



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2010 JUL 16 PM 2:05
REGIONAL HEARING
CLERK

IN THE MATTER OF)
)
AGUAKEM CARIBE, INC.,) DOCKET NO. RCRA-02-2009-7110
)
)
RESPONDENT)

ORDER SCHEDULING HEARING

This proceeding arises under the authority of Section 3008 of the Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to as "RCRA"), 42 U.S.C. § 6928. The parties are reminded that this proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), 40 C.F.R. §§ 22.1-22.32.

Pursuant to the Prehearing Order issued by Judge Moran on November 25, 2009, the parties have filed their initial prehearing exchanges in this case. Complainant states in its initial prehearing exchange that it "reserves the right to list and to call additional potential hearing witnesses, including expert witnesses, to answer and/or rebut evidence (testimonial or documentary) listed by Respondent in its prehearing exchange or on matters arising as a consequence of such evidence." Respondent also states in its initial prehearing exchange that it "reserves the right to supplement [its] witness and document list as necessary and in compliance with the November 25, 2009 Prehearing Order."

Pursuant to the Prehearing Order, the parties may file supplements to their initial prehearing exchanges, without motion, until 30 days before the hearing date. In addition, Section 22.19(f) of the Rules of Practice, 40 C.F.R. § 22.19(f), requires parties to promptly supplement their initial prehearing exchanges when they learn that the information therein is incomplete, inaccurate, or outdated, and the additional information has not

otherwise been disclosed to the opposing party. However, Sections 22.19(a) and 22.22(a) of the Rules of Practice, 40 C.F.R. §§ 22.19(a) and 22.22(a), provide that documents or exhibits that have not been exchanged and witnesses whose names or testimony summaries have not been exchanged at least 15 days before the hearing date shall not be admitted into evidence or allowed to testify unless good cause is shown for failing to exchange the required information. The parties are advised that the undersigned will not entertain last minute attempts to supplement prehearing exchanges absent extraordinary circumstances.

The parties are also advised that every motion filed in this proceeding must be served in sufficient time to permit the filing of a response by the non-moving party and to permit the issuance of an order on the motion before the deadlines set by this Order or any subsequent order. Section 22.16(b) of the Rules of Practice, 40 C.F.R. § 22.16(b), requires a party's response to a motion to be filed within 15 days of service of the motion, and Section 22.7(c), 40 C.F.R. § 22.7(c), provides for an additional five days to be added to that 15-day period when the motion is served by mail.

United States Environmental Protection Agency policy, found in the Rules of Practice at Section 22.18(b), 40 C.F.R. § 22.18(b), encourages settlement of a proceeding without the necessity of a formal hearing. The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding. However, the pursuit of settlement negotiations or an averment that a settlement in principle has been reached will not constitute good cause for failure to comply with the requirements or schedule set forth in this Order.

As the parties have not reached a settlement in this matter, they shall strictly comply with the requirements of this Order and prepare for a hearing. Pursuant to the conference call held between the parties and the undersigned on July 14, 2010, the hearing schedule is as follows.^{1/}

On or before **November 16, 2010**, the parties shall file a joint set of stipulated facts, exhibits, and testimony. See Section 22.19(b)(2) of the Rules of Practice, 40 C.F.R. § 22.19(b)(2). The time allotted for the hearing is limited. Therefore, the parties must make a good faith effort to stipulate, as much as possible, to

^{1/} During this conference call, counsel for Respondent raised the possibility of claiming an ability to pay defense. Counsel for Respondent is advised to raise this issue no later than September 1, 2010, and to submit documentation corroborating its claim no later than September 15, 2010.

matters which cannot reasonably be contested so that the hearing can be concise and focused solely on those matters which can only be resolved after a hearing.

The Hearing in this matter will be held beginning at 9:30 a.m. on Monday, December 6, 2010, in San Juan, Puerto Rico, continuing if necessary through December 10, 2010. The Regional Hearing Clerk will make appropriate arrangements for a courtroom and retain a stenographic reporter. The parties will be notified of the exact location and of other procedures pertinent to the hearing when those arrangements are complete. Individuals requiring special accommodation at this hearing, including wheelchair access, should contact the Regional Hearing Clerk at least five business days prior to the hearing so that appropriate arrangements can be made.

IF ANY PARTY DOES NOT INTEND TO ATTEND THE HEARING OR HAS GOOD CAUSE FOR NOT BEING ABLE TO ATTEND THE HEARING AS SCHEDULED, IT SHALL NOTIFY THE UNDERSIGNED AT THE EARLIEST POSSIBLE MOMENT.



Barbara A. Gunning
Administrative Law Judge

Dated: July 15, 2010
Washington, DC

In the Matter of Aguakem Caribe, Inc., Respondent.
Docket No. RCRA-02-2009-7110

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Scheduling Hearing**, dated July 15, 2010, was sent this day in the following manner to the addressees listed below.


Mary Angeles
Legal Staff Assistant

Original and One Copy by Facsimile and Pouch Mail to:

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Copy by Facsimile and Regular Mail to:

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Dated: July 15, 2010
Washington, D.C.