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October 23, 2009

VIA FEDERAL EXPRESS

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor, Room 1631
New York, NY 10007-1866

RE: Aguakem Caribe, Inc.
Docket No. : RCRA-02-2009-7110

Dear Sir/Madam:

Please find enclosed Respondent's Answer to Complaint and Request for Hearing in the above-identified matter. An original and one copy is enclosed for your convenience.

Thank you for your courtesies.

Respectfully submitted,
FURGANG & ADWAR, L.L.P.



SHERYL BRITNEY
Assistant to Armando Llorens
sheryl@furgang.com

sb
Enclosure

cc: Lourdes del Carmen Rodriguez, Esq.

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG 2
2009 OCT 26 PM 2:32
REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

IN THE MATTER OF

Aguakem Caribe, Inc.

Respondent

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

ANSWER TO COMPLAINT AND
REQUEST FOR HEARING

Docket No. RCRA-02-2009-7110

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 OCT 26 PM 2:32
REGIONAL HEARING
CLERK

I. ANSWER

By way of answer to the complaint in this action, through its undersigned counsel, Respondent Aguakem Caribe, Inc. ("Aguakem"), responds as follows:

1. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in this paragraph.
2. Aguakem admits the allegations contained in paragraph 2 of the Complaint.
3. Aguakem admits the allegations contained in paragraph 3 of the Complaint.
4. Aguakem admits the allegations contained in paragraph 4 of the Complaint.
5. Aguakem admits the allegations contained in paragraph 5 of the Complaint.
6. Aguakem admits the allegations contained in paragraph 6 of the Complaint.
7. Aguakem denies the allegations contained in paragraph 7 of the Complaint.
8. Aguakem admits the allegations contained in paragraph 8 of the Complaint.
9. Aguakem admits the allegations contained in paragraph 9 of the Complaint.

10. Aguakem admits the allegations contained in paragraph 10 of the Complaint.
11. Aguakem denies the allegations contained in paragraph 11 of the Complaint.
12. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 12 of the Complaint.
13. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 13 of the Complaint.
14. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 14 of the Complaint.
15. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 15 of the Complaint.
16. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 16 of the Complaint.
17. Aguakem admits the allegations contained in paragraph 17 of the Complaint.
18. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 18 of the Complaint.
19. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 19 of the Complaint.
20. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 20 of the Complaint.
21. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 21 of the Complaint.
22. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 22 of the Complaint.

23. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 23 of the Complaint.

24. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 24 of the Complaint.

25. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 25 of the Complaint.

26. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 26 of the Complaint.

27. Aguakem denies the allegations contained in paragraph 27 of the Complaint.

28. Aguakem denies the allegations contained in paragraph 28 of the Complaint.

29. Aguakem denies the allegations contained in paragraph 29 of the Complaint but admits that the EPA entered into an Administrative Order on Consent and incorporates that document into this response by reference.

30. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 30 of the Complaint.

31. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 31 of the Complaint.

32. Aguakem admits the allegations contained in paragraph 32 of the Complaint.

33. Aguakem admits the allegations contained in paragraph 33 of the Complaint.

34. Aguakem admits the allegations contained in paragraph 34 of the Complaint, except it denies it failed to comply with the EPA's First Request for Information.

35. Aguakem admits the allegations contained in paragraph 35 of the Complaint.

36. Aguakem admits the allegations contained in paragraph 36 of the Complaint.

Response To Count 1

37. Aguakem repeats and realleges its responses to paragraphs 1 through 36 as if fully set forth herein.

38. Aguakem denies the allegations contained in paragraph 38 of the Complaint.

39. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 39 of the Complaint.

40. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 40 of the Complaint.

41. Aguakem denies the allegations contained in paragraph 41 of the Complaint.

42. Aguakem denies the allegations contained in paragraph 42 of the Complaint.

43. Aguakem denies the allegations contained in paragraph 43 of the Complaint.

44. Aguakem denies the allegations contained in paragraph 44 of the Complaint.

45. Aguakem denies the allegations contained in paragraph 45 of the Complaint.

Response to Count 2

46. Aguakem repeats and realleges its responses to paragraphs 1 through 36 as if fully set forth herein.

47. Aguakem denies the allegations contained in paragraph 47 of the Complaint.

48. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 48 of the Complaint.

49. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 49 of the Complaint.

50. Aguakem denies the allegations contained in paragraph 50 of the Complaint.
51. Aguakem denies the allegations contained in paragraph 51 of the Complaint.

Response to Count 3

52. Aguakem repeats and realleges its responses to paragraphs 1 through 36 as if fully set forth herein.

53. Aguakem denies knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 53 of the Complaint.

54. Aguakem denies the allegations contained in paragraph 54 of the Complaint.

55. Aguakem denies the allegations contained in paragraph 55 of the Complaint.

II. FACTUAL RESPONSE

In the Complaint, the EPA ignores the central event of this saga - the fact that the PPA (Ponce Port Authority) contaminated the former facility with lead and asbestos to intolerably high levels because of its actions at the Port.

From the beginning, Aguakem requested the EPA investigate the lead contamination of the Former Facility by the PPA. In addition, Aguakem informed the EPA that a certified laboratory had tested the Former Facility for lead and asbestos contamination, had found levels of lead contamination 5 times above the legal level and recommended the immediate withdrawal from the facility until such time as the lead contamination had been ameliorated. Immediately upon receipt of that report, Aguakem informed the Ponce Port Authority, while expressly stating that as soon as the lead contamination issue were addressed, Aguakem would complete the transfer process of the materials remaining in the Former Facility.

The Ponce Port Authority never responded to Aguakem communications, which were numerous. The next action Aguakem became aware of was that the EPA was involved. Aguakem immediately informed the EPA of the lead contamination situation, its desire to transfer its materials to its new facility and its desire to handle the matter expeditiously. Instead of addressing the lead contamination issue and thus allowing for an expeditious and efficient transfer of materials, the EPA chose instead to negotiate an Administrative Order on Consent which would

remove the materials at the former facility. Aguakem protested the loss of its materials, which were of value to Aguakem. But, to avoid any problems with the EPA, and with the assurance that this would close the matter for the EPA, Aguakem agreed to the Administrative Order on Consent, reserving the issue of fault regarding the matter to its ongoing dispute with the Municipio of Ponce. The EPA expressed itself satisfied and said it would not intervene in any way in the issue of the lead contamination and the question of fault between Aguakem and the Municipio of Ponce.

Aguakem was not involved in the manner in which the Former Facility was treated pursuant to the AOC. The EPA and the Municipio were solely in charge and the Municipio solely bore the costs. Neither the EPA nor the Municipio objected to this arrangement.

Nearly 3 years later, the EPA has decided that it will, implicitly, pronounce itself on the issue of the lead contamination of the Former Facility. The EPA's position, apparently, is to say that Aguakem should have ignored the lead contamination (at 5 times above the legal level), ignore the federal OSHA laws, ignore rulings by Puerto Rico courts and ignore common sense.

Let it be clear that Aguakem never abandoned the facility and the materials therein. Aguakem always intended to remove the materials therein as soon as it was legal to reenter the Former Facility. This was told to the EPA at the very outset of this matter, nearly 3 years ago.

In the bringing of this action, in the calculation of a remedy, in its inaction regarding the lead contamination by the Ponce Port Authority, the EPA is ignoring its legal mandate, its public purpose and its public responsibilities.

Aguakem denies the allegations made by the EPA and reserves all legal defenses it is entitled to - including - the legal release granted to Aguakem by the EPA in the AOC, mitigation, failure to join necessary parties, the defense of illegality (federal OSHA laws and Puerto Rico law precluded Aguakem to act in the ways desired by the EPA), the equitable defense of laches, and failure to state a claim.

III. Request For Hearing

Pursuant to 40 CFR § 22.15(c), as as noticed at page 12 of the Complaint, Aguakem requests a hearing on this matter. Further, Aguakem requests that the hearing be held in New York, New York.

IV. CONCLUSION

For all the reasons stated above, Respondent Aguakem Caribe, Inc. Requests that the Complaint be dismissed and for such other and further relief as is deemed proper.

Dated: October 23, 2009

A handwritten signature in black ink that reads "Armando Llorens" followed by a circled monogram "AL".

Armando Llorens

FURGANG & ADWAR

Attorneys for Respondent

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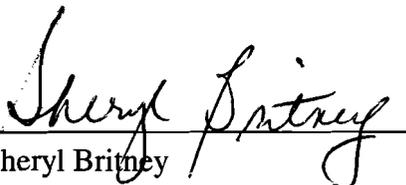
armando@furgang.com

CERTIFICATE OF SERVICE

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

Lourdes del Carmen Rodriguez, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
Centro Europa Building, Suite 417
1492 Ponce de Leon Avenue
San Juan, PR 00907

by first class mail.


Sheryl Britney