okay. In your paragraph sixteen, I
21 call it yours because you testified that you
22 drafted this.

23 A We draft it together, you know,
24 another co-worker, the lawyers.

25 Q Okay. Did Mr. Unanue inform EPA's

1 representatives that they ceased operations at
2 his former facility in December, 2006? I
3 think that has been testified to. Did Mr.
4 Unanue inform you of anything else related to
5 that statement?

6 A Yes, he did.

7 Q What did he say?

8 A That he has some, you know,
9 transporting companies transporting the
10 chemical products from the old facility to the
11 new one and pretty much was what that was.

12 Q Okay. He told you that he was
13 transporting the materials from the former
14 facility to the -

15 A That he transported.

16 Q Okay. That the materials were
17 transported from the former facility to the
18 Canas facility, correct?

19 A That is correct.

20 Q Did he say he was done transporting
21 the materials?

22 A He said that - I am looking for the
23 right words. He said that he transported all
24 the chemical products.

25 Q But he did say he was done

1 transporting, right?

2 A We didn't discuss that. He didn't
3 mention that.

4 Q Okay. In paragraph seventeen, the
5 basis of that statement was what?

6 A Paragraph seventeen?

7 Q Yes.

8 A I want to make clear that this was
9 prepared by me, the attorney and another co-
10 worker and this information, that is some
11 information that I don't have the specifics
12 but they have moved it way before December
13 26th, right before, yes.

14 Q Okay.

15 MR. LLORENS: Can I have a side bar with,
16 Your Honor?

17 THE JUDGE: Yes.

18 MR. LLORENS: Off the record.

19 (Discussion off the record)

20 THE JUDGE: Okay. We are back on the
21 record and the witness will be shown a
22 document and you will be requested to answer
23 the direct question of whether or not you
24 received this document. You need not testify
25 any further on the matter other than whether

1 or not you received it but first take ample
2 opportunity to review the document and make
3 sure you are familiar with it to see if you
4 actually received it.

5 MR. LLORENS: Your Honor, if I may
6 approach. I wanted to mark this as I.D. 1.
7 Actually it is in a slightly different order
8 here.

9 THE JUDGE: Is this going to change the -

10 MR. LLORENS: I don't believe so. It is
11 going to be for the same - let me show it to
12 counsel. It could be marked as I.D. 1.

13 MS. RODRIGUEZ: Your Honor?

14 THE JUDGE: Yes.

15 MS. RODRIGUEZ: Could we approach?

16 THE JUDGE: Yes. Now, there are two
17 documents you will be shown and take a moment
18 to review them. We will let the court reporter
19 mark them for identification. Is this Exhibit
20 1 and 2 or is it 1A and B?

21 MR. LLORENS: Pardon me, Your Honor?

22 THE JUDGE: No, they are not coming into
23 the record. This would just be for
24 identification purposes unless it is for the
25 qualified purpose.

1 MR. LLORENS: I thought we had a
2 stipulation.

3 THE JUDGE: Okay. I want to make sure on
4 the record we have that, we have that
5 conference.

6 MR. LLORENS: For the qualified purpose of
7 -

8 MS. RODRIGUEZ: Receiving, whether he -

9 MR. LLORENS: Whether he received these.

10 THE JUDGE: Okay. Do you want to mark one
11 1A and B or just 1 and 2?

12 MR. LLORENS: 1A and B unless you want to
13 mark them 1 and 2.

14 THE JUDGE: Okay.

15 (Whereupon the above mentioned
16 documents were marked Exhibits
17 1A and 1B for Identification)

18 MR. LLORENS: 1A and B. Make A the
19 February one. I am approaching the witness
20 and I am handing him documents marked Exhibit
21 1A and B for Respondent, Aguakem Caribe and I
22 am handing them to the witness and I ask the
23 witness to review the document.

24 THE JUDGE: Do you have an extra copy of
25 those, too?

1 MR. LLORENS: I am pulling them out now,
2 Your Honor, since I pulled them apart based on
3 the ruling here. If you give me a moment.

4 THE JUDGE: Perhaps maybe I can, if the
5 witness, when you are done with either of them
6 if I could take a look at them.

7 MR. LLORENS: If I may approach, Your
8 Honor.

9 THE JUDGE: Thanks. Okay. Thank you. If
10 you could pass that to counsel. Thank you.

11 MR. LLORENS: I am handing you back
12 Exhibits 1A and B, Respondent's Exhibit 1A and
13 1B.

14 EXAMINATION CONTINUED

15 BY MR. LLORENS:

16 Q Did you receive these documents?

17 A I did receive them.

18 Q Okay. Did you receive them on the
19 dates indicated in the e-mails?

20 A I don't recall exactly but they may,
21 I may have.

22 Q Okay.

23 MR. LLORENS: If that is all I am allowed.

24 THE JUDGE: Do you want to introduce it
25 into the record?

1 MR. LLORENS: I do, Your Honor. I would
2 like to move to have for the purposes just
3 stated which is to acknowledge receipt of
4 these e-mails by Mr. Gonzalez of the EPA, I
5 want to move Exhibits 1A and 1B for respondent
6 into the record.

7 THE JUDGE: Just as they were received.

8 MR. LLORENS: Thank you, Your Honor.

9 THE JUDGE: No objection. Please mark
10 Exhibits 1 A and B as received. Thank you.

11 (Whereupon Exhibits 1A and 1B
12 were marked as Received)

13 EXAMINATION CONTINUED

14 BY MR. LLORENS:

15 Q I want to take you back to the
16 complaint to discuss the allegations contained
17 therein. I would like to direct your attention
18 to page four of Exhibit 1 which has paragraph
19 twenty six and ask you to consider the last
20 sentence thereof and in particular the phrase
21 that begins "That were abandoned by PPA's
22 former tenant, the respondent, Aguakem Caribe,
23 Inc." Just to be clear, I believe your earlier
24 testimony was that around February 2, 2007 you
25 had not yet determined that Aguakem Caribe had

1 abandoned the materials at the former
2 facility, correct?

3 A We are referring to paragraph twenty
4 six in the complaint?

5 Q That is right.

6 A That is correct.

7 Q Okay. Now, the paragraph just to be
8 clear, and this is for the record for me
9 anyway which is the reference to the materials
10 being abandoned was not something that the EPA
11 had determined had occurred until after the
12 events that you have described in your earlier
13 testimony, correct?

14 A Could you repeat it.

15 Q It's a mess. I can't fix it. Let me
16 try this. Paragraph twenty eight says
17 "Respondent was a generator of solid waste as
18 that term is defined in 40 C.F.R. 261.2." Did
19 you make a determination as to what date the
20 respondent became a generator of solid waste?

21 A Well, after the closing meeting, on
22 the day of the inspection at the new facility
23 that I didn't get any response of taking back
24 the chemical materials left behind in the
25 warehouse. So, in relation to that, some of

1 the chemicals were opened, were leaking, were
2 on the floor. It is really hard, you know.
3 That is a lot of waste already in place on the
4 floor, leaking, open and abandoned.

5 Q Okay but my question was, when, what
6 date did the respondent become a generator of
7 solid waste as alleged in paragraph twenty
8 eight, the date that that occurred?

9 A The date, the date that the waste
10 was abandoned, that is the real date that a
11 facility becomes a generator.

12 Q Did you make a determination as to
13 the date that the respondent abandoned the
14 materials?

15 A Based on the conditions found at the
16 date of inspection, February 2. There were
17 like deteriorated conditions. There were like
18 opened, leaking, rusted, misplaced one on top
19 of the other and in addition to the interview
20 of the closing conference, that we didn't have
21 any proposed action to take back those
22 chemicals at the new facility.

23 Q Is your testimony that on February
24 2, 2007 that is the date that the respondent
25 became a generator of solid waste?

1 A That is correct.

2 Q Not before that date? Not before
3 that date, right?

4 A Yes, based on my evidence, yes.

5 Q Yes, it was. I will leave that
6 there.

7 Now, the complaint continues and
8 states at paragraph twenty nine that on June
9 27, 2007 the EPA entered into an
10 administrative Order Of Consent with PPA and
11 respondent under CERCLA. Now, I would like to
12 draw your attention to the last line of that
13 which is that the abandoned material was
14 analyzed prior to disposal and was discarded
15 as hazardous waste and non hazardous waste.
16 Okay. The question I have is who determined
17 what material was hazardous waste and not
18 hazardous waste?

19 A That was based on the referral to
20 the Super Fund Emergency Team and the EPA
21 contractor that conducted the analysis, the
22 segregation, the authorization and the final
23 disposition done by the Port Authority.

24 Q The respondent signed the
25 administrative order on consent as well,

1 right?

2 A I do believe so.

3 Q Were the actions that were taken in
4 terms of making the determination of hazardous
5 and non hazardous waste, was that not done
6 also on behalf of Aguakem Caribe, Inc.?

7 A Yes.

8 Q Okay. So is it fair to say that
9 according to your complaint, Aguakem Caribe,
10 Inc. in fact did make the determination of
11 hazardous and non hazardous waste?

12 MR. MATEO DURANGO: Objection.

13 THE JUDGE: I do not understand the
14 question.

15 EXAMINATION CONTINUED

16 BY MR. LLORENS:

17 Q Did the determination of hazardous
18 and non hazardous waste alleged in paragraph
19 twenty nine, was that done on behalf of
20 Aguakem Caribe, Inc.?

21 A I would say yes if it was part of
22 the administrative order on consent.

23 Q Okay. So the failure to make a
24 hazardous waste determination count would not
25 go beyond June 27, 2007, correct?

1 MR. MATEO DURANGO: Objection, confusing
2 and misleading.

3 MR. LLORENS: Well, I am trying -

4 THE JUDGE: I did not hear the objection.
5 What was the objection?

6 MR. MATEO DURANGO: I believe I said that
7 it was confusing and misleading. Can you
8 restate the question?

9 THE JUDGE: Or maybe explain it.

10 MR. LLORENS: What I am trying to get at,
11 Your Honor, is the count one of the complaint
12 says it was a failure to make a hazardous
13 waste determination. Paragraph twenty nine of
14 the complaint alleges that there was a
15 hazardous, there was an analysis prior to
16 disposal and that the materials were
17 segregated into hazardous waste and non
18 hazardous waste.

19 THE JUDGE: Okay. So EPA came in to clean
20 it up. They did a hazardous waste
21 determination and, therefore, respondent was
22 no longer viable because a hazardous waste
23 determination had been determined by the super
24 fund?

25 MR. LLORENS: That is what I am trying to

1 find out.

2 THE JUDGE: So EPA is acting as an agent
3 on behalf of the respondent?

4 MR. LLORENS: Yes, Your Honor but based on
5 the administrative Order on Consent, I am just
6 trying to understand what the EPA's position
7 is on that in terms of what -

8 THE JUDGE: Follow that with the witness
9 if he has an answer to that. I don't know if
10 he is -

11 THE WITNESS: We have to be clear that we
12 are on the record as statutory requirements
13 and even the responsibility of the operator to
14 make at the point of abandonment, to make a
15 hazardous waste determination because CERCLA,
16 CERCLA statutory took over because of the
17 imminent dangers and risk posed by the
18 situation of those chemicals at the warehouse,
19 they needed to take in the order the whole
20 procedure, taking like, make analysis, make
21 the proper segregation, make the proper
22 stabilization and the final disposition and
23 the final disposition that is on June 27th is
24 based on the CERCLA activities and not under
25 the RCRA statutory activities.

EXAMINATION CONTINUED

BY MR. LLORENS:

Q Is it your testimony that hazardous waste determinations made under CERCLA are not hazardous waste determinations under RCRA?

A No.

MR. LLORENS: I am trying to understand what the testimony is there.

THE WITNESS: What happened when EPA took over on the consent order, it was the responsibility that had been taken by Aguakem in the very beginning, something that Aguakem didn't do and this was referral to the CERCLA Program because of the risk posed by the condition of the warehouse.

EXAMINATION CONTINUED

BY MR. LLORENS:

Q I understand but apart from that, is it your testimony, do you agree that a hazardous waste determination done under CERCLA is a hazardous waste determination for RCRA purposes?

A Yes, they are the same.

Q Okay. To your knowledge, did the Ponce Port Authority making a hazardous waste

1 determination other than the one that was made
2 under the Administrative Order on Consent?

3 A I have no knowledge of hazardous
4 waste determination provided by the Port of
5 Ponce.

6 Q Okay, so to the best of your
7 knowledge they did not?

8 A They did not.

9 Q Is this part of the hazardous waste
10 determination determining whether you have
11 solid waste?

12 A It had to be a solid waste by
13 definition.

14 Q So would you agree with me that to
15 determine, make a hazardous waste
16 determination you first have to make a solid
17 waste determination?

18 A That is correct.

19 Q Okay and if you determine that you
20 do not have solid waste, would that qualify as
21 a hazardous waste determination?

22 A Not can be. It has to be a solid
23 waste by definition first and then has to be a
24 hazardous waste.

25 Q Take my example. The party makes a

1 solid waste determination and determines that
2 they are not producing solid waste. They don't
3 go further. Is that a hazardous waste
4 determination?

5 MR. MATEO DURANGO: Objection,
6 argumentative.

7 THE JUDGE: Well, that is a hypothetical.

8 MR. LLORENS: Thank you.

9 THE WITNESS: Can you repeat me the
10 statement, please?

11 EXAMINATION CONTINUED

12 BY MR. LLORENS:

13 Q Okay. As a hypothetical I operate a
14 facility. I am concerned that I have to make a
15 hazardous waste determination. The first step
16 I take is to make a solid waste determination.
17 I look, I apply the factors and I determine
18 that I am not generating solid waste. Have I
19 made a hazardous waste determination?

20 A In this hypothetical case in order
21 for you to make a hazardous waste
22 determination you need to go and make a solid
23 waste determination first.

24 Q Right and if I determine that I
25 don't have solid waste and I end the inquiry

1 there, have I made a hazardous waste
2 determination?

3 A You don't have to make a hazardous
4 determination if you have made a solid waste
5 determination.

6 Q Right but if I made a determination
7 that I didn't have solid waste in this
8 hypothetical so I went no further. I didn't
9 determine whether my solid waste was hazardous
10 waste because I determined I didn't have solid
11 waste. My question is, as a representative of
12 EPA, would you agree that in fact I had made a
13 hazardous determination by determining I don't
14 have solid waste?

15 MS. RODRIGUEZ: Your Honor, is he still
16 talking about the -

17 MR. LLORENS: The hypothetical.

18 THE JUDGE: Hypothetical.

19 THE WITNESS: Can you repeat that
20 statement again because -

21 EXAMINATION CONTINUED

22 BY MR. LLORENS:

23 Q In the hypothetical, I am company X
24 in New York. I work in New York or New Jersey
25 and I have a concern that I might be

1 generating hazardous waste but I don't think I
2 am so I go through the process of determining
3 but first whether I have solid waste. I go
4 through the factors and I determine that I
5 don't have solid waste. For purposes of the
6 EPA determination whether I have made a
7 hazardous waste determination, did my
8 determination that I do not have solid waste
9 constitute a hazardous waste determination?

10 A No.

11 Q How would I do a hazardous waste
12 determination in a situation where I determine
13 that I don't have solid waste?

14 A Do I have to answer?

15 THE JUDGE: Yes.

16 THE WITNESS: What is the question?

17 THE JUDGE: The question is, how do you
18 make a solid waste determination, in essence?

19 THE WITNESS: Solid waste determinations
20 by definitions is like anything that you
21 discard, that you abandon, that you don't use,
22 that you, you know, either send it for
23 burning, put in the land and that is where we
24 do, is a solid, that is the authority, you
25 know, the statutory, the RCRA will be

1 applicable to any of those situations where
2 you have those kind of solid waste.

3 THE JUDGE: What if I am mistaken and I
4 incorrectly determine that it is not solid
5 waste?

6 THE WITNESS: If it is not solid waste,
7 RCRA statutory doesn't apply.

8 THE JUDGE: Okay. What if I make a mistake
9 and I incorrectly say it is not a solid waste,
10 have I violated RCRA by failure to make a
11 solid waste determination?

12 THE WITNESS: That is correct because
13 based on the circumstances that we found, that
14 if a person commit a mistake but the
15 conditions is risky and we can determine that
16 we need to take action, that is the point
17 where we need to determine that it was
18 mistaken, the final analysis as solid waste
19 and we had to move on and make the proper
20 determination.

21 EXAMINATION CONTINUED

22 BY MR. LLORENS:

23 Q Say in my hypothetical I make a
24 solid waste determination. I determine I have
25 solid waste but then I make a mistake and I

1 determine that the solid waste I believe is
2 not hazardous is in your view hazardous, have
3 I made a hazardous waste determination if I
4 make a mistake?

5 MR. MATEO DURANGO: Objection, confusing
6 and misleading.

7 THE JUDGE: Well, I think at this stage we
8 have flushed it out and I think it was as well
9 as stated as can be under the circumstances.

10 EXAMINATION CONTINUED

11 BY MR. LLORENS:

12 Q I will try to make it shorter. If I
13 make a mistake in a hazardous waste
14 determination, have I made a hazardous waste
15 determination?

16 A Well, but there is some procedures
17 in the requirements to follow before you do a
18 hazardous waste determination. You need to
19 analyze it.

20 Q I followed it to the letter but I
21 was wrong. Did I make a hazardous waste
22 determination?

23 MS. RODRIGUEZ: Your Honor -

24 MR. LLORENS: Hypothetical, Your Honor.

25 MS. RODRIGUEZ: Yes. Now, Your Honor, I

1 have been waiting and I have been listening to
2 his line of questions and now I have an
3 objection because actually he is assuming
4 facts that were not brought into evidence and
5 he is actually now trying to bring his case or
6 whatever evidence he might have as a result of
7 his cross of the witness and even the
8 hypothetical example that he has given, I
9 don't see where he is going because it was not
10 in any way part of our direct.

11 THE JUDGE: Well, there was a question
12 asked and answered as to whether a
13 determination was made, whether this was solid
14 waste and then hazardous waste. I believe as a
15 hypothetical, it is relevant. Whether or not
16 it will have any probative value is at this
17 stage hypothetical but I will allow the
18 question.

19 THE WITNESS: Could you please repeat it.

20 EXAMINATION CONTINUED

21 BY MR. LLORENS:

22 Q Okay. I made a hazardous waste
23 determinations and I determined that my
24 materials are not hazardous waste.

25 A All right.

1 Q I was wrong. Did I make a hazardous
2 waste determination?

3 A Yes, you did.

4 Q Okay. A step back. I made a solid
5 waste determination. I determined that it is
6 not solid waste. I am wrong, it is solid
7 waste. Did I make a solid waste determination?

8 A You did not because you didn't
9 determine that it is a solid waste.

10 Q Okay. I see how you define it. All
11 right. Is the word determination in the
12 complaint, does that mean as you understand it
13 that I needed to determine that my materials
14 were hazardous waste otherwise I was in
15 violation of RCRA?

16 A You need to determine that there as
17 solid waste and then hazardous waste.

18 Q Okay but let me look at page six of
19 Exhibit 1. If I may approach the witness.

20 Okay. It says count one, "Failure
21 to make hazardous waste determination. Was
22 the failure to make a hazardous waste
23 determination the failure to designate
24 materials as hazardous waste or was it the
25 failure to go through the exercise and

1 determine whether something was hazardous
2 waste?

3 A Failure to make a hazardous waste
4 determination is based on anything that is not
5 in use, is abandoned and then you need to do
6 whatever the regs require, you need to make a
7 determination on those materials, the waste,
8 is it hazardous or not. That is what we needed
9 to know in this violation.

10 Q Okay. As I heard you, I have to
11 determine whether it is hazardous waste or
12 not.

13 A Exactly.

14 Q Okay. I determine it wasn't,
15 hypothetically.

16 A Okay.

17 Q You disagree with my determination.
18 Did I make a hazardous waste determination
19 under your understanding of the EPA
20 regulations?

21 A Well, this doesn't work long. It is
22 all based on circumstances. If you have a high
23 risk posed by those chemicals that you know a
24 priori that they are hazardous waste because
25 the information provided on the labels,

1 information about, we know about them so it is
2 really hard for me to say that it is not a
3 hazardous waste, even committing a mistake.

4 Q Well, I was speaking hypothetically.
5 Are you speaking about this case?

6 A Hypothetically.

7 MS. RODRIGUEZ: Your Honor, I guess he has
8 to be more clear. He is switching back and
9 forth from hypothetical to what is in the
10 complaint.

11 THE JUDGE: These are all strictly
12 hypothetical. It has no relationship
13 necessarily with this case.

14 EXAMINATION CONTINUED
15 BY MR. LLORENS:

16 Q I want to go to the issue and I am
17 going to use the demonstrative evidence that
18 was admitted earlier today. I am looking at
19 the photograph identified as layout. It is
20 marked as Appendix 4CE1CX3. I am not sure what
21 the entry is on the record here in the case.
22 I want you to look at this to see if you can
23 help walk me through the complaint where I can
24 put together what it is you are claiming was a
25 hazardous waste in the complaint as it goes

1 forth with this document.

2 A Okay.

3 Q If I may, let me refer you to
4 paragraph, page six, paragraph forty, excuse
5 me, paragraph forty one of Exhibit 1 and if
6 you will see, it says the respondent generated
7 at it's former facility prior to February 2,
8 2007 the following materials: If we can take
9 them one by one. The first one says, One
10 hundred and fifteen 1-cubic yard containers
11 identified as Sump Water Low pH. What is in
12 here? Can you tell me if there is a reference
13 to the material 41a in this layout?

14 A Could I make like a clear statement
15 for the record?

16 Q Always.

17 A We have all these containers all
18 over the warehouse. The reason and the way we
19 put it together in the complaint, it was
20 because of the similar characteristics. If
21 they are corrosive, they are corrosive. They
22 are paint waste, they are paint waste and they
23 could have been all around the facility and we
24 put it into groups and that is why I cannot
25 identify one here, one there like we did

1 before with the photograph.

2 MS. RODRIGUEZ: Your Honor, for the
3 record, we clarified that graph was related to
4 the photographs, the specific photographs that
5 were presented into evidence in order to
6 clarify where each one or we were describing
7 each one of these photographs, where they were
8 specifically with regard to the building. We
9 did not go over as to what he is trying now to
10 address with his question.

11 THE JUDGE: Okay. Well, why don't you let
12 the witness if the witness does not have
13 recollection he can so state. If he has
14 recollection, he can also so state.

15 MS. RODRIGUEZ: Because I just wanted to
16 clarify that that was the only purpose of the
17 graph.

18 THE JUDGE: Okay.

19 EXAMINATION CONTINUED

20 BY MR. LLORENS:

21 Q I appreciate the graph. It is
22 actually pretty helpful to me to understand or
23 better try to improve my understanding. I want
24 to go back and say, go back to 41a and there
25 will be testimony. Is it your testimony that

1 you cannot identify the materials in 41a on
2 this layout?

3 A I didn't say. What I said that they
4 were all over the places and if I can stand up
5 and show.

6 Q Yes.

7 A That kind of material you can find
8 it in number three, number seven, number nine,
9 number ten, and near to number four. So you
10 have it spread all over the area.

11 Q Let's go through it. You said
12 number, what was the first one, number 6?

13 MS. RODRIGUEZ: He said 8?

14 MR. LLORENS: Eight?

15 MS. RODRIGUEZ: No, no. He is talking
16 about, he is not talking about, right.

17 MR. LLORENS: Well, I thought these photos
18 were connected to the layout.

19 MS. RODRIGUEZ: Right.

20 MR. LLORENS: So I want to find the
21 numbers with the photos. What were the numbers
22 again?

23 THE WITNESS: Number three.

24 EXAMINATION CONTINUED

25 BY MR. LLORENS:

1 Q Let's start with photo three which
2 in your earlier testimony you connected to
3 area three in the layout which I placed
4 outside the south west corner of the former
5 facility. Would you agree with my
6 characterization of where three is?

7 A Three is the one outside of the
8 building.

9 Q In the south west corner of the
10 former facility, right?

11 A Yes.

12 Q Okay. Is this one of the materials
13 that is referenced in 41a of the complaint?

14 A It was included as part of that
15 group.

16 Q Okay. Your allegation is that there
17 is sump water low pH?

18 A That is correct.

19 Q Okay.

20 THE JUDGE: No. I am not quite clear. The
21 tote in the photograph is not necessarily the
22 same as the sump water low pH?

23 THE WITNESS: Exactly. That is right.

24 EXAMINATION CONTINUED

25 BY MR. LLORENS:

1 Q It is not the same?

2 A It is not the same.

3 Q Then what is it?

4 THE JUDGE: It is in the area of I believe
5 was -

6 THE WITNESS: Exactly.

7 EXAMINATION CONTINUED

8 BY MR. LLORENS:

9 Q What is in this, what was in this?

10 A The only thing that we can do is
11 just to see the label which is ferrous
12 chloride and we may assume that that is what
13 it is. Physically if you are there we can
14 open the label and read it.

15 Q Do you know if it was ferrous
16 chloride?

17 A That was the only label information
18 that we had at the time of the inspection,
19 what was on the label.

20 Q So you don't know today as you sit
21 here, you don't know if there was ferrous
22 chloride in there?

23 A I cannot be sure of that.

24 Q It could be anything?

25 A It could be anything.

1 Q It could be a non hazardous
2 material.

3 A Could be a hazardous material.

4 Q That is right, it could be either?

5 A Could be either.

6 Q You had three which we just went
7 through. What other photo with an area had
8 sump water low pH?

9 A Nobody said in the inside of the
10 building.

11 Q Well, read this. Which number?

12 A It was in different places inside of
13 the warehouse.

14 Q Okay.

15 A It shows in the photo.

16 Q This is photo thirteen. Does this
17 have sump water pH?

18 A No. That area is the tank area.

19 Q Okay. Is there anything in the list
20 of allegation 41 that matches photo thirteen?

21 A In paragraph 41?

22 Q Yes.

23 A It was included in another count.

24 Q Okay. So photo thirteen which is an
25 area, thirteen is not related in any way to

1 count one, failure to make out this waste
2 determination?

3 A No.

4 Q So this area, this photo thirteen is
5 not an instance of respondent's failure to
6 make a hazardous waste determination, right?

7 A It responded to the risk of material
8 being abandoned on the floor that it needed to
9 clean out as part of the emergency activities.

10
11 Q Let's speak specifically. I assume
12 you are going to be referring to count two
13 which is "Failure to minimize risk of a fire,
14 explosion or release" which starts at page
15 seven of Exhibit 1. So this area is an
16 instance of count two?

17 A Yes.

18 Q Okay. If you look at paragraph
19 fifty it has a long list. It continues on to
20 page eight.

21 A Ahum.

22 Q Making some reference to page nine.
23 Can you refer to me where in paragraph fifty
24 if at all there is a reference to what is
25 shown on photo thirteen?

1 A Letter D.

2 Q Okay. Let's look at letter D.

3 Letter D says "Southwest area of its former
4 former facility in Building 6, five (5) 2,600
5 gallon above ground storage tanks and
6 respective secondary containment units were
7 located in this area." Okay. This photo shows,
8 I assume you reference - why don't you tell
9 me what part of D are you referring to on page
10 eight of Exhibit 1 that you are referring to.

11 A In this area we are referring to the
12 yellow puddle spread material on the surface
13 concrete floor and a list, you can see three
14 tanks from the picture.

15 Q Okay and you are saying what this
16 photo depicts was alleged in paragraph D at
17 page eight of paragraph fifty. Is that an
18 illustration of the respondent's failure to
19 minimize risk of a fire, explosion, or
20 release?

21 A Definitely.

22 Q Now, can you explain to me why there
23 was a risk of a fire from this situation?

24 A In this situation, we don't know
25 what is inside the tanks. Secondly we don't

1 know the compatibility about any or any open
2 part coming out from the tank and the material
3 left on the surface of the floor.

4 Q Do you know where anything was, I
5 mean, anything that is pictured here? Do you
6 know what those materials are?

7 A Yes. Those materials are
8 unidentified and we need to take precautions
9 about what it is before we get in there and
10 clean it up and stabilize it.

11 Q Did you ever find out what it was?

12 A They may have collected and analyzed
13 it.

14 Q Who?

15 A CERCLA, EPA.

16 Q As you sit here today you don't know
17 what it was?

18 A My responsibilities and duties as a
19 RCRA inspector is to identify the area that
20 has been abandoned and as you can see, I don't
21 see there a product. What is there is a solid
22 waste that could have been hazardous waste.

23 Q Right.

24 A But even pose also a risk.

25 Q To coin a phrase, you didn't make a

1 hazardous waste determination about this, did
2 you?

3 A It was referred to the EPA Super
4 Fund Response Team to deal with that at Ponce
5 and that is why you have the order.

6 Q I understand but as you sit here
7 today you don't know that that was hazardous
8 waste?

9 MR. MATEO DURANGO: Objection, asked and
10 answered.

11 EXAMINATION CONTINUED

12 BY MR. LLORENS:

13 Q Fair enough. As you sit here today
14 you don't know if there was actually a risk of
15 a fire, explosion or release from this
16 condition, do you?

17 MR. MATEO DURANGO: Objection.

18 THE WITNESS: I do.

19 MR. MATEO DURANGO: Objection.

20 THE JUDGE: What is the objection?

21 MR. MATEO DURANGO: Asked and answered.

22 It appears that the same question has been
23 asked at least five times.

24 MR. LLORENS: I don't recall that I asked
25 him. As he sits here today he doesn't know

1 that if this can create a risk of a fire,
2 explosion or release.

3 MR. MATEO DURANGO: Objection, asked and
4 answered.

5 MR. LLORENS: I don't recall if he
6 answered that.

7 THE JUDGE: Why if you just have the
8 witness answer.

9 THE WITNESS: As you can see in the photo,
10 there is a release you have on the floor. You
11 mentioned the risk of fire, explosion, or
12 releases and it is clear in the picture that
13 you have releases on the floor.

14 EXAMINATION CONTINUED
15 BY MR. LLORENS:

16 Q Okay. Was there further risk of
17 release?

18 A Do we have any -

19 Q As illustrated?

20 A We could have any broken tank, we
21 could have a rain event, a release from other
22 tank or other container that may impact this
23 area and that is the potential risk.

24 Q Okay. Did you say rain event?

25 A Could be a rain event.

1 Q Okay. Was this endorsed?

2 A It was endorsed.

3 Q Okay. How would a rain event affect
4 this area?

5 A Well, the condition, the
6 deteriorated condition of the building and the
7 containers, some of the containers were opened
8 and any water could have come in or come out
9 because they were connected to a sump outside
10 of the facility.

11 Q Okay. Was there a leak in the roof?

12 A It was not. It wasn't raining that
13 day.

14 Q But you don't know if there was a
15 leak in the roof?

16 A I don't know, could be.

17 Q Let me ask you this, do you know
18 when this happened? When I say this, I mean
19 the materials being on the floor of Exhibit
20 13?

21 A Based on my evidence the only day
22 that I was there was on February 2, 2007 and
23 that was my last inspection.

24 Q Okay.

25 A The answer is, no.

1 Q So it could happen -

2 A The answer is, no.

3 Q It could have happened on February
4 1st?

5 A I don't know.

6 Q It could have happened anytime. Do
7 you know if this statement was in place in
8 December 28, 2006?

9 A I don't know. I don't have that
10 information.

11 Q I show you photo 12. Turn to the
12 photos and then we find in the complaint what
13 this is in reference to. Can you tell me,
14 point to me where in the complaint you covered
15 the situation that is illustrated in photo 12.

16
17 A That would be covered under letter
18 E.

19 Q Paragraph 50, letter E?

20 A Yes, it does.

21 Q That begins in the bottom of page
22 eight? Now, do you know what these materials
23 that are pictured here in the photo 12 are?

24 A Those are releases of some kind of
25 unknown material, solid material.

1 Q Okay. Do you have any basis for
2 stating that what is pictured here in photo 12
3 constitutes a risk of a fire, explosion or
4 release?

5 A Well, we may qualify that as
6 releases as explicitly explained in letter E,
7 that we had a spill of different substances.

8 Q Okay but what is pictured here in
9 this picture, how does this constitute a risk
10 of release?

11 A It is already a release. If it is on
12 the floor, it is not in a container. The
13 secondary container in that area is broken,
14 too. It is broken and will not contain
15 anything moving in or moving out from that
16 area.

17 Q What was moving in or moving out of
18 the area?

19 A Any potential corroded container or
20 tote that broke, that may be over there could
21 come in contact with that and we are talking
22 about potential risks. Anything could happen
23 there.

24 Q Okay. I am just trying to understand
25 the risks but did you say about the migration

1 I believe of a tote to the area.

2 A No, not a tote, the content of the
3 tote that may have broken because it is being
4 degraded, deteriorated, opened, an accident,
5 or anything.

6 Q Okay. I mean, you would agree that
7 there is no risk of a fire, right?

8 MS. RODRIGUEZ: Your Honor.

9 MR. MATEO DURANGO: Argumentative,
10 objection.

11 THE JUDGE: Yes. Sustained.

12 EXAMINATION CONTINUED

13 BY MR. LLORENS:

14 Q Was there a risk of a fire at the
15 former facility?

16 MS. RODRIGUEZ: Your Honor -

17 MR. MATEO DURANGO: Objection. I believe
18 he asked the same question before but, Your
19 Honor, we would like to allow the witness to
20 respond to the question.

21 MS. RODRIGUEZ: The witness already, I
22 mean, he already responded there was a risk
23 during the direct.

24 THE JUDGE: If you could qualify it.

25 EXAMINATION CONTINUED

1 BY MR. LLORENS:

2 Q Can you identify if you can in the
3 photos what evidence you had that there was a
4 risk of a fire?

5 MS. RODRIGUEZ: I think he already did in
6 the direct, Your Honor.

7 THE JUDGE: I will allow some questions on
8 count two.

9 THE WITNESS: For example we found at the
10 warehouse something called sodium aluminate.
11 When it contact with metal, may create
12 flammable fumes so that is a potential risk of
13 fire or explosion. Okay. I am just picking.
14 Sodium aluminate. You have sodium benzoate.
15 In contact with high temperature within it and
16 that would create a fire or explosion.

17 EXAMINATION CONTINUED

18 BY MR. LLORENS:

19 Q How high a temperature?

20 A I don't have the MSGS with me.

21 Q Okay. Other than that, do you have
22 anything to add to that answer?

23 A We have some unclaimed solutions
24 with some acid solutions that can react
25 violently and create fumes and you have

1 oxidizers nearby, corrosive and there is a
2 potential risk.

3 Q I am going to show you photo eleven
4 and I ask if you could identify it to me, if
5 what is depicted here is referenced in the
6 complaint.

7 A That would be included as part of
8 potential risk of releases under letter E.

9 Q Letter E?

10 A Ahum.

11 Q Can you specifically refer where in
12 letter E which I believe starts on page eight
13 of Exhibit 1 and ends at page nine.

14 A Yes. We generally have had a spill
15 of different substances.

16 Q Okay. So this is the white
17 substance in the picture?

18 A Yes.

19 THE JUDGE: And you are referring to
20 photograph eleven?

21 MR. LLORENS: Photograph eleven.

22 THE JUDGE: Okay.

23 EXAMINATION CONTINUED

24 BY MR. LLORENS:

25 Q And just for the record, you don't

1 know what that white substance is, right?

2 A I do not know.

3 Q Does anyone at EPA know what that
4 white substance is?

5 A No. Until they do, they perform
6 some chemical analysis.

7 Q Okay and no one has performed that
8 analysis, correct?

9 A Not at the time.

10 MS. RODRIGUEZ: I am sorry, what did you
11 say?

12 THE WITNESS: Not at the time of
13 inspection.

14 MS. RODRIGUEZ: Oh, not at the time of the
15 inspection.

16 EXAMINATION CONTINUED

17 BY MR. LLORENS:

18 Q How about now, how about as of
19 today, has anyone performed that analysis?

20 A Yes, they should have done it.

21 Q Do you know that someone has or do
22 you think someone should have done it?

23 MR. MATEO DURANGO: Objection. Counsel is
24 asking the witness facts that are not in
25 evidence yet. Complainant has not -

1 THE JUDGE: He is just asking him to
2 clarify his prior statement so I am going to
3 allow it.

4 THE WITNESS: As part of the removal
5 action they have analyzed everything that was
6 abandoned there and they have segregated and
7 stabilized it and there are some, you see,
8 pollution reports that would give you the
9 details about all that was analyzed.

10 EXAMINATION CONTINUED

11 BY MR. LLORENS:

12 Q Okay. It is not part of the
13 complaint, is it, any of the reports you are
14 talking about?

15 A If you go to page five.

16 Q Page five of the complaint?

17 A Yes. Paragraph 31 that will be part
18 of those disposal activities.

19 Q Okay. Can you connect anything that
20 is alleged in 31 to any of the photos that
21 have been entered into evidence?

22 A I don't have the information.

23 Q Okay. Is there anything that you
24 can show me in the complaint or the exhibits
25 that you have seen in your testimony that

1 would tell me if what you pointed to in 31 is
2 represented in any of those photos?

3 A Well, all of the containers, at
4 least all of the containers were analyzed and
5 were disposed of.

6 Q Could you reference specially what
7 photo you might be referring to?

8 A Can you show me then the photo with
9 containers, totes.

10 Q Sure. This one was photo three.

11 A Those containers were analyzed and
12 properly segregated, stabilized and disposed
13 of.

14 Q All right but you don't have
15 personal knowledge of what the analysis was.
16 You don't know what this is, do you?

17 A At the time of the inspection, no.

18 Q Do you know now?

19 A I don't have the reports with me.

20 MR. LLORENS: I would like to take a
21 break because I am going to talk about his
22 calculations.

23 THE JUDGE: Okay.

24 MR. LLORENS: If I could take five
25 minutes?

1 THE JUDGE: Yes.

2 MR. LLORENS: Or ten minutes.

3 THE JUDGE: The court could see the
4 clock from this angle. What time is it?

5 MS. RODRIGUEZ: Three ten.

6 MR. LLORENS: Three ten, Your Honor.

7 THE JUDGE: How about if we take a
8 ten minute break. EPA, how many witnesses do
9 you anticipate as part of your direct? We are
10 off the record.

11 (Discussion off the record)

12 MR. LLORENS: Your Honor, I am going to
13 turn to the questions of the proposed civil
14 penalty beginning on the discussion of page
15 nine of the complaint which is Exhibit 1.

16 THE JUDGE: Before we begin, I just wanted
17 to mention, I checked with the U.S. Marshals
18 and there is no problem for us going until six
19 P.M. So if we pack up at quarter of six or ten
20 of six, that will probably be good. Thank
21 you.

22 MR. LLORENS: Thank you, Your Honor.

23 THE JUDGE: And what page was that of
24 Exhibit 1?

25 MR. LLORENS: Page nine of the complaint,

1 the proposed civil penalty and I would refer
2 the witness' attention to the bottom of page
3 nine. Do you have that?

4 THE WITNESS: Yes, I do.

5 EXAMINATION CONTINUED

6 BY MS. LLORENS:

7 Q Okay. I want to ask you a couple of
8 questions about what you or what did you and
9 your group wrote here which says, "For
10 purposes of determining the amount of any
11 penalty assessed, Section 3008 (3) requires
12 EPA and the court here to take into account
13 the seriousness of the violation and any good
14 faith efforts to comply with applicable
15 requirements." I want to take that first
16 part which is the seriousness of the
17 violation. Is there a guidance inside EPA as
18 to determining the "seriousness of the
19 violation"?

20 A Yes, we do follow the RCRA policy
21 guidance dated 2003.

22 Q Okay. That was referenced in your
23 direct by counsel for EPA. I was wondering if
24 you could point to something to me if you
25 know, from the RCRA civil penalty policy that

1 addresses how to determine the "seriousness of
2 the violation". If you know.

3 A In the RCRA penalty policy?

4 Q Yes.

5 A You can go to page four.

6 Q Page four?

7 A It is first mentioned. It is the
8 first time they mention it, the seriousness of
9 the violation.

10 THE JUDGE: Page four of?

11 THE WITNESS: Of the RCRA penalty policy.

12 THE JUDGE: Okay. Now I know counsel
13 wanted to move that into the record and I said
14 it wasn't necessary but is there a copy of
15 that here just so I can follow?

16 MS. RODRIGUEZ: Yes, Your Honor.

17 THE JUDGE: What exhibit would that be?

18 MS. RODRIGUEZ: No, it is not an exhibit.

19 I think I just put it like in a binder.

20 THE JUDGE: Oh, okay.

21 MS. RODRIGUEZ: In the jacket.

22 THE JUDGE: Oh, in the jacket. Thank you.

23 MS. RODRIGUEZ: Yes.

24 THE JUDGE: Okay. Thank you very much.

25 EXAMINATION CONTINUED

1 BY MR. LLORENS:

2 Q And just for the record, we are
3 referencing page four of the RCRA penalty
4 policy. If the witness could, if you could,
5 Mr. Gonzalez, direct our attention to what you
6 are referring to on page four.

7 A Yes. There are two bullets that they
8 mention that the policy and the statutory
9 penalty should get into account the
10 seriousness of the violation and the good
11 faith efforts.

12 Q Okay. We will take them one by one.
13 On the question of determining the
14 "seriousness of the violation", is there
15 something that directs at least me to better
16 understand how you determined the seriousness
17 of the violation?

18 A What the policy does is some
19 hypothetical examples.

20 Q Yes.

21 A For you to determine how you can
22 come up with the seriousness of the violation?

23 Q Where would I find that?

24 A You can start from page fifteen as
25 an example.

1 Q Page fifteen did you say?

2 A Yes, I am pointing out some
3 examples that it go through all the policy.

4 Q Is there something specifically of
5 the examples?

6 A Like the hazardous waste on page
7 thirteen under B.

8 Q Tell me again what you refer to in
9 page thirteen.

10 A It is just that the policy would
11 give you scenarios for you to follow and to
12 identify how to quantify the penalty of the
13 RCRA violations.

14 MR. LLORENS: Your Honor, I hate to do
15 this but I am going to try a hypothetical.

16 EXAMINATION CONTINUED

17 BY MR. LLORENS:

18 Q There is certain things it seems
19 black and white to me in terms of the
20 seriousness of the violation. If I was
21 deliberately dumping toxic waste and hazardous
22 waste say into the water supply that was
23 dragged out. That seems to me as a layman
24 serious and then I don't know what constitutes
25 as benign but I suppose there is a benign. How

1 do you decide what is serious or what is not?

2 MR. MATEO DURANGO: Objection.

3 MR. LLORENS: I am trying to understand. I
4 am honestly trying to figure out what this
5 phrase seriousness of the violation means to
6 the -

7 THE JUDGE: What is the objection?

8 MR. MATEO DURANGO: It calls for a
9 narrative.

10 THE JUDGE: Well, this witness testified
11 as to how he calculated and determined the
12 seriousness so I am going to allow him.

13 MR. MATEO DURANGO: Yes, Your Honor he
14 did but there is not a specific question that
15 has been asked from the witness.

16 MS. RODRIGUEZ: Your Honor.

17 THE JUDGE: It is a rather open ended
18 question. Philosophic form -

19 MR. LLORENS: Let me try again, let me try
20 again, Your Honor.

21 EXAMINATION CONTINUED

22 BY MR. LLORENS:

23 Q How did you determine the
24 seriousness of the violations alleged?

25 A The seriousness of the violation is

1 not part of this record but it has like a list
2 of RCRA violations that is considered
3 substantial RCRA violations, substantial RCRA
4 violations.

5 Q But this one isn't one of those? Is
6 that what you stated?

7 A This one indirectly we give you
8 examples for higher violations, minor
9 violations or substantial, significant. There
10 is a document that we cite different
11 violations under the RCRA Program that you can
12 consider like high violation, moderate and low
13 violations.

14 Q Did you use that document in making
15 the seriousness determination?

16 A Yes. It is a document that is used
17 in the RCRA Program as a guidance. I believe
18 this is a guidance document, too.

19 Q Did you use that document that you
20 just identified?

21 A We all use it, yes.

22 Q Did you use it to calculate the
23 penalty in this case?

24 A No. That document, to make clear the
25 statement, is a classification of the

1 violations. What it consider like a
2 substantial, significant or minor violation
3 and this document is the one that tell you how
4 to calculate the penalty. There are two
5 different things.

6 Q I agree.

7 A Okay.

8 Q But did you use the document that
9 you just identified in your testimony
10 calculating the civil penalty of this case?

11 MS. RODRIGUEZ: Your Honor, I think he
12 testified in his direct what he used for
13 calculating the penalty.

14 THE JUDGE: Yes, he just stated that he
15 used some type of guidance document.

16 MS. RODRIGUEZ: And I think he is
17 referring to that policy guidance.

18 THE JUDGE: He said it was another
19 document. Let's have the witness clarify.

20 MS. RODRIGUEZ: Okay.

21 THE JUDGE: What did you rely on in
22 determining the penalty? How did you determine
23 if it was significant, major, minor, moderate?

24 THE WITNESS: It is the risk -

25 THE WITNESS: Pardon me?

1 THE WITNESS: The risk to the public
2 health and the environment.

3 THE JUDGE: One minute. I didn't get that.
4

5 THE WITNESS: Okay. The risk posed by the
6 conditions of the site.

7 THE JUDGE: Yes.

8 THE WITNESS: The adverse effects.

9 THE JUDGE: Did you just testify though
10 there was a document that lists the very -

11 THE WITNESS: Yes, I did. It was
12 something just to clarify that EPA also has a
13 document that identified the violations and
14 they put which are major violations, minor
15 violations and is something that you can
16 consult but for this penalty calculation we
17 used the RCRA penalty guidelines which this is
18 what it is, a guidance.

19 THE JUDGE: Did you rely on this other
20 document to make a determination as to the
21 level of seriousness?

22 THE WITNESS: We always, you know, consult
23 that document to know what EPA consider under
24 the RCRA Program.

25 THE JUDGE: And what document is that?

1 THE WITNESS: It is like a two page
2 document that they segregated the violation
3 for high violations and minor violations.

4 THE JUDGE: Do you have the name of this
5 document or have access to it?

6 THE WITNESS: I can print it.

7 THE JUDGE: Is this available to the
8 public?

9 THE WITNESS: Yes, it is.

10 THE JUDGE: And it is on the web page or
11 is it part of the penalty policy?

12 THE WITNESS: It is not part of the
13 penalty policy.

14 THE JUDGE: Okay.

15 MR. LLORENS: I am sorry. I am going to
16 have to continue on this because I am trying
17 to understand if you did rely on it or you
18 decided, made a decision to ignore the
19 document that we are discussing here.

20 THE WITNESS: I, you know, I mentioned it
21 as background information. I have been in the
22 program for many years so what I use in the
23 guidance, the policy as a guidance document to
24 perform the penalty calculation.

25 EXAMINATION CONTINUED

1 BY MR. LLORENS:

2 Q I understand but did you use -

3 MS. RODRIGUEZ: He already answered, Your
4 Honor.

5 MR. LLORENS: What is the answer?

6 MS. RODRIGUEZ: He already answered that
7 he has been in EPA -

8 THE JUDGE: He answered that he used
9 another document that is not in the RCRA
10 Program.

11 MS. RODRIGUEZ: Yes, but right now he just
12 said that he has been engaged in the agency.

13 THE JUDGE: Well, that is the problem,
14 that he is using two targets here so I am
15 going to allow the questions until it is
16 ascertained what he relied on.

17 EXAMINATION CONTINUED

18 BY MR. LLORENS:

19 Q Let me try it this way. We have the
20 RCRA civil penalty policy that has been
21 identified and testified about. You used
22 that?

23 A I did use that.

24 Q Okay. Did you use some other EPA
25 guidance document?

1 A Let me clear the record. I knew
2 about that document. For this particular
3 case, I didn't use it.

4 Q Okay.

5 A I was giving it you to use as
6 informative.

7 Q I appreciate that. Why did you not
8 use that document?

9 THE JUDGE: Wait a minute. I just thought
10 I heard him say he did use the document.

11 MS. RODRIGUEZ: That he didn't use it.

12 THE JUDGE: Did or did not?

13 THE WITNESS: I did not.

14 MS. RODRIGUEZ: Didn't, did not.

15 THE JUDGE: Now I hear did not. Okay.

16 EXAMINATION CONTINUED

17 BY MR. LLORENS:

18 Q Now my question is, why did you not
19 use it the document?

20 A It is simple a guidance giving you
21 some options to use.

22 Q Okay but why didn't you use that
23 guidance?

24 MS. RODRIGUEZ: I don't understand the
25 question.

1 THE JUDGE: The question was why did you
2 not use that guidance?

3 MR. LLORENS: That is right.

4 MS. RODRIGUEZ: And he answered.

5 THE JUDGE: I didn't hear the answer. I
6 am not understanding and hearing everything so
7 it makes it difficult to make a ruling when I
8 am not sure of what the witness has testified.

9 MS. RODRIGUEZ: I am sorry, Your Honor.

10 THE WITNESS: Why I didn't use it, that is
11 the question?

12 EXAMINATION CONTINUED

13 BY MR. LLORENS:

14 Q Ahum.

15 A Because it is not part of the RCRA
16 policy penalty guidance.

17 Q Have you ever used that guidance for
18 calculating RCRA penalties in other cases?

19 A No, I did not use it. I have not
20 used it in the past.

21 Q You have never used it?

22 A No, in calculating penalty
23 calculations.

24 Q Okay. When did you use it?

25 A When I am conducting an inspection

1 that we found the violations. That guidance
2 will give you some ideas of what is a
3 significant violation and what is not but it
4 is not but it is not intended to be used for
5 the penalty calculation process.

6 Q So you are saying now that document
7 is not intended to be considered for penalty
8 calculation?

9 A I want to be informative. I want to
10 give you something to rely how you can
11 differentiate different violations citing the
12 program according to EPA but it is not
13 something used to make the numbers in the
14 penalty calculation memo.

15 A Besides what we just discussed, did
16 you make reference or use any other EPA
17 document for determining the seriousness of
18 the violation?

19 Q I did not.

20 A Okay. What criteria did you use to
21 determine the seriousness of the violation?

22 Q First I used my professional
23 judgement. I have been in the program many
24 years. The adverse impact to the regulatory
25 program and the risk to human health and the

1 environment, that is why I determine how
2 serious is the violation.

3 Q Okay. What way did your
4 professional judgement inform you about the
5 seriousness of the violation?

6 A Well, the potential impact to the
7 environment, the risk to the public health, to
8 the workers and in this particular situation
9 the abandonment of those chemicals in the
10 warehouse.

11 Q Okay. What you just talked about it
12 relates to your professional judgement in what
13 sense?

14 A Related to my professional judgement
15 in other cases that I have been involved that
16 I worked it, that I have prepared the
17 penalties.

18 Q Okay. Have you calculated the civil
19 penalty in a case alleging failure, was it
20 failure to make hazardous waste
21 determinations. Have you ever calculated that
22 penalty before?

23 A Yes, I did. I have done it before.

24 Q Okay. When?

25 A In many enforcement cases that I

1 have participated or I have been inspector for
2 the case.

3 Q Okay. Now, do you recall whether you
4 characterized those as serious violations in
5 those calculations you made?

6 A It has always been considered as a
7 serious violation not to make a hazardous
8 waste determination.

9 Q Okay. So your testimony is that in
10 every case of what you have been involved in
11 where there has been a failure to make a
12 hazardous waste determination, you considered
13 it a serious violation?

14 A Yes.

15 Q Okay.

16 A This is part of the corner stone of
17 the program and may resulted in illegal
18 disposing hazardous waste in municipal solid
19 waste that are not designed to hazardous waste
20 and this is part of the program that is
21 considered substantive and serious violation.

22 Q Okay but the threat, did you say it
23 was what, that somebody, I didn't get it. The
24 risk of what?

25 A The risk of sending something to a

1 place that is not designed for that kind of
2 material. It is illegal.

3 Q All right. I get that but how does
4 that risk manifest itself to you? I mean how
5 did you see these materials being illegally
6 transferred?

7 A Did you say illegally transferred?

8 Q I think that is what you said but if
9 you didn't I apologize.

10 MR. MATEO DURANGO: Objection.

11 THE WITNESS: I haven't said anything
12 about illegal transfer.

13 MR. LLORENS: I thought that was the risk

14 -

15 THE JUDGE: The word illegal was used.
16 The word illegal was used.

17 THE WITNESS: Because if they don't do the
18 proper hazardous waste determination, like
19 illegal chemicals posing high risk and
20 dangerous characteristics may end up in
21 landfills and that is not the purpose of the
22 program.

23 EXAMINATION CONTINUED

24 BY MR. LLORENS:

25 Q How in this case was there a high

1 risk of what you just --

2 A The abandonment, the conditions, the
3 quantity and the type of chemical at the
4 warehouse.

5 Q But how is someone going to get over
6 there and get there and transfer the
7 materials? I am just trying to understand how
8 that risk would have manifested itself.

9 A If you don't do the proper
10 determination?

11 Q Yes.

12 A And you said before in your
13 hypothetical cases, and you said this is not a
14 solid waste, this is not hazardous waste, you
15 simply can send it out to a municipal waste
16 landfill and that is illegal because it is not
17 permitted to send hazardous waste to a non
18 hazardous waste landfill.

19 Q Okay. In terms of the policy
20 document that we found, the civil penalty
21 policy record, is there anything else in this
22 document that you considered in determining
23 the seriousness of the violation in this case?

24 A What we do consider is the gravity,
25 the benefit, potential for harm, we also

1 consider the deviation from the regulations.

2 Q Okay. So let me just take one
3 thing. You evaluate the potential for harm
4 which is the phrase I think you just used, at
5 page fifteen there is the policy. There is
6 this Section 3 called applying the potential
7 for harm factor, sub a, evaluate the potential
8 for harm is major, moderate, minor in a
9 particular situation, the degree of potential
10 harm represented, etcetera.

11 Now, correct me if I am wrong, you
12 made the determination that there was major
13 potential for harm in this case, right?

14 A Right.

15 Q So did you determine that and I am
16 quoting from the policy, "The violation posed
17 may pose a substantial risk of exposure of
18 humans of other environmental receptors to
19 hazardous waste or constituents." Did you make
20 that determination about this case?

21 A Could you please locate me the exact
22 area.

23 Q It is on page 15 of the policy. It
24 is the heading three of applying the potential
25 for harm factor.

1 A Major potential for harm, example
2 one?

3 Q No, not examples, the major,
4 criteria.

5 A Major, okay.

6 Q Evaluate the potential for harm a,
7 3a. Maybe I am reading it wrong. Number one,
8 in major it says "the violation poses or may
9 pose a substantial risk of exposure of humans,
10 or others, etcetera."

11 My question is, did you make that
12 determination that condition one was present
13 in this case?

14 A Yes, I did.

15 Q Okay. Can you tell me how you made
16 that, what is the basis of that determination?

17 A For substantial risk exposure?

18 Q Yes.

19 A The building was open. There are
20 people walking in the area. There were
21 chemical spills all over the area,
22 deteriorated containers, opened containers,
23 strong odors, spills.

24 Q Okay. Now, that is a question of
25 risk of exposure but how did you determine

1 that this was hazardous waste?

2 MR. MATEO DURANGO: Objection, asked and
3 answered.

4 THE WITNESS: It was.

5 MR. MATEO DURANGO: It was asked
6 previously.

7 EXAMINATION CONTINUED

8 BY MR. LLORENS:

9 Q Okay, well, let me try it this way.
10 How did you determine that there was
11 substantial risk of exposure of humans to
12 hazardous waste in this situation?

13 A Well, based on the labels and
14 information in the containers, we identify a
15 couple of materials or chemical waste that we
16 know a priori that they were dangerous, they
17 were hazardous and there is the potential risk
18 to receptor or any person there, worker
19 including the environment.

20 THE JUDGE: What characteristic based on
21 hazardous, was it corrosive or inflammability?

22 THE WITNESS: Inflammability. We found
23 acids like chlorine acids. We found many other
24 material that we were able to identify.

25 EXAMINATION CONTINUED

1 BY MR. LLORENS:

2 Q I am going to refer you back to the
3 complaint for a second because I want to at
4 least get a chance. Is the violation that you
5 determined posed or may pose a substantial
6 risk of exposure to humans hazardous waste,
7 that was both count one and count two,
8 correct?

9 A The risk?

10 MS. RODRIGUEZ: I am sorry. What are you
11 referring, what page?

12 MR. LLORENS: Page six and seven of the
13 complaint I am referring to but I am trying to
14 understand if he has determined that there was
15 a substantial risk of exposure to hazardous
16 waste with regard to both counts one and two
17 of the complaint. Or actually did you make a
18 determination for count one? That would be
19 one question, did he make a determination for
20 count two -

21 MS. RODRIGUEZ: Your Honor, that was part
22 of the direct and he already answered that
23 when we went over how he calculated and when
24 he described the explanation to support the
25 penalty amount.

1 THE JUDGE: But I am going to allow him to
2 examine the basis for his thought.

3 MS. RODRIGUEZ: Then I guess he should ask
4 the witness to also, you know, he discussed
5 how he calculated it and it is part of the
6 complaint.

7 MR. LLORENS: I understand.

8 MS. RODRIGUEZ: In the attachment.

9 THE JUDGE: It doesn't preclude though
10 cross examination.

11 EXAMINATION CONTINUED

12 BY MR. LLORENS:

13 Q Let me try again. With regard to
14 count one of the complaint, did you make a
15 determination that the violation posed a
16 substantial risk of exposure to humans, or to
17 hazardous waste?

18 A Yes, I did. It posed a substantial
19 risk.

20 Q Okay. Did you determine with
21 regards to count one that the actions have or
22 may have a substantial adverse effect on
23 statutory or regulatory purposes?

24 A Yes, I did.

25 Q Okay. With regard to the risk of

1 human exposure, I am going to refer you to
2 paragraph 41 of the complaint and ask you if
3 you can identify of those listed materials
4 which one of them you made a determination
5 that they were a substantial risk of exposure
6 to humans?

7 A For example, letter L, ferrous
8 chloride. Letter H, hydrochloride acid.
9 Letter B sodium aluminate, letter E, corrosive
10 substances and so on.

11 Q Okay and so on meaning?

12 A Meaning like letter Q all the
13 chemical reagents of all types being abandoned
14 at the laboratory of the facility.

15 Q Anything else in this list?

16 A Pretty much everything.

17 Q So the testimony is they are all -

18 A They are potential, they are
19 corrosive, they are pretty low pH
20 characteristics and they are dangerous when
21 they are not managed properly.

22 Q Okay. So what you determine is they
23 are all hazardous waste and the basis of this
24 substantial risk of exposure, was it in the
25 way the products were stored?

1 A That is correct.

2 Q And what about the way they were
3 stored created a risk?

4 A They were like opened, broken,
5 rusted. They were leaking on the floor and
6 they were not segregated by comparability that
7 could generate any violent reaction.

8 Q Well, now, let's take a look at the
9 photos again so you can tell me again how that
10 was demonstrated in these photos. I am going
11 to show you photo eleven. Explain to me if in
12 any way this demonstrates a substantial risk
13 of exposure by humans.

14 A Are you referring to count?

15 Q Yes, let's talk about count one,
16 your list.

17 A We didn't prove that fact at count
18 one.

19 Q I am sorry. So the answer to this
20 to 11 is no. So photo 13 also didn't apply to
21 count one, right?

22 A Ahum.

23 Q And photo 12 also didn't apply to
24 count one, right?

25 A No.

1 Q And photo ten?

2 A That may account for Count 1.

3 Q Okay. Give me the reference in 41
4 to photo ten. If you can.

5 A How did the hazardous get to see if
6 any identification in the container and it
7 could be in my notes. As you can see it is
8 open.

9 Q Okay but besides it being open, is
10 there any other basis for assuming the
11 substantial risk of exposure?

12 MR. MATEO DURANGO: Objection, asked and
13 answered. The witness already testified that
14 the facility was left opened and the people
15 could walk in there and be exposed to the
16 chemicals that were abandoned.

17 EXAMINATION CONTINUED

18 BY MR. LLORENS:

19 Q Okay. When evaluating the
20 substantial risk to exposure of the building
21 being opened, how did you attribute that
22 factor as a violation by respondent, Aguakem
23 Caribe?

24 A What you mean that the building was
25 opened, that it was not secured.

1 Q Let me try it. How is it, Aguakem
2 Caribe's fault that the Port Authority left
3 the building open?

4 A I don't know the answer. When I was
5 there the building was opened and we have
6 workers all over the outside areas working on
7 the renovation of the port.

8 Q Okay. As you sit there now sitting
9 here now as a witness, do you not know that
10 the former facility was owned by the Port
11 Authority of Ponce?

12 A I knew that the Port Authority of
13 Ponce is the owner of the property.

14 Q Okay. Do you agree then that
15 whether the building was opened or closed, was
16 controlled by the Port Authority of Ponce?

17 A Well, they are the owner and they
18 control the building.

19 Q All right so when you discussed the
20 question of risk of exposure to humans, and
21 you talked about what can be done to minimize
22 the risks or what is causing the risks. When
23 you testified that one of the main reasons is
24 that the building was opened. How did you come
25 to the conclusion that that was attributable

1 to Aguakem Caribe?

2 A Well, they were the last ones to
3 leave the building when they moved out of the
4 building back in December 26, 2006.

5 Q Right.

6 A And the condition according to let's
7 say, the condition that was the way we found
8 it at the time of the inspection.

9 Q Did you discover or try to discover
10 whether the decision to leave the building
11 opened was one made by the Port of Ponce or by
12 Aguakem Caribe?

13 A Well, I do believe it was by Aguakem
14 because when I went to the inspection Port of
15 Ponce tried to put some safety yellow tape
16 strips in order not to allow people to get in
17 but that was done by Port of Ponce.

18 Q On February 2, 2007?

19 A On the date I was there I evidenced
20 it, that they put a gel strip on the door.

21 Q But they didn't do it before that
22 day, did they?

23 A I don't know.

24 Q They had the power to do it on
25 February 2, 2007 and they did it according to

1 you.

2 A What I said to you --

3 MR. MATEO DURANGO: Objection,
4 argumentative. Counsel is asking the witness
5 to answer what the Port Authority may or may
6 not have thought or done. In addition I am
7 curious of the relevancy. Counsel is asking
8 for the witness to define regarding property
9 rights and so forth between the Port Authority
10 and Aguakem.

11 MR. LLORENS: Your Honor, the witness was
12 the person who made the determination on
13 behalf of the EPA that my client violated RCRA
14 because it created a substantial risk of
15 exposure to humans. I think I am perfectly
16 entitled to ask him what factors he considered
17 and whether one of the factors that he says he
18 considered the fact that the building was
19 opened, was it in fact attributable to my
20 client.

21 THE JUDGE: I agree with counsel for
22 respondent and he has the right to develop
23 this area.

24 EXAMINATION CONTINUED

25 BY MR. LLORENS:

1 Q Did you make a determination that
2 the status of the building being opened or
3 closed was under the control of Aguakem
4 Caribe?

5 A I didn't make that determination. I
6 based my determination on the potential harm
7 and the conditions of the chemical at the
8 warehouse and the proximity of the Caribbean
9 Sea which is in the background.

10 Q I think it was your counsel that
11 clarified for me that you testified that one
12 of the basis for the substantial risk of
13 exposure to humans was because the building
14 was opened and that anybody could get in.

15 A That is true.

16 Q And I am asking you who determined
17 that the building would be open?

18 A When I visited the area the building
19 was open.

20 Q Right and who made that decision to
21 let the building open?

22 A I don't know.

23 THE JUDGE: The question does become
24 though the relevance. Both the operator and
25 the owner shared joint and several liability.

1 MR. LLORENS: Your Honor.

2 THE JUDGE: Although I understand your
3 argument but it is more appropriate in the
4 form of a legal argument rather than the
5 specific questioning of this witness.

6 MR. LLORENS: If this witness has no other
7 basis for attributing that responsibility to
8 my client than what he has testified on that
9 point so I need go no further on that point.

10 EXAMINATION CONTINUED

11 BY MR. LLORENS:

12 Q Now I want to continue with this
13 calculation issue which refers to, this is
14 from the complaint, page nine, the proposed
15 civil penalty section, one and two and after
16 it says, "Taking into account the seriousness
17 of the violation" and I quote here, "Any good
18 faith efforts to comply with applicable
19 requirements". Did you make any determination
20 regarding whether occupant attempted to make
21 good efforts to comply with the applicable
22 requirements?

23 A Could you please refer me back to
24 the section -

25 Q Page nine.

1 A Of the complaint?

2 Q Roman II of the complaint.

3 A Page nine of the complaint?

4 Q That is right, underneath Roman II.

5 A What was the question, the good
6 faith effort?

7 Q Yes. Did you make a determination
8 with regard to any good faith efforts to
9 comply with the applicable requirements that
10 had been made by Aguakem Caribe?

11 A Well, I visited the new facilities
12 and we have a conference, a closing conference
13 and we discussed the details about the
14 chemicals being left behind and I didn't get a
15 direct response of cooperating, providing good
16 faith efforts; that he is going to take
17 actions, and he is going to go there and take
18 those chemicals back.

19 Q Okay. Other than that discussion,
20 did you consider any other evidence in
21 determining whether good faith efforts were
22 made?

23 A I simply referred the case to the
24 emergency support team.

25 Q Okay. Did you take into account that

1 Aguakem Caribe entered into a stipulation of
2 administrative order and consent?

3 A I did not.

4 Q You did or did not?

5 MS. RODRIGUEZ: I am sorry, Your Honor, I
6 didn't hear counsel's question. Could he
7 repeat it?

8 EXAMINATION CONTINUED

9 BY MR. LLORENS:

10 Q Did he take into consideration the
11 fact that Aguakem entered into a stipulated
12 administrative order on consent and his answer
13 was, "I didn't hear it."

14 A Well, when we prepared this document
15 we reviewed all the reports, all the data,
16 everything that is available and we also
17 reviewed the administrative order on consent.

18 Q So you did consider it with regard
19 to whether Aguakem made good faith efforts?

20 A Yes, I did consider that.

21 Q Okay. Did you determine that the
22 fact that Aguakem did enter into the
23 administrative order on consent was a good
24 faith effort to comply?

25 A Well, in my professional judgement

1 good faith efforts would have been if he has
2 been taking care of and doing the removal and
3 the removal was done by the Port Authority of
4 Ponce with the EPA and also with the emergency
5 team from EPA. I didn't see any action fully
6 taken by Aguakem during the implementation of
7 the order.

8 Q So the answer is, no, you did not
9 take into account -

10 MS. RODRIGUEZ: No, Your Honor, objection.
11 That is not what he answered. THE
12 JUDGE: Correct. Sustained.

13 EXAMINATION CONTINUED

14 BY MR. LLORENS:

15 Q Did you, yes or no, did you take
16 into account that Aguakem signed the
17 administrative order on consent and count that
18 as a factor -

19 THE JUDGE: It is too vague a question.
20 Part A and then Part B.

21 EXAMINATION CONTINUED

22 BY MR. LLORENS:

23 Q Did you consider the administrative
24 order on consent in determining good faith
25 efforts?

1 A I did.

2 Q And what did you determine as a
3 result of that consideration?

4 A Again the removal action was taken
5 by the Port Authority of Ponce in conjunction
6 with EPA. I didn't see any action or active
7 action being taken by Aguakem for the removal
8 and clean up of the warehouse.

9 Q So the fact that Aguakem executed
10 the administrative order of consent was not
11 considered as evidence of good faith to comply
12 by you?

13 MR. MATEO DURANGO: Objection, asked and
14 answered.

15 THE JUDGE: I believe it has been.

16 MR. LLORENS: What is the answer, I don't
17 know.

18 THE JUDGE: No.

19 MR. LLORENS: The answer is ,no.

20 THE WITNESS: No.

21 MR. LLORENS: Okay.

22 EXAMINATION CONTINUED

23 BY MR. LLORENS:

24 Q So the answer is no?

25 A No.

1 Q Okay. From your perspective then
2 Aguakem could have refused to sign the
3 administrative order of consent and it would
4 have been the same from your perspective as to
5 whether it made good faith efforts to comply
6 or not?

7 MS. RODRIGUEZ: Your Honor, again, we have
8 been, you know, going over the good faith
9 effort, what it means, what, you know, he has
10 already answered what he considered by the
11 signing of Aguakem to the administrative order
12 on consent and he keeps asking it in another
13 way.

14 THE JUDGE: He is becoming a bit
15 repetitive. I will allow this question but it
16 still goes to the same underlying question. It
17 may not be the answer you want but it is the
18 answer that has been given.

19 MR. LLORENS: I will withdraw that
20 question.

21 EXAMINATION CONTINUED

22 BY MR. LLORENS:

23 Q Now, in your testimony on the civil
24 penalty calculated, I thought you said
25 something about fifteen waste streams. Did I

1 hear that correctly?

2 A Yes, you did.

3 Q Can you explain to me what that
4 means? You want the responsibility of Aguakem
5 as the operator of the facility to make a
6 hazardous waste determination on each waste
7 being left behind.

8 Q Waste bin, not waste stream?

9 A Now I am going to go to the second
10 part. So what we did in order to quantify, we
11 segregated all the waste being abandoned at
12 the warehouse by characteristics and came up
13 to be like fifteen different waste streams.

14 Q Okay. There are a lot of words in
15 there. Waste bin and waste stream. Those are
16 two different things?

17 A I can clearly state that if you have
18 different paint, related waste, and paint
19 residual and we can segregate that, that is
20 what we consider a waste stream. If you have
21 corrosive all over the warehouse and we
22 segregate them as corrosive material, we call
23 that as a waste stream.

24 Q Okay. I think I understand waste
25 stream but in your answer before, I thought

1 you said waste bin and that is

2 A No, waste streams.

3 Q Okay. You never said waste bin,
4 okay. That is fine.

5 Can you tell me what those fifteen
6 waste streams were?

7 A If we refer to the complaint on page
8 six.

9 Q Six.

10 A Yes. You can see that we have
11 approximately there fifteen waste streams.

12 Q Well, if you are referring to 41,
13 there are seventeen different categories
14 listed there.

15 A That is right.

16 Q Okay. You talk about fifteen waste
17 streams.

18 A And we have seventeen here. If you
19 see like the letter P?

20 Q Yes.

21 A We can put it together with letter
22 C.

23 Q Okay.

24 A Because we don't know what is in
25 them. Those are unknown chemicals, unknown

1 solvents, unknown solids and then we have
2 counted on one waste stream for prepare the
3 calculation.

4 Q Okay so this counts as one stream
5 for the penalty calculation and this stream
6 was a major violation by your determination?

7 A Which one?

8 Q The waste stream you just identified
9 in your testimony, you joined c and p and said
10 "We could call that one waste stream."

11 A That is correct.

12 Q Did you do that, did you call that
13 one waste stream in your calculations?

14 A We did it by characteristics and
15 came out the whole waste as fifteen waste
16 streams.

17 Q Fair enough but did you put C and P
18 together to create one waste stream?

19 A I think I did.

20 Q Okay and did you call that waste
21 stream a major violation?

22 A Well, they were considered major,
23 major and we used our discretionary authority
24 to use it with the day matrix as part of the
25 waste streams.

1 Q Okay and this was major major
2 because -- this particular waste stream was
3 major major in the matrix based on what
4 factors?

5 A Major major was considered let's say
6 to every waste stream, let's say. The
7 abandonment, the conditions, the potential
8 exposure to waters and to the environment and
9 we took the discretion of using waste stream
10 and applying it instead of putting the maximum
11 penalty all over it by the penalty policy
12 which is 32,500 so we counted just one waste
13 stream. The other fourteen we multiplied by a
14 number that we took from the multi matrix.

15 Q Fair enough. The waste stream that
16 we just identified was treated as a major
17 major violation, I think you just testified
18 and one of the elements of the major
19 violations I understood was this calculation
20 this was a substantial risk of exposure to
21 hazardous waste.

22 A Another thing that has to be non
23 compliance on the regulatory program.

24 Q Okay but was this waste stream
25 considered to be a hazardous waste stream by

1 you in your calculation?

2 A What we are discussing here that you
3 needed to do, a hazardous waste determination.
4 That is what was violated here. It is not at
5 this point, if it was a hazardous or it was
6 not a hazardous waste. I don't take anymore
7 action at the end.

8 Q Okay. This particular waste stream
9 was a function of the failure to make a
10 determination that it was hazardous waste?

11 A Definitely.

12 Q Okay. But it wasn't a hazardous
13 waste? It is part of count one, not count two
14 anyway, right?

15 A Exactly.

16 Q Okay but that is one and I still
17 have to ask you, because when you called it a
18 major violation or serious violation, at least
19 by the policy guidelines, one of the elements
20 is the substantial risk of human exposure to
21 hazardous waste. So, to make that
22 determination you made that this was a major
23 violation. Wasn't part of that that you
24 determined this was hazardous waste?

25 A Based on a pure knowledge that we

1 gather during inspection that we have
2 hazardous waste.

3 Q Yes.

4 A Over there like potential or
5 hazardous waste constituents, that was part of
6 the assessment to determine that it was a
7 major violation.

8 Q Can you tell me the other waste
9 streams that you identified? Could you
10 identify the other waste streams as you did
11 this one?

12 A Going to page six of the complaint?

13 Q Right.

14 A Number A, you have like a low pH
15 solvent container.

16 Q Right.

17 A B, you have sodium aluminate.

18 Q Right.

19 A C you have unidentified materials.

20 Q Right.

21 A D, you have polyacrylamide
22 emulsions. E, corrosive substances unknown,
23 F, Superfloc C-59, G again, unknown substance,
24 H, hydrochloric acid, I, ferric sulfate, J,
25 ferric sulfate, K, corrosive tanks, L, ferrous

1 chloride, M, water treatment flocculant
2 solution, N, corrosive quim PAC, O, APAK 4050,
3 P, laboratory waste, unknown, and Q abandoned
4 bottles and chemical reagents at the
5 laboratory.

6 Q Do you know, okay, this is a general
7 question, in making your calculations, do you
8 determine that each of these was a hazardous
9 waste substance, correct?

10 MR. MATEO DURANGO: Objection, asked and
11 answered.

12 MR. LLORENS: In the context of a waste
13 stream, I want to just make sure I understand
14 that correctly.

15 THE WITNESS: What they violated was that
16 they didn't perform the hazardous waste
17 determination required by the program.

18 EXAMINATION CONTINUED

19 BY MR. LLORENS:

20 Q Okay. Now, when you did the
21 calculations, let me refer to the complaint
22 here, page ten, count one, 114,598; count two,
23 214,497; count three and so on. I heard your
24 calculation and again this may have been
25 answered but I didn't understand it if it was

1 answered. With regard to the calculation for
2 count one, did you determine that all the
3 violations that you did in the calculation of
4 the penalty involved hazardous waste?

5 A And again, the respondent violated
6 the failure to make the hazardous waste
7 determination. This is what this count is all
8 about.

9 Q My question is different and again,
10 I apologize if this was already answered but
11 when you calculated the fine for count one,
12 did you make a determination for the purposes
13 of the penalty calculation that the violations
14 in count one all involved hazardous waste
15 substances?

16 MR. MATEO DURANGO: Objection, asked and
17 answered.

18 THE JUDGE: Yes, I believe we are just
19 repeating this and going over it over and over
20 again.

21 THE WITNESS: What it considered it was
22 the adverse impact to the program of non
23 compliance and the risk to the human and the
24 environment.

25 MR. LLORENS: Your Honor, I did not feel

1 that in fact what he is considered to be
2 hazardous waste has in any way been clarified
3 but if I am being told that I can't ask
4 anymore questions on that -

5 THE JUDGE: I believe his testimony,
6 correct me if I am wrong, you did not
7 necessarily make a hazardous waste
8 determination as to any particular substance.
9 Your determination was, there was a failure to
10 make the hazardous waste determination and
11 that was the basis for determining it to be
12 serious.

13 THE WITNESS: Definitely. That is correct.

14 THE JUDGE: Okay.

15 MR. LLORENS: Well, Your Honor, that
16 doesn't go to the question of when calculating
17 the penalty and the issue of substantial risk
18 to human exposure to hazardous waste and he
19 said yes, these -

20 THE JUDGE: It says potential for exposure
21 and/or, so it is an alternative.

22 MR. LLORENS: I think I am entitled to
23 know which one then he is basing his penalty
24 on.

25 THE JUDGE: Okay. Now, that is

1 legitimate.

2 EXAMINATION CONTINUED

3 BY MR. LLORENS:

4 Q Would you tell me whether you,
5 instead of making a determination of hazardous
6 waste, you based your finding of the level of
7 the violation on other factors?

8 THE JUDGE: Now, I am clear as to what the
9 question is.

10 MR. LLORENS: Okay. Your Honor, you said
11 that the question of a determination of
12 hazardous waste wasn't exclusive; that there
13 was in fact other basis for finding a major
14 violation.

15 THE JUDGE: There can be.

16 MR. LLORENS: I am asking if he used the
17 other basis for that finding.

18 THE WITNESS: What I did was identify what
19 was at the warehouse at the time of inspection
20 and we segregated the waste streams and they
21 needed to perform a hazardous waste
22 determination.

23 MR. LLORENS: Your Honor, you see, people
24 say I am asking question that are irrelevant
25 but I don't think that answers my question.

1 THE JUDGE: The question, the answer as I
2 understand it which is what is going to count
3 when this is all over.

4 MR. LLORENS: Okay.

5 THE JUDGE: Is he did not make an actual
6 hazardous waste determination. He determined
7 that a hazardous waste determination was not
8 made which is then the basis for finding it to
9 be major or perhaps it posed a substantial
10 risk of exposure.

11 MR. LLORENS: Okay but in that finding he
12 found a substantial risk of exposure to
13 hazardous waste without having determined
14 whether or not any of the products were
15 hazardous waste.

16 THE JUDGE: Correct. I don't want to speak
17 for the witness but that is my understanding.

18 THE WITNESS: That is correct.

19 EXAMINATION CONTINUED

20 BY MR. LLORENS:

21 Q In your testimony you talked about
22 some of the containers being opened, having
23 rust or leaks. I am going to go through each
24 of the pictures that have containers. I am
25 asking you to point to what you consider to be

1 opened or leaking. This is photo thirteen. Is
2 there a container at photo thirteen that is
3 opened and has a leak?

4 A What you see there is leaks or spill
5 of solid solvent, different colors.

6 Q Okay but these containers, I see
7 three. How many do you see?

8 A One, two, three.

9 Q Okay. Were any of those three
10 containers leaking?

11 A This is like samples of all the
12 pictures we took and this is not only
13 representative of the overall conditions at
14 the warehouse.

15 Q Were these three containers
16 representative of the condition of the
17 containers with regards to leaks?

18 A As you can see in the picture, you
19 can see powder. Probably this was leaking
20 before, you know, passing leaks on the floor
21 because this is not the natural color of the
22 floor.

23 Q Okay. Is it your testimony that
24 these three would have leaks?

25 A Would have been leaking.

1 Q Could have been leaking?

2 A Ahum.

3 Q But you don't know that they were
4 leaking?

5 A You can see there the stains on the
6 floor.

7 Q Okay. It is your testimony that
8 these stains on the floor came from leaks from
9 these containers?

10 A That potentially it could have come
11 from leaks from the tanks and the water or
12 whatever evaporated and this is what you see
13 left behind as a stain on the floor.

14 Q Let's go to ten. Was this container
15 leaking?

16 A There were so many containers there
17 that this is just one sample photograph of one
18 container but I don't see it leaking because I
19 don't see the whole picture.

20 Q Do you have any photos of anything
21 that is leaking?

22 MR. MATEO DURANGO: Objection. The
23 witness already testified that it is the
24 actual leak or potential for a leak on
25 multiple occasions.

1 MR. LLORENS: I am going to ask if he had
2 any photos of any leaking containers.

3 THE JUDGE: I will allow the question.

4 THE WITNESS: Like for example, on Exhibit
5 three.

6 MR. LLORENS: Okay.

7 THE WITNESS: So we got some laboratory
8 pad that was broken, that spilled on more
9 deteriorated conditions that is a potential
10 for leak, too.

11 EXAMINATION CONTINUED

12 BY MR. LLORENS:

13 Q What page are you reading from?

14 A I am sorry, page number eight.

15 Q Okay. So you reported that you saw,
16 in your compliance evaluation report, is it
17 the last paragraph?

18 A Yes.

19 Q You say that potential waste spill,
20 you must be referring to another section.

21 A I am referring to the second
22 paragraph on page eight that you have all the
23 containers were broken, spilled their content.

24
25 Q Okay. Some of these were broken,

1 spilled or in deteriorated conditions. Okay.
2 So let's take those. Do you have any photos
3 or evidence other than your report of any
4 broken containers?

5 A We have to rely on my report and my
6 field notes.

7 THE JUDGE: Okay. At this stage yes or no.

8 THE WITNESS: Could I have just one
9 second?

10 THE JUDGE: Yes.

11 THE WITNESS: What I have in the report,
12 numerous spills.

13 THE JUDGE: The question presently before
14 you is limited strictly to, do any of the
15 photographs depict a spill, open spill,
16 leaking, pardon me, not spill, leaking.

17 THE WITNESS: Yes. What we see is the
18 spill like the dry solvent and the stain on
19 the floor. Stain on the floor so possibly that
20 is a spill. That is what we refer in the
21 report.

22 THE JUDGE: But do any of the photographs
23 that are in the exhibit demonstrate or reflect
24 a leak?

25 THE WITNESS: No.

1 THE JUDGE: Okay.

2 EXAMINATION CONTINUED

3 BY MR. LLORENS:

4 Q Just a few more. This is photo six
5 of the exhibit. Now, I am going to refer to
6 this wall here. Do you know what that wall
7 was, like cinder block wall?

8 THE JUDGE: You are referring to what in
9 the photograph?

10 MR. LLORENS: To the cinder block wall on
11 the right hand side?

12 THE JUDGE: Okay.

13 THE WITNESS: On the north side of the
14 facility where we have all the totes being
15 stored there.

16 MR. LLORENS: Right.

17 EXAMINATION CONTINUED

18 BY MR. LLORENS:

19 Q Do you know if the part of the
20 warehouse that was on this side of this wall
21 was part of the Aguakem space?

22 A I don't know. I didn't know.

23 Q So if anything you fathomed this
24 side -

25 THE JUDGE: Okay. Let the record reflect

1 you are pointing to -

2 MR. LLORENS: Sorry. Let me try that
3 again, Your Honor.

4 THE JUDGE: Okay.

5 EXAMINATION CONTINUED

6 BY MR. LLORENS:

7 Q Did you find any materials that you
8 included in your report on -

9 THE JUDGE: How about if we take -

10 MR. LLORENS: East of the wall, east of
11 the wall, actually.

12 THE JUDGE: Okay.

13 EXAMINATION CONTINUED

14 BY MR. LLORENS:

15 Q Do you know if you found any
16 material east of that wall?

17 A Yes, we found.

18 Q Okay. What did you find?

19 A Totes and other kinds of --

20 Q When you say south totes on the
21 east, east of the wall?

22 A Yes.

23 Q Did you find any spillage east of
24 the wall as depicted in photograph six?

25 A I don't recall.

1 Q Let's look at the drawing here.

2 THE JUDGE: How about if we go with the
3 photograph identified layout?

4 MR. LLORENS: Yes, in the photograph
5 identified layout. Your Honor, I am not going
6 to ask on that. I am just going to ask one
7 more general line of questions.

8 EXAMINATION CONTINUED

9 BY MR. LLORENS:

10 Q When you inspected the former
11 facility, did you notice anything around the
12 facility?

13 A You mean outside of the building
14 area?

15 Q Yes.

16 A Yes, we had some observations about
17 the outside area of the facility.

18 Q Okay. Tell me what you are
19 referring to.

20 A The tote.

21 Q Okay. Other than that tote that we
22 have discussed?

23 A A septic tank, a ditch.

24 Q Okay. Did you notice if part of the
25 entry ways were blocked off?

1 A There were like several entries.

2 Q Did you notice that there was
3 construction going on?

4 A Not in the perimeter of the
5 building.

6 Q Did you notice any demolition going
7 on?

8 MS. RODRIGUEZ: Could you be more specific
9 as to where.

10 MR. LLORENS: At the port.

11 MS. RODRIGUEZ: The port is very big
12 place, Your Honor.

13 MR. LLORENS: The area adjacent to the
14 port, to warehouse six.

15 THE WITNESS: I honestly I don't recall
16 any construction or demolition activities. I
17 concentrated my inspection to the
18 notification.

19 EXAMINATION CONTINUED

20 BY MR. LLORENS:

21 Q So you didn't look at anything that
22 was around there?

23 A We looked around the building and we
24 found the septic tank and a toate, an
25 abandoned toate on top of a sump that

1 discharged directly to the Caribbean Sea. We
2 saw a septic tank, a ditch on the south side
3 of the facility.

4 Q Debris, you saw debris outside the
5 facility?

6 A Yes, abandoned debris.

7 Q Okay and did you make a
8 determination as to what the cause of the
9 debris was outside the facility?

10 A That was not my real concern. My
11 concern was the chemical left behind in the
12 warehouse.

13 Q Okay, so you didn't make a
14 determination?

15 A No. What we do, we do it like a walk
16 through the area inside and outside of the
17 building.

18 Q I will ask one more time. So, you
19 didn't did you or did you not make a
20 determination about the debris outside the
21 facility?

22 MS. RODRIGUEZ: Your Honor, objection.
23 Irrelevance. I mean, he has already spoken on
24 the direct, was concentrated on what he found
25 inside and now he is going outside the scope

1 of the direct.

2 THE JUDGE: Well, I allow him to ask the
3 question if he made any determination
4 concerning the outside of the building.

5 THE WITNESS: What I saw outside of the
6 building -

7 THE JUDGE: Yes or no?

8 THE WITNESS: No.

9 THE JUDGE: Okay. Thank you.

10 MR. LLORENS: No further questions.

11 THE JUDGE: Okay. Do you want to take a
12 brief break?

13 MS. RODRIGUEZ: That is what I was going
14 to ask.

15 THE JUDGE: Five or ten minutes and
16 hopefully we can wrap things up with this
17 witness for today.

18 (Whereupon a recess was taken)

19 THE JUDGE: Back on the record and again I
20 remind the witness that he is still under
21 oath. REDIRECT EXAMINATION

22 BY MS. RODRIGUEZ:

23 Q Mr. Gonzalez, let's go back to 2007.
24 You testified that you learned, EPA learned
25 let's say of something had happened at the

1 facility in Ponce, by port of Ponce. That is
2 correct?

3 A That is correct.

4 Q And that resulted in the inspection
5 you conducted, that is correct?

6 A That is correct.

7 Q Prior to that call, did you receive
8 any call or were any calls made by Aguakem
9 which made you go and do an inspection of the
10 facility?

11 A No.

12 Q Okay. Now, as to the administrative
13 order on consent which was signed by Aguakem.
14 If you know, do you have knowledge whether
15 Aguakem conducted any of the work under the
16 order, yes or no?

17 A No.

18 Q Do you know whether Aguakem actually
19 participated in providing or the cost of or
20 the expenses of the administrative order?

21 MR. LLORENS: Objection. What is the
22 relevance?

23 MS. RODRIGUEZ: Your Honor, he opened up
24 and he waived reference to the, how the good
25 faith effort of respondent regarding the

1 administrative order on consent and he opened
2 the door.

3 THE JUDGE: The door was opened. Okay.

4 EXAMINATION CONTINUED

5 BY MS. RODRIGUEZ:

6 Q Do you know whether they incurred in
7 any costs?

8 A No.

9 Q Do you know whether they contacted
10 EPA to perform the work under the
11 administrative order on consent?

12 A No.

13 Q No. Okay. Now, you mentioned how
14 many FNFI's were actually issued?

15 A I believe one was issued to the
16 Aguakem and another to Port of Ponce.

17 Q Okay.

18 A To FNFI.

19 Q To FNFI and Aguakem and Port of
20 Ponce were the two parties also in the
21 administrative order on consent?

22 A Yes.

23 Q Okay. Now, let's go as to the
24 inspection and your experience as a RCRA
25 inspector when you conduct inspections of a

1 facility and let's go specifically to count
2 one, failure to make a hazardous waste
3 determination.

4 Take a look at page twelve of the
5 RCRA Civil Penalty Policy, specifically
6 Section 6a, potential for harm. Could you
7 please read the first, could you read that
8 paragraph, please.

9 A Letter A, Potential for Harm. "The
10 RCRA requirements were promulgated in order to
11 prevent harm to human health and the
12 environment. Thus noncompliance with any RCRA
13 requirements can result in a situation where
14 there is a potential for harm to human health
15 or the environment. In addition to those
16 violations that involve actual or potential
17 contamination from the release of hazardous
18 wastes, violations such as failure to comply
19 with record keeping requirements create a risk
20 of harm to the environment or human health as
21 well as undermine the integrity of the
22 regulatory program. Accordingly, the
23 assessment of the potential for harm resulting
24 from a violation to be based on two factors."

25 Q Okay and the first one states that,

1 could you read what the first of the two
2 factors is?

3 A The first one, "The risk of human or
4 environmental exposure to hazardous waste or
5 hazardous waste constituents that may be posed
6 by noncompliance."

7 Q And the second one?

8 A "And the adverse effects
9 noncompliance may have on a statutory or
10 regulatory purposes or procedures for
11 implementing the RCRA Program."

12 Q Okay. Now, when we go and state
13 failure to make a hazardous waste
14 determination, you previously stated that you
15 did not make a hazardous waste, you. When we
16 say, you I would say EPA, I am sorry, let me
17 correct. That EPA did not make a hazardous
18 waste determination when it went to the
19 inspection. That is correct?

20 A That is correct.

21 Q Does the RCRA statute or the
22 regulations require you and when I say you, I
23 mean EPA, that when you go to perform an
24 inspection in order to make a finding of a
25 violation of hazardous waste determination,

1 that you do one before that? Is it required
2 for EPA to make a finding of a hazardous waste
3 determination?

4 A It is important, we need that
5 information.

6 Q But are you required when you go,
7 counsel has stated and asked you regarding
8 when you went to the inspection, when you went
9 in the inspection to the facility right there,
10 do you have to sample and see whether those,
11 whatever chemicals that you found there or
12 whatever material was there at that moment, do
13 you have to sample to see whether they were
14 hazardous waste?

15 A No, I do not.

16 Q You do not. Is it required that you
17 do that in order to allege the violation?

18 A No, EPA doesn't need that.

19 Q You don't need to do that?

20 A Exactly.

21 Q Now, you discussed, you mentioned
22 and we can go back to your inspection report,
23 what you found during your inspection when you
24 went there. At that time was the operator or
25 the owner in place in this facility?

1 A Not the operator.

2 Q Not the operator, right. From your
3 experience and your professional experience,
4 what you saw there, what you found there
5 regarding the drums that we have mentioned,
6 regarding the other containers, is it
7 something normal that you would see in this
8 kind of inspection in that type of facility?

9 A No.

10 Q Let me rephrase the word. The drums
11 that you saw, not maybe in the actual state
12 that they were but are they something that you
13 would find, usually find when you go on an
14 inspection of this type of facility?

15 A Yes.

16 Q Okay. Now, you mentioned that
17 nobody, the operator was no longer in the
18 facility.

19 A That is correct.

20 Q And in order for whatever product
21 was there, be it hazardous waste or non
22 hazardous waste, in order, let's say, let's do
23 a hypothetical one. If the product in there
24 was not hazardous waste, let's say. You don't
25 know because you are going on the inspection

1 but the owner or operator of the facility is
2 no longer there and went away and left that,
3 what you saw let's say in the inspection, how
4 did that product that was left there or could
5 that product that was left there become a
6 hazardous waste, why?

7 A First because if it is abandoned it
8 is regulated by the RCRA Program and secondly
9 by knowledge from the waste of the material,
10 the material we can determine it is a
11 hazardous waste.

12 Q So by merely, you are saying that by
13 merely abandoning and leaving alone that
14 material there, even though if later you find
15 that it is not hazardous waste, at that time
16 when you make the determination it is
17 considered a hazardous waste just by merely
18 the abandonment of that product there?

19 A Yes, that is correct.

20 Q Okay and when you say failure to
21 make a hazardous waste determination, the
22 owner or operator of that facility, that same
23 facility known hypothetically that abandoned
24 and left that had to make a hazardous waste
25 determination of the products that he left

1 there, is that correct?

2 A That is correct.

3 Q Because he was actually abandoning
4 and leaving it there. Is that correct?

5 A That is correct.

6 Q Now, if he would continue using
7 that, would he have to make a hazardous waste
8 determination?

9 A No.

10 Q No. Right?

11 A Right.

12 Q So let's say whatever he took
13 hypothetically, whatever that operator took
14 with him when he left, would he have to make a
15 hazardous waste determination of what he took?

16 A No.

17 Q Would he have to do it with what he
18 left?

19 A Yes.

20 Q Okay and EPA does not have to know
21 whether actually it wasn't hazardous waste at
22 that moment of the inspection, correct?

23 A That is correct.

24 Q Now, I will refer you to --

25 MS. RODRIGUEZ: Your Honor, I think

1 it was already marked as Exhibit 9 and it was
2 the response submitted by Aguakem to the
3 second RCRA inspection.

4 EXAMINATION CONTINUED

5 BY MS. RODRIGUEZ:

6 Q Now, there were discussions about
7 how and who told EPA a December 28th date,
8 whether it was Port of Ponce, counsel asked
9 you how did EPA know that date. You know, who
10 provided it to you. Could you read from
11 Aguakem's response to the Second Information
12 Request, Part B1 chronology and could you read
13 the first sentence, please.

14 A Under chronology?

15 Q Yes.

16 A "Aguakem elaborates in Puerto Rico
17 various water treatment products for potable
18 and waste waters to be utilized in water
19 treatment plants."

20 Q Continue.

21 A "From the start of its operation in
22 Puerto Rico in June of 1995 to December 28,
23 2006 at the Port of Ponce."

24 Q Okay. So it was actually Aguakem who
25 told you the December 28, 2010 when they

1 abandoned the port.

2 MR. LLORENS: Objection to the form of
3 that question. I don't think that was the
4 testimony.

5 MS. RODRIGUEZ: He just read from the
6 response, Your Honor.

7 MR. LLORENS: That is what he did. He
8 didn't say that is who told him. He might
9 have been told earlier.

10 THE JUDGE: Okay.

11 EXAMINATION CONTINUED

12 BY MS. RODRIGUEZ:

13 Q Okay. Then who told you? Once that
14 you have read this inspection report and what
15 you just read, who informed EPA of the
16 December 28th date?

17 A Aguakem.

18 Q Thank you. Now, let's go back to
19 the date of the actual inspection. You
20 mentioned you first conducted, the same date
21 you conducted the two inspections of the
22 former and the actual facility of AGuakem
23 Caribe.

24 A That is correct.

25 Q And you stated that in the afternoon

1 you conducted the inspection of the Canas,

2 A Yes.

3 Q So I assume in the morning you
4 conducted the inspection of Aguakem.

5 A Yes, that is correct.

6 Q You also mentioned that there was a
7 closing meeting.

8 A Yes, I did.

9 Q And in that closing meeting you
10 mentioned somebody by the name of Unanue?

11 A Ahum.

12 Q Who was present?

13 A Ahum.

14 Q Jose Unanue, am I right?

15 A Yes, you are right.

16 Q Okay and in that closing meeting,
17 did you inform Mr. Jose Unanue the findings of
18 violation or potential violation that EPA had
19 found at the former Aguakem facility?

20 A We discussed that.

21 Q And what was the response that you
22 got from Mr. Unanue?

23 A He didn't responded much about the
24 subject. He didn't respond. He didn't say
25 much about the subject of the chemical, you

1 know, leaving behind.

2 Q Did he in any way say that they were
3 going to take care of it?

4 A They did not. He did not.

5 Q Did he state that he was going; that
6 they were going to call, you know, call you
7 later or contact EPA later regarding that?

8 MR. LLORENS: Objection. This is, first
9 of all it is repetitive and it is leading if
10 you want to form a basis for the objection.

11 THE JUDGE: It is quite leading.

12 MS. RODRIGUEZ: Okay.

13 EXAMINATION CONTINUED

14 BY MS. RODRIGUEZ:

15 Q Did you receive any future contact
16 from Aguakem regarding that inspection after
17 the Canas, after the inspection and the
18 meeting, the closing meeting?

19 A If I recall the e-mails that were
20 presented before.

21 Q But did they in any way, did you
22 receive any contact regarding the findings
23 that you had made?

24 A No.

25 Q Okay. Now, I think he still has it,

1 the inspection report?

2 A I have it here.

3 Q Okay. Now, the inspection report,
4 do you have the attachments to the inspection
5 report?

6 A Yes, I do.

7 Q And what are those attachments?

8 A We have some appendixes. There are
9 some location maps. We have the layouts and
10 another appendix with the photographs.

11 Q Are there more photographs than the
12 one that we discussed this morning?

13 A Yes.

14 Q Okay and you have your inspection
15 report. Could you take a look at page four.
16 Item three.

17 A Okay.

18 Q Could you read me the first, back
19 there, please, at the bottom.

20 A The last sentence?

21 Q No, start at the last paragraph.

22 A "Tour of the facility".

23 Q No. Item three. Tour of the
24 facility, right.

25 A Yes. "At the time of the

1 inspection, EPA inspectors identified an
2 abandoned chemical warehouse"--

3 Q You can skip down.

4 A Okay. "With actual and potential
5 hazardous waste spill to soil surface and
6 waterway in the area. The warehouse had
7 several chemical spills from drums and
8 containers labeled as hydrochloric acid,
9 sulfuric acid, low pH sump water, ferrous
10 chloride, ferric sulfate and sodium aluminate.
11 Also there were spills from containers with
12 unknown contents labeled as corrosive. These
13 spills presented a potential contamination to
14 the soil surface and waterway in the area,
15 specifically the Caribbean Sea. As evidenced
16 by EPA inspectors, the site posed a potential
17 risk to human health and the environment and,
18 therefore, during the inspection it was
19 referred to EPA's Superfund Removal Program
20 for stabilization activities on the date of
21 the inspection."

22 Q So I would like to ask you, when you
23 did this inspection report, did you rely
24 solely on the photographs that were taken? I
25 mean did you just give let me not just say

1 solely.

2 When you did the inspection report,
3 did you just use the photos that had been
4 taken in order to prepare the inspection
5 report?

6 A Yes, in addition to my field notes.

7 Q I am sorry?

8 A My field notes.

9 Q So you just used your field notes to
10 prepare the report?

11 A Ahum.

12 Q Did somebody else besides you review
13 also this inspection report?

14 A Yes.

15 Q Could you tell me who?

16 A Other enforcement officers.

17 Q So did you also rely on what they
18 saw during the inspection?

19 A Yes, I did.

20 Q Okay. Now, back to the complaint,
21 Exhibit 1. Do you have it?

22 A Yes.

23 Q Okay. In the narrative explain to
24 support the complaint amount under count one,
25 what did you discuss on the gravity base

1 penalty? What are the three items there?

2 A We discussed potential for harm, I
3 discussed extent of deviation and multiple
4 days.

5 Q You mentioned that when you
6 discussed this, the count one which is the
7 failure to make a hazardous waste
8 determination, that the determination was
9 deemed major.

10 A Yes.

11 Q That is correct and you also
12 mentioned here because of the penalty policy
13 provided potential for harm should be based on
14 two factors and I am reading from it. "The
15 adverse impact of the noncompliance on the
16 regulatory scheme and the risk of human or
17 environmental exposure." Now, in your
18 experience and in the inspections you have
19 conducted, approximately how many complaints
20 have you issued or at least reviewed and
21 participated?

22 A I don't know the exact number but it
23 could be over twenty, thirty.

24 Q Okay. If the count failure to make
25 a hazardous waste determination a serious

1 count?

2 A Yes, it is.

3 Q And under your professional
4 experience and in accordance with the RCRA
5 penalty policy, is that account where you
6 would make usually a major determination?

7 A We typically use major for that
8 count.

9 Q Okay. What effect would it have on
10 the RCRA Regulatory Program if people did not
11 consider making a hazardous waste
12 determination?

13 A It would undermine the program.

14 Q It would undermine the RCRA Program?

15 A Ahum.

16 Q Because is it a requirement?

17 A Yes.

18 Q Under the regulations for certain
19 kind of emphasis I would say?

20 A Yes, that is correct?

21 Q And it would be a requirement for
22 Aguakem's business?

23 A It is a requirement.

24 MS. RODRIGUEZ: Your Honor, that would be
25 all.

1 THE JUDGE: Okay. Any recross?

2 MR. LLORENS: Yes, Your Honor, just a
3 couple.

4 RE CROSS EXAMINATION

5 BY MR. LLORENS:

6 Q Was there sulfuric acid at the
7 former facility?

8 MS. RODRIGUEZ : Your Honor, if I can --

9 MR. LLORENS: Was there sulfuric acid at
10 the former facility?

11 THE JUDGE: Okay.

12 MS. RODRIGUEZ: Your Honor, objection.

13 THE JUDGE: For direct?

14 MS. RODRIGUEZ: Yes, first of all the
15 direction, the redirect specifically stated
16 and addressed that in order to make a
17 hazardous determination there was no need to
18 make a finding of that and we did not discuss
19 what was actually found there.

20 THE JUDGE: I didn't, on redirect I didn't
21 hear any discussion of -

22 MR. LLORENS: There was, Your Honor. It
23 is in the compliance report. He read from the
24 compliance inspection report that said there
25 was hydrochloride acid and sulfuric acid and a

1 number of other things and I am asking him now
2 -

3 THE JUDGE: The question will be allowed
4 then.

5 MS. RODRIGUEZ: Then, Your Honor, then we
6 will object because if he read it, and it is
7 in the inspection report then it would be just
8 repetitive. He already then stated it.

9 THE JUDGE: Well, I will let the question
10 be asked.

11 MS. RODRIGUEZ: Okay.

12 THE WITNESS: If I will recall when we
13 went, EPA inspector went to the laboratory
14 area, there were a lot of reagents being
15 abandoned there. So that can probably be part
16 of the sulfuric acid we saw.

17 EXAMINATION CONTINUED

18 BY MR. LLORENS:

19 Q As you sit here today, is it your
20 testimony that the former facility contained
21 sulfuric acid?

22 MS. RODRIGUEZ: I am sorry, Your Honor. I
23 think it is too broad, the question and first
24 of all, what did he ask whether--

25 THE JUDGE: Whether it contained sulfuric

1 acid.

2 MS. RODRIGUEZ: When?

3 THE JUDGE: Okay. Could you qualify the
4 time?

5 EXAMINATION CONTINUED

6 BY MR. LLORENS:

7 Q On the date of your inspection of
8 the former facility.

9 A You are asking me?

10 Q I am asking you as you sit here
11 today do you believe that the former facility
12 had sulfuric acid on the date of the
13 inspection by you of the former facility?

14 A Well, I have to rely on my field
15 notes and the notes and the observations at
16 the facility and I am pretty sure, if you have
17 seen the report, because it is in the field
18 notes, it is in the field notes. If it is in
19 the field notes on the date of the inspection,
20 we saw it at the facility. Could be at the
21 laboratory or some place else.

22 Q Okay. Other than from relying on
23 your field notes and what is in the compliance
24 inspection report, is there any evidence that
25 you know of that there was sulfuric acid at

1 the former facility on the day of the
2 inspection?

3 MR. MATEO DURANGO: Objection, assuming
4 facts not in evidence.

5 THE JUDGE: Okay. I am gong to allow the
6 question.

7 THE WITNESS: The only thing that I can
8 add that at the laboratory there were numerous
9 chemicals.

10 THE JUDGE: Numerous what?

11 THE WITNESS: Chemicals, reagents.

12 THE JUDGE: Yes or no?

13 EXAMINATION CONTINUED

14 BY MR. LLORENS:

15 Q Just to repeat my question, other
16 than your field notes that you just testified,
17 do you have anything else that you could point
18 to as evidence that there was sulfuric acid at
19 the former facility on the day of your
20 inspection?

21 A No.

22 Q Okay. Counsel briefly asked you
23 about whether applicants, excuse me,
24 applicants, I am not sure. Respondent's like
25 Aguakem Caribe were required to do hazardous

1 waste determinations.

2 A That is correct.

3 Q And you said, yes.

4 MS. RODRIGUEZ: Your Honor, what I asked,
5 he would like to clarify that.

6 MR. LLORENS: Okay.

7 MS. RODRIGUEZ: I asked whether he would
8 have to make a hazardous waste determination
9 when he abandoned the facility.

10 THE JUDGE: Okay.

11 MR. LLORENS: Okay.

12 EXAMINATION CONTINUED

13 BY MR. LLORENS:

14 Q Okay. If there was an abandonment
15 of the facility, would there have to be a
16 hazardous waste determination?

17 MR. RODRIGUEZ: He already answered that
18 during the direct.

19 THE JUDGE: He did but I will allow him to
20 answer again.

21 MR. LLORENS: I am sorry, did he answer in
22 your redirect or in the direct?

23 MR. RODRIGUEZ: He answered in the
24 redirect and he responded.

25 THE JUDGE: Correct.

1 MR. LLORENS: Okay.

2 MS. RODRIGUEZ: It would be repetitive,
3 you know, he mentioned that -

4 THE JUDGE: It would be repetitive but I
5 will allow it.

6 EXAMINATION CONTINUED

7 BY MR. LLORENS:

8 Q The question is, if there was an
9 abandonment of the former facility, would
10 there have had to have been a hazardous waste
11 determination?

12 MS. RODRIGUEZ: I didn't quite hear. Did
13 you say was or wasn't an abandonment?

14 THE JUDGE: Very hard to hear.

15 MR. LLORENS: There was not an
16 abandonment.

17 MS. RODRIGUEZ: Okay. Thank you so much.

18 EXAMINATION CONTINUED

19 BY MR. LLORENS:

20 Q The inverse if there was an
21 abandonment.

22 MS. RODRIGUEZ: And again that was not
23 part of the redirect.

24 THE JUDGE: Okay. Restate it clearly and
25 move on with this.

1 THE WITNESS: Can you repeat it for me,
2 please?

3 THE JUDGE: Okay.

4 EXAMINATION CONTINUED

5 BY MR. LLORENS:

6 Q If Aguakem had not abandoned the
7 former facility, would they have to do a
8 hazardous waste determination?

9 A If they are still using the
10 chemicals, no.

11 THE JUDGE: What was the answer?

12 MR. LLORENS: He said if they were still
13 using the chemicals, no.

14 THE JUDGE: Okay. Was that correct, that
15 is what you said?

16 THE WITNESS: Like -

17 THE JUDGE: I mean, was that a correct -

18 MS. RODRIGUEZ: Was that your answer?

19 MR. LLORENS: Let me say it again.

20 EXAMINATION CONTINUED

21 BY MR. LLORENS:

22 Q You said if he is still using the
23 chemicals, then no. That is what I heard. Is
24 that what you testified to?

25 A That is correct.

1 THE JUDGE: Okay.

2 EXAMINATION CONTINUED

3 BY MR. LLORENS:

4 Q Now, excuse me, counsel for EPA
5 asked about if you abandon, the question of
6 whether a hazardous waste determination is
7 necessary if there is an abandonment of the
8 facility. I will ask you a similar but I
9 believe a different question. Is there a need
10 for a hazardous waste determination when there
11 is an abandonment of material as opposed to a
12 facility?

13 A Yes.

14 Q The other side of that and if there
15 is not an abandonment of material, would there
16 then not have to be a hazardous waste
17 determination?

18 A If there are abandoned, they will be
19 covered under the RCRA statute and they have
20 to do a hazardous waste determination.

21 Q Let me try one more time but if
22 there is not an abandonment of materials at a
23 facility, would you then say that they would
24 not need to be a hazardous waste
25 determination?

1 THE JUDGE: Okay, too many negatives.
2 You got three negatives in here. It is too
3 confusing.

4 EXAMINATION CONTINUED

5 BY MR. LLORENS:

6 Q Materials at a facility are not
7 abandoned. Take that as my hypothetical and
8 that is what you know. Is there a need then
9 for a hazardous waste determination?

10 A Yes.

11 Q There is?

12 A Yes.

13 Q Even if there is no abandonment?

14 A Yes.

15 Q Okay and what is your basis for
16 making that statement?

17 A You need to consider the conditions
18 of the chemicals. You may have a product that
19 is leaking, that has expired, that is not in
20 use any longer and this is not -- the meaning
21 of abandonment but it is on detrimental
22 conditions that is not in use, discarded and
23 we need to have, you need to make a hazardous
24 waste determination.

25 Q Okay. Do you agree with me that if

1 a product is not abandoned or disposed of, it
2 is not a solid waste?

3 A Could you repeat it? If a solid?

4 Q If a material is not abandoned or
5 disposed of, it is not a solid waste for RCRA
6 purposes. You agree with that?

7 A No.

8 Q Okay. Explain to me what a solid
9 waste is then.

10 A Well, if a chemical is not in the
11 proper container, it is not in the proper
12 container that the container is not compatible
13 with the content of the container, if the
14 chemical has been deteriorated, expired, out
15 of date, you need to make a hazardous waste
16 determination because it could be considered
17 as solid waste.

18 Q Okay even if you don't dispose of
19 it, it is waste according to you?

20 MS. RODRIGUEZ: Objection. Now we are
21 going too broad.

22 THE JUDGE: Yes. We are going beyond the
23 scope -

24 MS. RODRIGUEZ: We are going too broad in
25 a universe of materials which he hasn't

1 identified that could be a solid waste without
2 having to do, being related to -

3 THE JUDGE: We are going off on a tangent.

4

5 MR. LLORENS: No further questions.

6 THE JUDGE: Now, I do want the record to
7 reflect, I think this witness has made a
8 valiant effort in making it clear today but I
9 do want the record to reflect there have been
10 some language difficulties and this is on the
11 transcript. I want to make sure this is being
12 recorded, and if this were to go up on appeal,
13 that it has complicated matters in our
14 understanding and, therefore, more questions
15 than necessary have probably been asked
16 because of the language barrier and I just
17 want the record to reflect that.

18 Now, is this witness going to be
19 reserved?

20 MS. RODRIGUEZ: Your Honor, yes, we would
21 reserve the witness in case we need to bring
22 it as a rebuttal once the respondent presents
23 his case.

24 THE JUDGE: Okay. So unfortunately I
25 cannot dismiss you from the case but you are

1 dismissed today. Thank you, for your
2 testimony.

3 THE WITNESS: Thanks.

4 (The witness was excused)

5 THE JUDGE: Now, it is what, five twenty.
6 Now, we could get a jump on the next witness
7 and get the basic qualifications of the
8 witness out of the way.

9 MS. RODRIGUEZ: Okay.

10 THE JUDGE: Which may expedite things
11 tomorrow if you are willing to go for that.

12 MS. RODRIGUEZ: Yes. I do have him here.

13 THE JUDGE: Okay.

14 MS. RODRIGUEZ: I will call Mr. Jessie
15 Aviles.

16 Whereupon,

17 JESSIE AVILES

18 was called as a witness, having been duly
19 sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. RODRIGUEZ:

22 Q For the record please, could you
23 state your name?

24 A Jessie Aviles.

25 Q And where are you employed?

1 A EPA, Environmental Protection
2 Agency.

3 Q What region?

4 A Region 2.

5 Q And in what office within EPA Region
6 2?

7 A Caribbean Environmental Protection
8 Division.

9 Q And where is that office located?

10 A San Juan, Puerto Rico.

11 Q How long have you worked in EPA?

12 A Three years.

13 Q And if you want you can just, you
14 know, when you answer, you can look that way
15 so it is easier for the reporter.

16 A Okay.

17 Q To transcribe and where did you work
18 previously at EPA, previously to EPA I am
19 sorry?

20 A I worked at Genvirotech, Inc. I
21 worked at Elam Pushen Services, Inc. I worked
22 at Mava Geophysics. I worked at Environmental
23 Services and Technology then again at Elam
24 Pushen Services, Inc.

25 Q How long did you work in those

1 places?

2 A Since 1998.

3 Q And what kind of post high school
4 education do you have?

5 A A bachelors in industrial micro
6 biology.

7 Q From where?

8 A University of Puerto Rico Mayaguez.

9 Q And when did you get that bachelor's
10 degree?

11 A 1998.

12 Q And could you please tell us what
13 title was your title at EPA?

14 A Environmental Scientist, Physical
15 Scientist.

16 Q Okay. How long have you worked in
17 that position?

18 A Three years.

19 Q And could you just briefly describe
20 what were your duties under that position?

21 A Yes, as an enforcement officer I do
22 inspections of facilities that generate
23 hazardous waste, or may generate hazardous
24 waste. We also do enforcement actions,
25 notification violations, enforcement actions

1 such as this one. I also do corrective action
2 actions at the facilities that also have
3 releases to the environment.

4 Q And are you familiar with the RCRA
5 and the federal regulations that include RCRA?

6 A I am.

7 Q And could you tell us how became
8 familiar with them?

9 A I became familiar through EPA
10 trainings and inspections.

11 Q And could you tell us since you have
12 been in EPA, how many facilities have you
13 inspected?

14 A At least twenty.

15 Q Are you familiar with a company
16 named Aguakem Caribe, Inc.?

17 A I am.

18 Q And how did you become familiar with
19 Aguakem, please?

20 A I was part of an inspection done in
21 the facility on February, 2007.

22 Q And could you tell us where the
23 facility was located?

24 A The facility was located at Ponce,
25 Port of Ponce in Ponce, Puerto Rico.

1 Q And during that inspection, in that
2 inspection, were there any other enforcement
3 officers with you?

4 A There was Solimar Luna and Eduardo
5 Gonzalez.

6 Q Okay and could you tell us about the
7 inspection. How did you conduct it?

8 A We arrived at the facility. We were
9 granted access by the port auxiliary director,
10 Mr. Quinones. He took us in the facility then
11 we looked at the site of the facility, looked
12 at what was outside and then we entered into
13 the facility. We took pictures of the facility
14 and we took field notes describing what we
15 were seeing at the facility.

16 MS. RODRIGUEZ: Your Honor, I would use -
17 may I approach?

18 THE JUDGE: Yes.

19 EXAMINATION CONTINUED

20 BY MS. RODRIGUEZ:

21 Q I am just going to ask you very
22 briefly, because of the time, without actually
23 entering into the contents of the photos.
24 Could you just take a look at all these photos
25 that I am showing you and tell me whether you

1 took any of these photos, please? May the
2 record reflect that the witness has reviewed.

3 A I reviewed but I took these
4 pictures.

5 MS. RODRIGUEZ: Your Honor, could we
6 recess now and I could continue with the
7 witness tomorrow?

8 THE JUDGE: Okay. That would be fine.
9 Hopefully, do you have any idea how long this
10 witness will take tomorrow?

11 MS. RODRIGUEZ: It will probably be much
12 shorter than Mr. Gonzalez.

13 THE JUDGE: Okay and then after that the
14 next witness will be?

15 MS. RODRIGUEZ: Solimar Luna.

16 THE JUDGE: Okay and that will be same
17 length or shorter also?

18 MS. RODRIGUEZ: Probably a little bit
19 longer than Mr. Aviles, it would depend.

20 THE JUDGE: Okay and then that is
21 finished?

22 MS. RODRIGUEZ: And then we have the last
23 witness which is Mr. Angel Rodriguez.

24 THE JUDGE: Okay. Do you think there is a
25 chance we could get all of those?

1 MS. RODRIGUEZ: Hopefully, you know, I
2 guess you would also have to ask counsel.

3 THE JUDGE: Okay. Yes, that will be fine
4 with me. How about if tomorrow we start -

5 MS. RODRIGUEZ: We could start at nine.

6 THE JUDGE: Nine would work.

7 MR. LLORENS: Yes, Your Honor.

8 THE JUDGE: Okay.

9 MS. RODRIGUEZ: Now, I think since we are
10 going to be using the same courtroom I think
11 they have given you access to, could we, I
12 don't know, should we leave the photos here,
13 should we -

14 THE JUDGE: My general understanding is
15 this will be secured but I cannot personally
16 assure.

17 MS. RODRIGUEZ: I know that it is very
18 secure so I don't think there will be any
19 problem leaving it here.

20 THE JUDGE: Okay.

21 MR. LLORENS: If I may, Your Honor, just
22 one sort of logistical issue. One of my
23 witnesses which is the certified public
24 accountant that prepared a lot of the
25 financial statements that have been in issue

1 here, is both not well physically and also
2 somewhat tied up in other things. He has a
3 window Thursday morning. I hope they closed
4 by then but if they are not is there any way
5 we could just sneak him in, get his testimony
6 in and we will continue where we are going?

7 THE JUDGE: Well, we will try our very
8 best.

9 MR. LLORENS: Okay.

10 THE JUDGE: You know, usually we try to
11 get someone in and accommodate him. You have
12 only two witnesses to begin with.

13 MR. LLORENS: Right.

14 THE JUDGE: So perhaps we can do that.

15 MR. LLORENS: I appreciate that.

16 THE JUDGE: Okay. We will look for an
17 opportune time. That would be Thursday
18 morning?

19 MR. LLORENS: Thursday morning, Your
20 Honor.

21 MS. RODRIGUEZ: Your Honor, I mean, what
22 we could do is after I finish, if I am able to
23 finish Mr. Aviles, if we are able to finish
24 with the testimony of Mr. Aviles, and Miss
25 Luna, we could, you know, then somehow -

1 THE JUDGE: Skip one of your witnesses,
2 and come back.

3 MS. RODRIGUEZ: Mr. Angel Rodriguez, and
4 then we could, you know, allow him to testify
5 at the end of tomorrow.

6 THE JUDGE: Okay. You would be agreeable
7 to that, with that decision?

8 MS. RODRIGUEZ: It is not that I am
9 agreeable for his testimony, that I would have
10 to see when he comes, but we could, you know,
11 postpone Mr. Angel Rodriguez's testimony and
12 allow him to come tomorrow.

13 THE JUDGE: Okay.

14 MR. LLORENS: He can't come tomorrow, he
15 should be for Thursday.

16 MS. RODRIGUEZ: Oh, I am sorry.

17 MR. LLORENS: It will be for Thursday. I
18 want to be clear.

19 MS. RODRIGUEZ: Oh, okay.

20 MR. LLORENS: Since this window is
21 Thursday, I wanted to get it today so -

22 THE JUDGE: What I was thinking is we do
23 two other witnesses and then that last witness
24 you have may be skipped over him?

25 MS. RODRIGUEZ: Sure.

1 THE JUDGE: And have respondent's witness
2 and then we can go directly back to him
3 Thursday afternoon.

4 MS. RODRIGUEZ: Okay.

5 THE JUDGE: Okay. That will be excellent.

6 MS. RODRIGUEZ: Your Honor, these are -

7 THE JUDGE: These are the records. Okay.
8 Yes, we want to make sure we keep them.

9 MR. LLORENS: Thank you, Your Honor. See
10 you tomorrow.

11 MS. RODRIGUEZ: Thank you, Your Honor.
12 (Whereupon at 5:30 P.M. the hearing adjourned)

13

14 REPORTER'S CERTIFICATE

15

16 I, BOABDIL VAZQUETELLES, Court
17 Reporter;

18 DO HEREBY CERTIFY, That the
19 foregoing transcript is a full, true and
20 correct record of the testimony that was
21 electronically recorded by me and thereafter
22 reduced to typewritten form.

23 I FURTHER CERTIFY, that I am in
24 no way interested in the outcome of the case
25 mentioned in said caption.

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Court Reporter;

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case mentioned in said caption.



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