

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

PREHEARING EXCHANGE

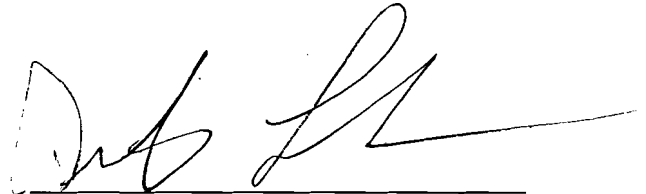
Docket No. RCRA-02-2009-7110

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U.S. ENVIRONMENTAL
AGENCY

I. RESPONDENT'S INITIAL PREHEARING EXCHANGE

Pursuant to the request made by the Honorable William B. Moran, Administrative Law Judge, on the Prehearing Order dated November 25, 2009, the Respondent Aguakem Caribe, Inc., through its undersigned attorneys, hereby files its Initial Prehearing Exchange for the above-captioned matter.

Respectfully submitted, in New York, New York this 25th day of January, 2010.



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

1. Respondent's List of Witnesses And Submission Of Documents¹

Jorge J. Unanue, President Aguakem Caribe, Inc.

Mr. Unanue will testify regarding the Respondent's interactions with the EPA regarding the events described in the Complaint, including, but not limited to, the fact that the EPA was informed from the first day of its involvement that the PPA (Ponce Port Authority) contaminated the former facility subject of this action (the "Former Facility") with lead and asbestos to intolerably high levels because of its actions at the Port.

Mr. Unanue will testify that 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.

Mr. Unanue will further testify that Respondent Aguakem Caribe, Inc. was under a court order to vacate the Former Facility and that, by mutual agreement, Aguakem Caribe, Inc. Was in the process of removing all of its products, materials, equipment and items from the premises when the lead contamination by the PPA occurred.

Mr. Unanue will further testify that immediately upon receipt of the aforementioned report, Aguakem informed the PPA, 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.

Mr. Unanue will further testify that the Ponce Port Authority never responded to Aguakem communications, which were numerous and that the next action Aguakem became aware of was that the EPA was involved.

Mr. Unanue will further testify that 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

¹ Respondent is making a partial submission of the documents it intends to present at the hearing. A supplemental submission, in compliance with the November 25, 2009 Prehearing Order, will be made within ten (10) days.

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 and the PPA. 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.

Mr. Unanue will testify that 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.

Mr. Unanue will further testify 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 by Aguakem at the very outset of this matter, nearly 3 years ago.

Mr. Unanue will testify that the allegations made by the EPA are inaccurate and that 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 all preclude recovery by the EPA on the Complaint.

Finally, Mr. Unanue will testify that the penalty sought by the Complaint will have an adverse, likely fatal, impact on Aguakem Caribe's Inc.'s ability to remain in business.

List Of Documents

1. 12/29/06 Jorge Unanue e-mail re: Lead contamination.
2. 02/07/07 e-mail from Armando Llorens to Eduardo Gonzalez re: Lead contamination at Former Facility.
3. 03/04/07 Letter to Raymond Basso with copies to Angel Rodriguez and Lourdes Rodriguez, re: March 1, 2007 Letter from Basso.
4. 03/05/07 e-mail from Llorens to Raymond Basso, Eduardo Gonzalez, Angel Rodriguez, Lourdes Rodriguez re: 2/07/07 e-mail to Eduardo Rodriguez.
5. 10/04/07 Memo to File by J. Unanue re: EPA visit to Aguakem Facility.

6. 10/05/07 Memo to file by J. Unanue re: Call to Angel Rodriguez by Unanue
7. 06/30/09 Audited Financial Statement of Aguakem Caribe. Inc.
8. 12/06 Envirorecycling, Inc. Report On Lead Contamination At Former Facility

Respondent Aguakem Caribe, Inc.'s reserves the right to supplement this witness and document list as necessary and in compliance with the November 25, 2009 Prehearing Order. In addition, Respondent Aguakem Caribe, Inc. Reserves its right to cross examine EPA witnesses and review and challenge evidentiary submissions by the EPA, in compliance with the November 25, 2009 Prehearing Order.

2. The Requested Penalty Will Have An Adverse Effect On Respondent's Ability To Remain In Business

Respondent Aguakem Caribe, Inc. hereby submits its most recent audited financial statement in support of its contention that the requested penalty will have an adverse effect on respondent's ability to remain in business. See Exhibit 1 hereto.

3. The Hearing Should Be Held In New York

Citing 40 CFR §§ 22.21 (d) and 22.19(d), the Complainant relies upon the Respondent Aguakem Caribe, Inc.'s place of business as the basis for where the hearing in this matter should take place. This provision is more properly a basis for such a request by the Respondent, not the EPA. The convenience of individuals in the EPA is not a proper basis for the designation of the place of hearing. Indeed, 40 CFR § 22.15(c) states that a hearing will only be held if requested by the Respondent or if ordered by the Administrative Law Judge. The Complainant is not provided any right in this regard.

Further, the Complainant acknowledges that 40 CFR §§ 22.21 (d) and 22.19(d) expressly

state that the hearing in this matter may be held in the city in which the relevant Environmental Protection Agency offices is located, and that, that office is in New York, New York. This location was expressly chosen by the Respondent precisely because the rule permitted that selection and that location was most convenient to the Respondent. Indeed, Washington, D.C. is more convenient for the Respondent than San Juan, Puerto Rico.

A strict reading of 40 CFR §§ 22.21 (d) and 22.19(d) also demonstrates that San Juan, Puerto Rico is not eligible to be the site of the hearing, as it is not “in the county where Respondent conducts business which the hearing concerns[.]” See Complainant’s Preliminary Exchange, page 8. To invoke this provision, the Respondent must seek to hold the hearing in Ponce, Puerto Rico. The Respondent has not done so.

Respondent is available for a hearing in New York, New York between March 15- and March 27, from May 1- May 10, from June 15 - June 22. At this time, Respondent is available on any date after July 4 as well.

CERTIFICATE OF SERVICE

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

Original and copy to:

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

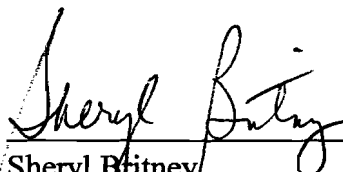
copy to:

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

copy to:

Administrative Law Judge
The Honorable William Moran
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Franklin Court Building
1099 14th Street, N.W. Suite 350
Washington, D.C. 20005
Attn: Knolyn R. Jones, Legal Staff Assistant

by first class mail.



Sheryl Britney

#1

[Fwd: Fwd: EPA NLIC Inquiry] - Yahoo! Mail

http://us.mc8.mail.yahoo.com/mc/showMessage?sMid=329&fid=%25

YAHOO! SMALL BUSINESS

[Fwd: Fwd: EPA NLIC Inquiry]

Friday, December 29, 2006 9:30 AM

From: "aguakem@verizon.net" <aguakem@verizon.net>
To: admin@allorencslaw.com

>From: junanuejr@aol.com
>Date: 2006/12/29 Fri AM 07:52:21 CST
>To: jjunanue@aguakem.net
>Subject: Fwd: EPA NLIC Inquiry

>
>YA MANDE INQUIRY A CDC.LA PRUEBA DE SANGRE ES—THE LEAD CARE IIBLOOD
>LEAD TEST SYSTEM—UN NIVEL POR ARRIBA DE 10 MICROGRAMS SE CONSIDERA
>EXPOSURE— EXISTE THE NATIONAL LEAD INFORMATION CENTER TEL 1 800 424
>5323
>EL EPA CONTACT DE PUERTO RICO ES LOUIS BEVILACQUA TEL 732 321 6671.-
>EXISTE EL DOCUMENTO POR EL NATIONAL SAFETY COUNCIL—REAL STATE LEAD
>DISCLOSURE REQUIREMENTS QUE SE PASO COMO LEY EN 1976-

>-----Original Message-----
>From: epahotline@abvi-goodwill.com
>To: JUNANUEJR@AOL.COM
>Sent: Thu, 28 Dec 2006 9:57 AM
>Subject: EPA NLIC Inquiry

>
> Good Morning Joseph.
>
>Thank you for contacting the National Lead Information Center
>concerning
>obtaining information relating TO LEAD EXPOSURE(TIME),PLUS TREATMENTS

>
>In order to obtain information relating TO LEAD EXPOSURE(TIME),PLUS
>TREATMENTS
>you may want to contact the Center For Disease Control (CDC) who can be
>reached

>at
>
>rifink
>Program Coordinator
>Childhood Lead Poisoning Prevention Program
>Florida Department of Public Health, HSEE
>4052 Bald Cypress Way, Bir# A08
>Tallahassee, FL 32399-1712
>Tel: (850) 245-4444 ext 2869
>Fax: (850) 922-8473
>Email: Julie_kurlfink@doh.state.fl.us

>
>WOULD LIKE INFORMATION RELATING TO LEAD EXPOSURE(TIME),PLUS TREATMENTS
>EmailAddress:JUNANUEJR@AOL.COM
>Name:JOSEPH M. UNANUE JR M.D. FFACOG
>Organization:PHYSICIAN
>PhoneNumber:386 788 0469

>
>
>Important: This e-mail, including attachments, may include
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2

YAHOO! SMALL BUSINESS

EPA Investigation of Muelle 6, Puerto de Ponce

Wednesday, February 7, 2007 11:49 AM

From: "Armando Llorens" <admin@alloremslaw.com>
To: gonzalez.eduardo@epa.gov
Cc: jjananue@aguakem.net

Dear Mr. Gonzalez:

I am the attorney for Aguakem Caribe, Inc. My client has informed me that the EPA conducted an inspection of Aguakem's interim facilities and requested information regarding Aguakem's former facilities at Muelle 6, Port of Ponce.

We trust that your inspection of Aguakem's interim facilities demonstrated Aguakem's commitment to and success at complying with all lawful regulations.

Regarding your request for information regarding Aguakem's prior facilities, it would be helpful to us if you could make the request in writing. As soon as we receive the written request, we will work expeditiously to provide you the information requested.

Aguakem is committed to fully cooperating with the EPA, as it has suffered great harm because of the blatant negligence and failure to comply with lawful regulation demonstrated by the Port and its designated agents. Indeed, we are hopeful that the EPA can provide us guidance with regard to lead contamination, as Aguakem employees have been exposed to illegal lead levels and lab testing has evidenced unusually high levels of lead in the blood of Aguakem employees. We performed testing of the atmosphere in our former facilities as well. If you need copies of this testing, please do not hesitate to request it.

If possible, please, communicate with Aguakem through me. My phone number is 787-587-3517.

Respectfully,

Armando Llorens, Esq.

#3

Re: Response to 3/4 Lieber Letter to Aguakem Caribe, Inc. - Yahoo! Mail <http://us.mc8.mail.yahoo.com/mc/showMessage?sMid=318&fid=%2>

YAHOO! SMALL BUSINESS

Re: Response to 3/4 Lieber Letter to Aguakem Caribe, Inc.

Monday, March 5, 2007 8:09 AM

From: "Armando Llorens" <admin@allorencslaw.com>

To: "Armando Llorens" <admin@allorencslaw.com>, rodriguez.angel@epa.gov, rodriguez.lourdes@epa.gov, basso.raymond@epa.gov

Cc: jjunanue@aguakem.net

2 Files (60KB)



lettertoEPAC lettertoEPAC

Armando Llorens <admin@allorencslaw.com> wrote:

| Please see attached response.

BY E-MAIL AND FIRST CLASS MAIL

Raymond Basso
US EPA
290 Broadway
NY, NY 10007-1856

Re: Your March 1, 2007 Letter to Aguakem Caribe, Inc.

Dear Mr. Basso:

I represent Aguakem Caribe, Inc. ("Aguakem.") We are in receipt of your above referenced letter. Our response follows:

First, Aguakem denies that there was any release of substance under its control. However, Aguakem does assert that the Municipio of Ponce, through its agents, released illegal and unhealthy levels of lead into the area. On February 7, 2007, the EPA was so informed by me:

To: gonzalez.eduardo@epa.gov
CC: jjanuae@aguakem.net

Dear Mr. Gonzalez:

I am the attorney for Aguakem Caribe, Inc. My client has informed me that the EPA conducted an inspection of Aguakem's interim facilities and requested information regarding Aguakem's former facilities at Muelle 6, Port of Ponce.

We trust that your inspection of Aguakem's interim facilities demonstrated Aguakem's commitment to and success at complying with all lawful regulations.

Regarding your request for information regarding Aguakem's prior facilities, it would be helpful to us if you could make the request in writing. As soon as we receive the written request, we will work expeditiously to provide you the information requested.

Aguakem is committed to fully cooperating with the EPA, as it has suffered great harm because of the blatant negligence and failure to comply with lawful regulation demonstrated by the Port and its designated agents. Indeed, we are hopeful that the EPA can provide us guidance with regard to lead contamination, as Aguakem employees have been exposed to illegal lead levels and lab testing has evidenced unusually high levels of lead in the blood of Aguakem employees. We performed testing of the atmosphere in our former facilities as well. If you need copies of this testing, please do not hesitate to request it.

If possible, please, communicate with Aguakem through me. My phone number is 787-587-3517.

Respectfully,





Armando Llorens, Esq.

The EPA never contacted Aguakem on the lead and asbestos matters.

Similarly, on December 28, 2007, Aguakem informed the Municipio de Ponce as follows:

Thu, 28 Dec 2006 10:50:58 -0800
(PST)

From: "Armando Llorens" <admin@alloremslaw.com>
Subject: Re: Municipio Autonomo de Ponce v. Aguakem Caribe, Inc.
To: "Armando Llorens" <admin@alloremslaw.com>, retorres@coqui.net
CC: jjunanue@aguakem.net

&&     &&&&&&

Dear Colleague:

My client Aguakem Caribe, Inc., has just this moment received test results performed at Warehouse 6 regarding the levels of lead. The results are extremely alarming. They demonstrate that the work performed by Del Valle and other contractors has created environmental law violations of an extreme nature.

For example, some of the test results indicated that the lead levels were more than 5 times above the levels permitted by federal and Puerto Rico law. It is imperative that your client, the Municipio de Ponce, immediately ameliorate this situation as Aguakem MUST immediately suspend its removal process until such time as Warehouse # 6 becomes compliant again.

Moreover, this situation appears to have existed for nearly a month. Aguakem employees and contractors, including a pregnant woman, have been exposed to these dangers throughout this period,

These events are of grave concern and my client requires immediate notification of what the Municipio plans to do to rectify the situation.

Please contact me immediately to discuss this urgent matter.

Sincerely,

Armando Llorens
787-587-3517

The Municipio never contacted Aguakem on this matter.

Please also note that Aguakem did not ABANDON the premises, rather Aguakem was legal evicted from the premises by the Municipio.. It is impossible for Aguakem to be responsible for Premises from which it was legally evicted.

Please also note that Aguakem never had sulfuric acid on the Premises ever. Your allegation that Aguakem was involved with sulfuric acid is simply incorrect.

Aguakem is prepared, despite its complete lack of legal and moral responsibility, to assist in the removal of the equipment in the Premises. However, our agreement is conditioned upon a certification from the EPA that currently, there are no hazardous substances, such as lead and asbestos, on the premises where it is now safe to work again. This exact same offer was made to a representative of the Municipio, Mr. Saro Llorens, Esq. of Ponce.

Aguakem does not see the need for the EPA to review Aguakem's financial records and will wait for further instructions from the EPA on the matter.

Finally, Aguakem AGAIN requests guidance from the EPA on how to handle the human lead contamination that has occurred thanks to the gross negligence of the Municipio. It has been nearly a month since Aguakem has requested such guidance from the EPA and to date, no answer has been forthcoming.

Respectfully yours,

Armando Llorens

c: Rafael Torres, Esq.
Francisco Rodriguez, Esq.

#4

YAHOO! SMALL BUSINESS

Re: EPA Investigation of Muelle 6, Puerto de Ponce

Monday, March 5, 2007 8:33 AM

From: "Armando Llorens" <admin@allorencslaw.com>

To: "Armando Llorens" <admin@allorencslaw.com>, gonzalez.eduardo@epa.gov, rodriguez.angel@epa.gov, rodriguez.lourdes@epa.gov, basso.raymond@epa.gov

Cc: jjananue@aguakem.net

Armando Llorens <admin@allorencslaw.com> wrote:

Please see attached response to lwtwe from Raymond Basso.

Armando Llorens <admin@allorencslaw.com> wrote:

Dear Mr. Gonzalez:

I am the attorney for Aguakem Caribe, Inc. My client has informed me that the EPA conducted an inspection of Aguakem's interim facilities and requested information regarding Aguakem's former facilities at Muelle 6, Port of Ponce.

We trust that your inspection of Aguakem's interim facilities demonstrated Aguakem's commitment to and success at complying with all lawful regulations.

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Aguakem is committed to fully cooperating with the EPA, as it has suffered great harm because of the blatant negligence and failure to comply with lawful regulation demonstrated by the Port and its designated agents. Indeed, we are hopeful that the EPA can provide us guidance with regard to lead contamination, as Aguakem employees have been exposed to illegal lead levels and lab testing has evidenced unusually high levels of lead in the blood of Aguakem employees. We performed testing of the atmosphere in our former facilities as well. If you need copies of this testing, please do not hesitate to request it.

If possible, please, communicate with Aguakem through me. My phone number is 787-587-3517.

Respectfully,

Armando Llorens, Esq.

AguaKem

Memorandum

Date: 10.04.07
To: File
From: Jorge J. Unanue
Re: EPA "Emergency Response Inspection" on 10.04.07

Today, around noon, I received a call from the plant indicating that the EPA enter our premises without notification. Geoffrey M. Garrison talked to me saying that an AguaKem representative had to be there for the inspection. I told him that I had an appointment in San Juan in the afternoon and if we set up an appointment for Friday. He quickly said that I was refusing the inspection and that he was going to call the EPA attorneys. I called Armando Llorens to see if I could cancel the appointment which I did. I called the plant and asked to talk to Mr. Garrison and indicated that I was going to go to the plant immediately. My employees described their entrance to the plant as if a high crime was committed speeding through the dirt, getting off the car and tacking pictures.

When I arrived Mr. Garrison, Enforcement Officer for CERCLA, accompanied by to contract employees, proceeded to show me his batch and identification. I asked why was he performing an emergency inspection. He said that someone anonymous had presented a complaint. I asked if he had a name. He said yes. I asked if he could give me the name. He said no since it is confidential. I proceeded to let them know that AguaKem had contracted a company to perform an environmental and OSHA assessment of our new operations, He asked to see the Material Safety Data Sheet for the products that we handled. I showed him our book with all our products and MSDS. I also gave him a brochure. He asked to go through the plant which we did. He asked if he could take pictures and I said yes as long as I authorized it. He look at everything for about 1.5 hours. We concluded the inspection and then he indicated that another group from the EPA RECLA was driving from San Juan and that this group had performed an earlier inspection because of the Port of Ponce old Aguakem plant. He requested a copy of the MSDS which I committed to send the via email.

At around 2 pm Eduardo Gonzalez, Jessy Aviles and Zolimar Luna from the EPA RECLA division arrived. They are the group that evaluated AguaKem's old facility at the port of Ponce and had inspected AguaKem's new facilities a few months earlier. They were joint by Mr. Garrison and his group. In the office, before we started with the RECLA inspection, I asked the EPA group why were they responding in this way. They

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told me the anonymous called story. I proceeded to ask them why the EPA had not responded to AguaKem's complaint of lead contamination at Almacen number 6 ten months ago and all the numerous communications and requests since then. They asked who was contacted. I indicated that my attorney had contacted the agency and the Port. Ms. Luna asked in what form did we communicate. I said email and that I personally had send certified letters to EPA representatives in PR and in New York. Mr. Garrison said that he was going to call the Agency to find out who was in charged of this investigation. I told the group that the entire warehouse was contaminated with lead and that the analysis was done by a qualified US laboratory. Mr. Gonzales indicated that the Port had done its own tests. I proceeded to tell Gonzales that the Port - Municipio de Ponce- had admitted in open court that there was a lead contamination. Gonzales proceeded to say that we should have not abandoned the site. I said that I would have been negligent to send my people to work inside the warehouse when I had a report that conclusively stated that the warehouse was lead contaminated. Gonzalez said I should not abandon the site. I said that we did not abandoned the site but asked the Port to certified to us that the inventory and equipment in our old facility was lead free and then we will complete the moving. Mr. Aviles said that people should never be expose to a known lead contaminated area. I said that is what I did. They asked me where did the lead come from which I answered from the demolition of all the buildings around warehouse 6. I also said that the Port new that there was lead and asbestos in those buildings. Gonzales then said that was not under the jurisdiction of the EPA in PR but rather EQB. I asked why the EPA had never said so and why did the EPA not referred my complaint to EQB. At this point Mr. Garrison came in and told me that the person in charged was Ing. Angel Rodriguez. I told them that this as the person I send a registered letter with no response. I asked if an investigation case was opened for this complaint and they told me to talk to Ing. Rodriguez.

I told them that AguaKem had contracted a company to perform an environmental and OSHA assessment of our new operations, They proceeded with the inspection of our new facilities. Before I new it all four were going there separate ways taking pictures at will. They went through everything concentrating on waste products and processes. The meeting ended after 4:15 pm. They did not provide a verbal comments and said that they will be sending a letter.

Mr. Geoffrey M. Garrison -CRCLA- Enforcement officer - tel: 787.977.5820; 5802; cel: 671.8101
Eduardo R. Gonzalez RECLA 787.977.5839
Jessy Aviles - RECLA 5883
Zolimar Luna 5844

#6

AguaKem

Memorandum

Date: 10.05.07
To: File
From: Jorge J. Unanue
Re: EPA - ING. ANGEL RODRIGUEZ.

Today, around 1 pm, I called Ing. Angel Rodriguez from the EPA. I asked Rodriguez if there was an ongoing investigation regarding our complain about lead contamination that occurred at the Port of Ponce Almacen Nun. 6, our old facility. He indicated that lead in the paint was not under his responsibility but that of EQB. I asked how did he know it was paint lead contamination since the samples taken were swipes after clouds of dust entered the warehouse from the demolition of the buildings around us. He indicated that the EPA did not have jurisdiction over contamination for one property, in this case the Port. He also said that more than 400 ppm is considered a contaminated site. Since the contamination was inside the building and the port that was not the EPA's responsibility. I replied that we did not know the levels of lead since it was air bourn requiring my employees to exit the warehouse because they could not breath. These clouds of dust went all over the place in the direction of the Hilton and Villa del Carmen and that next to us there was a juice concentrate operation that lead could have contaminated a food source. He acknowledged that I did the right thing by not allowing my employees to enter the building once I had received the report but that I should have removed the chemical and equipment inventory through a contractor. I pointed out that Port never notified us before and during the demolition that there was lead and asbestos in the buildings. He promptly said that was a requirement by the port and if they did not notify us that they are responsible. He pointed out that the chemicals were in a semi-secure facility and that anyone could have come in and release the chemicals. I pointed out that the Port of Ponce ins under Homeland Security and the Coast Guard and that is there responsibility to have a secure port at all times. I proceeded to tell him that I had four units of lead in my blood and that all the employees were contaminated including a pregnant women. He said that it could have been from something else. I emphatically said, I am a citizen of the US with a complaint and there has not been a due diligence process here. The EPA was informed of this situation over 10 months ago and that I send a registered letter at the beginning of August with no reply. We asked for direction on our personal health concern since all at AguaKem have levels of lead in their blood and no-one from the EPA bothered to help us and to carry an investigation. I pointed out that yesterday we were subject to a four hour inspection by two departments from the EPA because an anonymous called complaint. Were are my rights. He asked for me to send him a copy of the registered letter which I did.

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#7

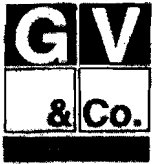


AGUAKEM CARIBE, INC.
AUDITED FINANCIAL STATEMENTS

JUNE 30, 2009

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GUZMAN VILLANUEVA & CO., CPA, CSP
Certified Public Accountant

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

To the Board of Directors
Aguakem Caribe, Inc.

We have audited the accompanying balance sheet of Aguakem Caribe, Inc., as of June 30, 2009, and the related statements of loss and accumulated deficit and of cash flows for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

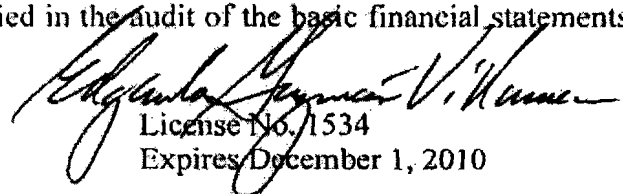
We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatements. An audit includes examining, on a test basis, evidence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

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Notes 1 and 11 to the financial statements, the Company had sustained accumulated losses amounting to (\$690,430) as of June 30, 2009; which raise substantial doubt about its ability to continue as a going concern. Management's plans regarding those matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

In our opinion, except for the matters discussed in Notes 1 and 11, the financial statements referred to above presents fairly, in all material respects, the financial position of Aguakem Caribe, Inc., as of June 30, 2009 and the results of its operations and of its cash flows for the year then ended in conformity with generally accepted accounting principles.

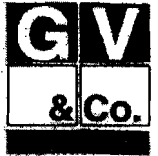
Our audit was made for the purpose of forming an opinion on the basic financial statements taken as a whole. The Overhead Operating Costs & General, Selling and Administrative Expense Schedules on page 5 are presented for the purposes of additional analysis and is not a required part of the financial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

November 4, 2009
Ponce, Puerto Rico


License No. 1534
Expires December 1, 2010

Stamp # 2463593 "Colegio de Contadores
Públicos Autorizados de Puerto Rico" was
affixed to the original of this report.

AGUAKEM CARIBE, INC.
BALANCE SHEET
JUNE 30, 2009



ASSETS

Current assets:

Accounts receivable - trade (net)	\$ 361,310
Inventories (Note 1)	<u>170,138</u>
Total current assets	531,448

Fixed assets: (Note 1) 184,310

Other assets:

Deferred tax asset (Note 11)	\$195,439
Prepaid expenses	16,182
Accounts receivable - Affiliates (Note 2)	98,624
Accounts receivable - (net of reserve of \$46,759) (Note 3)	<u>8,356</u>
Total other assets	<u>318,601</u>
Total assets	<u><u>\$1,034,359</u></u>

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

AGUAKEM CARIBE, INC.
BALANCE SHEET
JUNE 30, 2009



LIABILITIES AND SHAREHOLDERS' EQUITY

Liabilities

Current liabilities:

Bank overdraft	\$ 27,300
Demand credit line (Note 4)	87,863
Current portion of long-term debt (Note 5)	30,786
Trade payable	338,977
Other accrued expenses (Note 6)	<u>96,052</u>
Total current liabilities	580,978

Long-term liabilities:

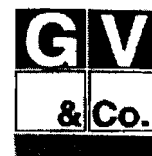
Loans payable (Note 5)	<u>\$366,861</u>
Total long-term liabilities	<u>366,861</u>
Total liabilities	947,839

Shareholders' equity:

Common Stock, \$100.00 par value, subscribed	\$170,647
Class A Common Voting Stocks, \$100.00 par value, subscribed	5,000
Class B Preferred Non Voting, Non Cumulative Stocks, \$100.00 par value, subscribed	5,000
Additional paid-in-capital	273,364
Accumulated deficit	<u>(367,491)</u>
Total shareholders' equity	<u>86,520</u>
Total liabilities and shareholders' equity	<u>\$1,034,359</u>

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

AGUAKEM CARIBE, INC.
STATEMENTS OF (LOSS) AND ACCUMULATED DEFICIT
FOR THE YEAR ENDED JUNE 30, 2009



Sales - net		\$1,964,966
Direct operating cost:		
Materials:		
Beginning inventory	\$ 126,667	
Purchases	<u>1,487,982</u>	
Materials available for production	1,614,649	
Ending inventory	<u>(170,138)</u>	
Cost of materials	1,444,511	
Labor	76,102	
Overhead	<u>244,377</u>	
Total operating cost		<u>1,764,990</u>
Gross Profit		199,976
General, selling and administrative expense		<u>247,514</u>
(Loss) from operations		(47,538)
Other income/(expense)		
Interest-net	(13,107)	
Others (Note 8)	<u>4,882</u>	
Total other income/(expense)		<u>(8,225)</u>
Net (loss) before Income Tax Benefit		(55,763)
Income Tax Benefit (Note 11)		4,075
PR Income tax (Note 9)		<u>(976)</u>
Net loss		(52,664)
Accumulated deficit, at beginning		<u>(314,827)</u>
Accumulated deficit, at end		<u><u>\$(367,491)</u></u>

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



AGUAKEM CARIBE, INC.
OVERHEAD OPERATING COSTS & GENERAL,
SELLING AND ADMINISTRATIVE EXPENSE SCHEDULES
FOR THE YEAR ENDED JUNE 30, 2009

Overhead Operating Costs:

Warehouse rent	\$100,800
Depreciation	70,874
Repair & maintenance	31,233
Insurances	22,342
Supplies & materials	9,541
Equipment rent	5,567
Others	<u>4,020</u>
Total overhead operating costs	<u><u>\$244,377</u></u>

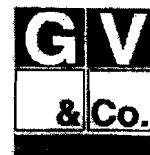
General, Selling and Administrative Expenses:

Salaries & fringe benefits	\$114,153
Professional services	41,204
Depreciation	25,398
Telephone	14,015
Office supplies	11,571
Vehicle expense	10,954
Property, municipal & other taxes	8,851
Bank charges	5,566
Travel expense	4,204
Bad debt expense	2,433
Promotion	1,703
Insurance	1,474
Others	<u>5,988</u>
Total general, selling and administrative expense	<u><u>\$247,514</u></u>

AGUAKEM CARIBE, INC.

STATEMENT OF CASH FLOWS

FOR THE YEAR ENDED JUNE 30, 2009



Cash flow from operating activities:	
Net (loss)	\$(52,664)
Adjustments to reconcile net (loss) to net cash provided by operating activities:	
Depreciation	96,272
Increase in merchandise inventories	(43,471)
Increase in accounts receivable	(123,578)
Increase in credit line	36,089
Decrease in current portion of long-term debt	(4,943)
Decrease in trade accounts payable	(64,309)
Decrease in other accrued expenses	<u>(31,139)</u>
Total adjustments to net income	<u>(135,079)</u>
Net cash provided by operating activities	(187,743)
Cash flow from investing activities:	
Increase in fixed assets	(35,793)
Increase in other assets	<u>(102,227)</u>
Net cash used in investing activities	(138,020)
Cash flow from financing activities:	
Increase in long-term debt	<u>299,730</u>
Net cash used in financing activities	<u>299,730</u>
Net decrease in cash	(26,033)
Cash at beginning of year	<u>(1,267)</u>
Bank overdraft at end of year	\$ (27,300)
	=====

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

AGUAKEM CARIBE, INC.
NOTES TO THE FINANCIAL STATEMENTS
JUNE 30, 2009



1) Organization

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

A) Significant Accounting Policies

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

Accounts receivable are considered due at 30 days.

Inventories are recorded at cost, not in excess of fair market value using first-in first-out method. Inventories as of June 30, 2009 are comprised as follow:

Finished products	\$ 21,924
APAK	30,481
Polymers	30,315
Hydrochloric Acid	18,614
Metabisulfate	16,658
Super Sorb	7,083
Sodium Bisulfate	6,150
Others	<u>38,913</u>
Total	\$170,138 =====

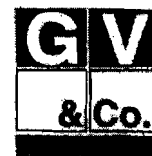
Concentration of credit risk:

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

Concentration of sales to governmental agencies:

Company sales to Puerto Rico Aqueduct Sewerage Authority, a governmental agency, for the year ended June 30, 2009 amounted to \$826,563; representing 43% of the total sales.

AGUAKEM CARIBE, INC.
NOTES TO THE FINANCIAL STATEMENTS
JUNE 30, 2009



1) Organization (Continued . . .)

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

<u>Description</u>	<u>Estimated Cost</u>	<u>Useful Life</u>	<u>Dep. for the Year</u>	<u>Acc. Dep.</u>	<u>Book Value</u>
Process equipment	\$ 393,978	10	\$ 39,483	\$328,020	\$ 65,958
Research & dev.	127,034	10	12,204	118,900	8,134
Vehicles	172,133	5	17,648	149,257	22,876
Office & lab. equip.	61,512	10	4,379	51,014	10,498
Leasehold Imp.	64,274	5	10,999	11,572	52,702
Design & engineering	27,600	5	5,520	5,520	22,080
Totes & Drums	<u>127,922</u>	2.5	<u>6,039</u>	<u>125,860</u>	<u>2,062</u>
Totals	\$ 974,453		96,272	790,143	\$184,310

B) Going Concern

The Company had sustained a net accumulated loss amounting to (\$690,430) as of June 30, 2009. Although the Company is currently in negotiations with potential future customers and additional line of business, this situation raises substantial doubt about its ability to continue as a going concern. Although management is working with its indebtedness and is currently evaluating methods to reduce costs, improve profit margins and increase capital, the ability of the Company to continue as a going concern is dependent on increasing gross sales and gross margins, obtaining additional capitalization and or restructuring of debt. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

2) Accounts receivable -Affiliates

Accounts receivable Affiliates as of June 30, 2009 are comprised as follows:

Accounts receivable from La Huella Taína	\$26,502
Accounts receivable from Officer	<u>72,122</u>
Total	<u>\$98,624</u>

AGUAKEM CARIBE, INC.
NOTES TO THE FINANCIAL STATEMENTS
JUNE 30, 2009



3) Accounts receivable -Others

Accounts receivable -Others as of June 30, 2009 are comprised as follows:

Accounts receivable non-voting shareholder	<u>\$ 8,357</u>
Total	<u>\$ 8,357</u>

4) Demand Credit Line

BPPR "Flexi-Línea" - payable at 1/60 of principal plus a monthly interest at 3.75% over prime-rate.	<u>\$87,863</u>
---	-----------------

5) Long Term Debts

Long term debts as of June 30, 2009 are comprised as follows:

o Loan payable to Banco Popular de PR in monthly installments of \$446.09 each, including principal and interest at 8.00%, collateralized by Forklift equipment, due on February 2010.	\$ 3,537
o Loan payable to Banco Popular de PR in monthly installments of \$450.09 each, including principal and interest at 8.38%, collateralized by Tanker equipment, due on February 2010.	3,567
o Loan payable to Banco Bilbao Vizcaya in monthly installments of \$449.37 each, including principal and interest at 5.89%, collateralized by vehicle Mitsubishi Endeavor for \$27,200, due on July 2010.	5,393
o Loan payable to Reliable Financial in monthly installments of \$340.00 each, including principal and interest at 7.95%, collateralized by vehicle Toyota Tacoma for \$16,800.00, due on November 2011.	8,932
o Loan payable to A.I. Credit Corp. in monthly installments of \$1,184.87 each, including principal and interest at 9.75%. Due on April 2009.	8,987

AGUAKEM CARIBE, INC.
NOTES TO THE FINANCIAL STATEMENTS
JUNE 30, 2009



5) Long Term Debts . . . (continued)

o Accrued legal claim payable in bi-monthly installments of \$1,000.00.	29,000
o Kemira Water Solutions - Debt is in dispute.	188,577
o Loan payable to Scotiabank de PR in monthly installments of interest at 1% over prime rate. No payments term nor due date. Collateralized by stockholder's personal assets.	<u>149,654</u>
Total	397,647
Less: Current Portion	<u>(30,786)</u>
Total long term debt	<u>\$366,861</u>

Future minimum loans payments are disclosed as follows:

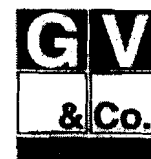
<u>Year ended</u>	
June 2010	\$ 30,786
June 2011	9,977
June 2012	7,653
June 2013	6,000
June 2014 and thereafter	<u>343,231</u>
Total	<u>\$397,647</u>

6) Other accrued expenses

Other accrued expenses as of June 30, 2009 are comprised as follows:

Accrued excise tax claim (Note 10)	\$ 90,000
Municipal tax payable	3,837
Other accrued expenses	<u>2,215</u>
Total	<u>\$ 96,052</u>

AGUAKEM CARIBE, INC.
NOTES TO THE FINANCIAL STATEMENTS
JUNE 30, 2009



7) Lease Agreement

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

8) Other Income (Expenses)

The other income (expenses) is comprised as follows:

Rental income-net	\$ 3,153
Equipment sales-net	<u>1,729</u>
Total	\$ 4,882 <u>=====</u>

9) Puerto Rico Tax Exemptions

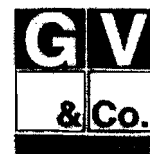
Under the provisions of sections 2 (d) (i) and 11 (b) (3) of law #135 of December 2, 1997, as amended, Industrial Incentive Act of Puerto Rico, the Company obtained effectively on January 1, 2008 a twenty (20) years partial tax exemption. The tax exemption covers industrial development income directly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

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

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

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

AGUAKEM CARIBE, INC.
NOTES TO THE FINANCIAL STATEMENTS
JUNE 30, 2009



9) Puerto Rico Tax Exemptions. . . (continued)

personal property tax for the applicable year. The exemption expiration date will be the date in which the construction and/or installation concludes.

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

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

10) Contingencies

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

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

11) Deferred Tax Asset and Operating Loss Carry Forward

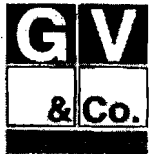
As of June 30, 2009 the Company has available (\$690,430) of operating loss carry forward to offset future taxable income.

Deferred tax asset in the accompanied balance sheet amounting to \$195,439 arose from the tax benefit of net operating loss carryover as required by Financial Accounting Standard Board #109 - Accounting for Income Taxes and are due as follows:

<u>Due on Year Ended</u>	<u>Deferred Tax Asset</u>
June 30, 2011	\$ 8,420
June 30, 2013	165,717
June 30, 2014	5,450
June 30, 2015	11,777
June 30, 2016	4,075

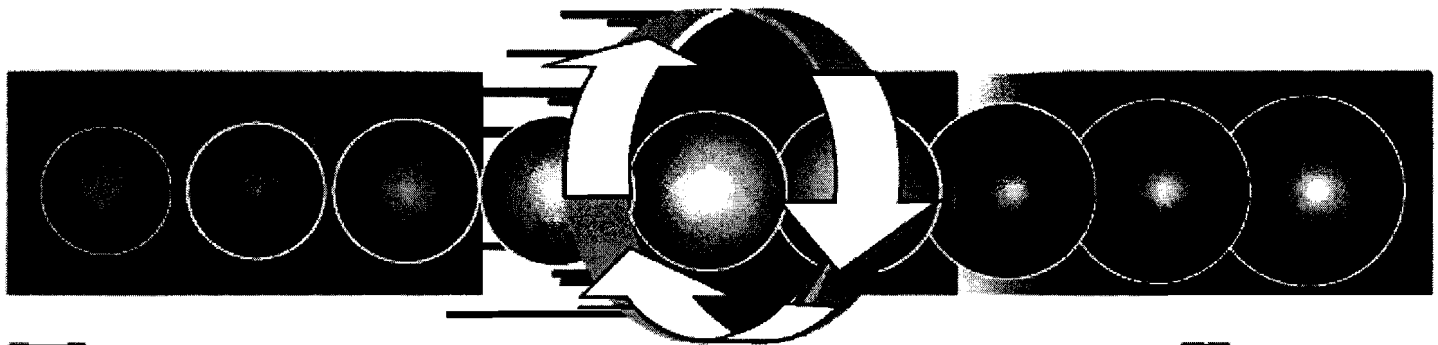
Deferred tax asset were estimated based upon current applicable taxable rates.

AGUAKEM CARIBE, INC.
NOTES TO THE FINANCIAL STATEMENTS
JUNE 30, 2009



12) Provision for excise taxes claim

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



ENVIRORECYCLING, INC.

**ENVIRONMENTAL SAMPLING FOR
CONTAMINATION IN DUST FOR ASBESTOS AND LEAD AT
AGUAKEM IN PONCE, PUERTO RICO**

DICEMBER, 2006

Prepared For:

JORGE UNANUE

Prepared By:

ENVIRORECYCLING, INC.

1508 Paseo Fagot Suite # 3 Urb. Jardines de Fagot

Ponce, P.R. 00716

Tel. (787) 284-0044 / (787) 284-0055

Fax (787) 848-1780

SUMMARY

An environmental Sampling for asbestos and lead in dust was conducted by Envirorecycling at Aguaken building in Ponce; PR. Seven (7) samples were collected for asbestos and seven (7) for lead in dust. As result of the samples taken at the time no asbestos were found and the lead samples taken show very high concentration of lead in dust in all seven samples the location of the samples taken are described in the chain of custody. This survey was requested by the owner Jorge Unanue

The sampling was conducted by Benjamin Cintron Pagan an EQB certified LBP and Asbestos inspectors.

RECOMENDATION

Base on the samples taken and the results this area needs to be seal and warning sings need to be posted on all entrees to prevent personal to enter and be expos to lead. Then companies who specialize in lead removal and have there personal certify and training most be contact to come and estimate the cost for cleaning the area were the contamination was found. Once the area is clean a visual and lead survey most be conduct to determinate where the lead contamination is coming from and weather is lead base paint present or lead is be brought from outside to the interior of the building.

Some painted surfaces may contain levels of lead below 1.0 mg/cm^2 , which could create lead dust, or lead contaminated soil hazards if the paint is turned into dust by abrasion, scraping, or sanding.

This report shall be kept by the owner and all future owners for the life of the structures.

Benjamin Cintrón Pagan
EQB LBP Inspector Certified

