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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF: *
AGUAKEM CARIBE, INC. *COMPLAINT, COMPLIANCE ORDER

AND NOTICE OF OPPORTUNITY
FOR

Respondent *HEARING

Proceeding under Section 308 *Docket No. RCRA-02-2009-7410
of the Solid Waste Disposal
Act, amended, 42 U.S.C. 6928 *

HEARING

was taken on December 8, 2010 at Federico Degetau Federal
Building, 1560 Carlos Degetau Building, Courtroom 11,
Fourth Floor, San Juan, Puerto Rico at 9:00 a.m.

PRO. ENVIRONMENTAL
AGENCY-REG. II
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REGIONAL HEARING
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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.

1 I N D E X

2
3 WITNESS: JESSIE AVILES

4
5 DIRECT EXAMINATION BY: MS. RODRIGUEZ
6 PAGE 6

7 CROSS EXAMINATION BY MR. LLORENS
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9 REDIRECT EXAMINATION BY MS. RODRIGUEZ:
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13 WITNESS: ANGEL RODRIGUEZ
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1
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3 THE JUDGE: Any issues that arose
4 overnight? Anything you need to discuss
5 before we get started this morning?

6 MR. LLORENS: I just want to make
7 one point with regard to the transcript. It
8 was asked of me and I am going to defer to
9 the various people in the room on this. In
10 terms of ordering a transcript, who is in
11 charge of making sure the transcript is taken
12 care of just as to how, what is the process
13 on that? I guess I am asking the question.

14 THE JUDGE: Generally after a
15 hearing is conducted the transcript is
16 prepared and then a notice is provided to
17 both parties that the transcript is available
18 and there is a cost involved to the
19 respondent for the reproduction I believe of
20 the transcript and upon payment I assume it
21 is then forwarded to you and then we set a
22 post hearing brief schedule which is once
23 again not mandatory but if the parties desire
24 to do it, and then the initial decision is
25 issued after that.

1 MR. LLORENS: All right.

2 MS. R: Yes and in order to avoid
3 any type of conflict of interest, that is why
4 the original and a copy is actually sent to
5 the regional hearing clerk and I believe that
6 the regional hearing clerk is the one that
7 notifies the parties but I don't have, you
8 know, any advantage over you in receiving it
9 or whatever.

10 MR. LLORENS: Thank you very much.

11 THE JUDGE: Okay. Now, also I will
12 mention it each morning, if at any time the
13 parties would like to have a brief recess to
14 talk possible settlement, even though we have
15 traveled here and gone through a great deal
16 of effort, I am not adverse to a settlement.
17 The only time I do get upset is after the
18 post hearing briefs are in and we have
19 written the decision. That does not make me a
20 happy person but otherwise if the parties
21 wish to settle through the close of the
22 hearing, that is fine with me.

23 Now, we had started yesterday with
24 EPA second witness.

25 MS. RODRIGUEZ: Mr. Jessie Aviles,

1 Your Honor.

2 THE JUDGE: Yes. Now, on break
3 times, I believe there is a tentative request
4 from the court reporter that when we break
5 for lunch that it is a full hour and I assume
6 that is what we were going to go forward with
7 today as yesterday.

8 MS. RODRIGUEZ: I would suggest,
9 Your Honor, that in order to avoid the rush
10 in the cafeteria, like if we could recess
11 like quarter to twelve. It is much easier to
12 get back and forth, you know.

13 THE JUDGE: Okay. Do the parties
14 have any problem with that?

15 MR. LLORENS: No, Your Honor.

16 THE JUDGE: Excellent. Okay. Sir,
17 I just want to remind you that you are still
18 under oath.

19 MS. RODRIGUEZ: And, Your Honor, may
20 I continue conducting the direct from here?

21 THE JUDGE: Yes.

22 EXAMINATION CONTINUED

23 BY MS. RODRIGUEZ:

24 Q Okay. Good morning judge, good
25 morning counsel. Let me go back. Yesterday,

1 if I can recall we were discussing, I asked
2 you a question as the different types of
3 facilities that you inspect. Could you just,
4 to refresh so we can continue with the
5 direct, can you refresh and mention the ones
6 you as an inspector normally inspect under
7 the RCRA Program.

8 A We inspect all kinds of facilities.
9 We are looking for hazardous waste but we
10 will not know if they hazardous or not until
11 we get there so we usually go over any kind
12 of facility to see whether or not they
13 generate hazardous waste. We cite them and
14 at times we ask the facility if they have any
15 hazardous waste in issue and then we continue
16 inspecting the facility.

17 Q And I think I already asked but I
18 am not sure. What kind of company is the
19 applicant, Aguakem Caribe, Inc.?

20 A Aguakem Caribe is a company that
21 produces chemical for water treatment.

22 Q And did you say, I am sorry, it is
23 just that I didn't know whether you answered
24 this. Did you ever become familiar with
25 Aguakem?

1 A I became familiar with Aguakem
2 through a complaint that was received in the
3 office and then through an inspection that we
4 performed on February 2, 2007.

5 Q Now, regarding the inspection,
6 could you tell us what facility of Aguakem
7 did you inspect?

8 A We inspected the facility at
9 building 6 in Puerto De Ponce and we inspect
10 Aguakem's facility at Canas Ward.

11 Q And could you for the record, I
12 don't know whether it has been clarified,
13 which is the former facility and which is the
14 current facility?

15 A Aguakem's former facility is the
16 one that was located at Building 6 at Puerto
17 De Ponce and their current facility is the
18 one located at Canas Ward, C-A-N-A-S.

19 Q And when you were assigned to work
20 in this case, were there any other people
21 assigned along with you?

22 A Yes. I went to the inspection with
23 Mr. Eduardo Gonzalez and Miss Solimar Luna.

24 Q And when you were assigned to work
25 on this case, what did the three of you do?

1 What did you decide to do?

2 A Okay. We received the
3 complaint. We evaluated the complaint and
4 then we went into the facility. We went to
5 the former facility, the one at Building 6
6 first. We were briefed by Mr. Quinones from
7 Puerto De Ponce. He gave us access to the
8 facility. Once he gave us access, we start,
9 we did a walk through outside the facility
10 and then we entered into the building. We
11 took pictures. We took our field notes.
12 Afterwards we left the facility. We went
13 inside to Puerto De Ponce. Actually the
14 director is Mr. Quinones and then we went to
15 Canas facility in which we also did
16 inspection of the Canas facility and we
17 talked with Mr. Jose Unanue and I believe he
18 identified himself as the business manager.
19 We asked questions about their current
20 facility and questions about their former
21 facility.

22 Q Okay and regarding their current
23 facility, could you just tell us what, if
24 anything, Mr. Unanue told you about their
25 operation?

1 A Yes. Mr. Unanue told us that they
2 had moved by October, 2006, they had not
3 moved by October, 2006. They had started
4 operations at their Canas facility by
5 October, 2006; that they moved outside of
6 Building 6 by December 28th and they were not
7 going back to Building 6; that the operation,
8 the moving operation was performed by one of
9 their employees; that he did not know what
10 happened there because he was on vacation and
11 he did not offer any other information when
12 we tried to find out what was left at the
13 facility.

14 Q Now, I am going to ask in general
15 terms about the RCRA Program and the RCRA
16 regulation. You have mentioned the different
17 facilities that you inspect under, you know,
18 in your position as EPA inspector under RCRA.
19 Now, under those facilities that you
20 mentioned, does Aguakem fall under those, you
21 know, falls under the different type of
22 facilities you inspect?

23 A Yes, Aguakem does fall within those
24 facilities that we will inspect.

25 Q Now, under the RCRA in general

1 terms, what is considered a person under the
2 RCRA statute of the regulation?

3 A Any person that generates waste.

4 Q And only persons that generate
5 waste or are there an other persons that are
6 also considered person?

7 A There could be also a facility.

8 Q And do you know whether an owner or
9 an operator is also considered a person?

10 A Yes, an owner/operator will be
11 considered a person under RCRA.

12 Q Is a transporter also considered a
13 person?

14 A A transporter is also considered as
15 a person under RCRA, too.

16 Q Now, with your experience, what is
17 the Puerto De Ponce under the RCRA
18 regulations?

19 A Puerto De Ponce will be considered
20 the owner of the facility.

21 Q And what is Aguakem considered?

22 A Aguakem will be considered the
23 operator of the facility.

24 Q And under your experience under
25 RCRA regulations, are they both liable under

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RCRA?

A They are both liable.

Q Okay.

MS. RODRIGUEZ: May I approach, Your Honor ?

THE JUDGE: Yes.

EXAMINATION CONTINUED

BY MS. RODRIGUEZ:

Q Now, we are going to go over the photograph that I believe yesterday you mentioned that you actually took. You reviewed the photographs yesterday?

A Yes.

Q And you mentioned that you actually took all of these photographs?

MS. RODRIGUEZ: Your Honor, I am also going to show the witness for the record there is two, there is the facility layout and the photograph identified layout. I am going to be showing each one of the pictures and could you please describe what you see and what you saw during the inspection. I am showing photo number nine, Your Honor.

THE JUDGE: That will be on the photograph identified layout?

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MS. RODRIGUEZ: Yes.

THE JUDGE: Okay.

EXAMINATION CONTINUED

BY MS. RODRIGUEZ:

Q Okay. Now, can you tell us what during the inspections, what you found in this photo, what does this photograph represent?

A That is what we call a tote, is approximately 1,040 liter containers. A tote is cut open. There is some powder on top of it. There is rusting of the metal frame that is usually around the tote.

Q Could you point to the rusty?

A Yes, the rusty, you could see it, is on the left corner of the picture and you could see it, colors the tote. This is what I say is the frame of the tote, it is completely rusted. You can see the rust on the other side on top of the photo and you could also see that there is a tote sideways on the top portion of the picture.

Q And can you identify where this was found in the photograph identification layout?

1 A If you look at the layout number
2 nine is located on the north side of the
3 building towards the wall on the lower
4 portion of the building, well, actually the
5 southern portion of the building.

6 Q Can you point out. It is marked
7 there?

8 A Yes, right here.

9 Q Now, this photo, is it a full photo
10 of what is their number niner?

11 A It is only a partial picture.
12 Pictures are only, part of those pictures of
13 what we see, they are descriptive but we
14 cannot take pictures of everthing that we
15 actually see because it would be thousands of
16 pictures so we take pictures of what
17 represents the site.

18 Q Now, is this photograph number ten?
19 Okay. Can you describe what you see in
20 photograph ten?

21 A Again we are looking at a tote,
22 1,040 liter container that has been cut
23 opened. It has, it is almost full of, at that
24 time, liquid.

25 Q And what else do you see in the

1 photo?

2 A You also see the frame of the
3 container which is also rusting. You can also
4 see on the background of the picture another
5 container, as this one, that is also cut
6 open.

7 Q Could you point out where in the
8 picture you see that, here, in the picture?

9 A In the picture, this is where the
10 other container that is opened and this is
11 the same of the container that is made part
12 of the picture. It is also open and full of
13 liquid.

14 Q For the record, he is pointing to
15 the top of the picture as to where the other
16 container is and can you please point in the
17 graph where this container was?

18 A Yes, the graph is located right
19 next to number nine which would be the
20 northern wall towards the southern part of
21 the building.

22 Q And what number does it have in the
23 graph?

24 A Ten.

25 Q Okay. Now I am showing you

1 photograph thirteen. Can you describe what
2 these are?

3 A Yes, photograph thirteen is a
4 picture of the tank farm. You can see in the
5 picture that there were numerous spills in
6 the tank farm. It is covered with a
7 yellowish powder, a brownish powder. You can
8 also see that there is a dike around it and
9 part of the dike is broken.

10 Q And what else do you see there in
11 the picture, if anything?

12 A Yes, there is also an opened
13 container by the top portion of the picture.
14 There are balls of the tanks, specifically
15 what that is.

16 Q Okay. Can you go to number two in
17 the picture also, in the graph, I am sorry.

18 A Number thirteen in the graph is
19 towards the southern wall of the southern
20 part of the building, that is where the tank
21 farm was.

22 Q And do you have an idea of what
23 this yellowish or brownish or white powder
24 could be?

25 A At that time we could not identify

1 what those powders were.

2 Q Just one more question. Is this
3 normal to have these kinds of powder on the
4 floor?

5 A No, it is not normal to have
6 spills, unattended spills on the floor.

7 Q So you would consider this also as
8 a spill?

9 A It is.

10 Q Okay. Now, I am going to show you
11 photograph number three. Now, could you
12 please tell us first where was this located.

13 A Photograph number three is located
14 on the north side of the building towards the
15 south corner just outside of the stairs that
16 go into the building.

17 Q And what does it consist of?

18 A It has, again, a tote that is
19 partially full. The tote was located on top
20 of a storm water catch grill.

21 Q Can you point out to where the
22 storm water is.

23 A The storm water, when you look at
24 the picture, the storm water catch grill is
25 towards the center of the picture, just below

1 the tote.

2 Q And could you explain what a storm
3 water catch is?

4 A Yes, storm water catch grill is
5 used to convey water from rain event, usually
6 to water body.

7 Q And do you know the water body that
8 would be used?

9 A In this case we assumed the body
10 water to be impacted was the Caribbean Sea.

11 Q Okay and so you if you point in the
12 graph where it is, this picture was taken?

13 A Southern side of the building of
14 the picture I took.

15 Q I ask you, was it covered, was this
16 covered? I mean is this out in the open or
17 was it covered?

18 A Those are out in the open. Those
19 are outside of the building.

20 Q Okay. Now, I am going to show you
21 photo eleven. Now, could you identify what
22 you saw when you took photo eleven?

23 A Yes, picture eleven was a wooden
24 shack in the facility, within the facility.
25 It had numerous white spills consisting of

1 white powder in it. It was broken but we
2 don't know what reasons.

3 Q What was broken, can you point that
4 out to me?

5 A Actually the door was actually
6 expanded by breaking it. Also the lower part
7 is made of yellow cinder blocks or cinder
8 blocks that were painted yellow and they were
9 also broken.

10 Q Okay and what was on the floor, did
11 you say?

12 A A white powder, on the tiles there
13 were spills.

14 Q Okay and could you point to the
15 photograph identified layout where this would
16 correspond.

17 A In the layout, number eleven is
18 towards the southern wall, towards the half
19 part, half portion of the building.

20 Q Now, I am going to show you photo
21 twelve. Now, could you tell us what you see
22 in photo twelve?

23 A Picture twelve again has a white
24 powder on top where you can see the spills.
25 There was a dike, a cinder block dike that at

1 one time constructed but at the time of the
2 inspection was destroyed.

3 Q But as you see in the picture that
4 you found? If you see anything.

5 A What you see a broken dike and
6 spills, with controlled spills.

7 Q Okay. Again to clarify, spills
8 don't necessarily have to liquid spills?

9 A No. When we talk about spills we
10 mean any material that is spilled on the
11 floor. It doesn't need to be a liquid, it
12 could be a solid, it could even be a gas.

13 Q And can you also point to the
14 layout and tell us where, please go to
15 twelve.

16 A Photo twelve is also on the
17 southern wall of the facility close to the
18 center of the facility.

19 Q Okay. Thank you. Now, I am going
20 to show you photo six. Now could you tell us
21 what you see. First of all where was, at what
22 point was photo six taken, if you can show us
23 in the graph.

24 A Photo six was taken approximately
25 at the center of the building.

1 Q Okay.

2 A We took photo six to show, to have
3 a wide view of what we were looking at when
4 we entered into the building. We basically
5 stopped in the center door of the building
6 and had a picture of the totes, the
7 containers that were stacked on part of the
8 building, drums also stacked on part of the
9 building. The blue shed that was picture
10 eleven, the tank farm that is picture
11 thirteen and the laboratory area which is
12 behind the tank farm. There is also totes and
13 drums at the far end of the picture.

14 Q Could you point out where in here?

15 A This other drums that I am pointing
16 in the picture, close to the center of the
17 picture is on this southern corner.

18 Q Okay.

19 A Of the facility.

20 Q Okay and and in what condition did
21 you see this?

22 MR. LLORENS: Objection to the form
23 of the question. What is this?

24 MS. RODRIGUEZ: It is a picture of
25 what condition that was in.

1 THE WITNESS: Previously the
2 materials were mismanaged as there were a
3 number of spills, there were containers that
4 were opened. There were containers that were
5 leaking. This is a facility that was not
6 properly managed at the time that we were
7 there.

8 EXAMINATION CONTINUED

9 BY MS. RODRIGUEZ:

10 Q Now, Mr. Aviles, you said you took
11 those pictures and do the pictures represent
12 all the things that you saw during the
13 inspection?

14 A I could see that they do represent
15 what we saw at the inspection even though
16 they do not point out to everything that we
17 saw, they are a good representation of what
18 we saw during the inspection.

19 Q Now, I am going to show you Exhibit
20 3.

21 MS. RODRIGUEZ: Your Honor, may I
22 approach the witness?

23 THE JUDGE: Yes.

24 MS. RODRIGUEZ: I am going to be
25 showing him an exhibit that has already been

1 entered into evidence, Exhibit number 3 which
2 is the RCRA Compliance Evaluation inspection
3 of what was known as Port of Ponce, the
4 former facility.

5 EXAMINATION CONTINUED

6 BY MS. RODRIGUEZ:

7 Q Take your time and look at it.
8 Now, I ask you to look at page five and could
9 you tell us what in the picture where it says
10 toward the facility, could you tell us - I
11 mean, first of all, do you know this
12 document?

13 A Yes, I do know this document.

14 Q Have you reviewed this document?

15 A I did.

16 Q What does this document reflect?

17 A It reflects the findings of the
18 inspection, how we found the facility at the
19 time of inspection and what we identified as
20 violations by the time that this document was
21 completed.

22 Q Okay. Now, let me ask you to look
23 at pages five and page six. Now, let's go
24 one by one. We already described outside
25 building 6. It says here outside building 6.

1 Now, could you tell us, can you read us what
2 it says in the third sentence.

3 A Third sentence of the north
4 paragraph?

5 Q Right. Where it starts also.

6 A "Also a plastic and metal frame
7 square tank, one cubic yard containing a
8 liquid identified as ferrous chloride, June,
9 2001 was observed on top of a storm water
10 catch basin in the parking lot."

11 Q Now, is that the one, is this the
12 one that you were talking about when I showed
13 you figure three, picture three?

14 A Picture three, that is right.

15 Q Okay. Now, continue, please.

16 A "In addition various 55 gallon
17 drums were observed along an
18 unloading/loading dock-path adjacent to the
19 referenced Building 6, such drums were empty
20 and identified as APAK 4050 and Ferric
21 Sulfate as follows."

22 Q Okay. Now, could you go also now to
23 page six. Where it says "Inside the Area
24 Building number 6." And it says north. Can
25 you please read that out loud? It says north.

1 It is the first paragraph.

2 A Okay. "Approximately twenty six,
3 one cubic yard containers staked and some of
4 them labeled as sump water low pH were
5 observed from a concrete brick wall to the
6 center of the Building 6."

7 Q You can skip what has been
8 bracketed so it is easier.

9 A "Nearby the one cubic yard
10 containers there were approximately thirty 55
11 gallon plastic and corroded metal drums which
12 some were labeled as Polyacrylamide Emulsion
13 and Sodium Aluminate, corrosive. One of the
14 55 gallon drum was open on top with an
15 unknown content emanating strong odors. In
16 addition there was one five gallon container
17 filled with Polyacrylamide Emulsion Solution,
18 corrosive. The drums and containers were
19 severely deteriorated, open and stains were
20 observed all over the concrete floor."

21 Q Okay. Now, let's go to the
22 southeast and let me point or let me show you
23 the graph so that we have a better
24 understanding what area of the facility we
25 are talking.

1 MS. RODRIGUEZ: We are now going to be
2 using, Your Honor, the facility layout, not
3 the photograph, just the facility layout.
4 Let me go back. Where you say the north.

5 EXAMINATION CONTINUED

6 BY MS. RODRIGUEZ:

7 Q Where you say the north, could you
8 point out where is the north?

9 A This side of the building.

10 Q In the picture.

11 THE JUDGE: Let the record reflect.

12 MS. RODRIGUEZ: Yes, let the record
13 reflect that he is pointing in the picture
14 the left side of the building as depicted in
15 the graph.

16 EXAMINATION CONTINUED

17 BY MS. RODRIGUEZ:

18 Q Now, when we talk about the south,
19 now we are going to talk about the southeast.
20 Could you first point out where the
21 southeast, when you discuss the southeast,
22 where it is?

23 A Right here.

24 Q He is pointing to the contract, to
25 the right side of the facility layout.

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THE JUDGE: Towards the top?

MS. RODRIGUEZ: No, to the right side.

THE JUDGE: Right.

THE WITNESS: Right towards the top, yes.

THE JUDGE: Yes.

EXAMINATION CONTINUED

BY MS. RODRIGUEZ:

Q Okay, now could you read from the pre-inspection report?

A "As the walkthrough proceeded southeast, additional sixty to seventy stacked one cubic yard containers and approximately fourteen 55 gallon plastic drums placed on wood pallets and various 5 gallon containers were seen in the east side of the building. Most of the one cubic yard containers were identified as Sump Water low pH, APAK 4050 and A-Ferric. The drums were labeled as Sodium Aluminate. Two of the 55 gallon drums were leaking from the top openings and one of them was totally open. There were also approximately ten various unidentified and opened 5 gallon containers with Poly quaternary Ammonia, corrosive. Next to the 5 gallon containers there were

1 two additional unidentified one cubic yard
2 containers with unknown content and its top
3 portion removed and leaking on the warehouse
4 floor. Nearby the stacked one cubic yard
5 containers there was a partially demolished
6 wood shed which was painted yellow and blue
7 and was observed severely impacted with
8 solvent stains and with a spill of unknown
9 granulated material over the floor. In
10 addition there were two one cubic yard
11 containers which were identified as
12 Hydrochloric Acid, corrosive located on the
13 side of the wood shed."

14 Q Okay. Now, as to what you
15 described in the inspection report at the
16 east part. Could you point out where the east
17 would be?

18 A Top portion of the building.

19 MS. RODRIGUEZ: Let the record reflect
20 that the witness is pointing to the top
21 portion of the graph.

22 EXAMINATION CONTINUED

23 BY MS. RODRIGUEZ:

24 Q And can you describe what it
25 states?

1 A "In this area there were abandoned
2 scattered metal debris and one 55 gallon
3 plastic drum labeled as Sodium Aluminate,
4 corrosive which was uncovered."

5 Q Now, could you show us where the
6 northwest of the facility is.

7 A It would be towards the lower
8 portion of the picture.

9 Q Let the record reflect that the
10 witness is pointing to the lower portion of
11 the graph. Now, could you read what it says
12 that you found?

13 A "At this area the inspectors
14 observed approximately thirteen 55 gallon
15 drums located next to Building 6 entrance
16 area which were identified as follows: Three
17 of the drums were unlabeled and contained an
18 unknown content. Eight 55 gallon drums were
19 labeled as Ferric Chloride. One 55 gallon
20 drum was labeled as Ferric Sulfate and one 55
21 gallon drum labeled as APAK 4050-Coagulant.
22 Also there was one 55 gallon drum cut in half
23 with unknown content."

24 Q And could you read the last
25 paragraph?

1 A "At the entrance area of Building 6
2 the inspectors observed approximately ten 5
3 gallon containers which were identified as
4 follows: Five gallon containers identified as
5 paint waste with impacted unknown material,
6 one 5 gallon container unlabeled and
7 containing an oily waste and four 5 gallon
8 containers with soil impacted with unknown
9 waste. None of the 5 gallon containers were
10 clearly labeled and most of them were open
11 exposing its waste content."

12 Q Just for the record, where was the
13 entrance? Can you point out to where is the
14 entrance?

15 A Yes. We entered right next to this
16 area identified as a street which is on the
17 northern wall, top portion of the picture.

18 THE JUDGE: Can you show that to me?

19 MS. RODRIGUEZ: Yes, Your Honor. Let the
20 record reflect that the witness pointed to
21 the left side, upper portion of the graph.

22 THE JUDGE: That little area denoted by -

23

24 THE WITNESS: Yes, with kind of round
25 parts.

1 THE JUDGE: Okay. Thank you.

2 EXAMINATION CONTINUED

3 BY MS. RODRIGUEZ:

4 Q Now, we also have the southwest.
5 Could you point to the southwest here.

6 A Southwest will be this corner.

7 Q Let the record reflect that he is
8 pointing to the lower right hand corner of
9 the picture. Can you read us what it says.

10 A "As the walkthrough proceeded
11 towards the southwest area of the building,
12 an indoor tank farm with five 2,600 gallon
13 above ground storage tanks and their
14 respective secondary containment systems were
15 identified in a deteriorated and partially
16 demolished conditions. Three of the reference
17 tanks were identified and labeled as
18 corrosive liquid. The other two tanks were
19 labeled as Ferric Sulfate and Ferrous
20 Chloride solutions, respectively. The level
21 indicator of the tanks marked one eighth full
22 of chemical content and their secondary
23 containment floors had a yellow colored
24 granular material spread over its surface.
25 It was also observed that the secondary

1 containment system wall protections were
2 broken and could not have contained any
3 spills which was observed to run toward the
4 concrete ditch located in the backyard of the
5 south side of the Building 6."

6 Q Go on.

7 A "In addition within this tank farm
8 area, it was observed one 30 gallon and one 5
9 gallon containers. One of the containers was
10 labeled as Sodium Benzoate and the other
11 contained an unknown liquid. Beside this
12 section, there was an additional and
13 partially demolished secondary containment
14 system that was observed with a white colored
15 granular material over its surface floor.
16 Nearby to this area there was a partially
17 demolished two story wood structure that
18 contained numerous opened and unopened
19 laboratory reagents in an enclosed area in
20 the first floor of the structure. As
21 observed by the inspectors, there were all
22 kind of laboratory chemical reagents
23 including buffer solutions, acids, bases,
24 flammable, corrosive, oxidizers, toxics among
25 other unidentified reagents abandoned

1 throughout the laboratory shelves, desks and
2 floors."

3 Q Thank you. I am handing over the
4 original. Mr. Aviles what you just
5 described, what you just read from the
6 inspection report, does that reflect an
7 accurate version of what you actually saw
8 when you conducted the inspection?

9 A Yes, it does reflect an accurate
10 depiction of what we saw during the
11 inspection.

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

14 THE JUDGE: Yes.

15 MS. RODRIGUEZ; I don't remember, I think
16 it was Exhibit 9, was it admitted into
17 evidence? It was. Could I have it?

18 EXAMINATION CONTINUED

19 BY MS. RODRIGUEZ:

20 Q I am giving the witness Exhibit 9.

21 MR. LLORENS: Can you give me that
22 paragraph?

23 MS. RODRIGUEZ: That is what I am going
24 to ask him. It is Exhibit 9.

25 MR. LLORENS: Can you just tell me -

1 MR. RODRIGUEZ: Exhibit 9?

2 MR. LLORENS: What is it?

3 MS. RODRIGUEZ: It is the response,
4 Aguakem's response from your client.

5 MR. LLORENS: Can we have the date?

6 MS. RODRIGUEZ: The June 30th. The one
7 that was back here.

8 MR. LLORENS: June 30th response?

9 MS. RODRIGUEZ: Yes, the only one we
10 considered complete. Could you take a look
11 at it, please.

12 EXAMINATION CONTINUED

13 BY MS. RODRIGUEZ:

14 Q Now, could you please go to page
15 ten.

16 THE JUDGE: Just a moment, why don't we
17 give counsel an opportunity to catch up.

18 MS. RODRIGUEZ: Sure.

19 MR. LLORENS: Okay.

20 EXAMINATION CONTINUED

21 BY MS. RODRIGUEZ:

22 Q Now, could you read where it starts
23 "To the best of the company's knowledge". It
24 is right after paragraph fifteen.

25 A "To the best of the company's

1 knowledge, the inventory records on hand as
2 of December 31, 2006 were: Inorganic salts,
3 APAK 4000 aluminum chlorohydrate, 11,561
4 pounds, APAK 4050 po-aluminum chloride,
5 115,555 pounds, Hydrochloric Acid, 94,291
6 pounds, APAK 1000 Aluminum Sulfate Liquid,
7 6,494 pounds, Ferix Dry, ferric sulfate,
8 48,501 pounds, AFERIS 4000 ferric sulfate,
9 42,963 pounds, AFERIS 2000 Ferrous Chloride,
10 209,496 pounds, AFERIC 4000 ferric chloride
11 147,064 pounds, ADECLOR 4000 sodium
12 bisulfate, 7,918 pounds, Supersorb 4000
13 bentonite, 4,000 pounds, AguasFloc 2000
14 bentonite, 2,200 pounds, Ferrous Sulfate Dry,
15 480 pounds, Caustic Soda, 550 pounds, Cytec
16 Organic Polymers Superfloc N300, 4,440
17 pounds."

18 Q And can you continue, what is on
19 page eleven?

20 A Superfloc SD 2085, 12,425 pounds,
21 Superfloc C 581, 26,675 pounds, Superfloc C-
22 591, 29,100 pounds, Superfloc A 110, 275
23 pounds, Superlfoc A130, 200 pounds, Poly
24 1800, 15,950 pounds, Superfloc 4818, 2,425
25 pounds, Superfloc C4810, 450 pounds,

1 Superfloc C4225, 450 poounds, Poly 1400,
2 2,500 pounds, Poly 1800 Plus, 15,080 pounds.

3 Q Okay. Now, I am going to show you
4 again the previous exhibit which you just
5 testified about which is the inspection
6 report, Exhibit 3. I want you to take a look
7 at page five. Take your time and let's go
8 over what you found outside building area
9 north and see if anything that you found
10 conforms or is related to anything that you
11 just read.

12 A Yes, they do relate to the list
13 that Aguakem gave us.

14 Q Could you please state which one.

15 A Paragraph one north, paragraph one
16 which is APAK, there are at least two
17 instances of APAK being Aguakem's response.
18 Item two of paragraph one north says APAK
19 4050. On Aguakem's list is APAK 4050,
20 hydrochloric acid on paragraph one north,
21 item three, Aguakem's response, it says
22 hydrochloric acid. Once again item four of
23 paragraph one north says APAK 4050 which is
24 in Aguakem's response.

25 Q Now, let's go to the next one. Did

1 you just take north?

2 A North.

3 Q Okay. Now, let's go to page six,
4 inside the building and we are now inside the
5 building, area north. If it makes it easier
6 for you, you could take north toward each one
7 and just take during the inspection which
8 materials were found, chemicals were found in
9 the containers identified?

10 MR. LLORENS: Just for the record, I
11 think we should be identifying the document
12 that the witness is referring to.

13 MS. RODRIGUEZ: We are talking about two
14 exhibits. We are talking the inspection
15 report and we already identified the second
16 information request that Aguakem submitted.

17 THE JUDGE: Exhibit number 9?

18 MS. RODRIGUEZ: Those are the two that he
19 is only looking at, yes, Your Honor, Exhibit
20 number 9 and the inspection report and they
21 have already been identified.

22 MR. LLORENS: I am not questioning their
23 admissibility. For the clarify of the
24 record, as you give him a document, we should
25 say, "I just handed you Exhibit -"

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THE JUDGE: Yes.

MS. RODRIGUEZ: I will, no problem.

THE JUDGE: Okay and we are on page ten and eleven of Exhibit 9?

MS. RODRIGUEZ: Yes.

THE JUDGE: And page five and six of Exhibit 3?

MS. RODRIGUEZ: Just to clarify, yes, Your Honor. I have given the witness, let the record reflect that he is reviewing the RCRA Compliance Evaluation Inspection Report which is Exhibit, Complainant's Exhibit entered already into evidence marked number 3 and I have asked the witness to read and go over page six, the description on what they found inside the building 6 and he will also take a look at Exhibit 9, page ten which he just testified about and see if there is any correlation or if he can find any of the materials, the inventory mentioned in the inspection report that were found or labeled in the containers when we did the inspection.

Just point out and please say where and on what document you are referring to.

EXAMINATION CONTINUED

1 BY MS. RODRIGUEZ:

2 Q Take as much time as you need.

3 A Paragraph two of this.

4 Q Of which?

5 A Of the inspection report says
6 APAK 4050 which is on Aguakem's list. On
7 paragraph two southeast of the compliance
8 evaluation inspection report says,
9 "hydrochloric acid which is on the response

10 -

11 THE JUDGE: Just one moment. There is a
12 phone call.

13 MS. RODRIGUEZ: Maybe we should take a
14 recess.

15 THE JUDGE: Okay. Yes, we can go off the
16 record for a moment or two. Sure.

17 (Whereupon a recess was taken)

18 THE JUDGE: Back on the record.

19 EXAMINATION CONTINUED

20 BY MS. RODRIGUEZ:

21 Q You can continue.

22 A And paragraph two northwest there
23 is Ferric Chloride in the evaluation
24 inspection report and it is also in our
25 count's response.

1 Q Ferric Chloric?

2 A Ferric Chloride. Ferric Sulphate
3 is also on the compliance evaluation report
4 and it is also on Aguakem's response. Also
5 APAK 4050 which is also in Aguakem's
6 response. On page seven of the Compliance
7 Evaluation Inspection Report, paragraph that
8 starts with Southwest. There is a reference
9 to the above ground storage tanks that has
10 been labeled Ferric Sulfate and Ferrous
11 Chloride which are also in Aguakem's
12 response.

13 MS. RODRIGUEZ: Your Honor, I am handing
14 over to the court reporter Exhibit 3 and
15 there is no exhibit number.

16 EXAMINATION CONTINUED

17 BY MS. RODRIGUEZ:

18 Q Mr. Aviles, now that we have gone
19 over the different things that we found, Mr.
20 Aviles, now that we -- I am sorry, I thought
21 that --

22 THE JUDGE: Yes, I was trying to get you
23 to raise your voice.

24 EXAMINATION CONTINUED

25 BY MS. RODRIGUEZ:

1 Q Now that we have gone over the
2 items that you found during the inspection,
3 were those materials or the containers that
4 we just described in the condition to be
5 able to use them?

6 A I would say no. The containers
7 were leaking, were spilled throughout the
8 floor and usually when you have a material
9 that you want to use the product, you
10 actually take care of it which was my
11 impression that they were not well taken
12 care of.

13 Q Let's say in the best case
14 scenario that the conditions are perfect and
15 that they could be used, I mean, in the
16 normal circumstances, right?

17 A Yes. If they were taken care
18 properly they could be reused.

19 Q Okay and in the conditions that
20 you found them under the RCRA regulations,
21 what would they be considered?

22 A After we did the visit at Building
23 6 and we talked to Mr. Unanue, we considered
24 the chemicals abandoned, basically having
25 those abandoned materials become a solid

1 waste.

2 Q And since they were abandoned and
3 leaking solid waste, would a person under
4 the RCRA regulations be required to make a
5 hazardous waste determination?

6 A Yes. A person is required to make
7 a hazardous waste determination every time
8 that they generate a solid waste.

9 Q Now, under the foundation of the
10 RCRA, what is the importance of making a
11 hazardous waste determination?

12 A The hazardous waste determination
13 is the base of RCRA. Everything that RCRA
14 regulates is all based on making a hazardous
15 waste determination. RCRA has several
16 regulations regarding safe keeping of waste.
17 Your disposal of the waste regarding
18 worker's protection, regarding
19 transportation of the waste and its all
20 based on the hazardous waste determination.
21 If a hazardous waste determination is not
22 made properly or is not made at all, the
23 whole program just falls apart. If a person
24 says, "I do not have hazardous waste" then
25 they will not have to comply with anything

1 but if they don't do the proper
2 determination then it is a hazardous waste.
3 You are exposing not only their workers,
4 they might be exposing other people and the
5 environment to the harmful effects of
6 hazardous waste.

7 Q Now, those chemicals, while they
8 are being used in the Canas facility, do
9 they have to make a hazardous waste
10 determination?

11 A While they are being used they are
12 a product and if they are a product they are
13 not a waste, then they don't have to make a
14 hazardous waste determination.

15 Q They don't have to make it when
16 they are using it in the Canas?

17 A That is right.

18 Q But would they have to under the
19 conditions that you saw at the former
20 facility during the inspection?

21 A Yes, they would, they were
22 required to make a hazardous waste
23 determination.

24 Q Okay. Now, in general terms about
25 the penalty policy, are you familiar with

1 the RCRA penalty policy?

2 A I am familiar with the RCRA
3 penalty policy.

4 Q And did you use it as a guidance,
5 have you ever used it as a guidance?

6 A Yes.

7 Q When you calculate penalties?

8 A Yes.

9 Q And are you familiar with the RCRA
10 statute?

11 A Yes, I am familiar.

12 Q Now, what would you, when you take
13 the seriousness of the violation as outlined
14 in the RCRA statute, what do you consider
15 seriousness of the violation? What do you
16 take into account?

17 A Yes. When we are calculating the
18 RCRA penalty, we are required to look into
19 two things, potential for harm, deviation
20 from the regulation and potential for harm
21 doesn't actually mean that there has to be
22 actual harm. That is it is potential. It
23 could be the potential for harm to happen
24 and deviation of the regulations. In this
25 case we calculated, we in the penalty, we

1 included the three counts, the first count
2 being the hazardous waste determination.
3 When we look at the amount of containers
4 that there were, we tried to see how much
5 they were, the Aguakem facility deviated
6 from regulations by not making the
7 determination given that the base of RCRA is
8 the actual hazardous waste determination.
9 They have not made it in over, we grouped
10 them in fifteen different categories
11 although we could have gone by each
12 container or each chemical, we grouped them
13 so that gave us fifteen different instances
14 in which Aguakem had failed with the
15 regulation which is a major deviation from
16 the requirements of RCRA.

17 The other part was potential for
18 harm. Given what we saw of the facility was
19 that we could see the abandonment. The
20 facility was not properly managed. There
21 were spills every where. Even the dikes that
22 were supposed to contain spills or was
23 broken. We look at the potential for harm,
24 not only for the workers but for any other
25 one like in this example, the owner of the

1 facility which as Puerto De Ponce, if anyone
2 could walk in there was potential for harm
3 for those people. Even then for any reason
4 the roof was blown off and there was rain,
5 well, it was potential for the contaminants
6 to migrate towards outside of the building.
7 There was also an outside towards the south
8 portion of the building, there was a small
9 dike in which some of the flow from inside
10 of the building moved so if the spill could
11 also move outside, causing exposure to the
12 environment so taken all together for us is
13 what we consider a major violation.

14 Q Now going back to the closing
15 meeting that you discussed with Mr. Jose
16 Unanue. Correct?

17 A Yes.

18 Q He mentioned, did he mention to
19 you whether they had concluded?

20 A Yes. Mr. Unanue said that they
21 were returning to Building 6.

22 Q Did he provide any information as
23 to what they would do after you informed
24 them the findings of the inspection report?

25 A No. He didn't want to provide any

1 other information.

2 Q Did he provide any type of
3 cooperation that you are aware of?

4 A No.

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

7 THE JUDGE: Yes.

8 EXAMINATION CONTINUED

9 BY MS. RODRIGUEZ:

10 Q I am going to take I think it is
11 Exhibit, Complainant's Exhibit 1 that has
12 already been entered into evidence. I am
13 showing the witness Exhibit 1, the
14 complaint, the Administrative Complaint.
15 Now, Mr. Aviles, are you familiar with the
16 complaint?

17 A Yes, I am familiar with the
18 complaint.

19 Q Are you familiar with the three
20 counts listed in the complaint?

21 A I am.

22 Q Now, could we go to the attachment
23 to the complaint which is the Narrative of
24 the penalty calculations?

25 A Okay.

1 Q Now, could you tell us as to count
2 one of the complaint the failure to make a
3 hazardous waste determination, could you
4 tell us what would be the assessed for the
5 potential for harm.

6 A Because of the potential for harm,
7 for this count as major.

8 Q Could you explain why if you know.
9 Why is it considered major?

10 A Yes. There were - let me check
11 something here a minute. Can I have a look
12 at the inspection report?

13 MS. RODRIGUEZ: Your Honor, let the
14 record reflect that the witness has asked
15 for the inspection report and I am handing
16 him Exhibit number 3 which is a RCRA
17 Compliance Evaluation Inspection.

18 THE WITNESS: We were calculating the
19 potential for harm of this violation. We
20 look at the amount of waste that would have
21 caused harm. When we counted, there were
22 almost 200 containers at the facility that
23 had unknown contents or chemicals that we
24 could consider as hazardous waste. We also
25 looked on the total amount of waste could

1 have gone over 2,000 pounds, over a ton of
2 waste that was left at the facility. The
3 conditions of the facility at the time that
4 we were there actually made the release of
5 the environment as an actual threat and a
6 potential for harm to the environment and
7 other people so when we considered this, the
8 amount of waste, the amount of containers
9 and the actual threat, you know, the actual
10 and possible threat, potential threat of the
11 hazardous waste released to the environment,
12 we decided that this would be considered as
13 a major classification.

EXAMINATION CONTINUED

BY MS. RODRIGUEZ:

14 Q Now, would you tell us what was
15 the assessment of the extent of the
16 deviation for San Juan?
17

18 A We also classified the extent of
19 deviation as major so I said there were
20 numerous chemicals, containers that I would
21 say that could have been individually for
22 each container individually as hazardous
23 waste determination to have been made and as
24 I said, there were over 200 containers in
25

1 which we grouped mostly, you know, fifty
2 containers and all of them needed a
3 hazardous waste determination given the
4 amount of containers and the amount of times
5 that were committed to the hazardous waste
6 determination, we consider that a major
7 violation, major deviation of the
8 requirements of RCRA.

9 Q Now, could you tell us regarding
10 that count, was there more than one instance
11 of violation in this count?

12 A Yes. There were fifteen instances
13 in which Aguakem was at least required to
14 make a hazardous waste determination.

15 Q And when you say fifteen
16 instances, is what you were just talking
17 about?

18 A Yes.

19 Q Could that be more?

20 A Could have been more.

21 Q Why could it have been more?

22 A When you have to make a hazardous
23 waste determination, let's pause for a
24 moment. You have any facility, what RCRA
25 requires is for anything that becomes a

1 waste, you have to make a hazardous waste
2 determination and for a minute, let's say
3 that I have two cans of what could be
4 similar products but they are from different
5 brands, so you can say that for each brand
6 you can make hazardous waste determination
7 so even though they are about the same, you
8 have to make a hazardous waste determination
9 twice or you could say that no matter what
10 the brand is, because you looked into the
11 constituents of, the content of the
12 contents, you just make one hazardous waste
13 determination. It will be up to the
14 facility, so it could have been two or it
15 could have been one. The same thing happened
16 here. We could have selected or we could
17 have said that Aguakem had to do the same
18 determination for each chemical that was
19 there, doesn't matter that we are similar or
20 not, or that they could approve everything
21 like we did so it could have been more.

22 Q Now, could you tell us what the
23 total gravity base penalty for count one
24 was?

25 A \$32,500.

1 Q And can you tell us how you
2 derived the total gravity base penalty?

3 A We looked into -

4 Q For that count.

5 A For this count. Look at
6 attachment two which contains the penalty
7 assessment rate matrix.

8 Q What page is that on?

9 A It is third to last in my copy. It
10 doesn't have a page number.

11 Q Can you at least tell us how it
12 starts in the first paragraph?

13 A No, actually this is the complaint
14 and this is attachment, the penalty rate
15 matrix.

16 THE JUDGE: What document are we in
17 again?

18 MS. RODRIGUEZ: In the complaint.

19 THE JUDGE: Okay. Attachment one.

20 MS. RODRIGUEZ: I mean -

21 THE WITNESS: Exhibit one.

22 MS. RODRIGUEZ: Exhibit one, Your Honor.

23 THE JUDGE: Right but what page, where
24 are we in Exhibit 1?

25 MR. MATEO DURANGO: Exhibit 1,

1 attachment two.

2 THE JUDGE: Okay.

3 MR. MATEO DURANGO: The last page.

4 THE JUDGE: And is it multi day matrix
5 or the penalty assessment gravity?

6 THE WITNESS: Penalty assessment gravity
7 matrix.

8 MR. MATEO DURANGO: That is correct,
9 yes.

10 THE JUDGE: Okay.

11 THE WITNESS: So what we are discussing,
12 what was the penalty and we selected that
13 the potential for harm at the extent of
14 deviation was major leaked into the cells
15 that are labeled major on top and major on
16 the left. The section of the row at the
17 column goes to the first cell on the top
18 left in which we could assess between 32,500
19 to \$25,791 for the penalty. We selected to
20 go to with the \$32,500 penalty the amount of
21 which there was in the facility. That one
22 was for the first instance of the violation.
23 Now, the penalty policy provides for
24 multiple instances of the same violation. In
25 this case since we had fifteen instances in

1 which Aguakem had to make a hazardous waste
2 determination, we elected to apply \$32,500
3 for the first time, for the first time the
4 violation occurred and for the other
5 fourteen violations we looked into the multi
6 day matrix, again selecting the column and
7 row labeled as major, went on to the top
8 left cell. We were given the opportunity to
9 give between \$6,448.00 to \$1,290 and we
10 elected the mid point of the cell for the
11 fourteen other instances of the violation.

12 EXAMINATION CONTINUED

13 BY MS. RODRIGUEZ:

14 Q And what were the amount for the
15 mid point?

16 A \$3,869.00.

17 Q And then you would multiply that
18 by?

19 A Fourteen other instances giving us
20 a total of \$54,166.00.

21 Q And then what would be the total
22 amount for the gravity? What would you add
23 to \$54,166.00?

24 A \$86,666.00.

25 Q Would be the total amount?

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A That would be the total amount of the first timeliness of the matrix for the violation

THE JUDGE: Why is it added to the gravity base the multi day? Why not just use the multi day?

THE WITNESS: Because not all the violations have a multiple instance. They could have had just one container that was not properly determined to be a hazardous waste and that was the first instance. The penalty policy, I would not think that no big policy will apply the total amount of the violation, that will be the penalty amount, \$32,000 to the facility so that they give us the opportunity to assess repeat violations. In this case repeat instances of making a hazardous waste determination. The opportunity to use a lower amount which reflects the times and opportunity not complying with the regulations.

Q Now, do you know whether there was any type of adjustment factor?

A Yes, there was a ten percent adjustment factor for negligence.

1 Q Now, will you turn to count two on
2 the complaint.

3 A Yes.

4 Q Can you tell me what count two is.

5 A Failure to minimize risks of a
6 fire, explosion or release.

7 Q Now, what did you find for that
8 count? Was it major, was it minor?

9 A It was considered a major and
10 potential for harm and major in extent of
11 deviation.

12 Q And could you tell us why it was
13 found major?

14 A Potential for harm and the
15 facility had over 200 containers, over 7,000
16 pounds of waste that was left at the
17 facility so the potential to harm any other
18 person or to be released into the
19 environment was very high and that is why we
20 selected major. The extent of deviation was
21 also selected major because even the way in
22 which we observed the facility, it means
23 that it was not properly managed before
24 Aguakem left the facility. The dikes were
25 broken. There were spills all over the

1 floor. The containers got opened and
2 chemicals were left abandoned at the
3 facility so this count actually looks into
4 the way a facility is being kept, the way a
5 facility actually looks into the hazardous
6 waste management and tries the most to
7 minimize the risk posed by the hazardous
8 waste. What we saw there is indicative that
9 they were not minimizing the risks; that
10 Aguakem was not minimizing the risk of a
11 release, of a fire or explosion.

12 Q Now, was the high point in the
13 matrix used?

14 A Again we used the high point of
15 the matrix.

16 Q And do you know why?

17 A Yes, the amount of waste and the
18 extent of, the abandonment, the extent of
19 how the facility was not well kept was the
20 reason to do that. It was also the fact
21 that the Caribbean Sea was located right
22 next to the facility so any release not only
23 could have impacted the people but could
24 have been threatening to the environment.

25 Q Now, when you talk about once a

1 day, I think it goes, to what really the
2 attachments, the last, what date did you
3 take into consideration as the date when it
4 began, you know, let's say from what date,
5 the period of time that you took in
6 consideration for calculating your penalty?

7 A Okay. This instance, failure to
8 minimize risk is not something that you
9 repeat, you know, it is not a multi instance
10 like hazardous waste in which you have one
11 item for which you to make a hazardous waste
12 determination. In this case it speaks to the
13 well kept of the facility so instead of
14 going for multiple instance, it goes for a
15 multi day. It is the time of days in which a
16 facility will not keep their facility to
17 minimize the risk of a fire, explosion or
18 release.

19 What we selected was the date in which
20 the response said that Aguakem had left
21 Building 6 which was December 28th. The time
22 in which we finished or we calculated the
23 end date was the time in which the EPA
24 Emergency Team actually stabilized the risk
25 of a fire, of an explosion.

1 Q And do you know what is the base,
2 when the gravity based penalty for this
3 violation was?

4 A The base -

5 Q I am sorry, what was the gravity,
6 base penalty, the penalty amount for the
7 violation?

8 A For the repeat for every day, we
9 assessed the penalty of \$3,869.00. That was
10 multiplied for forty three days which are
11 broken down in terms of the first instance,
12 the first day of the violation and forty two
13 other days which give us a total of a
14 hundred and sixty, two thousand four hundred
15 and ninety eight days, ninety eight dollars,
16 sorry.

17 Q So when you say forty three
18 instances, are you talking forty three days?

19 A Days.

20 Q From the time that the informed
21 EPA -

22 A It took forty three days within
23 the time that Aguakem abandoned the facility
24 to the time, to the day that EPA stabilized
25 the site.

1 THE JUDGE: What was that date?

2 THE WITNESS: The stabilization date?

3 THE JUDGE: Yes.

4 THE WITNESS: I would have to look.

5 The date on which it was stabilized was
6 February 9, 2007. I am reading on the
7 narrative explanation to support complaint
8 amount, count two.

9 EXAMINATION CONTINUED

10 BY MS. RODRIGUEZ:

11 Q And are you aware of whether any
12 adjustment factors were also included in the
13 penalty?

14 A Yes, we also adjusted the penalty
15 ten percent for negligence.

16 Q And do you know how much was it?

17 A Yes. That ten percent was
18 19,499.80.

19 Q And could you tell us what the
20 total penalty amount was for count two?

21 A \$214,497.80.

22 Q Now, just for count three, can you
23 tell us what count three is?

24 A Yes, the failure to comply with
25 the used oil regulations.

1 Q And what was the potential for
2 harm?

3 A Minor.

4 Q Can you explain to us why?

5 A Yes. We assessed this one because
6 there was one container of used oil that was
7 unlabeled left behind which is one container
8 so the potential for harm is very minor.

9 Q And what was the extent of
10 deviation?

11 A It was major because the container
12 it had, was opened and was unlabeled so you
13 have to label used oil containers with the
14 words, used oil.

15 Q And did you use the high point in
16 the matrix?

17 A No. In this case we also elected
18 the mid point, we selected the high point of
19 the count, yes at the rate of the matrix or
20 minor potential for harm and major extent of
21 deviation.

22 Q And were there any adjustments
23 made to this?

24 A There were no other adjustments
25 made for this count.

1 Q So what was the total gravity
2 based penalty for this violation?

3 A \$3,868.00.

4 Q And what was the amount of the
5 penalty?

6 A \$3,868.00.

7 MS. RODRIGUEZ: Your Honor, that will be
8 all for the witness.

9 THE JUDGE: Okay. This will probably be
10 an ideal time to take a short break. How
11 about if we try to get back at 10:30 but
12 understandably the facilities may be locked
13 up.

14 (Whereupon a recess was taken)

15 MS. RODRIGUEZ: Your Honor, I am handing
16 over the exhibits.

17 THE JUDGE: Are we ready to go back on
18 the record. Excellent and I remind the
19 witness that he is still under oath.

20 MR. LLORENS: Good morning, Your Honor.
21 Good morning everyone, the court and good
22 morning, Mr. Aviles.

23 CROSS EXAMINATION

24 BY MR. LLORENS:

25 Q You testified in direct about the

1 calculation of penalty in this matter and I
2 believe Counsel asked you if you applied any
3 adjustments factors. Do you recall that?

4 A Yes, I do.

5 Q And do you recall that you
6 testified that on some of the counts I think
7 you applied a negligence factor.

8 A Yes.

9 Q Did you consider applying any
10 other factors?

11 A Yes, on the first count there was
12 also the economic benefit factor that was
13 adjusted in the penalty total.

14 Q Okay. How did you consider and
15 determine how to apply that factor?

16 A Which factor?

17 Q The economic benefit factor that
18 you just described?

19 A The economic benefit factor is an
20 adjustment that is made under all penalties
21 and is always considered because it is the
22 part on which a facility basically obtains
23 the benefit over other facilities that
24 comply. What we did in this case is that a
25 facility has certain ways or has more than

1 one way to make a determination of hazardous
2 waste. One of those ways to do it is by
3 knowledge. They can actually look at their
4 product, they can look at the MSDS or they
5 could look at other information and compare
6 it with what we call the RCRA
7 characteristics and that is, I would say a
8 shipment. They know what their product is,
9 they know when it becomes a waste, if it
10 falls within one of the characteristics and
11 then they make a hazardous waste
12 determination which they also keep in
13 writing for us to check it.

14 The other way to do it is actually to
15 perform a laboratory analysis. In this case
16 since we didn't know what it was and we
17 didn't know if the facility knew how to
18 calculate it, we said that the economic
19 benefit of the facility that didn't know or
20 was not completely sure especially since
21 MSDS don't always provide all the
22 information necessary to make a hazardous
23 waste determination, we assumed that the
24 best way to do it will be through a
25 laboratory analysis.

1 Q Okay and a number was assessed for
2 economic benefit that was derived by
3 avoiding I suppose the laboratory analysis?

4 A Yes.

5 Q That is the logic? Okay. Did you
6 rely in assessing the economic benefit, did
7 you rely on any information that was
8 provided to you by Aguakem Caribe?

9 A For the economic benefit?

10 Q Yes.

11 A We relied on our observations on
12 the MSDS provided by Aguakem.

13 Q Okay. So other than the MSDS that
14 Aguakem provided, did you rely on any other
15 information provided to you by Aguakem
16 Caribe?

17 A As far as I remember, no.

18 Q Did EPA request any information
19 from Aguakem Caribe regarding the economic
20 benefit factor?

21 A No.

22 Q Let me give you a specific
23 instance. Did you inquire as to the value of
24 the materials to Aguakem?

25 MR. MATEO DURANGO: Objection, asked and

1 answered.

2 THE JUDGE: I will allow the question.

3 MS. RODRIGUEZ: Objection. He has not
4 that I recall testified that for the
5 economic benefit you would consider the
6 value of the materials. He was just talking
7 about the method which is the laboratory in
8 order to determine what the materials were.

9 THE JUDGE: I guess now is a good time
10 for a discussion on the cross. I give a
11 fair amount of latitude because the topic
12 was raised and even though the specific
13 testimony may not have been provided by this
14 witness, it was part of the process that was
15 used to determine either the alleged
16 liability or the amount of the proposed
17 penalty so I afford a fair amount of
18 latitude in examining that on cross
19 examination. So, if you could please
20 restate the question.

21 EXAMINATION CONTINUED

22 BY MR. LLORENS:

23 Q The question was, did the EPA
24 specifically request information regarding
25 the value of the materials subject to this

1 proceeding to Aguakem?

2 A I will need to check the
3 information request to see if that was
4 decided. I don't remember.

5 MR. LLORENS: Is that an exhibit?

6 MS. RODRIGUEZ: Yes.

7 MR. LLORENS: I am just going to ask
8 counsel.

9 THE JUDGE: I believe Exhibit 9. Oh,
10 actually you are looking for the EPA's
11 Information Request?

12 THE WITNESS: Yes.

13 THE JUDGE: Which of the two dates, do
14 you know offhand?

15 MR. LLORENS: I am going to point to,
16 well, why don't we show him both of them.

17 THE WITNESS: Yes.

18 EXAMINATION CONTINUED

19 BY MR. LLORENS:

20 Q I think these are Exhibit 5 and
21 Exhibit 8 I believe is what I am handing the
22 witness. You tell me if those are the
23 requests that he is referencing.

24 A No.

25 Q Okay. Now, I think that there was

1 reference made to the RCRA policy guidelines
2 in the direct examination of the witness. Is
3 my recollection correct? I don't know if we
4 have that copy of the guidelines.

5 MS. RODRIGUEZ: Yes, right here.

6 MR. LLORENS: In here somewhere?

7 MS. RODRIGUEZ: Yes. No, I think -

8 MR. LLORENS: If it is here I don't see
9 it.

10 MS. RODRIGUEZ: It is right here in
11 front.

12 MR. LLORENS: Oh, I am sorry. Thank
13 you.

14 EXAMINATION CONTINUED

15 BY MR. LLORENS:

16 Q I am going to have the witness
17 read a document titled RCRA Civil Penalty
18 Policy dated June, 2003. It is a matter of
19 public record I believe.

20 MR. LLORENS: If the Judge permits I am
21 going to sit here.

22 THE JUDGE: Yes. I just remind you to
23 keep your voice up because there is a great
24 deal of construction going on outside and it
25 is somewhat interfering with our ability to

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hear.

EXAMINATION CONTINUED

BY MR. LLORENS:

Q Now, if you would, there is Roman VIII in the policy guideline and I believe it starts at page 28. In referencing page 28 and 29 and 30 I am just generally, I am going to ask you did you in your calculations of economic benefit in this case make use of the guidelines stated in this section of the policy?

A Yes.

Q Can you tell me how you applied the guidelines stated in this policy to this case?

A I am going to read the first sentence of Section eight. It says, "The Agency's 1984 policy of civil penalties mandates the recapture of any significant economic benefit of noncompliance that accrues to a violator from noncompliance with the law." In this case Aguakem was not complying on count one with the hazardous waste determination. It was reasonable to suspect that Aguakem could have made a

1 laboratory analysis to make a hazardous
2 waste determination so we accrued for each
3 of the instances in which a hazardous waste
4 determination was requested an amount which
5 totaled to, if I could look into the
6 complaint I could tell you the exact number.

7 MS. RODRIGUEZ: Counsel?

8 MR. LLORENS: My apologies.

9 THE WITNESS: After we evaluated the
10 amount of noncompliance, the calculated
11 economic benefit was \$19,266.

12 EXAMINATION CONTINUED

13 BY MR. LLORENS:

14 Q Okay and it was your judgement
15 that that was a significant economic
16 benefit?

17 A If you will explain what you mean
18 by significant.

19 Q I am just reading from, I am
20 quoting from the policy.

21 A Can you point me to where in the
22 policy.

23 Q It says, "The agency's 1984 policy
24 of civil penalties mandates the recapture of
25 any significant economic benefit of

1 noncompliance that accrues to a violator for
2 noncompliance with the law." It is in the
3 first sentence there.

4 A I see it.

5 Q So my question is, did you make a
6 judgement that the \$19,000 economic benefit
7 was significant?

8 A Yes, according to the description.

9 Q Okay. Now, other than this
10 language here, is there some guidance that
11 you received from this policy guideline book
12 on determining what constitutes a
13 significant economic benefit?

14 A Economic benefits only discussed
15 in Section VIII. So, we used this at this
16 part of the guidelines.

17 Q Let me ask you about February 2,
18 2007. In your direct you testified about
19 your activities with regard to Aguakem on
20 February 2, 2007. Did what you and your
21 team did on February 2, 2007 with regard to
22 Aguakem, was that planned earlier than that
23 date? Let me speak openly. Obviously you
24 just didn't decide in the morning of
25 February 2nd to show up so more than likely

1 there was a decision made to go on February
2 2nd?

3 A That is right.

4 Q Do you recall when, what date that
5 occurred?

6 A I would say that it was after the
7 call but I do not recall the exact date.

8 Q Okay. Does the complaint state a
9 day when the call was received from, when
10 the complaint was received. I think you have
11 the complaint with you. I think if you look
12 at the section that says, investigation. I
13 can probably point you to that.

14 THE JUDGE: Paragraph XII.

15 MR. LLORENS: Yes.

16 EXAMINATION CONTINUED

17 BY MR. LLORENS:

18 Q Yes. I direct your attention to
19 paragraph XII.

20 A Yes. Paragraph XII says that a
21 call was received on January 29, 2007.

22 Q Okay. So do you recall if it was
23 on January 29, 2007 that the decision and
24 planning was made with regard to the
25 activities of February 2, 2007?

1 A I didn't catch the first part of
2 the question.

3 Q Was it on January 27th that the
4 decision was made at the EPA to take the
5 activities -

6 MR. MATEO DURANGO: January 29th.

7 MS. RODRIGUEZ: It is 29th, counsel.

8 MR. LLORENS: Sorry.

9 EXAMINATION CONTINUED

10 BY MR. LLORENS:

11 Q January 29th.

12 A It could have been that day.

13 Q It could have been that day. All
14 right. And certainly it was before February
15 2nd. Do you recall how it was decided, if it
16 was decided, excuse me, to visit both the
17 Canas facility and the Port facility?

18 A Those were two different
19 decisions. The first decision was based on
20 the call that we received. We looked at the
21 merits of the call and we decided to make an
22 inspection of the Port of Ponce facility.
23 While at the Port of Ponce facility, given
24 that we did not have all the information
25 that we needed, we decided then to visit

1 Aguakem's Canas facility.

2 Q So the decision to come to the
3 Canas facility came on February 2, 2007.

4 A Yes.

5 Q What time, do you recall the time
6 of that day that decision was made?

7 A I would say that in the afternoon.

8 Q Do you recall when you arrived at
9 the Canas facility?

10 A Do you mean arrive physically or
11 the time of the arrival?

12 A When you, when your team, your
13 inspection team arrived at the Canas
14 facility on February 2, 2007, do you know
15 the time of day?

16 Q I would say around three or four.

17 A Okay. Did you conduct an
18 inspection at the Canas facility after you
19 arrived?

20 Q Yes, we did.

21 A Okay. Do you recall how long that
22 inspection took?

23 Q Between two and three hours.

24 A So based on your testimony, the
25 inspection, you said you arrived between

1 three and four and that it took between two
2 and three hours. Let's say you arrived at
3 three, and then it took two hours, it would
4 have ended at five, at the earliest,
5 correct?

6 A Yes.

7 Q I am just trying to understand
8 your testimony. You would agree that the
9 earliest based on your testimony would be
10 five P.M. on February 2nd, correct?

11 A That we -

12 Q That you would have finished the
13 inspection of the Canas facility.

14 A Yes.

15 Q Okay. Now, you testified about a
16 closing meeting. What time did the closing
17 meeting take place on February 2nd?

18 A The closing meeting took place at
19 the end of the inspection so that would be
20 between five and six.

21 Q Did you, after the inspection, did
22 you leave the facility?

23 A Yes. We left the facility after
24 the inspection.

25 Q And before the closing meeting,

1 correct?

2 MS. RODRIGUEZ: Your Honor, first of
3 all, could he clarify which facility he is
4 talking about and which of the two
5 inspections he is talking about.

6 MR. LLORENS: Okay.

7 EXAMINATION CONTINUED

8 BY MR. LLORENS:

9 Q Let me, all these questions are
10 directed to your inspection of the Canas
11 facility that would have ended no later than
12 five o'clock based on your testimony. I
13 mean, no earlier than five o'clock based on
14 your testimony.

15 My question is this, at the time at the
16 end of the inspection of the Canas facility,
17 but before the closing meeting, did you
18 leave the Canas facility?

19 A The answer is, no. The closing
20 meeting is part of the inspection so we did
21 not leave facility before we finished the
22 inspection.

23 Q Okay. When you started the day on
24 February 2, 2007, I believe your testimony
25 is that you weren't planning on inspecting

1 the Canas facility, that in fact that
2 decision was made on February 2, 2007? Is
3 that right?

4 A That is right.

5 Q Okay. So what time did you arrive
6 to inspect the Port Facility on February 2,
7 2007?

8 A That was in the morning. I do not
9 recollect the exact time.

10 Q Okay. Do you recall when the
11 inspection ended?

12 A Not the time.

13 Q Okay. Do you recall who met you at
14 the Port facility for the inspection in the
15 morning of February 2, 2007?

16 A Mr. Quinones.

17 Q Who is Mr. Quinones?

18 A I believe his title was Auxiliary
19 Director of Port of Ponce, however, if you
20 look at the inspection report, it will tell
21 you exactly what the title was.

22 Q That would be Exhibit 3 I believe?

23 THE JUDGE: Yes.

24 THE WITNESS: I am looking at page three
25 of the inspection report, under Section 2

1 Inspection, the third paragraph, says that
2 "Mr. Quinones' title was Port Auxiliary
3 Director of Operations."

4 EXAMINATION CONTINUED

5 BY MR. LLORENS:

6 Q Okay. Now, Mr. Quinones met with
7 you. Did he meet with you at the warehouse
8 or somewhere else?

9 A Somewhere else.

10 Q Where did he meet you?

11 A We met in an office at the port.

12 Q Okay. Did you have a conversation
13 with Mr. Quinones before you went to the
14 warehouse for the inspection?

15 A Yes, we did.

16 Q He say anything to you about the
17 warehouse facility during that conversation?

18 A Yes.

19 Q What did he say?

20 A He said that Aguakem was a tenant
21 at the facility, they had abandoned the
22 facility leaving behind their chemicals.

23 Q Did they say anything else about
24 the facility?

25 A He also said, he also talked about

1 their request to Aguakem to leave the
2 facility because of the construction that
3 was occurring at the port at the moment.

4 Q So he informed you that they, the
5 owners of the facility had, your word was
6 requested, that Aguakem leave the facility
7 because of the construction?

8 A Yes, the request was made I
9 believe by a court order.

10 Q Okay. They told you that there
11 was an eviction order to have them leave the
12 facility?

13 A Yes.

14 Q Did he tell you anything else
15 about the facility?

16 A No.

17 Q Did he discuss with you the
18 environmental conditions around the
19 facility?

20 A Only to the extent of the
21 abandoned chemicals.

22 Q Okay. He didn't discuss anything
23 but the abandoned chemicals with you?

24 MR. MATEO DURANGO: Objection, asked and
25 answered.

1 MR. LLORENS: Fair enough. You are
2 right. He did.

3 EXAMINATION CONTINUED

4 BY MS. LLORENS:

5 Q Okay. At that point after, is
6 there anything else that was said in that
7 conversation regarding the facility?

8 MR. MATEO DURANGO: Objection, asked and
9 answered.

10 THE JUDGE: Well, I will allow the
11 question.

12 EXAMINATION CONTINUED

13 BY MR. LLORENS:

14 Q There was also a call to Mr.
15 Hernandez which he also explained about the
16 abandonment of the chemicals.

17 A Would it be okay if I read this
18 paragraph?

19 THE JUDGE: Yes, and who is Mr.
20 Hernandez?

21 THE WITNESS: Mr. Hernandez was, I
22 believe he was the director of the Port of
23 Ponce. Yes, on page two of the inspection
24 report on the third paragraph, first
25 sentence, second sentence it says that Mr.

1 Jorge Hernandez was the Port Authority
2 Executive Director.

3 EXAMINATION CONTINUED

4 BY MR. LLORENS:

5 Q Now, are you finished?

6 A I was going to read this
7 paragraph.

8 Q Go ahead, please. I didn't want
9 to interrupt that.

10 A The paragraph says, "According to
11 Mr. Hernandez, the nature of the first
12 complaint was based upon the alleged
13 abandonment of numerous corrosive and
14 hazardous chemicals at the port after
15 Aguakem moved out from the property. Mr.
16 Hernandez stated that he conducted a
17 walkthrough of the facility which included
18 Building 6 and discovered numerous 55 gallon
19 drums and one cubic yard containers.
20 Approximately twenty percent of the total
21 Aguakem's inventory that were still at the
22 site of Building 6. As a result, Mr.
23 Hernandez contacted Mr. Unanue to notify him
24 about the remaining drums and containers
25 left behind in his property. Mr. Unanue

1 replied that prior and during relocation
2 activities he requested to conduct an
3 asbestos and lead survey since he was
4 concerned with the safety and health of his
5 employees due to nearby uncontrolled
6 demolition operations. As a result, the
7 survey indicated that the property contained
8 powerful levels of lead and, therefore, he
9 was not going to finalize the mobilization
10 until a lead abatement was performed on
11 Building 6. In order to confirm the alleged
12 survey results, the Port also conducted a
13 lead paint and asbestos containing material
14 survey at the facility building. The survey
15 confirmed Aguakem's allegation and
16 demonstrated that in fact the facility
17 contained lead base paint and asbestos
18 containing material in a final form but did
19 not pose an actual and harmful working
20 environment that was not yet disturbed by
21 the demolition operations.

22 Q Can you tell me when that
23 information came to the EPA's notice that
24 you just read?

25 A Yes. That information was

1 discussed during the opening meeting that we
2 had on February 2, 2007.

3 Q Right. Now, that opening meeting
4 that you are discussing is the one you had
5 with the Port Authority of Ponce, right?

6 A Yes.

7 Q Okay and there was no Aguakem
8 representative present at that opening
9 meeting, was there?

10 A No, there was none.

11 Q Okay. Now, you just read from
12 this and the last line says "The survey
13 results confirmed Aguakem's allegation,
14 demonstrate that in fact the facility
15 contained lead based paint and ACM's in a
16 pliable form but did not pose any actual
17 harmful working environment since it was not
18 yet disturbed by the demolition operation."
19 Did the EPA make that finding?

20 A No.

21 Q Who made that finding?

22 A Port of Ponce.

23 Q Okay and they represented to you
24 at the opening meeting that they in fact had
25 done what is described here?

1 A Yes.

2 Q Okay. Did you verify whether that
3 was correct or not, you being EPA?

4 A We requested the documentation in
5 which Mr. Hernandez says about the asbestos
6 containing material, lead survey,
7 information about Aguakem, the lease
8 agreements and -

9 Q Okay. Let me ask you, did you
10 receive it at that opening meeting?

11 A My best recollection is that we
12 did not receive it at that meeting.

13 Q Okay. Do you recall if you
14 received it?

15 A I do not remember if I pulled up
16 the Port of Ponce response to the request
17 for information to tell you.

18 Q I believe you are referencing
19 Exhibit 7?

20 A That is Exhibit 7.

21 MR. MATEO DURANGO: Your Honor and
22 counsel, I believe Exhibit 7 was introduced
23 to show that EPA received the response from
24 the Port of Ponce. Does counsel now want to
25 introduce the contents as admissible as

1 well?

2 MR. LLORENS: The witness requested to
3 see the document.

4 MS. RODRIGUEZ: Yes, Your Honor, but did
5 counsel actually make reference to the
6 document per se?

7 THE JUDGE: Right. The testimony would
8 be at this stage limited to the question of
9 whether it was received.

10 MR. LLORENS: Your Honor, I did not make
11 reference to that document. The witness
12 made reference to that document.

13 THE JUDGE: Okay.

14 MS. RODRIGUEZ: Well, Your Honor,
15 counsel did make reference when it was
16 received, when the information was received
17 so, of course, it led to the answer by the
18 witness and he did open the doors.

19 MR. LLORENS: Your Honor, it is in the
20 Compliance Inspection Report. I asked if
21 this was asked at the opening meeting, the
22 witness confirmed that it was discussed at
23 the opening meeting. He now asks for a
24 document wich I certainly, they are
25 objecting to their witness looking at a

1 document he is asking for and that is fine.

2 MS. RODRIGUEZ: Your Honor -

3 MR. LLORENS: Let the record reflect
4 that.

5 MS. RODRIGUEZ: Okay. Your Honor, I
6 would have an objection as to the relevance
7 of what he is asking the witness. It was not
8 addressed during the direct, what regarding
9 what the conditions of the facility were on
10 what the Port of Ponce told the witness. I
11 did not address that at any time whether
12 there was any, you know. I have been very, I
13 have been allowed and I have been very
14 flexible in the questions, the line of
15 questioning of counsel but I do not recall
16 that I had asked whether there was an
17 opening meeting and as such what Port of
18 Ponce mentioned and I did not even mention
19 Port of Ponce in the direct.

20 THE JUDGE: This entire subject is in
21 the inspection report so it is fair game for
22 cross examination regardless of whether
23 there was specific testimony or not
24 concerning it because the document has now
25 been admitted into the record. So questions

1 concerning the subject are within the
2 inspection report and, therefore, are fair
3 game. Now, in this particular case the
4 witness has asked to see Exhibit 7 to
5 examine the contents. Now, he can review it
6 for his testimony purposes. That does not
7 mean the document comes into the record and
8 I think it would be important at this stage
9 to have the court reporter read back the
10 specific question that was asked of the
11 witness. Perhaps it would be helpful to
12 restate the question so we know specifically
13 the question.

14 MR. LLORENS: I wan to just do that.

15 EXAMINATION CONTINUED

16 BY MR. LLORENS:

17 Q Mr. Aviles, in your testimony you
18 read into the record a passage from the
19 compliant's inspection report that discussed
20 if I may, let me actually and I am going to
21 read from the section that I believe was in
22 your testimony in the compliance inspection
23 report, page four. I quote "In order to
24 confirm the alleged survey results, the Port
25 also conducted a lead based paint and

1 asbestos containing material survey at the
2 facility/Building number 6. The survey
3 results confirmed Aguakem's allegation,
4 demonstrated that in fact the facility
5 contained lead based paint and ACM in a
6 pliable form but did not pose an actual
7 harmful working environment since it was not
8 yet disturbed by the demolition operations."

9 THE JUDGE: ACM being the acronym for?

10 MR. LLORENS: Asbestos contained
11 material

12 THE JUDGE: Thank you.

13 EXAMINATION CONTINUED

14 BY MR. LLORENS:

15 Q The question that I pose to you is
16 did the Port of Ponce ever provide you
17 information or documentation with regard to
18 the mentioned survey?

19 A In the response it says that the
20 Port of Ponce provides the information,
21 however, it is not in that copy.

22 Q Let's be clear for the record. You
23 are referencing Exhibit 7.

24 A Yes.

25 Q And did you just say it is not in

1 this copy?

2 A Yes.

3 Q But your testimony is that you
4 believe that it was submitted in this, by
5 the Port of Ponce in this response to your
6 request for information?

7 MR. MATEO DURANGO: Objection, asked and
8 answered.

9 THE JUDGE: No. I will allow the
10 question.

11 THE WITNESS: I know that I have seen a
12 report about asbestos and lead. I do not
13 remember if it was from this report or from
14 another report.

15 EXAMINATION CONTINUED

16 BY MR. LLORENS:

17 Q Let me go about it in a different
18 way. The part of this document that has
19 been accepted is in English is the first, I
20 don't know five pages. What it is, is
21 apparently a December 24, 2008 document
22 submitted to Mr. Eduardo Gonzalez from the
23 Response Remediation Branch of the United
24 States Environmental Protection Agency. Up
25 on the right hand side it says is from

1 Puerto De Ponce. Let me show this to the
2 witness and just for the sake of this
3 testimony see if he can ID this document and
4 see if he knows what it is.

5 A This document is a response from
6 Puerto De Ponce but part of what it says is
7 that Puerto De Ponce provided information is
8 on -

9 Q No, wait, first of all, you have
10 ID'd it. I want to ask you, I am going to
11 ask you a question first. Let me ask you the
12 question which is can you tell me in the
13 request for information if any of those
14 requests relate to the lead and asbestos
15 containing material survey that we have been
16 discussing the last few minutes?

17 A Yes, this request requires
18 information about the use or release of lead
19 based paint, lead in the air or asbestos or
20 any other hazardous waste substance. That
21 is question ten which is the sixth page of
22 the English part of the document.

23 Q Okay. Now, with regard to what
24 you were discussing which is the Port of
25 Ponce's provision of the survey that we have

1 been discussing. I interrupted you and I
2 apologize. Maybe you want to tell us what
3 you were going to say about that. Did the
4 Port of Ponce provide the information
5 requested?

6 A It says that it is included in
7 Appendix A of this document. However, there
8 is no Appendix A in this document.

9 Q Okay.

10 A In this copy at least.

11 Q Okay. Now, this document is dated
12 December 24th, 2008. Now, prior to December
13 24, 2008, do you have any knowledge that the
14 EPA was provided the documentation regarding
15 the Port of Ponce's testing for lead and
16 asbestos?

17 A Can you repeat that question
18 again?

19 Q Prior to December 24, 2008, did
20 the EPA receive the information regarding
21 the lead asbestos containing material
22 testing that the Port of Ponce claimed to
23 have done?

24 A As I said, I do remember an
25 asbestos and lead survey report. I don't

1 remember if it was from Puerto De Ponce or
2 from Aguakem.

3 Q Let me go back to the February,
4 2007 opening meeting. I want to be clear on
5 a point. Was Mr. Hernandez at the meeting
6 physically, was he there?

7 A No, he was not at the meeting.

8 Q How did you speak to him then?

9 A Over the telephone.

10 Q Who decided to call Mr. Hernandez?

11 MR. MATEO DURANGO: Objection,
12 relevance.

13 MR. LLORENS: If, Your Honor, would
14 grant me a minute of leeway. The next
15 question I think will demonstrate the
16 relevance.

17 THE JUDGE: Granted.

18 THE WITNESS: It was Mr. Quinones who
19 contacted Mr. Hernandez.

20 EXAMINATION CONTINUED'

21 BY MR. LLORENS:

22 Q Did anyone consider calling
23 Aguakem Caribe so they could participate by
24 telephone in the opening meeting?

25 A I do not remember if Port of Ponce

1 tried to call Aguakem during that opening
2 meeting.

3 Q Does the Compliance Inspection
4 Report reflect that any attempt was made to
5 communicate with Aguakem Caribe at the
6 opening meeting?

7 A No.

8 Q Okay. After the conversations
9 with Mr. Hernandez and Mr. Quinones what
10 happened then, on February 2, 2007?

11 A We went into Building number 6 to
12 conduct an inspection.

13 Q Did you go, just the EPA personnel
14 or did Mr. Quinones come with you?

15 A He only does for us, getting us to
16 the building and that was it.

17 Q And then you were on your own afer
18 this?

19 A I believe so. I believe he needed
20 to accompany us inside the building.

21 Q Okay. When you approached the
22 building, were the doors opened?

23 A Yes.

24 Q Did you ask Mr. Quinones any
25 questinos regarding the manner in which the

1 facility was being secured?

2 A The door flew open. They only had
3 a yellow caution tape telling everyone not
4 to enter the building.

5 Q My question was a little
6 different. Did you query, did you ask any
7 questions of Mr. Quinones regarding how the
8 warehouse 6 was being kept?

9 A No.

10 Q How much time did it take to
11 inspect the former facility as it is
12 referred in this proceeding?

13 MS. RODRIGUEZ: Your Honor, he already
14 asked that at the beginning and he got a
15 response from the witness.

16 MR. LLORENS: I am trying to specify,
17 Your Honor, the amount of time in the
18 facility. I think we already established
19 that the inspection had a precursor
20 conversations on the phone. I think that
21 given the testimony --

22 THE JUDGE: I will allow the question
23 and it was referred to, you were
24 specifically saying when entering the
25 building.

1 MR. LLORENS: Yes.

2 THE JUDGE: Number six. Approximately
3 and if the witness doesn't recall, he will
4 state so.

5 THE WITNESS: Yes, three to four hours.

6 EXAMINATION CONTINUED

7 BY MS. LLORENS:

8 Q And the best aspect of the
9 inspection concluded to the best of your
10 recollection at what time of the day?

11 A I don't remember the time of the
12 day that we left the facility.

13 THE JUDGE: Pardon me?

14 THE WITNESS: I do not remember the time
15 that we left the facility.

16 EXAMINATION CONTINUED

17 BY MR. LLORENS:

18 Q Let us consider that you earlier
19 testified that you arrived at the Canas
20 facility that same day sometime between
21 three or four o'clock. We can then presume
22 that you weren't both at the Canas facility
23 and at the warehouse. So, clearly it was
24 before three o'clock. Does that help you at
25 all to recollect when you finished?

1 A I already considered that part and
2 it didn't help me to think what time.

3 Q Okay. Well, let's take the three
4 to four hour number and just in rough terms,
5 when did you arrive so at least we can get a
6 range of when this ended. Did you arrive at
7 eight or nine in the morning?

8 A I would say between eight and
9 nine.

10 Q Okay. Let's say eight so if we
11 say it was three hours, it is close to four,
12 in your testimony, so didn't we say that it
13 ended at some point between eleven and three
14 o'clock on February 2nd?

15 A We could say so.

16 Q Okay. Would you agree with that?

17 A Between eleven and three that we
18 finished with the inspection?

19 Q Yes.

20 A Yes.

21 Q Okay. When did, on February 2,
22 2007, when did the EPA first attempt to
23 communicate with anyone from Aguakem Caribe?

24 A Could you repeat the first part of
25 the question?

1 Q On February 2, 2007, if you
2 recall, when was the first attempt by the
3 EPA to communicate with Aguakem Caribe,
4 Inc.?

5 A I think the first attempt was the
6 inspection of the Canas facility.

7 Q So the first attempt was the
8 physical, was actually arriving there
9 physically, correct?

10 A Yes.

11 Q Okay and we have established that
12 figure to be three and four. Now, let's
13 talk about that. What happened when you
14 arrived at the Canas facility? Who was with
15 you?

16 A Solimar Luna and Mr. Eduardo
17 Gonzalez.

18 Q Okay. It was just the three of
19 you?

20 A Yes.

21 Q Okay. When you arrived at the
22 facility, what did you do?

23 MS. RODRIGUEZ: Your Honor, now he is
24 entering into the actual inspection of the
25 Canas facility and that has not been covered

1 on the direct and that is not even relevant
2 to this, what we are discussing, the
3 inspection and violations at the other
4 former facility so I see no relevance of the
5 inspection at the Canas with -

6 THE JUDGE: It could be linked directly
7 to the point you are trying to reach.

8 EXAMINATION CONTINUED

9 BY MR. LLORENS:

10 Q When did you speak with Mr. Jose
11 Manuel Unanue?

12 THE JUDGE: With who?

13 MR. LLORENS: Mr. Jose Manuel Unanue on
14 February 2, 2007.

15 THE WITNESS: When?

16 EXAMINATION CONTINUED

17 BY MR. LLORENS:

18 Q When, when did you first speak to
19 him?

20 A I would say that when we arrived
21 at the facility.

22 Q Okay. Sometime after three
23 o'clock on February 2, 2007?

24 A Yes.

25 Q What did you say to him?

1 A I discussed the summary where they
2 identify those salts. They said they were
3 trying to do an inspection under Statute
4 3007 of RCRA which is the one that give us
5 the authority to inspect the facility and
6 collect the information necessary to
7 determine if the facility is in compliance
8 with the RCRA regulations.

9 Q Did you say anything else?

10 A I would say that the request is
11 general information about the facility and
12 the process of the facility, the chemicals
13 that they use and the information I was
14 requesting at the time was about the Canas
15 facility.

16 Q Okay and what did he say to you in
17 response to these statements by you?

18 A He responded to my questions. I do
19 not remember exactly what he responded. I
20 know that he talked about the general make
21 up of the facility, about the general
22 manufacturing occurring in the facility, the
23 collection of chemicals and about the site
24 in general of the facility but probably
25 something else that I do not remember.

1 Q Okay. At some point this
2 conversation ended, correct, the opening
3 conversation you had with Mr. Jose Unanue?

4 A Yes.

5 Q And then you inspected the
6 facility. I don't want to go into the
7 details of it. I just want to establish that
8 yo went in and you inspected the facility.

9 A Yes.

10 Q And then you came out and finished
11 the inspection.

12 A And then?

13 Q Then you were finished and you
14 came out of the facility, correct? I am
15 trying to just understand that you finished,
16 you left the Canas facility after you
17 finished the inspection.

18 A Yes.

19 Q Okay. Did you speak with Mr. Jose
20 Unanue again after you finished the
21 inspection?

22 A We spoke to him before we were
23 finished with the inspection at the closing
24 meeting so as I said before, the closing
25 meeting is part of the inspection.

1 Q Okay. Were the closing minutes of
2 this inspection about the Canas facility
3 inspection?

4 THE JUDGE: Closing minutes referring
5 to?

6 EXAMINATION CONTINUED

7 BY MR. LLORENS:

8 Q Meeting, I am sorry, closing
9 meeting that you just referenced that
10 occurred at the Canas facility. Was that
11 about the inspection that had just taken
12 place at the Canas facility?

13 A That was part of it.

14 Q Okay. What else was it for?

15 A Requesting information about
16 Building 6.

17 Q Okay. When did you ask him for
18 the information about Building 6?

19 A During the closing meeting.

20 Q But not when you first arrived?

21 A No.

22 Q So during the closing meeting
23 after you have taken the inspection of the
24 Canas facility, then you asked him some
25 questions about the port facility? Did I

1 understand that correctly?

2 A Say that again?

3 MR. MATEO DURANGO: Can you repeat that?

4 EXAMINATION CONTINUED

5 BY MR. LLORENS:

6 Q When did you ask Jose Unanue about
7 the port facility on February 2, 2007?

8 A During the closing meeting.

9 Q But never before that?

10 MR. MATEO DURANGO: Objection, asked and
11 answered.

12 THE JUDGE: This has been asked and
13 answered.

14 MR. LLORENS: Okay. To me as long as
15 that point is clear, I don't need to
16 belabor.

17 EXAMINATION CONTINUED

18 BY MR. LLORENS:

19 Q What did you ask him about the
20 port facility?

21 A We asked Mr. Unanue what date they
22 finished the operation, the date they left
23 the facility which he answered December
24 28th. We asked him if they were returning to
25 Building 6 to which he said that Aguakem was

1 not returning to it. We also asked him
2 about the chemicals left at the facility and
3 he said that the operations at the time were
4 managed by another employee; that he was on
5 vacation and he did not offer any other
6 information regarding that.

7 Q Did he say anything else?

8 A Anything else related to what?

9 Q Did he say anything else at all?

10 A Well, he did say something else.

11 Q Tell me.

12 A Well, it wasn't related to the
13 Building 6. That is what I said.

14 Q Okay. So it wasn't related to
15 Building 6. Okay. Fine. How long did this
16 conversation take?

17 A I do not recollect.

18 Q Was it ten minutes, fifteen
19 minutes?

20 A I do not recollect.

21 Q It might have been a minute?

22 MR. MATEO DURANGO: Objection, asked and
23 answered.

24 THE JUDGE: It has been asked and
25 answered.

EXAMINATION CONTINUED

1
2 BY MR. LLORENS:

3 Q Did you ever speak with Mr. Jose
4 Unanue again after that conversation?

5 A I do not think I spoke with him
6 again.

7 Q Did you speak with anyone at
8 AGuakem ever after that conversation you had
9 with Mr. Unanue?

10 A Yes.

11 Q Okay. When was that?

12 A At different inspections of the
13 Canas facility.

14 Q I am sorry, when?

15 A At different inspections of the
16 Canas facility.

17 Q Okay. Any of those conversations
18 relate to the port facility?

19 A No.

20 Q Okay. Give me one second to see
21 if I am going to pursue anything more on
22 this point.

23 THE JUDGE: Okay.

24 MR. LLORENS: I just have one more
25 question on this point.

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EXAMINATION CONTINUED

BY MR. LLORENS:

Q Did you ever discuss at any time with any Aguakem person or representative the issue of lead being present at warehouse 6?

A Not with Aguakem.

Q Do you know whether anyone at the EPA did have such a conversation?

MR. MATEO DURANGO: Objection.

MR. LLORENS: What is the objection?

MR. MATEO DURANGO: It is asking for comments on another witness --

THE JUDGE: Pardon me?

MR. MATEO DURANGO: Asking for comments on another witness and it calls for a narrative.

THE JUDGE: Okay. I am going to allow the question even though it could be hearsay, we don't follow the strict rules of evidence on that.

THE WITNESS: I know that we discussed it internally but I do not know if someone from EPA talked to Aguakem about the lead asbestos, whatever.

MR. LLORENS: Okay. I don't know if that, we said a quarter to twelve?

THE JUDGE: Yes, approximately.

MR. LLORENS: I rather stop here and begin again on another subject after we break for lunch because I don't want to take five minutes.

THE JUDGE: EPA do you have a response?

MS. RODRIGUEZ: I would prefer if he finishes with him.

MR. LLORENS: I am not going to finish in five minutes, Your Honor.

THE JUDGE: Pardon me?

MR. LLORENS: I am not going to finish in five minutes.

THE JUDGE: How long do you think, another half hour?

MR. LLORENS: At least an hour.

THE JUDGE: Okay. Well, then we will break now. It is approximately a quarter of twelve and we will be back here no later than quarter of one.

MS. RODRIGUEZ: Okay.

THE JUDGE: Okay.

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MR. LLORENS: Thank you, Your Honor.

(Whereupon a luncheon recess was taken at
11:40 a.m.)

A F T E R N O O N S E S S I O N 12:40 pm

THE JUDGE: I would like to remind the
witness that he is still under oath.

EXAMINATION CONTINUED

BY MR. LLORENS:

Q Good afternoon, Mr. Aviles. I want
to give you Exhibit 1 which is the
complaint. I am going to ask you a few
questions about that and first let me ask
you, did you prepare this, were you involved
in the preparation of this document?

A I was involved in the preparation
of the complaint.

Q Okay. Were you involved in
formulating count one of the complaint and I
will refer you to page six.

A Page six?

Q Yes.

A What was the question?

1 Q Whether you were involved in the
2 formulation of this count one of the
3 complaint?

4 A Yes, I participated in the whole
5 complaint.

6 Q Okay. To your knowledge, with
7 regard to this count, there is a series of
8 allegations. Do you know of anything besides
9 what is alleged here in the complaint that
10 supports a determination that Aguakem failed
11 to make a hazardous waste determination?

12 Okay. The complaint has a series of
13 allegations and in count one there is an
14 allegation of the first thirty six plus a
15 few other allegations. You could take a
16 minute, look at that and tell me to your
17 knowledge is there anything besides what is
18 here that supports a determination that
19 Aguakem failed to make a hazardous waste
20 determination?

21 THE JUDGE: Okay. I am not clear on the
22 question.

23 MR. LLORENS: I just want to make sure.
24 I am trying to frankly cut to the chase. I
25 want him to, if you don't mind, I will do a

1 colloquy of the witness. I am going to
2 withdraw the question. I am trying to
3 elicit that as far as he knows this is the
4 bundle of information that supports this
5 count.

6 THE JUDGE: But by the rules of
7 procedure and evidence, it is the only items
8 that we can rely on.

9 MR. LLORENS: Okay. This is basically
10 an unnoticed plea. I think he basically has
11 to state it here or --

12 THE JUDGE: Or it fails.

13 MR. LLORENS: I withdraw the question
14 and I apologize for my ignorance on that
15 point.

16 THE JUDGE: Well, if the complaint,
17 factual allegations do not support the
18 charge then it is subject to dismissal.

19 MR. LLORENS: Thank you, Your Honor. I
20 withdraw the question.

21 EXAMINATION CONTINUED

22 BY MR. LLORENS:

23 Q Let me then refer the witness to
24 the attachment two. It is Attachment one but
25 it has been discussed in count two on the

1 page number on the document but it is the
2 Narrative that began discussing count two.
3 If Your Honor will permit me I am going to
4 ask the questions first so I can proceed.

5 THE JUDGE: Yes.

6 EXAMINATION CONTINUED

7 BY MR. LLORENS:

8 Q With the calculation of count two.
9 In your testimony you related ti the
10 Honorable Judge about your decision to apply
11 multi day violations. Do you recall that?

12 A Yes, I do.

13 Q Okay. In the attachment, your
14 narrative describes and I quote, in terms of
15 the multiple day which is part 1C of this
16 page, on count two. It says, "The
17 conditions are presumed to have existed at
18 least through the period covered in which
19 respondent moved out from the facility "

20 THE JUDGE: Okay. What document are we
21 in?

22 MR. LLORENS: I am sorry, Your Honor.
23 This is Exhibit 1, Attachment 1. I don't
24 have a page number but it is the page that
25 starts Narrative Explanation to Support

1 Complaint Amount, Penalty Computation
2 Worksheet, Count two - Failure to Minimize
3 the Risk of of a Fire, Explosion or Release.

4 THE JUDGE: I will get there. Okay.

5 MR. LLORENS: And I was reading from 1C
6 which I will repeat for the record which
7 states "The conditions are presumed to have
8 existed at least during the period covered
9 in which Respondent moved out from the
10 facility, December 28, 2006 until the EPA
11 Removal Support Team stabilized the site on
12 February 9, 2007. Accordingly, a 43-day
13 time period was selected for the multi-day
14 component."

15 EXAMINATION CONTINUED

16 BY MR. LLORENS:

17 Q And my question for the witness
18 is, is there something in the penalty
19 guideline policy of the EPA on RCRA that
20 permits a presumption of a multi-day
21 violation?

22 A May I have the policy document?

23 Q Yes.

24 A Will you state your question
25 again.

1 Q Is there a basis by which you can
2 presume that a violation was a multiple day
3 violation in the RCRA policy guidelines?

4 MS. RODRIGUEZ: Your Honor, I object.

5 THE WITNESS: I will read from page 23,
6 Section B. The first paragraph under that
7 section. "RCRA provides EPA with the
8 authority to assess in administrative
9 actions or seek in court civil penalties of
10 up to \$27,500.00 per day as noncompliance
11 for each violation of a requirement under
12 Title C." I believe that was your question.

13 EXAMINATION CONTINUED

14 BY MR. LLORENS:

15 Q Okay. Is there anything else in
16 the policy that supports the presumption of
17 a multi day violation?

18 MR. MATEO DURANGO: Your Honor,
19 objection.

20 THE JUDGE: Okay. What is the objection?

21 MR. MATEO DURANGO: The question is
22 confusing and misleading. Section 7 of the
23 penalty policy is five pages long. Is
24 counsel going to ask the witness about a
25 specific portion of that?

1 THE JUDGE: Well, he could take adequate
2 time to review it.

3 THE WITNESS: Second paragraph of that
4 same section starts "After it has been
5 determined that any of the violations
6 alleged has continued for more than one day,
7 the next step is to determine the length of
8 time each violation continued and whether a
9 multi-day penalty is mandatory presumed or
10 discretionary." I believe that will also
11 answer your question.

12 EXAMINATION CONTINUED

13 BY MR. LLORENS:

14 Q Okay. In addition to what you just
15 identified, is there anything else in this
16 policy?

17 MS. RODRIGUEZ: Your Honor.

18 MR. LLORENS: I would like him to
19 identify everything that he has relied on
20 that is on the guidelines that supports the
21 presumption of a multi-day violation.

22 MS. RODRIGUEZ: Your Honor.

23 THE JUDGE: One at time. Okay.

24 MS. RODRIGUEZ: Yes, Your Honor. First
25 of all then it is confusing. It is a public

1 document and if we are going to go page by
2 page, you know, then maybe counsel should
3 reference specifically what pages he wants.
4 It is one complete section unless counsel,
5 Brother Counsel stated it is seven pages. We
6 understand that they take it all in
7 consideration in general. Does he want a
8 specific sentence in each one of the
9 sections then we are not going to get
10 anywhere.

11 THE JUDGE: Counsel?

12 MR. LLORENS: Your Honor, I didn't write
13 the narrative, they did. The narrative
14 states "The conditions are presumed to have
15 existed." The word presumed is not used by
16 me. It is used by EPA. I am asking what is
17 his authority for making such a presumption
18 and if it could be found in the guidelines.

19 THE JUDGE: Well, the problem is this
20 may take at least an hour and I understand
21 that. Personally it is more along the lines
22 of a legal argument that may be more
23 appropriately addressed for post hearing
24 brief but inasmuch as this person has been
25 presented as a witness who is testifying

1 about the calculation of the penalty, I
2 think Respondent is fully entitled to an
3 evaluation of the thought process and what
4 was considered in making that determination.
5 This is a substantial penalty of three
6 hundred and some thousand dollars and I
7 believe the Respondent should be afforded
8 the full opportunity to explore the manner
9 in which this was calculated and the thought
10 process of the individuals who did the
11 proposed penalty.

12 MR. MATEO DURANGO: I agree, Your Honor,
13 the only point, the reason that the
14 objection was brought up is that if counsel
15 wants, requests that the witness reads each
16 page of a document that speaks for itself
17 which is seven pages long, maybe we can be
18 more specific in the line of questioning
19 because the questions and this is the
20 objection that may call for somewhat of a
21 narrative and I am not objecting to the
22 witness testifying about how the penalty was
23 calculated but what I am objecting to is the
24 manner of the questioning because -

25 THE JUDGE: Well, it is a rather broad

1 question and I agree that it is rather open
2 ended. The problem is, it is to go to the
3 thought process of the individual who
4 prepared the calculation so I think it is a
5 fair question. The problem is how much time
6 should be allotted to it.

7 MR. LLORENS: Your Honor, let me try a
8 couple of specific sentences from the
9 guidelines and I will ask him if he
10 considered those and see how that goes.

11 THE JUDGE: That may be more appropriate
12 but otherwise we are going to have to give
13 the witness, you know, a fair amount of time
14 to go through the document and to read this
15 in his mind, what the considerations were.

16 MR. LLORENS: Okay.

17 EXAMINATION CONTINUED

18 BY MR. LLORENS:

19 Q Mr. Aviles, I am withdrawing the
20 last question. I am going to ask you
21 something different. Where in the
22 guidelines that you have before you, I
23 believe, and I am looking at page 23. Now,
24 the last paragraph. Now, I am going to read
25 it into the record, the first two sentences

1 and then I am going to ask you a question
2 about them. It says, "After it has been
3 determined that any of the violations
4 alleged "

5 THE JUDGE: Where, I am not -

6 MR. LLORENS: I am at the bottom of page
7 23, Your Honor, at least in my version.

8 THE JUDGE: Okay and what -

9 MR. LLORENS: It is the last paragraph,
10 it begins after it has been determined.

11 THE JUDGE: Okay.

12 EXAMINATION CONTINUED

13 BY MR. LLORENS:

14 Q "That any of the violations
15 alleged has continued for more than one day,
16 the next step is to determine the length of
17 time each violation continued and whether a
18 multi day penalty is mandatory presumed or
19 discretionary. In most instances the agency
20 should only seek to obtain multi-day
21 penalties if a multi-day penalty is
22 appropriate for the number of days it can
23 document that the violation in question
24 persisted."

25 My question to the witness is did in

1 calculating the penalty from count two of
2 the complaint in this proceeding, did he
3 follow the guideline as to the two sentences
4 that I just read.

5 A The answer to the question is,
6 yes. We followed these guidelines.

7 Q Okay. So this would not be one of
8 the most instances quoting from the
9 guidelines that the Agency should only seek
10 to obtain multi-day penalties for the number
11 of days that you document that the violation
12 in question persisted?

13 A What is the question?

14 MS. RODRIGUEZ: Your Honor.

15 MR. MATEO DURANGO: Objection.

16 THE JUDGE: Okay.

17 MR. LLORENS: Let me try it again.

18 THE JUDGE: Okay.

19 EXAMINATION CONTINUED

20 BY MR. LLORENS:

21 Q Can you document the number of
22 days that the violation in question in count
23 two persisted in this case?

24 THE JUDGE: Any objection?

25 MR. MATEO DURANGO: Can you tell us

1 which of the counts in question which
2 counsel --

3 MR. LLORENS: I said count two. My
4 question is regarding count two.

5 EXAMINATION CONTINUED

6 BY MR. LLORENS:

7 Q Can you document the number of
8 days that the violation in question
9 persisted?

10 A Yes.

11 Q How can you document that?

12 A We arrived at the facility and it
13 was in an abandoned state and in the request
14 for information we asked Aguakem when they
15 left the facility. We reasonably presumed
16 that the facility was in the same state as
17 when they left the facility because no one
18 had occupied the facility after Aguakem. So
19 it was reasonable for us to presume that the
20 answer in the request for permission which
21 was December 28th was the date in which the
22 violations started.

23 Q Okay. Anything else that
24 documented the number of days of the
25 violation besides what you just testified

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to?

A If I can have the inspection report?

Q Yes.

A The Aguakem response and the Puerto De Ponce response.

MR. LLORENS: I am handing the witness Exhibit 7. You want the report, that is Exhibit 3. The Aguakem response, Exhibit 9.

THE WITNESS: This is the date that Juan Unanue, Jose Unanue -

THE JUDGE: Pardon me.

THE WITNESS: The date we used to calculate that was the date that was given by Jose Unanue and by Aguakem's response.

EXAMINATION CONTINUED

BY MR. LLORENS:

Q Okay. Showing you this is photo six previously marked from Exhibit 3, the complaint. Earlier I think you testified about yellow tape.

THE JUDGE: Wait till I get there.

MR. LLORENS: I am sorry, Your Honor.

THE JUDGE: Okay.

EXAMINATION CONTINUED

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BY MR. LLORENS:

Q Earlier you testified in your direct testimony about the question of yellow tape being around the facility. At least as I am looking at this picture there is an open door at the far end and no indication of yellow tape. Do you know if the yellow tape was taken down?

A The yellow tape was exactly where you pointed to.

Q You mean that is representing yellow tape? Okay. I guess the sunlight blocked it. There was yellow tape over there?

A Yes.

Q Now, there is an entrance on the right which I can't see. Was there yellow tape there, too?

A I do not remember.

Q Okay but you remember yellow tape here?

A Yes.

THE JUDGE: Okay. When you say here -

MR. LLORENS: Here meaning on the left hand side of the photo there is an open door

1 with sunlight coming through.

2 THE JUDGE: Okay.

3 MR. LLORENS: And there is no yellow
4 tape.

5 THE JUDGE: Now, wait a minute. The
6 witness testified that there was yellow
7 tape.

8 MR. LLORENS: I agree. What I was
9 referring to at least as I look at the
10 picture, I can't see yellow tape but he said
11 there was yellow tape.

12 EXAMINATION CONTINUED

13 BY MR. LLORENS:

14 Q Referring to the same picture,
15 photo 6 in the front right part of the photo
16 there is a wall through the cinder block
17 wall. Can you see that?

18 A Yes.

19 Q The facility that you were
20 inspecting, looking at this picture
21 included, what part of this picture is
22 included in the facility that you inspected
23 on February 2, 2007?

24 A I don't understand the question.

25 Q Is everything that is represented

1 in this picture, was that part of the
2 facility you inspected on February 2, 2007?

3 A Yes.

4 Q Okay. Do you know if Aguakem
5 controlled the part of the facility that was
6 underneath the cinder block wall and the
7 photo would be the lowest part of the photo?
8 I am referring to -

9 THE JUDGE: In front of or behind?

10 MR. LLORENS: In front of, in front of.

11 MS. RODRIGUEZ: Your Honor, we do have a
12 facility layout.

13 THE JUDGE: Yes, that may -

14 MS. RODRIGUEZ: It would be much easier
15 for counsel to use the layout and state
16 which area he is referring to.

17 MR. LLORENS: This doesn't -

18 MS. RODRIGUEZ: The layout.

19 MR. LLORENS: If this is what we are
20 talking about. I don't think this is really
21 going to help.

22 THE JUDGE: Well, that is the layout.
23 Maybe it would be much easier if you just
24 refer to that layout of the facility.

25 MR. LLORENS: All right. Well, let me

1 try something, if I may, Your Honor. The
2 photograph identified layout in conjunction
3 with photo six, the top of the photograph
4 layout has a wall represented and doors. Is
5 that right?

6 THE WITNESS: Yes.

7 EXAMINATION CONTINUED

8 BY MR. LLORENS:

9 Q Okay.

10 THE JUDGE: I see one door, the second
11 door on the far left corner.

12 MR. LLORENS: On the layout?

13 THE JUDGE: No.

14 MR. LLORENS: I was actually -

15 THE JUDGE: On the photograph you were
16 referring to.

17 MR. LLORENS: I am going to now ask if
18 this door on the top part of the layout is
19 represented or is seen in this photo.

20 THE WITNESS: No, it is not.

21 EXAMINATION CONTINUED

22 BY MR. LLORENS:

23 Q Okay. Where would that be relative
24 to this photo?

25 THE JUDGE: Yes, you are showing it to

1 him which is great but I can't see a thing.

2 MR. LLORENS: Okay.

3 THE JUDGE: So you are going to have to
4 restate everything so I can watch this.

5 MR. LLORENS: Okay.

6 EXAMINATION CONTINUED

7 BY MR. LLORENS:

8 Q First let me try again, Your
9 Honor, with the layout. What I am asking
10 him is, is this wall and this door
11 represented in photo six?

12 THE JUDGE: Let the record reflect that
13 you are referring to the -

14 MR. LLORENS: Photograph -

15 THE JUDGE: Eastern side of photograph
16 identified layout.

17 MR. LLORENS: Right. Okay.

18 EXAMINATION CONTINUED

19 BY MR. LLORENS:

20 Q Look at photo six of Exhibit 3 and
21 I ask you if that was represented in this
22 photo?

23 A That was not seen in that picture.

24 Q Okay. I am going to refer again
25 to the photograph in the identified layout.

1 Do you have knowledge, with regard to what
2 part of this facility was under the
3 operation of Aguakem Caribe -

4 THE JUDGE: This facility is photograph
5 six or where are we?

6 MR. LLORENS: I am actually referring to
7 the photograph identified layout. I would
8 ask the witness if he has knowledge with
9 regard to what part of the facility was
10 leased by Aguakem Caribe from the Port of
11 Ponce Authority or from the Municipio of
12 Ponce? Do you know?

13 THE WITNESS: Ponce Port Authority told
14 us that the part that we were inspecting was
15 the part that was leased by Aguakem Caribe.

16 MR. LLORENS: Okay.

17 THE JUDGE: Okay. I didn't get that. I
18 didn't understand that.

19 MR. LLORENS: Would the witness please
20 repeat the answer.

21 THE WITNESS: Port of Ponce told us that
22 the part that we were inspecting was the one
23 that was used or leased by Aguakem Caribe.

24 EXAMINATION CONTINUED

25 BY MR. LLORENS:

1 Q Okay.

2 THE JUDGE: And I don't know what that
3 means. Is it or is it not this diagram?

4 MS. RODRIGUEZ: I guess that is the
5 question you should ask --

6 THE JUDGE: Is it the entire diagram,
7 part of the diagram?

8 MS. RODRIGUEZ: I guess he could
9 identify the area which is the facility.

10 THE JUDGE: Okay.

11 MS. RODRIGUEZ: Could you identify it
12 there and make it easier, in that graph?

13 THE WITNESS: Everything that was
14 inspected was from where you see the
15 drawings down.

16 THE JUDGE: So number seven?

17 THE WITNESS: Would be like the top.

18 THE JUDGE: Okay. So number seven would
19 be as far as you went in the inspection or
20 considered as part of the inspection?

21 THE WITNESS: As far as we consider in
22 the inspection.

23 THE JUDGE: Okay. So you did not
24 consider above number seven?

25 THE WITNESS: No. There is a reason for

1 that. It was empty.

2 THE JUDGE: But you considered seven and
3 lower being towards the west.

4 THE WITNESS: If I remember correctly
5 when we went into the building, this is an
6 open warehouse and we started where the
7 materials started.

8 THE JUDGE: Okay.

9 THE WITNESS: So what you see in the
10 depiction is what we saw. What you do not
11 see, it was empty.

12 THE JUDGE: Okay. My question is,
13 photograph six identifies the view of the
14 containers located at the north side of the
15 facility and my understanding is on that
16 diagram the north is on the left toward
17 number four.

18 THE WITNESS: That is right.

19 THE JUDGE: Okay. Yet this is an oblong
20 photograph showing a rather rectangular
21 facility with an opened end so would the
22 light that we see in photograph six be the
23 door next to number four?

24 THE WITNESS: No.

25 THE JUDGE: Where would it be?

1 THE WITNESS: Can I state it?

2 THE JUDGE: Yes. Where is that light in
3 photograph six?

4 THE WITNESS: If you look at the
5 picture, that light is this door. I am
6 standing close to this part of the building
7 and what you see in the picture is a wide
8 view that contains both walls, both walls
9 and the western wall which is at the lower
10 portion of the drawing. The light that you
11 see at the end is this door at the western
12 wall.

13 THE JUDGE: Okay.

14 MS. RODRIGUEZ: Your Honor, may the
15 record show that he is pointing to the lower
16 part of the graph?

17 THE JUDGE: Yes, the photograph
18 identified layout, is the door identified at
19 the lowest part of the schematic. Okay.
20 Thank you.

21 EXAMINATION CONTINUED

22 BY MR. LLORENS:

23 Q Is area 7 depicted in photograph
24 six of Exhibit 3?

25 A Area 7, what do you mean by area

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Q I am going to refer you to the photograph identified layout and then --

MS. RODRIGUEZ: Your Honor, I think, you know, first of all, we have gone over this not only in my direct but he has gone over again where each area was with regard to the graph and the photograph so are we going to be just repeating the same thing over again or does he have a specific question on how it was identified or whether -

THE JUDGE: Where are we going with this?

MR. LLORENS: I am trying to find out what he considers to be the parameters of the premises.

MS. RODRIGUEZ: And I think it was already established, Your Honor.

MR. LLORENS: And I am trying to connect it to the photographs so I can understand -

MS. RODRIGUEZ: Your Honor, he just did that.

THE JUDGE: Okay. I believe we had identified it up through seven and then a

1 line was drawn beyond that and nothing else.

2 MR. LLORENS: Your Honor, if someone
3 could tell me where area seven is in this
4 photograph which is the pending question,
5 then I could understand the objection. Do
6 you want to tell me?

7 MS. RODRIGUEZ: No, no. He can tell you.

8 MR. LLORENS: You don't want the witness
9 to tell me?

10 THE JUDGE: Okay. We only engage in
11 argument here. We can direct the comments
12 to me and we will filter through that way.

13 MS. RODRIGUEZ: Could you identify area
14 seven in the graph?

15 THE WITNESS: Picture seven is not seen
16 from that picture because seven is actually
17 behind me as I am taking the picture.

18 EXAMINATION CONTINUED

19 BY MR. LLORENS:

20 Q Okay. My last question on this,
21 so this wall did not -

22 THE JUDGE: Okay. This wall identified
23 in photograph -

24 MR. LLORENS: This wall in photo six,
25 Your Honor, in photo six on the right hand

1 side of photo six, you do not understand
2 that this was the boundary of the premises
3 of the facility you inspected?

4 MS. RODRIGUEZ: Your Honor, he has not
5 said that.

6 THE JUDGE: Okay.

7 MR. LLORENS: Okay, well.

8 MS. RODRIGUEZ: He has not stated that.
9 He -

10 THE JUDGE: Okay. Let's not continue to
11 argue the point. Let's just try to make sure
12 we understand the photographs. I think the
13 easiest point would be where is the ball
14 located on the photograph identified layout
15 based upon the photographs that are there.
16 If you could take a moment.

17 THE WITNESS: Special request, please.

18 THE JUDGE: Okay. We are looking at the
19 photograph six and there is a partial wall.
20 I think what happens is because of the
21 physical layout of the photograph and the
22 layout it is an inverse so it is somewhat
23 counter intuitive here. So if I am
24 understanding the witness' testimony, the
25 light identified in photograph six is the

1 most western wall so the wall which is on
2 the right side would be on the northern
3 wall.

4 THE WITNESS: Yes, the right side of the
5 picture would be the northern wall.

6 THE JUDGE: Okay. Do you know if it is
7 between the nine, ten and four area or is it
8 up above the four area, do you have any
9 estimate?

10 THE WITNESS: In the picture, only for
11 clarification, Your Honor, if you look at
12 the bottom part, it says not at scale.

13 THE JUDGE: Yes.

14 THE WITNESS: And this picture six is
15 actually taken along the lines of this lower
16 on the northern wall so we will be looking
17 down on this point towards the west.

18 THE JUDGE: The ball that is identified
19 in photograph six which seems to be a point
20 of interest, if you had to place that
21 somewhere on this schematic that is not to
22 scale, approximately where would you put
23 that?

24 THE WITNESS: Between four and the
25 northern wall, in the north side.

1 THE JUDGE: Okay. Around the floor
2 area.

3 THE WITNESS: If I remember correctly
4 the south, where that wall was, somewhere
5 around that place.

6 MR. LLORENS: Okay. Let the record
7 reflect that the witness said that the wall
8 was around area four and entrance way also?

9 THE WITNESS: Yes.

10 THE JUDGE: And what?

11 MR. LLORENS: An entrance way on the
12 left hand side of photograph identified
13 layout and that is where he is placing the
14 wall?

15 THE WITNESS: Yes.

16 MR. LLORENS: In photo six. I have no
17 more questions on this point. I think I
18 might be done. I have no further questions
19 of this witness.

20 MS. RODRIGUEZ: Yes, Your Honor. I have
21 redirect.

22 THE JUDGE: Please.

23 MS. RODRIGUEZ: Let's go back to that
24 same photo and the same graph. Was this the
25 facility layout, Your Honor, was it a

1 facility layout, what he used?

2 THE JUDGE: Yes.

3 MS. RODRIGUEZ: Was this the one that he
4 used?

5 MR. LLORENS: I was using the bigger
6 one.

7 MS. RODRIGUEZ: Okay.

8 THE JUDGE: It is the photograph
9 identified layout.

10 REDIRECT EXAMINATION

11 BY MR. RODRIGUEZ:

12 Q Now, Mr. Gonzalez, going back to
13 photo six, counsel for Respondent has asked
14 you about this wall and I am talking and I
15 am pointing to what appears to be a block,
16 cinder blocks towards the right hand of the
17 photos. Is that correct?

18 A Yes.

19 Q Okay. Now, in the photograph
20 identified layout that would be and I am
21 pointing to, I mean, like you say, it is
22 confusing because it is the other way
23 around, but it would be approximately around
24 where it is marked as number four.

25 A Somewhere around there.

1 Q Right and you stated in response
2 to counsel's question that this area that
3 you went in, there was nothing there. I am
4 talking about the top part of the
5 photograph, is that correct?

6 A Yes.

7 Q And I am asking you when we make
8 reference to Building 6 regarding this
9 specific photograph identified layout, is it
10 all that is marked, Building 6 all that is
11 and I am saying, not the outside but what is
12 marked inside the perimeter?

13 A I would say it is a complete
14 drawing.

15 Q And just to make it for the
16 record, with your finger can you go around
17 and just tell us all that is building 6?

18 THE JUDGE: So let the record reflect
19 the witness is doing the full rectangle
20 represented in the photograph identified
21 layout.

22 EXAMINATION CONTINUED

23 BY MS. RODRIGUEZ:

24 Q And I ask you again, at the time
25 of the December 28, 2006, who was the

1 current person who was the tenant and still
2 at, you know, at the facility?

3 A Aguakem Caribe.

4 Q Was that the only tenant at that
5 time?

6 A As far as we know, yes.

7 Q Okay. Now, as I stated before
8 December 28th, who was in control of that
9 area?

10 A Before December 28th, Aguakem was
11 the controlling party.

12 Q Okay and it was the sole
13 controller on the facility?

14 A As far as I know.

15 Q Now, as to the RCRA penalty
16 policy, I would ask you, when you use the
17 RCRA penalty policy, do you use it as a
18 whole or you just go one sentence by one
19 sentence?

20 A We use the whole penalty policy.

21 Q Now, I want you to read the
22 following sentence after the two sentences
23 that counsel made you read and he asked you
24 just for the record, and I think, I don't
25 know whether he read it or made you read it,

1 the paragraph at page twenty three where it
2 states that it has been determined that any
3 violations alleged so and so. Can you please
4 read this sentence that he did not read for
5 you. It starts, "however."

6 MR. LLORENS: Your Honor, I object first
7 to the last part of the question and beyond
8 that I was doing cross examination, she is
9 doing direct examination. This is a leading
10 question.

11 MS. RODRIGUEZ: Okay.

12 EXAMINATION CONTINUED

13 BY MS. RODRIGUEZ:

14 Q Mr. Aviles, I am presenting to you
15 the penalty policy. Could you please read in
16 page twenty three the third sentence.

17 MR. LLORENS: I object again.

18 MS. RODRIGUEZ: Your Honor --

19 MR. LLORENS: It is leading.

20 MS. RODRIGUEZ: Your Honor, this is
21 redirect.

22 THE JUDGE: Okay. I am going to allow
23 the question just to expedite this matter.
24 We can address it and hopefully you have the
25 question restated so it is not as leading

1 and it is leading but I think to move this
2 along, the entire paragraph, it would be
3 better if it were read into the record
4 ending with the word, "status."

5 MS. RODRIGUEZ: We could start if you
6 want, Your Honor, let me rephrase because it
7 is not, I would say you know, read the whole
8 section penalty for that and -

9 THE JUDGE: I think the sentence that
10 follows the other sentence, it is important
11 to have the entire context and while
12 examining this I will validly ask just to
13 move it along. Eventually it is coming in.

14 MS. RODRIGUEZ: Yes, I will then just
15 rephrase my question, Your Honor, in order
16 to expedite matters. In the penalty policy,
17 do you consider all the different sections
18 or do you consider it as a whole?

19 THE WITNESS: We consider it a complete
20 penalty policy.

21 MS. RODRIGUEZ: Okay. Thank you. That
22 will be all, Your Honor.

23 THE JUDGE: No further questions of this
24 witness on redirect?

25 RE CROSS EXAMINATION

1 BY MR. LLORENS:

2 Q When asked if you knew there were
3 other tenants at the facility, you said that
4 you know as far as you knew. What is the
5 basis of your knowledge that there was no
6 other tenant?

7 A We were never told that there was
8 any one besides Aguakem.

9 Q Anything else?

10 A No.

11 MR. LLORENS: No further questions.

12 THE JUDGE: Now, you want to reserve
13 this witness?

14 MS. RODRIGUEZ: Yes, Your Honor.

15 THE JUDGE: Okay. So you are dismissed
16 today but you are still subject to the
17 court's jurisdiction. Thank you.

18 Now, it is 1:40 and I think we can move
19 along to EPA's next witness.

20 MS. RODRIGUEZ: Yes, Your Honor. We
21 were planning to use Miss Solimar Luna but
22 she would just be for cumulative, you know,
23 her testimony would probably be just
24 basically the same that Mr. Aviles testified
25 and it would be cumulative testimony and we,

1 you know, provide her to counsel if he
2 wishes to call her. She is here and -

3 THE JUDGE: Was she identified as a
4 witness for the Respondent?

5 MS. RODRIGUEZ: Yes no, no. She was
6 identified as our witness.

7 THE JUDGE: Okay but if you are not
8 presenting testimony -

9 MS. RODRIGUEZ: It would be just
10 cumulative and the other, you know, Mr.
11 Aviles has already testified to what she
12 would testify but she is here and she is
13 available for counsel if he wishes to -

14 THE JUDGE: Okay. That is an unusual
15 situation but -

16 MR. LLORENS: Your Honor, my
17 stipulation, I appreciate counsel for making
18 her available to me but the basis of my
19 request was that, if I stipulated certain
20 testimony that she would be presented so I
21 can cross examine her on the stipulated
22 testimony. If there is nothing in addition
23 to what is stipulated, I do not think I need
24 to cross her on the stipulations. I do agree
25 that it would be cumulative. Actually let me

1 just ask her a couple of questions on the
2 calculations, Your Honor.

3 THE JUDGE: If the witness is not giving
4 direct testimony, cross is not necessarily
5 afforded unless there is something that we
6 have agreed in the stipulations.

7 MR. LLORENS: If there is a withdrawal
8 of what was stipulated as the testimony by
9 Miss Luna I would not need to cross her on
10 this then.

11 THE JUDGE: My understanding of the
12 stipulations per the pre-hearing conference
13 call was that it was essentially a
14 stipulation as to authenticity.

15 MR. LLORENS: That is right.

16 THE JUDGE: And not admissibility of
17 proposed testimony, the substance was not
18 admitted.

19 MR. LLORENS: Very good. Then, Your
20 Honor, I understand -

21 THE JUDGE: There is no testimony coming
22 in from this proposed witness.

23 MR. LLORENS: Very good.

24 THE JUDGE: Is that your understanding,
25 counsel?

1 MS. RODRIGUEZ: Yes, it would be
2 cumulative, Your Honor. We would have her
3 at his disposal if he wants to.

4 MR. LLORENS: No, I don't and I
5 appreciate counsel for making her available
6 and appreciate the court's clarifying the
7 position and the stipulations and I would
8 not need it even if the Court would deem it
9 appropriate.

10 THE JUDGE: So, that expedites matters
11 extensively.

12 MS. RODRIGUEZ: We have one more
13 witness, our last witness.

14 THE JUDGE: Okay. This would be your
15 last witness and then it would be concluded,
16 your case in chief?

17 MS. RODRIGUEZ: That is correct.

18 THE JUDGE: Okay. Now, do you want to
19 take a five minute break before starting the
20 next witness?

21 MS. RODRIGUEZ: Sure.

22 THE JUDGE: Do you have any
23 approximation, is this going to be probably
24 the rest of the day?

25 MS. RODRIGUEZ: I think we might be able

1 to get through Respondent.

2 THE JUDGE: Okay. So now your next two,
3 you have two witnesses, correct, CPA and
4 Respondent?

5 MR. LLORENS: That is correct.

6 THE JUDGE: Okay and so you would be
7 prepared to go tomorrow morning with the
8 CPA?

9 MR. LLORENS: Absolutely

10 THE JUDGE: Excellent. Hey how about if
11 we take a ten minute break?

12 (Whereupon a recess was taken)

13 MS. RODRIGUEZ: Yes, Your Honor, we call
14 now our next witness, Angel Rodriguez.

15 THE JUDGE: Okay.

16 Whereupon,

17 ANGEL RODRIGUEZ

18 was called as a witness, having been duly
19 sworn, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MS. RODRIGUEZ:

23 Q State your name for the record.

24 A My name is Angel C. Rodriguez.

25 Q And where are you employed?

1 A I am employed with the United
2 State Environmental Protection Agency,
3 Region 2.

4 Q And could you tell us where that
5 office is located?

6 A Yes, the office is located in San
7 Juan, Puerto Rico.

8 Q And how long have you worked at
9 EPA?

10 A Twenty three years.

11 Q And where did you work previously,
12 or prior to EPA?

13 A The United States Coast Guard.

14 Q How long?

15 A Four years active duty.

16 Q And can you tell us what kind of
17 post high school education you have?

18 A A bachelor's degree in mechanical
19 engineering.

20 Q And where were you awarded that
21 under graduate degree?

22 A University of Puerto Rico,
23 Mayaguez campus.

24 Q And could you tell us when was
25 that?

1 A That was in 1987.

2 Q Now, could you tell us what is
3 your title at EPA?

4 A Yes, I am an environment
5 engineer/on scene coordinator.

6 Q Where is the EPA Region 2 office
7 you work?

8 A I work at the Caribbean Law
9 Enforcement Division, specifically the
10 Response and Remediation Branch.

11 Q And could you please tell us what
12 your duties are?

13 A Yes. As an on scene coordinator I
14 work on the implementation of the CERCLA,
15 Comprehensive Environment Response
16 Compensation Liability Act and the CWA which
17 is the Clean Water Act performing removals
18 and clean ups, performing emergency response
19 and enforcement related programs throughout
20 the Caribbean.

21 Q And besides that, do you have any
22 other functions as an on scene coordinator?

23 A Yes, my duties involve performing
24 on site inspections of regulated facilities
25 to evaluate their compliance with CERCLA and

1 that is who I work for; RCRA, the Emergency
2 Planning Committee, Right To Know Act, the
3 Clean Water Act and the Oil Pollution Act,
4 OPA.

5 Q And Mr. Rodriguez, so you stated
6 that you in your experience, you also have
7 knowledge on CERCLA so are you familiar with
8 CERCLA and the CERCLA regulations?

9 A Yes.

10 Q And as an environmental engineer
11 and as an on scene coordinator, could you
12 tell us at least what type of facilities do
13 you inspect, regularly inspect?

14 A Yes, Facilities that store
15 hazardous substances, hazardous waste or oil
16 storage facilities.

17 Q And during the time that you have
18 worked with EPA, could you tell us how many,
19 approximately, how many facilities you have
20 inspected?

21 A Between removal actions and many
22 emergency responses, well over three
23 hundred.

24 Q Okay. Now, I ask you, are
25 familiar with a company called Aguakem

1 Caribe, Inc.?

2 A Yes, I am.

3 Q Do you know what kind of company
4 Aguakem Caribe is?

5 A They are a chemical manufacturing
6 facility who engages in water purification
7 commitments.

8 Q And how did you become familiar
9 with Aguakem Caribe?

10 A I performed an inspection as an
11 assessment in February 7th of 2007 based on
12 an invitation by the Port of Ponce
13 Administration.

14 Q And could you tell us where the
15 facility was located?

16 A The facility specifically within
17 the Port of Ponce is located in Building 6
18 and within the port of Ponce.

19 Q Now, could you tell me who
20 participated in the inspection you
21 mentioned?

22 A Performing the assessment are
23 contractors, specifically Western Solutions.
24 They are a technical support team and
25 myself. I act as the supervisor.

1 Q Right. Who does the contractor
2 respond to?

3 A Specifically myself.

4 MS. RODRIGUEZ: Okay. Now, Your Honor,
5 I would like to show him Exhibit 10 and 11
6 for identification, 10 and 11 and for the
7 record, for identification they are
8 pollution reports dated April 2, 2008 and
9 February 12, 2007. For identification
10 purposes number ten is the one that is dated
11 April 2, 2008 and 11 is the one that is
12 dated February 12, 2007 and both are from
13 Mr. Angel C. Rodriguez.

14 EXAMINATION CONTINUED

15 BY MS. RODRIGUEZ:

16 Q Mr. Rodriguez, I am showing you
17 for Identification purposes Exhibit,
18 Complainant's Exhibit 11. Could you please
19 take your time and look at it.

20 A I read it.

21 Q Okay. Now, I ask you, are you
22 familiar with that document?

23 A Yes, I am.

24 Q And can you tell us what that
25 document reflects?

1 A It basically reflects an
2 information that we collected during the
3 assessment at the site.

4 Q Do you know who generated that
5 document?

6 A I did.

7 MS. RODRIGUEZ: You generated it?
8 We would like at this time to introduce it
9 into evidence, Your Honor.

10 THE JUDGE: Okay. Any objection?

11 MR. LLORENS: Was this pat of the -

12
13 MS. RODRIGUEZ: The stipulation, yes.

14 MR. LLORENS: No objection.

15 THE JUDGE: Okay. Please mark it
16 Complainant's Exhibit 11 as received.

17 (Whereupon Complainant's Exhibit
18 No. 11 was marked as received)

19 EXAMINATION CONTINUED

20 BY MS. RODRIGUEZ:

21 Q Now, I am showing the witness
22 Complainant's Exhibit 10 which I already
23 showed counsel. Could you please take a
24 look at it. Take your time. Could you tell
25 us what the document is.

1 A It is another pollution report
2 basically generated from actions taken on
3 site.

4 Q And do you know who generated it?

5 A I did.

6 Q Who did? Oh, you said, "I did."
7 Okay and does it reflect a true and exact
8 copy of what you generated?

9 A It is an exact copy of what I
10 generated.

11 MS. RODRIGUEZ: At this time I would
12 like to introduce into evidence
13 Complainant's Exhibit 10.

14 THE JUDGE: Any objection?

15 MR. MATEO DURANGO: I believe we already
16 stipulated to this document.

17 THE JUDGE: Please mark Complainant's
18 Exhibit 10 as received.

19 (Whereupon Complainant's Exhibit
20 No. 10 was marked as received)

21 MS. RODRIGUEZ: Your Honor, I am going
22 to show the witness the pollution report
23 dated February 12, 2007, Exhibit 11.

24 THE JUDGE: Okay.

25 EXAMINATION CONTINUED

1 BY MS. RODRIGUEZ:

2 Q Now, you previously stated that
3 you visited the facility to conduct an
4 inspection on September 7th.

5 A Yes, correct.

6 Q Does that report reflect what you,
7 is that an account of what you did in the
8 facility?

9 A It is an account.

10 Q Could you please tell us what
11 inspection you conducted of the facility?

12 A I am going to read from the
13 document specifically Exhibit 11 and it says
14 "On February 7, 2007 an inspection
15 assessment of the site was conducted by the
16 EPA CERCLA Emergency Response Program. The
17 assessment revealed the presence of
18 laboratory containing chemical reagents and
19 unknown chemicals releases in the vicinity
20 of approximately fifty, five gallon drums,
21 four tanks of various sizes, and one hundred
22 cubic yard containers, referred to as totes.
23 Many of these containers were observed in
24 deteriorated condition and spills were
25 observed around them."

1 Q So that was the inspection, I am
2 sorry. I rephrase.

3 A In summary these are basically
4 what we found. We have a detailed list of
5 the chemicals that were observed via labels
6 and also very what we call airborne
7 carrying, small testing on site. That was
8 performed by the contractor.

9 Q Now, I ask you, after you
10 conducted the inspection, what happened, if
11 anything?

12 A Okay. Basically I generated two
13 documents. We call those Field Notice of
14 Federal Interest. Those documents were sent
15 to the Port of Ponce specifically addressed
16 to Mr. Hernandez who runs the Port of Ponce
17 and they were addressed also to Mr. Unanue
18 from Aguakem.

19 Q And could you send those, what did
20 you call those?

21 A Field Notice of Federal Interest.
22 We call them for short, FNFI's.

23 Q FNFI. Okay. After you sent those
24 two FNFI's, what if anything happened
25 afterwards?

1 A To further clarify, a FNFI is a
2 document which we originally speak by word
3 of mouth, verbally to the responsible
4 parties what we like them to do because we
5 feel there is a threat at their facility. We
6 did that with Mr. Hernandez. I attempted to
7 contact Mr. Unanue several times and I could
8 not but I was given the information from the
9 Port of Ponce so I could send those FNFI's
10 and I sent that, a copy to him via fax.

11 Q Okay.

12 A Could you ask me the question
13 again?

14 Q Okay. Then after you sent the
15 FNFI, first of all, before asking that,
16 under what authority did you send the
17 FNFI's?

18 A Under our CERCLA authority.

19 Q Now, after you sent the FNFI to
20 the two parties, what, if anything happened
21 after you sent that?

22 A Basically the FNFI requires that
23 within, I have the leeway of telling them
24 how soon depending on the severity of the
25 threat that the site is posing to let them

1 know, "hey, I would like to have that, this
2 information or this assessment or your
3 action to perform a big, pretty much resolve
4 the issue at hand to minimize the threat or
5 abate the threat within a specific time
6 frame because I had that leisure. I thought
7 it was so important that someone took action
8 over there that I wrote immediately. I
9 usually just so you have an idea, I might
10 give a week, I might give two weeks
11 depending on the severity, this is time
12 critical, this not time critical. This
13 definitely was an emergency response.

14 Q And why did you send it to both of
15 them, to Aguakem?

16 A Because one is the owner and the
17 other one is the operator.

18 Q Okay.

19 A Respectively.

20 Q Okay. So what, if anything did
21 they do -

22 A Well --

23 Q That you are aware of after their
24 receipt of the FNFI's?

25 A The Port of Ponce was concerned of

1 not having funding but they complied with --
2 basically the FNFI requires that they notify
3 me immediately and that means in writing to
4 let us know what they intend to do, okay,
5 with the presentation and so forth because I
6 give them time to explain what we are
7 looking for and even though they stated they
8 had no money, they told us that they would
9 comply with the EPA requirements. They
10 questioned why Aguakem was not responding
11 and I said, "Well, we did send them the
12 notice. Whoever responds first, we do it." I
13 mean, they will do it. If the two respond
14 at the same time, you have to agree who is
15 going to do it. If they don't do it, then the
16 EPA will use their authority to spend money
17 to mitigate the threat and then we will
18 pursue both parties up to three times the
19 amount of our costs."

20 Q Okay. Now, after you said that
21 the Port of Ponce contacted you, did Aguakem
22 contact you?

23 A To my recollection, I don't
24 remember having a single call returned or a
25 letter from Aguakem.

1 Q That you are aware, could you tell
2 us what happened after they contacted you?
3 After Port of Ponce contacted you, what
4 happened afterwards?

5 A Well, they basically talked to,
6 not having money, they managed to obtain,
7 not funding but the back up from their
8 contractor that was working in the facility
9 building what they call the future port, Las
10 Americas Port or Puerto Las Americas and
11 they themselves paid for a contractor to at
12 least stabilize the site. By stabilization I
13 mean to secure all the leaky containers,
14 everything that was opened, they had to pop
15 into both containers and support because
16 this facility was just literally, whatever
17 they were doing was a cluster, it was a
18 mess.

19 Q Under whose supervision were they
20 doing that?

21 A They performed all the actions
22 they, once we, the Emergency Response
23 Program is involved, it is based on our
24 supervision. Everything they do they have to
25 generate a sampling plan, they have to

1 generate a work plan, they have to generate
2 all the documentation, manifest, and they
3 have to comply with our time lines as well.
4 Oh, they have to provide a time line of what
5 they are going to do.

6 Q Now going back to where you
7 mentioned that it was an emergency and that,
8 you know, you sent the FNFI and the parties
9 had to address that, what did you use or
10 what did you find during the first
11 inspection in order for you to determine
12 that?

13 A That there was a screaming
14 emergency there. They had strong bases and
15 strong assets very much close to each other
16 and the way I could see it, I mean, I was
17 dying to say something about these pictures
18 that we are showing here but you had pools
19 or secondary containment for the main tanks
20 in a specific process and then that material
21 was leaking out. In order to stop that leak
22 they actually added sodium hydroxide and I
23 know because I have many years of experience
24 doing this and I could see some hydroxide
25 opened bags and they used as that as well.

1 They actually on the floor threw some
2 hydroxide in order to attempt to neutralize
3 the materials and this is based on our
4 professional interpretation of what was
5 happening there. You don't do that. You
6 simply don't do that.

7 Q What do you mean you don't do, who
8 doesn't do that?

9 A Basically you don't add a strong
10 acid to a strong base because you can
11 generate an exothermic reaction. Heat is
12 generated and that combined with in the
13 facility have oxidizers as well. If they had
14 a very small fire start up, it would just
15 create a reaction that eventually becomes a
16 very hot burning fire because of the
17 oxidizing agents that they had. It would
18 also result on a generation of a vapor cloud
19 which could be a corrosive nature and that
20 itself, the proximity of the, because we are
21 also taking in consideration the recipients
22 of that. If that was in the middle of the
23 Mojave Desert that could happen but there is
24 not going to be a removal action on our part
25 but if it took place like in this case where

1 according to our study of the area, at least
2 three thousand people could have been
3 impacted including workers within the same
4 port of Ponce, then it went into an action.

5 MS. RODRIGUEZ: May I approach the
6 witness, Your Honor?

7 THE JUDGE: Yes.

8 EXAMINATION CONTINUED

9 BY MS. RODRIGUEZ:

10 Q I am showing you Exhibit, what was
11 marked as Exhibit 11. It was already
12 admitted into evidence and it is page two,
13 Your Honor and could you tell me under
14 current activities what you have?

15 A I am going to read from the top
16 there. "Current activities. On February 7,
17 2007 EPA conducted a site inspection at the
18 Aguakem warehouse and performed an inventory
19 of the chemicals stored in the building.
20 The initial building entry was conducted in
21 Level B of Protected People Equipment, PPE."
22 That is unprotected equipment. That is all.
23 "EPA RST2 contractor utilized a Multi RAE-5
24 gas meter and photo VAC FID to perform air
25 monitoring. All initial air monitoring

1 readings were below background levels,
2 therefore, the materials inventory was
3 performed in Level C of PPE." That means we
4 changed from a more drastic protective
5 measure to a less drastic because we didn't
6 detect anything that was in there that could
7 deem an action of another type. "The
8 inventory results are shown in Table I."
9 This is basically a list of the inventory:
10 "Material description container quantity.
11 Corrosives materials sump water low pH cubic
12 yard containers 115, Sodium Aluminate 55
13 gallon plastic drums 15, Unknown
14 Substances." That means we could not read
15 what they were on the containers. "55
16 gallon drums, 13 of them, Polyacrylic Lamide
17 emulsion." It was labeled as that. "55
18 gallon drum 1 of them. Unknown substances,
19 55 gallon drums, corrosive drums, nine of
20 them. Superfloc C-59, 5 gallon", basically
21 four pails of 5 gallons. "Unknown liquid, 8
22 pails of 5 gallon. Hydrochloric acid cubic
23 yard containers, 6, Suspected asbestos
24 panels various in the interior and roof of
25 the warehouse, Ferrous Chloride, Interior of

1 the warehouse 2,600 gallon Tank 1, Ferrous
2 Chloride interior and outside of the
3 warehouse, one cubic yard containers on the
4 interior and one container of the exterior.
5 Ferric Sulfate, 2,600 gallons, one tank.
6 Corrosive liquid labeled, 2,600 gallon tank
7 3, Water treatment Flocculant Drums 55
8 gallon drums 2, Corrosive Quim PAC 55 gallon
9 drums, 8 of them, Small Chemicals Containers
10 with acids, bases and buffers, Lab Pack
11 various." A lab pack is all the little
12 bottles that you will find in a laboratory
13 type scenery just hanging on the shelves.
14 "Chemical substances, laboratory 5 gallon
15 containers, various. APAK 4050 outside the
16 warehouse 55 gallon plastic drums, 4 empty
17 drums. On the exterior, one partially empty
18 on the exterior as well. Hydrochloric acid,
19 55 gallon drums 7 empty drums on the
20 exterior. EPA observed that the interior of
21 the warehouse was in deteriorated
22 conditions, this include demolition
23 activities of suspected asbestos containing
24 materials or SACM." S-A-C-M. "White powder
25 spills on the floor and warehouse entrance,

1 visible soil and liquid chemical spills with
2 potential migration to soil and water
3 bodies. Several 5 gallons and small
4 chemical containers with acids, bases,
5 buffers were observed and photo documented
6 in the lab pack area. Some of them were
7 broken, spilled or in deteriorated
8 conditions."

9 Q Okay. Now, after the inspection
10 you said that Port of Ponce acted and you
11 ordered the Port of Ponce after they
12 received the FNFI. What did they do again, I
13 am sorry, what did they do once they
14 received the FNFI?

15 A Yes. Once they received the FNFI
16 they immediately claimed that they needed to
17 get funding but within a couple of days they
18 communicated that they had managed to have
19 the Port of Las America contractor pay for
20 an environmental cleaning contractor to
21 stabilize the site. By stabilization means
22 to secure all those containers who are
23 leaking and also to state and base on
24 compatibility. That means, no longer a
25 strong acid with a strong base.

1 Q Now, after the Port of Ponce
2 stabilized the site as you described, what,
3 if anything happened afterwards?

4 A They provided all the
5 documentation that we requested as I
6 mentioned before and they began a site
7 stabilization on or about the ending of
8 February of 2007 and they concluded all
9 those actions in March of 2008. It took them
10 well over a year to handle, store and leave
11 everything in stable conditions.

12 Q Okay. Now, while they were doing
13 that, are you aware, do you know whether
14 that was done under any legal authority or
15 any legal document with EPA?

16 A Well, again this one specific
17 action was performed under the field notice
18 of federal interest.

19 Q Were there any other actions
20 besides the FNFI action?

21 A Yes. Well, apparently the
22 contractor, because again we are overseeing
23 what the contractor was doing. During one of
24 our visits, we were not there twenty four
25 hours a day, and during one of the visits,

1 we discovered that for unknown reasons they
2 were taking some of those chemicals, they
3 were neutralizing the site. The only people
4 that had that authority to neutralize
5 materials on site is the EPA. It is
6 specifically on scene coordinators and they
7 were taking that, those materials on to the
8 landfill. The landfill, they do their own
9 testing and they realized that the material
10 was corrosive so they turn them around and
11 they send them back. We learn of that when
12 the drivers were coming back and we merely
13 stopped them. We said, "Okay, fine, from
14 this moment on, you are not to touch this
15 stable materials here. You are not to
16 dispose of them and now we are going to go
17 ahead and enter into an administrative order
18 on consent."

19 Q And who did you notify? Who
20 entered into the Administrative Order on
21 Consent that you ordered?

22 A Yes, we notified the authorities
23 at the Port of Ponce and we invited Aguakem,
24 Mr. Unanue to join the AOC.

25 Q Okay.

1 MS. RODRIGUEZ: Your Honor, I am
2 returning, I am sorry, Exhibit 11 to the
3 court reporter.

4 EXAMINATION CONTINUED

5 BY MS. RODRIGUEZ:

6 Q Now, let me just go back before we
7 discuss the order that you mentioned. You
8 mentioned, when were the FNFI removal, when
9 was the FNFI removal that Port of Ponce was
10 doing, when was it concluded?

11 A That was concluded in March 28th
12 of 2008.

13 Q Okay and previously, I previously
14 showed you and we have already submitted
15 into evidence Exhibit 10 and can you tell me
16 what that document reflects.

17 A This is specifically the
18 culmination of the stabilization phase and I
19 am going to read from the, "Current
20 Activities. In February of 2007" and I
21 didn't add a specific day number there.
22 "The Municipality of Ponce conducted removal
23 activities at the site which were intended
24 to stabilize those hazardous substances
25 which were leaking or were otherwise in a

1 condition which could have reacted with
2 other chemicals which were haphazardly
3 stored at the site. The nature of these
4 activities were reflected in a stabilization
5 plan which was provided to EPA.

6 The wastes were secured by over packing
7 in DOT, Department of Transportation
8 approved containers and were relocated to
9 building number 5 and two roll off
10 containers." It doesn't say that but they
11 were located over by the port area. They
12 were special type containers.

13 "The tasks required in the FNFI were
14 completed on March 28, 2008."

15 Q Now, Mr. Rodriguez, I ask you, for
16 the work, the removal that was done under
17 the FNFI, did Aguakem participate?

18 A No, no, they did not.

19 Q Did they contact you to
20 participate?

21 A Not to my recollection.

22 MS. RODRIGUEZ: Okay. Now, I am
23 showing, Your Honor, I am going to show, may
24 I approach the witness?

25 THE JUDGE: Yes.

EXAMINATION CONTINUED

1
2 BY MS. RODRIGUEZ:

3 Q Complainant's Exhibit 13 which is
4 the and it had been mentioned before, the
5 CERCLA, Administrative Order On Consent."
6 Let the record show that I am showing it to
7 counsel for Respondent.

8 Mr. Rodriguez, could you tell me
9 what the document that I show you, do you
10 recognize the document?

11 A Yes, this is the Administrative
12 Order on Consent that was negotiated with
13 the Port of Ponce and Aguakem.

14 Q Okay and in summary, what were the
15 actions, if any, would they have to do under
16 the administrative order? What work was
17 required?

18 A Okay. They were supposed to
19 perform the disposal and handling of all
20 stabilized materials from the previous
21 action under the Field Notice of Federal
22 Interest, also known as a FNFI and basically
23 included "Eighty six one cubic yard plastic
24 boxes containing liquid corrosives, thirty
25 five gallon plastic drums containing

1 corrosives, nine 85 gallon salvage drums
2 containing corrosives, fifteen one cubic
3 yard lined boxes containing corrosives, the
4 contents of three 3,000 gallons". That is
5 nine thousand gallons in total. "Containing
6 liquid corrosives. The contents of two
7 2,750 gallon tanks containing liquid
8 corrosives, the contents of one, 1,450
9 gallon tank containing liquid corrosives."

10 Q Could you please tell me, did you
11 participate in the negotiations for that
12 Administrative Order on Consent?

13 A Yes, I did.

14 Q And do you know then who actually
15 at the end finally signed the Administrative
16 Order on Consent on behalf of the two
17 respondents that signed there?

18 A Well -

19 Q You could just use that and tell
20 me, please. Who signed for that?

21 A Okay. It was signed by George
22 Pavlou, the Director for Emergency and
23 Remedial Response Division of Region 2. I
24 can't recognize. Well, someone from the
25 Municipality of Ponce. I cannot, oh,

1 actually Francisco Zayas Seijo, I am sorry.
2 I was trying to read the signature and Mr.
3 Jorge Unanue, the President of Aguakem.

4 Q Okay.

5 MS. RODRIGUEZ: Your Honor, I move to
6 introduce into evidence Exhibit 13,
7 Complaint's Exhibit 13 that was stipulated
8 and counsel has no objection. The complaint.

9 THE JUDGE: No objection?

10 MR. LLORENS: No objection.

11 THE JUDGE: Okay. Please mark
12 Complainant's Exhibit number 13 as received.

13 (Whereupon Complainant's
14 Exhibit No. 13 was marked
15 as received.)

16 EXAMINATION CONTINUED

17 BY MS. RODRIGUEZ:

18 Q Now, I am showing the witness the
19 exhibit marked 13 already introduced into
20 evidence. Now I ask you, could you please
21 read from page six and seven, paragraph
22 twenty five.

23 A "The conditions present at the
24 site constitute a threat to public health,
25 welfare, or the environment based upon

1 factors set forth in Section 300.415 (b) 2
2 of the National Contingency Plan. These
3 factors include but are not limited to the
4 following conditions: Actual or potential
5 exposure to nearby human populations,
6 animals, or the food chain from hazardous
7 substances or pollutants or contaminants and
8 b, hazardous substances or pollutants or
9 contaminants in drums, tanks, pails, or
10 other storage containers that may pose a
11 threat of release." Item number c, "Weather
12 conditions that may cause hazardous
13 substances or pollutants or contaminants to
14 migrate or be released" and item d, "Threat
15 of fire or explosion.

16 Q Okay. Now, as to this
17 administrative order, do you know who was in
18 charge of supervising the implementation of
19 the administrative order?

20 A Well, basically on the field and
21 anything having to do with the technical
22 aspects, myself and on the legal aspect an
23 EPA attorney.

24 Q Now, while you participated and if
25 it is on your own knowledge, did Aguakem

1 participate at all in the removal action
2 being performed under this Administrative
3 Order on Consent?

4 A They did not, they only
5 participated in the generation of the order
6 itself but they produced nothing out of it.
7 They did not participate or pay for a single
8 item that needed to be further bulked or
9 disposed that or disposal process.

10 Q Did they have anybody there -

11 A No one whatsoever, not even a
12 witness, no one whatsoever.

13 Q Did anybody from Aguakem contact
14 you in order to participate in the work that
15 they had agreed to perform?

16 A No. The only, the attorney they
17 had assigned before, again the order was
18 signed, called me with me questions. It was
19 pretty much almost like a delay because we
20 were ready to go and this whole time that
21 person was asking for things that were just
22 for the purpose of review.

23 Q In order to clarify that, was that
24 before or after the signature of the
25 administrative order.

1 A This was before the signature.

2 Q I am talking about after it was
3 signed.

4 A After the signature, there is no
5 communication whatsoever.

6 Q That you are aware -

7 A That we are aware. We kept asking
8 them to participate, though. They did not
9 come to us but we did come to them via phone
10 calls and so forth.

11 Q And can you recall what they
12 mentioned or what they said?

13 A I don't recollect but it was,
14 again, that we were just inviting them to
15 participate, to take action and assist the
16 Port of Ponce.

17 Q Now, while the work being done
18 under the Administrative Order on Consent,
19 you said that you were the technical person
20 who was supervising the implementation of
21 the order, right?

22 A Right.

23 Q Was EPA involved, did EPA do over
24 sight of the CERCLA removal action on the
25 order?

1 A Yes, we did. We do but just to
2 make sure that everyone understands how we
3 do this, it is not necessarily an EPA
4 employee who will do the oversight. Again,
5 our response, our technical assistance
6 contractors; namely the removal support team
7 contractors, they will be employed in
8 assuring they try to remain as much as they
9 can on site to oversee, they don't direct
10 but they are our eyes and our ears and if
11 something is going wrong whether they are
12 not fine with the work and so forth, they
13 will immediately notify us and we will be on
14 site. Then once in a while and I would say
15 once a week, twice a week we will be on site
16 to make sure that everything was running
17 fine.

18 Q Okay.

19 MS. RODRIGUEZ: Can you give me second,
20 Your Honor? Thank you, Your Honor, may I
21 approach

22 THE JUDGE: Yes.

23 EXAMINATION CONTINUED

24 BY MS. RODRIGUEZ:

25 Q I already showed this document to

1 Respondent's counsel for identification
2 purposes. I am handing a document to the
3 witness, dated October 10, 2008 generated by
4 Caribe Environmental Services and addressed
5 to Mr. Angel Rodriguez. Now, would you
6 please, sir, take a look at the document I
7 have just handed over.

8 A This is the document given by the
9 Port of Ponce representative. They have to
10 sign and so they don't have to be going to
11 the administrator all the time and that
12 person is on site, namely Mr. Raul Colon and
13 this is basically a monthly report under the
14 Administrative Order on Consent and it shows
15 a list of all the manifests that were at
16 that time sent over for final disposition as
17 hazardous materials to the United States of
18 America.

19 Q Could you please, is there a list
20 there?

21 A There is a list.

22 Q Could you please read from that
23 list.

24 A Yes. "Manifest 004708704JJK
25 shipped on August 26th. Manifest 0047--"

1 THE JUDGE: Maybe we can dispose with
2 the reading of the manifest.

3 MS. RODRIGUEZ: Yes, I will be more
4 specific if I can approach the witness, Your
5 Honor.

6 THE JUDGE: Yes.

7 MS. RODRIGUEZ: Your Honor, I will go
8 directly and I am showing, I am going to ask
9 the witness, it is not numbered, but to go
10 directly to the manifest. They are right
11 after, they are Appendix one stated Closed
12 Manifest and Certificates of Destruction.
13 Will you take a look at them.

14 THE WITNESS: Yes.

15 EXAMINATION CONTINUED

16 BY MS. RODRIGUEZ:

17 Q Please take your time and just go
18 over them.

19 A Yes. This is basically an addendum
20 to the one list that I was trying to read
21 and basically it is a copy of all the
22 manifests.

23 Q And can you tell us if you get
24 from that list?

25 A Yes, from the list I can tell you,

1 again, this is how the materials, this is a
2 document that is required by the Department
3 of Transportation for many reasons. You
4 know, if something happens on the road, they
5 need to know what is leaking, what is
6 involved in the accident to protect life and
7 health and also when you enter a state that
8 is intended for, in this case it was
9 intended for Michigan, Belville, and there
10 is a treatment facility there. It is called
11 Michigan Disposal Waste Treatment. In Puerto
12 Rico there are no hazardous waste disposal
13 facilities only industrial waste and it is
14 not by any chance to be confused with
15 hazardous materials. This material will ship
16 over and in the case of manifest 004708704 -
17 -

18 Q Can we stipulate to the numbers on
19 the manifest that are there so we can go
20 directly --

21 A Okay.

22 MR. LLORENS: I stipulate to what the
23 document says.

24 MS. RODRIGUEZ: Right.

25 THE JUDGE: To be quite honest now,

1 let's clarify this. It is my understanding
2 during the pre-hearing conference when we
3 discussed this, you did not stipulate to the
4 contents. It was just the authenticity and
5 the reason EPA is putting on much of its
6 case in chief through the testimony is
7 because of that interpretation of the
8 stipulations.

9 MR. LLORENS: Your Honor, if I can
10 clarify what I understood. I would -

11 THE JUDGE: Well, no, we are not going
12 to have that on the record now because we
13 had a pre-hearing discussion and it was my
14 understanding that there was no stipulation
15 to the contents and/or substance of the
16 documents so the question is now, to
17 expedite this and the seven manifests so
18 that they are not read into the record. The
19 seven manifests that are listed on page two
20 of Claimant's proposed Exhibit 14, would you
21 stipulate to those so that they are not read
22 into the record?

23 MR. LLORENS: I stipulate to that, Your
24 Honor.

25 THE JUDGE: Okay. Thank you.

1 THE WITNESS: Hazardous waste solids,
2 not NOS. NOS stands for Not Otherwise
3 Specified. The total quantity that was
4 shipped on this manifest is 29,520 pounds.

5 EXAMINATION CONTINUED

6 BY MS. RODRIGUEZ:

7 Q Okay. Can you go to the next.

8 A Of hazardous materials. I am
9 going into, by the way, accompanying the
10 manifest is also the certificate of disposal
11 which means we require them to assure this
12 material was treated. Not until the material
13 is treated can the facility generate a
14 certificate of disposal. So, in this case,
15 every manifest is accompanied by a specific
16 certificate of disposal.

17 Hazardous waste solid NOS, is the
18 next manifest, 26,000 pounds. The next
19 manifest, hazardous waste solid NOS, 22,900
20 pounds. Waste corrosive liquids, 840
21 gallons. Waste oxidizing liquid, corrosive,
22 NOS, 290 gallons. Hazardous waste solid
23 NOS, 17,000 pounds and then this following
24 manifest, and I have to mention this, it
25 went to another facility, namely, Safety

1 Clean Environment. Although it is in Manati
2 and I mentioned that hazardous materials
3 cannot to be disposed in Puerto Rico, Safety
4 Clean is a facility that would eventually
5 send this for disposal and they also do have
6 a permit to treat, treatment and disposal
7 treatment, two different things. So this
8 over here is all the lab pack material.
9 Waste oxidizing liquids, 12 pounds; waste
10 oxidizing liquids, 6 pounds; waste bromine,
11 15 pounds; waste cyanide solutions, ten
12 pounds; waste corrosive liquid, ten pounds;
13 waste corrosive liquid, 12 pounds; waste
14 corrosive liquid 20 pounds, and of those
15 that I read in such manner that are
16 basically sulfuric acid, some hydroxide and
17 sulfuric acid. The next round is liquid
18 organic or feno because it is a solvent. It
19 is a hazardous material and it is 150 pounds
20 and bromine hazardous substances, solid NOS
21 sodium phosphate, 60 pounds and bromine
22 hazardous substances solid AOS, copric
23 sulfate 80 pounds and that concludes the
24 manifest.

25 Q Thank you so much.

1 MS. RODRIGUEZ: Was this introduced?

2 THE JUDGE: No, it has not been
3 introduced.

4 MS. RODRIGUEZ: Oh, I am sorry. Could
5 we introduce it into evidence?

6 THE JUDGE: Any objection?

7 MR. LLORENS: I don't have any objection
8 to the admissibility of the document.

9 THE JUDGE: Please mark Complaint's
10 Exhibit 14 as received.

11 (Whereupon Complainant's
12 Exhibit No. 14 was marked
13 as received)

14 EXAMINATION CONTINUED

15 BY MS. RODRIGUEZ:

16 Q I just have a couple of more
17 questions. Do you know how much money was
18 actually spent in the removal action?

19 A By the Port of Ponce, well over a
20 million dollars.

21 Q And by EPA?

22 A By us, I don't have an exact
23 figure but I know that at least one of, I
24 remember the last attempted, the last
25 document was submitted to Ponce which by the

1 way they have paid the over site cost. It
2 was approximately \$86,000.

3 Q I am sorry?

4 A \$86,000.

5 Q Have any of those been paid by
6 Aguakem Caribe?

7 A None.

8 MS. RODRIGUEZ: That is all, Your Honor.

9 THE JUDGE: Now, complainant's Exhibit
10 12 is not received in the record so that
11 will not be included. It is in the
12 materials provided to the court reporter.
13 So the numbering sequence, 12 will be out of
14 the -

15 MS. RODRIGUEZ: Yes, Your Honor.

16 THE JUDGE: There is no 12?

17 MS. RODRIGUEZ: Yes.

18 THE JUDGE: Okay and that concludes the
19 direct examination?

20 MS. RODRIGUEZ: Yes, Your Honor, that
21 concludes our direct of the witness.

22 THE JUDGE: Does counsel request a short
23 break or are you ready to proceed in cross?

24 MR. LLORENS: I am ready to proceed,
25 Your Honor.

1 THE JUDGE Okay.

2 CROSS EXAMINATION

3 BY MR. LLORENS:

4 Q I believe you testified that you
5 first came to the warehouse site on February
6 7th for an inspection if I understood your
7 words correctly, was at the invitation of
8 the Port of Ponce. Did I hear that
9 correctly?

10 A You heard that correctly.

11 Q Okay. Could you explain to me how
12 this invitation from the Port of Ponce took
13 place?

14 A Well, it is my understanding that
15 after the facility was inspected by the RCRA
16 Program, they realized, the Port of Ponce
17 realized they had an issue to deal with
18 which was going to cost them a lot of money
19 and again this is purely hypothetical.

20 Q I don't want hypothetical. I
21 mean, Your Honor -

22 A Wait a minute.

23 Q Okay.

24 A That is for you.

25 Q Go ahead.

1 A I cannot tell you I mean what
2 transpired before. I can tell you what I
3 believe happened all the way to the point
4 where we were invited by the Port of Ponce
5 and there were comments in the office that
6 the RCRA Program had inspected the facility
7 but at that time we were not a team to go
8 out to the facility because we were not
9 fully aware of what was going on.

10 Q Let me try more simple. How did
11 the Port of Ponce invite you to come inspect
12 their facility?

13 A They contacted Carl Soderberg our
14 division director and then requested the EPA
15 Emergency Response Program or the EPA
16 specifically station in the Caribbean
17 Division to take an action to assist them
18 with chemicals that were left there by a
19 company named Aguakem.

20 Q How do you know that they called
21 Carl Soderberg for those purposes? Do you
22 have personal knowledge?

23 A I have personal knowledge.

24 Q Were you on the phone call?

25 A I was not on the phone call but I

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was informed by my supervisor that that transpired.

Q Okay. Who was your supervisor?

A Ariel Iglesias and also I have to mention that Mr. Hernandez also informed me on February 7th when I visited the facility.

Q Okay but you personally have no direct knowledge that there was an invitation from the Port of Ponce? Isn't that correct? What you know is what somebody else told you, isn't that right?

A That is correct.

Q You mentioned Western Solutions, Inc.?

A Western Solutions.

Q Could you tell me what that is again. I am sure you testified but I didn't understand.

A Yes. Western Solution is a company that we hired on a full time basis, is a contract that lasts for anywhere between five to six years and what they are hired for is to provide technical assistance. They are called RST2 is because depending on when the contract is renovated, it would be RST

1 1, RST2, Removal Support Team contract.
2 Exactly the name of the contract and in this
3 case was RST 2.

4 Q Okay. So RS stands for Removal
5 Support Team.

6 A Support Team.

7 Q And they came with you on February
8 7th?

9 A Correct.

10 Q Now, why did you bring your
11 Removal Support Team on that date?

12 A Because the information that was
13 provided to us was that hazardous materials
14 were left on site based on conditions and
15 bring to our attention so we went there to
16 see if the facility was removal eligible.

17 Q Okay and who provided you that
18 information?

19 A My supervisor, I believe I already
20 told you and he informed Mr. Carl Soderberg.

21 Q Okay. The information was in the
22 form of a document?

23 A To the best of my recollection,
24 the way I received the information from my
25 supervisor was by word of mouth.

1 A Okay. Do you recall what was said
2 to you?

3 Q How can I possibly recollect what
4 was said to me from that time word by word?

5 THE JUDGE: Just say that you cannot
6 recall specifically.

7 THE WITNESS: I cannot recall
8 specifically.

9 EXAMINATION CONTINUED

10 BY MR. LLORENS:

11 Q Do you recall in a general way?

12 A In a general way. Okay.

13 Q Did they describe to you what
14 materials were there?

15 A No, they did not. They just told
16 us that they were, well, again, there were
17 corrosive material but not specific
18 materials.

19 Q Okay.

20 A You know, like sulfuric gas, and
21 so forth, they do not like that but yes
22 that, they were corrosive materials in the
23 facility.

24 Q Okay. Now, what time did you
25 arrive at the facility on February 7th,

1 excuse me at the warehouse, the port on
2 February 7, 2007?

3 A I do not recollect the exact time
4 but I can tell you it was mid morning.

5 Q Okay and how long did that
6 inspection last?

7 A Well, in between the conversation
8 we had with Mr. Hernandez and the time we
9 began performing our site assessment, we
10 actually left the place by 4:30, 5 o'clock
11 in the afternoon.

12 Q So it was most of the day, right?

13 A Yes, most of the day.

14 Q Now, if I understood correctly
15 your testimony, it was on that same day that
16 you issued I think you called it FNFI?

17 A No, that is not correct.

18 Q Okay.

19 A Yes.

20 Q Please tell me what I
21 misunderstood.

22 A Yes. We issued the FNFI on
23 February 9th.

24 Q February 9th?

25 A Two days later.

1 Q Two days later. Okay. Now, you
2 said that the Port of Ponce responded to the
3 FNFI. On what date did they respond?

4 A Well, like I mentioned, I
5 mentioned that but it is my usual practice
6 to advise them, to let me know when I tell
7 them immediately, within a 24 hour period so
8 that means they had at least until 12
9 o'clock. I mean until 12 o'clock that day,
10 at the end of the day, when the next day
11 starts.

12 Q Okay.

13 A Notify us.

14 Q So did they notify you by February
15 10th?

16 A No. They had notified me by word
17 of mouth. Again, the FNFI is a protocol to
18 what I tell them verbally and they have
19 notified me way before of their intent which
20 I mentioned, I explained that to the court.

21 Q Okay.

22 A The opportunity here was for Mr.
23 Unanue.

24 Q But I was asking you about the
25 Port of Ponce's response.

1 A All right.

2 Q Okay and did they respond to you
3 verbally on February 9th?

4 A To the best of my recollection
5 they did.

6 Q Right and once they responded to
7 you what, did that trigger anything with
8 regard to what you were going to do?

9 A Yes. Basically I allowed them the
10 opportunity to prepare to get set with the
11 contractor to perform a removal action on
12 site by stabilizing the site as soon as
13 possible.

14 Q Now, I wrote down from your
15 testimony appraised with regards to the
16 FNFI, it was whoever responds first. Did I
17 hear that correctly?

18 A Yes.

19 Q So you were going to accept the
20 plan of whoever responded first. Did I
21 understand that correctly?

22 A Yes.

23 Q So once the Port of Ponce had
24 responded that was it, right, you had
25 already decided what the course of action

1 you were going to take, right?

2 A Well, if I apply your statement
3 because it is not yes or no.

4 Q Okay. It is based on the fact
5 that whoever wants to address the emergency
6 response were not going to do well in the
7 minor part of choosing who we had to wait
8 for. Whoever responds, whoever responds to
9 that document, it could be both of them and
10 I already said that too, the two of them
11 responded at the same time, then we enter
12 into an agreement, verbal agreement, written
13 agreement as to how things are going to take
14 place. The fact is that, yes, it is
15 dependent on who chose to be responsible and
16 take care of whatever needs to be done based
17 on the owner/operator type relationship
18 which is on the law.

19 Q Okay. Now, the law you are
20 referencing is CERCLA, correct?

21 A Title 40, Code of Federal
22 Regulations, Part 300.

23 Q That is a CERCLA Req?

24 A That is a CERCLA Req.

25 Q Okay. Now, you said you tried to

1 contact Aguakem. I assume you started on
2 February 7th trying to contact them?

3 A Yes, I did.

4 Q Okay. What did you do as an
5 attempt to contact Aguakem?

6 MR. MATEO DURANGO: Objection, asked and
7 answered.

8 THE JUDGE: I will allow the question.

9 THE WITNESS: Should I go ahead?

10 THE JUDGE: Yes.

11 THE WITNESS: During the meeting that I
12 had with Mr. Hernandez at the Port of Ponce
13 I requested to see if they could have
14 information that could somehow assist us or
15 EPA in locating Mr. Unanue to advise him
16 about the responsibility. It provided a
17 telephone number. It provided a fax number
18 and if I remember correctly, it also had
19 reqs.

20 EXAMINATION CONTINUED

21 BY MR. LLORENS:

22 Q Okay and what did you do with that
23 information?

24 A Oh, I attempted to call Mr. Unanue
25 by phone, okay and this is after I left the

1 facility and I also utilized the address and
2 the fax number to send Mr. Unanue a FNFI.

3 Q Okay. With regard to the phone
4 call, did you successfully reach someone
5 from Aguakem?

6 A No, I was not. I was not,
7 unfortunately I was not able to reach him.

8 Q Okay. Did no one answer the
9 phone?

10 A I don't recollect but I wasn't
11 able to reach him.

12 Q Okay. You say you also sent a fax.
13 Did you send that on February 7th?

14 A No, on the 9th.

15 Q Okay.

16 A To the best of my recollection.

17 Q By February 9th you had already
18 had a verbal confirmation from the Port of
19 Ponce, correct?

20 A Correct.

21 Q So what did you expect from
22 Aguakem on February 9th in terms of -

23 A According to the law I had to
24 provide equal opportunity to both parties to
25 remediate the ongoing issue, in this case

1 the threat and that is what I did. Had I
2 only addressed the Port of Ponce, I would
3 have been unfair specifically because in our
4 eyes who generate the problem was the
5 operator of the facility, so again I
6 notified them, I notified the Port of Ponce
7 and it is an equal share of responsibility.
8 It wouldn't be fair to both parties

9 Q All right. What was the basis for
10 your supposition that Aguakem was the
11 responsible party for the situation?

12 A They are both responsible parties.
13 When I say operator, and the other one is
14 the owner and the operator of those
15 chemicals was Aguakem. The owner of the
16 property is the Port of Ponce and that is
17 all I need to know.

18 Q Okay. You didn't consider the
19 issues regarding what Aguakem's occupancy of
20 the space, the questions, any other
21 questions like whether they had a legal
22 right to be there, anything like that?

23 A I don't have to.

24 Q Okay but you did, whether you did
25 or didn't. I just want to -

1 MR. MATEO DURANGO: Objection, asked and
2 answered.

3 THE WITNESS: I asked the pertinent
4 questions, you know, how come they are not
5 there, we were told that they had ben
6 evicted five years before; that they were
7 still there two years before the beginning
8 of the construction for Puertos Las Americas
9 but just basically questions. Where are
10 they? Where are they? How come they are not
11 there? That is all we do.

12 Q Okay but someone did speak to you
13 then about why Aguakem wasn't there?

14 A Yes. I already mentioned that but
15 Mr. Hernandez.

16 Q Okay. What did they say to you
17 about why Aguakem wasn't there in your
18 words?

19 A They had been evicted and the
20 reason why they had not returned or so
21 claimed Aguakem according to the Port of
22 Ponce was because there were environmental
23 conditions that prevented them from
24 accessing their chemicals and moving them
25 out of the building, specifically asbestos

1 and lead.

2 Q Okay so did they tell you that
3 Aguakem believed there was a lead and
4 asbestos problem in the facility?

5 A They told me.

6 Q Okay. They told you, I think, I
7 will leave your statement as it stands. Let
8 me go back. Once you get the response from
9 Ponce, the verbal response we discussed
10 about the FNFI on February 7th, did
11 anything, did any steps get taken to
12 ameliorate the situation on February 8th?

13 A Ameliorate the situation. Could
14 you please clarify that word?

15 Q Yes. Let me try it differently.
16 After Ponce assented or whatever it is they
17 did in terms of the FNFI, was some action
18 taken to stabilize the situation?

19 A The only actions that were taken
20 as a request from myself is that they, when
21 we went there, the doors for the facility
22 were all secured by debris that they had
23 placed in to prevent people from coming in
24 with the exception of one door, the one
25 door, if I remember correctly, they had to

1 open with a lock or it wasn't with a lock
2 and I told them that under no circumstances
3 no one was to enter that facility, okay,
4 without our consent and that we wanted to
5 make sure that they provided additional
6 security rounds to make sure that no one
7 would enter into, vagrancy, try to enter
8 that building to steal anything, and
9 specifically to protect those people. Even
10 vagrants, vagrants have rights to make sure
11 that their own employees did not enter the
12 facility to move or steal anything around
13 and they did so.

14 Q So on February 8th under your
15 instructions, the Port of Ponce secured the
16 facility.

17 A That is correct, by means and that
18 is a way of securing a facility with a
19 potential to present problems, yes.

20 Q Okay. When you inspected, I am
21 sorry to take you back in time a little. It
22 is just I have a note here and I want to go
23 back and ask these questions. I don't know
24 if this connected to the inspection or not.
25 I thought you testified about seeing

1 something related to asbestos during the
2 February 7th inspection. Did I hear that
3 correctly?

4 A Yes, I did.

5 Q Okay. Can you explain what you
6 found that was related to asbestos in the
7 inspection?

8 MS. RODRIGUEZ: Could we go back on
9 the record because I think what you said was
10 and I could be wrong, not that he saw but
11 that somebody told him that that was the
12 reason -

13 THE JUDGE: He was reading a list
14 and it included suspected asbestos prior to
15 receiving this.

16 MS. RODRIGUEZ: I am sorry. Then what
17 is he referring to? It is just that I
18 didn't -

19 THE JUDGE: That is what he is
20 inquiring, hazard 2.

21 MR. LLORENS: Yes.

22 MS. RODRIGUEZ: I am sorry, Your Honor,
23 I didn't hear then the beginning of the
24 question. Sorry, counsel.

25 EXAMINATION CONTINUED

1 BY MR. LLORENS:

2 Q My question, I had a note here
3 when I heard the word asbestos and I put in
4 quotes -

5 A You heard that word twice.

6 Q And I asked him about his usage of
7 that word.

8 MS. RODRIGUEZ: Oh, okay, I am sorry.

9 MR. LLORENS: And he was explaining
10 about that.

11 MS. RODRIGUEZ: And I am sorry that I
12 interrupted.

13 THE WITNESS: In two occasions I
14 mentioned how we obtained that information.
15 One was by information that was provided by
16 Mr. Hernandez when we went to the facility on
17 the 7th and the other one was by means of
18 our contractor entering the warehouse while
19 they were performing their assessment, they
20 saw ceiling that could potentially contain
21 asbestos. Basically ASM. We also questioned
22 the Port of Ponce as to the whether they
23 knew, they had any knowledge whether they
24 were these shingles containing asbestos and
25 they stated that, yes, they did contain

1 asbestos.

2 EXAMINATION CONTINUED

3 BY MR. LLORENS:

4 Q Okay and I believe and again if I
5 am being repetitive, I apologize, I was
6 taking notes and I want to make sure I
7 understood what your testimony was so that
8 if I have a follow up but there was a bit of
9 testimony about a lack of funds from Ponce
10 to implement the situation but after a
11 couple of days they got the money. I thought
12 I heard that the contractor for the Port
13 Authority agreed to pay for the efforts, did
14 I misunderstand that?

15 A You misunderstood. I said very
16 clearly that they have issues obtaining
17 monies immediately to address the problem
18 but they did not get money, they entered
19 into some sort of which I wasn't involved,
20 some sort of an agreement with the
21 contractor for Las Americas Port, the people
22 that are working on the landscaping and so
23 forth and buildings and they actually hired
24 a clean up contractor to perform the site
25 stabilization.

1 Q What was the last thing you said?

2 A Site stabilization.

3 Q Okay. So it wasn't they were paid,
4 they just hired those guys to do it?

5 A I did not say that.

6 Q I am sorry.

7 A I repeat again, the site
8 stabilization was performed by a contractor
9 for Puerto Las Americas.

10 Q Puerto Las Americas, right.

11 A Under no circumstances, the only
12 relationship they had with Port of Ponce is
13 that that port is going to be called that
14 way but the actual construction of Puerto
15 Las Americas had a contractor that contract
16 needed to I guess eventually work on the,
17 where Building 6 was or whatever and they
18 had interest, what their contractor
19 agreement was for Ponce with them to us it
20 is of no consequence. What we want to make
21 sure that happen is that the site was
22 stabilized.

23 Q Right. Okay and on what date do
24 you understand that all that was resolved
25 and the site stabilization commenced?

1 A I do not recollect when that was
2 resolved.

3 Q Now, with regard to the FNFI that
4 you testified was transmitted to Aguakem,
5 did you ever receive any response from
6 Aguakem with regard to that?

7 A To my best of my recollection I
8 never received one, a response.

9 Q Putting aside the FNFI, did you
10 ever hear from Aguakem or a representative
11 of Aguakem regarding warehouse number 6?

12 MR. MATEO DURANGO: Objection, asked and
13 answered.

14 THE JUDGE: No. I will allow the
15 question.

16 THE WITNESS: What time frame are you
17 talking about?

18 EXAMINATION CONTINUED

19 BY MR. LLORENS:

20 Q Well, let's try from February 7th
21 to say March 31st.

22 A It is, if I remember correctly I
23 did spoke to Mr. Unanue in that, not within
24 the close proximity of the requirements
25 under the FNFI but after the fact. I did

1 spoke to him, I don't remember what we spoke
2 but again it had to do with the invitation,
3 you know, to perform the, you know, assist
4 the Port of Ponce in the clean up.

5 Q Right.

6 A Or site stabilization.

7 Q Did you receive any communication
8 from any attorney from Aguakem?

9 A To the best of my recollection on
10 that period, no. During the AOC, yes.

11 Q Did you receive an e-mail from an
12 attorney from Aguakem on March 4, 2006?

13 A I do not recollect.

14 Q Is your e-mail address Gonzalez.--
15 excuse me. That is not it. Is it
16 rodriguez.angel@epa.gov?

17 A It is incorrect.

18 Q Okay.

19 A My address is
20 Rodriguez.angel@epa.gov.

21 Q How do you spell Angel?

22 A A-N-G-E-L but you stated Angel.

23 Q Okay but the spelling A-N-G-E-L,
24 that is your e-mail, right?

25 A That is correct.

1 Q Okay. Putting aside everything I
2 just asked you about, do you recall the
3 first time you spoke with Aguakem or a
4 representative of Aguakem regarding the
5 warehouse at the port?

6 A Again, to the best of my
7 recollection when I spoke to Mr. Unanue is
8 the only person that I remember talking to.
9 I mentioned the fact that I issued a Field
10 of Notice of Federal Interest; the FNFI.
11 Maybe I should say FNFI, regarding the FNFI
12 that I had issued and again inviting them to
13 participate, to assist the Port of Ponce.
14 Their big deal with Port of Ponce was they
15 had to go through the Assembly. This
16 facility is not owned by the Port Authority
17 of Puerto Rico. This is owned by the
18 Municipality of Ponce so whatever funding
19 they generated or whatever monies they are
20 going to spend, it has to be approved by La
21 Asemblea Municipal. Okay and that and the
22 amount that they have to spend on this, you
23 know, was considerable.

24 Q Did there come a time when you had
25 discussions with Aguakem about a proposed

1 administration on consent?

2 A I did with our attorneys. What is
3 the name, Port of Ponce attorneys and our
4 EPA attorney and the attorney that was
5 representing Aguakem at that time.

6 Q Okay. Do you know when those
7 started to, when those commenced?

8 A I do remember we began site action
9 on June but I don't remember precisely.
10 Again in June of 2008, I don't remember
11 precisely the date that we begin the
12 conversation.

13 MR. LLORENS: I just want to hand you, I
14 think the AOC was moved into direct, the
15 administrative Order on Consent?

16 MS. RODRIGUEZ: Yes.

17 MR. MATEO DURANGO: Exhibit 13.

18 THE JUDGE: Exhibit 13.

19 MR. LLORENS: Yes.

20 EXAMINATION CONTINUED

21 BY MR. LLORENS:

22 Q And EPA's Exhibit 13, you have
23 already testified about this document. This
24 is the Administrative Order on Consent
25 that was executed in June of 2007, correct?

1 A Right.

2 Q Would you agree with me that prior
3 to the execution of the document -

4 A Excuse me for a second. I want to
5 make sure I look at this, 2007 in July.

6 Q Was it July?

7 A Yes.

8 Q What day on July was that?

9 A July 27th.

10 Q July 27th?

11 A Yes. Is when the last signatory
12 signs.

13 Q Is there a date when Aguakem
14 signed?

15 A The 24th.

16 Q The 24th of July?

17 A Ahum.

18 Q Okay.

19 A Yes, yes.

20 Q All right. Would you agree with me
21 that whatever communications you had about
22 the negotiation of the document, they
23 preceded the execution of the document?

24 A Correct. That is correct.

25 Q So these negotiations would have

1 taken place no later than July of 2007.

2 A Right.

3 Q Okay. Now, what was going on in
4 terms of the stabilization and the
5 management of the site from let's say
6 February 10 to July 30 of 2007?

7 A Well, the company like I mentioned
8 in March 28th concluded the site study of
9 2008, they concluded the site stabilization.
10 They actually moved the material from
11 Building 6 to Building 5 based on a request
12 to do so. I had to make sure that the
13 building had the appropriate or the
14 safeguards that were required in such a way
15 that they had the space in order to properly
16 stage every chemical, meaning oxidizers that
17 become flammable, strong corrosives away
18 from strong acids like you need to require a
19 large space. When that was not possible again
20 to have that type of spacing and the ability
21 to work, two roll ons were actually rented
22 and placed over by the port side that were
23 designed specifically to store drums and
24 keep a low temperature by meaning of venting
25 through fans under sunny conditions and then

1 just secure them at that point. Building
2 number 6 was eventually demolished.

3 Q When were the materials
4 transferred from Building 6 to Building 5,
5 if you recall?

6 A I don't recall.

7 Q Was it before the execution of the
8 Administrative Order on Consent?

9 A It was, according to the dates, it
10 was after.

11 Q According to what dates?

12 A Excuse me?

13 Q According to what dates, what
14 dates are you referring to?

15 A Again to March 20th of 2008 is to
16 the best of my recollection where the
17 stabilization concluded and then the final
18 disposal of - again, the AOC, the
19 Administrative Order on Consent had nothing
20 to do with where the chemicals were but
21 actually the proper, for the proper disposal
22 of these chemicals so it could have been
23 approved way before this stabilization
24 process began.

25 Q I didn't follow that answer. How

1 do you know that when the materials were
2 moved from Building 6 to Building 5, if you
3 know?

4 A I was inside. I was asked by the
5 Port of Ponce.

6 Q You were asked when the materials
7 were moved?

8 A No, no. What I am saying is I was
9 asked if they could remove them from one
10 area to another.

11 Q Okay, they asked you if they could
12 do it and you said it was okay. Now my
13 question is -

14 A Yes, it was based on specifics.

15 Q Yes. Of course, how to do it and
16 all of that.

17 A Right.

18 Q But my question is, when did you
19 approve it and when did the Port of Ponce
20 move the materials from Building 6 to
21 Building 5?

22 A I don't recall.

23 Q Okay, Could it have been in March
24 of 2007?

25 A I do not recollect.

1 Q But it is possible that it was in
2 March?

3 A It is possible. Again this is one
4 of them.

5 Q Right. With regard, which makes me
6 think of something. With regard to the FNFI
7 that you sent Aguakem Caribe, were you asked
8 to produce a copy of that in this
9 proceeding?

10 A To produce a coy of?

11 Q The FNFI that you issued o Aguakem
12 Caribe.

13 A No, I was not asked.

14 Q Okay. Was there ever a plan to
15 transport the material subject of the FNFI
16 in this dispute to a facility in Alabama?

17 A Was there a plan?

18 Q Was there a time when there was a
19 plan to transport these materials to a
20 hazardous waste facility in Alabama?

21 A Yes. Basically there were plans
22 in a very generic way that they have to
23 provide a facility to dispose of, whether it
24 is an industrial landfill or a hazardous
25 material landfill, they have to provide that

1 information to us for approval based on what
2 we call the on site disclosure rule. We will
3 take that information of the proposal, we
4 will look into it to see if this complies
5 with the RCRA Regulations. They are in good
6 standing and so forth and at that time they
7 were. That means a month after, a week
8 later, under an inspection it might have
9 become not under RCRA Regulations or, you
10 know, compliance with RCRA Regulations but
11 the fact is that when we do so, the law, the
12 onsite disposal rule allow us to check on
13 that one specific time frame and if it is
14 okay, you know, we get pretty much a letter,
15 a statement from the RCRA contact for
16 outside disposal rule, under the outside
17 disposal rule then we will tell the
18 responsible party whoever wants to dispose
19 there specifically under the AOC, or under a
20 FNFI go ahead and dispose. We actually
21 provide a copy if they want to as well of
22 our findings.

23 Q Okay but I think your answer was
24 yes there was a time when there was a plan
25 to transport the materials to a hazardous

1 waste facility in Alabama?

2 A Again, the work plan dictates the
3 possibility of a time and I remember,
4 mentioned also that there was a time line
5 that was issued because we requested that.
6 The contractor has to stick to that time
7 line as much as possible as they can and to
8 the work plan as much as they can otherwise
9 whether there was a Field Notice of Federal
10 Interest or whether is under the AOC, to
11 request, we allow them to change those
12 dates.

13 Q Right. Was there a change in the
14 time line plan to have the materials
15 transported to a hazardous waste facility in
16 Michigan as opposed to the original plan
17 that was going to have it transported to a
18 hazardous waste facility in Alabama?

19 MR. MATEO DURANGO: Objection,
20 relevance.

21 THE JUDGE: Where are we going with
22 this?

23 MR. LLORENS: The witness testified that
24 there was delay on the part of Aguakem with
25 regard to the Administrative Order on

1 Consent. I am trying to establish and in
2 fact the delay was not the fault of Aguakem
3 Caribe.

4 THE JUDGE: I don't recall testimony
5 concerning that.

6 MR. LLORENS: If we agree that there
7 would be no testimony that he says that
8 there was a delay by the part of Aguakem
9 Caribe, then -

10 THE JUDGE: No.

11 MS. RODRIGUEZ: No.

12 THE WITNESS: I never stated that there
13 was a delay on the part. There is always
14 delays but I never stated that.

15 MR. LLORENS: Okay. I heard
16 differently, then there is no issue for me
17 to keep pursuing on that. One second.

18 THE JUDGE: Why don't we take a five
19 minute break.

20 (Whereupon a recess was taken)

21 THE JUDGE: I just want to remind the
22 witness he is still under oath.

23 THE WITNESS: Yes.

24 EXAMINATION CONTINUED

25 BY MR. LLORENS:

1 Q Mr. Rodriguez, what testing did
2 you order or supervise to determine what the
3 materials found at the warehouse facility
4 were?

5 A We did not perform any testing
6 during the pre notice of federal interest
7 action. What we did is we observed the
8 conditions of the site, the labels that were
9 on the different tanks and we performed air
10 monitoring which is a form of sampling and
11 we also did what we call field sampling of
12 the liquids by means of a pH testing strips.

13 Q Did you later do anymore
14 comprehensive testing to determine what the
15 materials were?

16 A No.

17 Q Okay.

18 MR. LLORENS: No further questions.

19 MS. RODRIGUEZ: Your Honor, just a brief
20 redirect.

21 THE JUDGE: Yes, please.

22 REDIRECT EXAMINATION

23 BY MS. RODRIGUEZ:

24 Q Mr. Rodriguez, you mentioned and I
25 don't know if I heard right or not, that

1 when the counsel, Brother Counsel asked the
2 reason, the Puerto De Ponce had mentioned to
3 you the reason why Aguakem left. You said
4 because eviction?

5 A They had been evicted five years
6 prior to ourselves showing there but they
7 had continued to occupy the facility all the
8 way up to it was a year or two years before
9 they were, the Port of Ponce began pushing
10 to force them out.

11 Q So, let me see if I understand
12 what you said. When you say eviction is that
13 they had been, from December, let's take
14 December when they left. They had been
15 evicted, Port of Ponce told you that they
16 had been evicted five years?

17 A Five years prior to.

18 Q And they had not left?

19 A They had not left and they
20 eventually end up bringing the authorities.

21 Q In order for them to leave?

22 A That is correct.

23 MS. RODRIGUEZ: That will be all, Your
24 Honor, but we will reserve our witness in
25 case we need to use him when the Respondent

1 presents his case as a rebuttal witness.

2 THE JUDGE: Thank you very much for your
3 testimony today but you have been reserved.

4 THE WITNESS: Yes. I understand. Should
5 I leave the exhibit here?

6 THE JUDGE: Please. Oh, no, please hand
7 it to the court reporter. Is it my
8 understanding then that concludes the EPA's
9 case in chief?

10 MS. RODRIGUEZ: Yes, Your Honor, I am
11 sorry. That concludes the EPA's
12 presentation of this case.

13 THE JUDGE: Okay. Well, we have jumped
14 ahead in time. It is quarter of four. Now, I
15 understand that you have your CPA as one of
16 the two witnesses who will be appearing
17 tomorrow morning?

18 MR. LLORENS: That is correct.

19 THE JUDGE: Okay and will he be here at
20 nine A.M.?

21 MR. LLORENS: He will.

22 THE JUDGE: Okay. Would you like to
23 begin the testimony of your other witness?

24 MR. LLORENS: Absolutely not, Your
25 Honor. I frankly did not expect to be

1 putting on a case today and I am not
2 prepared. I expected to start tomorrow.

3 MS. RODRIGUEZ: I mean, Your Honor, I
4 would object to that. I mean, we have tried
5 to move this case, you know, as fast as we
6 can and he requested a hearing. I think
7 Brother Counsel should have been prepared. I
8 mean nobody knows when, you know, a
9 particular witness is going to end and he
10 should have been prepared here to begin, you
11 know, his presentation on his case. We are
12 prepared to do the redirect and I think it
13 would then be a waste of precious of time
14 right now to continue with the case.

15 MR. LLORENS: I am not prepared, Your
16 Honor. I mean, if you make me do it, I will
17 do it. I am not prepared.

18 THE JUDGE: Okay. How long do you
19 anticipate the direct of the CPA,
20 approximately?

21 MR. LLORENS: Thirty five, forty
22 minutes.

23 THE JUDGE: Okay and how about of your
24 second witness?

25 MR. LLORENS: Two hours.

1 THE JUDGE: Two hours. So that would
2 allow us to conclude it on Thursday in terms
3 of Respondent taking one day. I think it
4 would be reasonable to presume a two day
5 presentation and it is unfortunate that we
6 won't be able to get started but given the
7 circumstances that we did move ahead quite
8 quickly and it was our understanding that
9 there would be at least one more witness, I
10 don't think it is terribly unreasonable to
11 start fresh tomorrow morning and it sounds
12 like we will be able to wrap it up at the
13 latest at five o'clock tomorrow.

14 MS. RODRIGUEZ: Your Honor, I do want to
15 state for the record that counsel should
16 have been completely prepared when he came
17 in today.

18 THE JUDGE: The objection is noted.
19 Well, if there is nothing further, I guess
20 we can close for today but with the clear
21 intent of we will move things along quickly
22 tomorrow morning.

23 MR. LLORENS: I have every intention,
24 Your Honor, of completing my case in chief
25 in less than a day, frankly. I have two

1 witnesses. One is an accountant who I don't
2 know how long it will take. It certainly
3 won't be because the direct is very long.

4 THE JUDGE: Okay. With that
5 understanding then, I will grant the
6 request.

7 MR. LLORENS: Thank you, Your Honor.

8 THE JUDGE: Thank you.

9 MS. RODRIGUEZ: Your Honor, at what time
10 tomorrow morning?

11 THE JUDGE: Nine A.M.

12 MS. LLORENS: Yes.

13 (The hearing adjourned at 3:45 P.M.)
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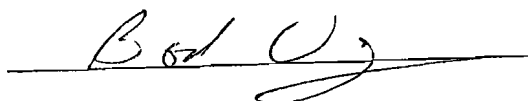
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REPORTER'S CERTIFICATE

I, BOABDIL VAZQUETELLES,
Court Reporter;

DO HEREBY CERTIFY, That the
foregoing transcript is a full, true and
correct record of the testimony that was
electronically recorded by me and thereafter
reduced to typewritten form.

I FURTHER CERTIFY, that I am
in no way interested in the outcome of the
case mentioned in said caption.



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