UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

IN THE MATTER OF:	
Aguakem Caribe, Inc.	**COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING**
Respondent	
Proceeding under Section 3008 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6928	Docket No. RCRA-02-2009-7110

I. COMPLAINT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. §§ 6901 et seq. (referred to collectively as the Act or RCRA). The United States Environmental Protection Agency (EPA) has promulgated regulations governing the handling and management of hazardous waste and used oil at 40 C.F.R. Parts 260 through 279.
This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING (Complaint) serves notice of EPA's preliminary determination that Aguakem Caribe, Inc. (hereinafter "Respondent" or "Aguakem") has violated requirements of RCRA and regulations implementing RCRA, concerning the management of hazardous waste at its facility in Ponce, Puerto Rico.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), whereby the Administrator of EPA may, if certain criteria are met, authorize a state to operate a "hazardous waste program" (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the federal hazardous waste program, the Commonwealth of Puerto Rico is not authorized by EPA to conduct a hazardous waste management program under Section 3006 of RCRA, 42 U.S.C. § 6926. Therefore, EPA retains primary responsibility for requirements promulgated pursuant to RCRA. As a result, all requirements in 40 C.F.R. Parts 260 through 268 and 270 through 279 relating to hazardous waste are in effect in the Commonwealth of Puerto Rico and EPA has the authority to implement and enforce these regulations.

Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), provides, in part, that "whenever on the basis of any information the Administrator [of EPA] determines that any person has violated or is in violation of any requirement of this subchapter [Subtitle C of RCRA], the Administrator may issue an order assessing a civil penalty for any past or current violation."

Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), "[a]ny penalty assessed in the order [issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a)] shall not exceed

$25,000 per day of noncompliance for each violation of a requirement of [Subtitle C of RCRA]." Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, inter alia, increased to $27,500 the maximum penalty EPA might obtain pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3) for violations occurring between January 31, 1997 and March 15, 2004 and the maximum penalty to $32,500 for violations occurring after March 15, 2004.

The Complainant in this proceeding, the Director of the Caribbean Environmental Protection Division, EPA, Region 2, who has been duly delegated the authority to institute this action, hereby alleges:

GENERAL ALLEGATIONS

Jurisdiction

1. This Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. §§ 6928(a), and 40 C.F.R. § 22.1(a)(4).

Respondent's background

2. Respondent is Aguakem Caribe, Inc., a public corporation, organized under the laws of the Commonwealth of Puerto Rico.

3. Mr. Jorge J. Unanue is the President of Aguakem Caribe, Inc.

4. To the best of EPA's knowledge, Respondent has been in the chemical manufacturing industry since at least 1995.

5. Respondent manufactures a variety of chemical products that are used in private and public owned potable and wastewater treatment plants.

6. Respondent, at the present time conducts its manufacturing business at another facility, located at PR-132, Villa Final St., Canas Ward, Ponce, P.R. (hereinafter the "Canas facility"). The property where the facility is located is owned by La Huella Taina, Inc. Mr. Jorge Unanue is the President of Aguakem Caribe, Inc., as well as La Huella Taina, Inc.

7. The Respondent began operations at the Canas facility described in paragraph "6", around October 2006.

8. Respondent's former facility, a warehouse identified as an area in Building 6 on the Puerto de Ponce, a property owned by the Port of Ponce Authority ("PPA"), is located in PR-12, Santiago de los Caballeros Ave., Ponce, Puerto Rico (hereinafter the "Former Facility").

9. Respondent had a lease agreement for the Former Facility with PPA, since approximately June 28, 1995 to approximately May 23, 2005, for an area of twenty-three thousand, eight hundred and six square feet (23, 806 ft ^{2}) within Building 6.

10. The Former Facility, consisted of the following areas:
    a. Office;
    b. Laboratory;
    c. Tank farm;
    d. Secondary containment system;
    e. Process Area;
    f. Storage Area and
    g. Unloading/loading dock

11. Upon information and belief, Respondent was the operator of the area described in paragraphs "8-10" from at least June 28, 1995 to approximately December 28, 2006.

12. On or about January 29, 2007, EPA received a notification from PPA, regarding a former tenant, which they identified as Respondent, that allegedly had left abandoned chemical products and equipment at PPA's property, in a building identified as Building 6.

13. On or about February 2, 2007, EPA representatives conducted a compliance evaluation inspection (CEI) under 3007 of RCRA, 42 U.S.C. § 6927 (the "Inspection"). The purpose of the inspection was to evaluate Respondent's compliance at its Former Facility, as described in paragraph "8", with the applicable requirements of RCRA and its implementing regulations.

14. As part of the CEI, EPA inspectors discovered the presence of various spills and deteriorated containers (e.g. drums, tanks).

15. On or about February 2, 2007, EPA representatives conducted a compliance evaluation inspection (CEI) under 3007 of RCRA, 42 U.S.C. § 6927 at Respondent's Canas facility (the "Canas Inspection"). The purpose of the inspection was to evaluate Respondent's compliance at its current facility in Canas Ward, with the applicable requirements of RCRA and its implementing regulations.

16. EPA held a closing meeting with Respondent's representative, Mr. Jose Manuel Unanue, Aguakem's Business Manager to inform him of EPA's findings during both inspections. EPA asked Mr. Unanue about Respondent's operations at its Former Facility in the Port of Ponce. Mr. Unanue informed EPA representatives that they ceased operations at its Former Facility in December 2006.

17. Aguakem removed equipment and materials from its Former Facility to its Canas Facility prior to December 28, 2006.

18. Respondent is a "person" (as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.

19. Respondent's Former Facility, constitutes a "facility," within the meaning of 40 C.F.R. § 260.10.

Notification of Hazardous Waste Generation

20. The Respondent did not obtain an EPA ID number for the operations it conducted at the Former Facility.

21. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, EPA's RCRA database reveals that PPA, the owner, filed a Notification of Regulated Waste Activity Form for Respondent's Former Facility, and identified the site name as "*Aguakem Facility in Within the Ponce Muni Pier Property*". The form was dated December 11, 2007, and filed in the course of carrying out removal and disposal activities at the Former Facility.

22. The notification was prepared by an employee and/or agent of PPA in the course of carrying out his/her duties.

23. In the Notification, PPA indicates that as part of the clean up activities at the Respondent's former facility, 1,000 kg/month or more of hazardous waste described as waste codes D002 and D007 were generated.

24. In response to the Notification, EPA provided PPA with EPA Identification Number PRR000021188 for the facility referred to in the Notification.

25. The location described in the Notification is Respondent's Former Facility as set forth in paragraph "8" above.

Respondent's Generation and Storage of Waste

26. On February 2, 2007, EPA conducted an Inspection of a warehouse identified as Building 6, on property of the Port of Ponce in the Municipality of Ponce. At the time of the Inspection, EPA found approximately 1,000 kg of various chemical materials in containers and tanks that were abandoned by PPA's former tenant, the Respondent, Aguakem Caribe, Inc.

27. The warehouse was Respondent's Former Facility mentioned above in paragraph "8", which it left on or about December 28, 2006. Respondent left behind chemical containers (e.g. drums and tanks), along with related ancillary equipment. Respondent also left other items generated or used during the course of doing business, like facility documents and office supplies.

28. Respondent was a generator of "solid waste", as that term is defined in 40 C.F.R. § 261.2.

EPA Investigative Activities

29. On June 27, 2007, EPA entered into an Administrative Order on Consent (AOC) with PPA and Respondent, under Section 104 of CERCLA, 42 U.S.C., to address the release and/or threatened release from the abandoned material, by conducting a removal action at Respondent's Former Facility (Case No. 02FL). The abandoned material was analyzed prior to disposal and was discarded as hazardous waste and non hazardous waste.

30. From approximately February 14, 2007 to approximately August 29, 2008, PPA conducted removal actions at Building 6 under EPA's oversight as per the AOC mentioned in paragraph 29.

31. As part of the removal action, PPA disposed of the following material:

    a) 375 lbs. of lab packs including oxidizers, corrosives, flammables and others;

    b) 93 yd^3 of crush drums, tote bins, and PPE

    c) 95,400 lbs. of corrosive solids and oxidizers

    d) 20,435 gals. of corrosive liquids and oxidizers

32. On May 12, 2008, EPA sent Respondent a "RCRA § 3007, Request for Information Letter" (Ref. No. CEPD-RCRA-08-3007-0000-002) (the "First Request"), requiring the submission of certain information about its operations at the Former Facility and its Canas Facility.

33. On or about November 6 2008, Respondent submitted a partial response (the "First Response") to the First Request letter. Respondent did not address the portion of the request about its Former Facility. Respondent's only answer as to the Former facility was that it was no longer under its control.

34. On May 6, 2009, EPA sent Respondent a "Second RCRA § 3007 Information Request Letter" (Ref. No. CEPD-RCRA-09-3007-0000-01) (the "Second Request") notifying Respondent that it had failed to comply with EPA's First Request by not providing relevant information about the operations of its Former Facility. The Second Request required that Respondent submit a complete response no later than fifteen days of receipt of the letter.

35. On or about June 15, 2009, Respondent contacted EPA to request a fifteen day extension to submit its response. EPA granted the extension.

36. On or about June 30, 2009, Respondent submitted its second response (the "Second Response").

COUNT 1 – Failure to Make Hazardous Waste Determinations

37. Complainant re-alleges each applicable allegation contained in paragraphs "1" through "36", as if fully set forth herein.

38. Pursuant to 40 C.F.R. § 262.11, a person who generates "solid waste," as defined in 40 C.F.R. § 261.2, must determine if the solid waste is a hazardous waste using the procedures specified in that provision.

39. Pursuant to 40 C.F.R. § 261.2, subject to certain exclusions, a "solid waste" is any "discarded material" that includes "abandoned," "recycled" or "inherently waste-like materials," as those terms are further defined therein.

40. Pursuant to 40 C.F.R. § 261.2(b), materials are solid wastes if they are "abandoned" by being "disposed of," "burned or incinerated" or "accumulated, stored, or treated before or in lieu of being abandoned by being disposed of, burned or incinerated."

41. Prior to at least February 2, 2007, Respondent generated at it's Former Facility at least the following materials:

    a. One hundred and fifteen (115) 1-cubic yard (1,040 liters) containers identified as Sump Water Low pH;
    b. Fifteen (15) 55-gallon drums with sodium aluminate;
    c. Thirteen (13) 55-gallon drums with an unidentified material;
    d. One (1) 55-gallon drum with Polyacrylamide Emulsion;
    e. Nine (9) 55-gallon drums with unknown corrosive substance;
    f. Four (4) 5-gallon containers with "Superfloc C-59;"
    g. Five (5) 5-gallon pails with an unknown substance;
    h. Six (6) 1-cubic yard (1,040 liters) containers with hydrochloric acid;
    i. One (1) 2,600 gallon above ground storage tank with ferrous chloride;
    j. One (1) 2,600 gallon above ground storage tank with ferric sulfate;
    k. Three (3) 2,600 gallon above ground storage tanks labeled as corrosive tank
    l. Two (2) 1-cubic yard (1,040 liters) with ferric chloride;
    m. Two (2) 55-gallon drums with Water Treatment Flocculant solution;
    n. Eight (8) 55-gallon drums with Corrosive Quim PAC;
    o. Five (5) 55-gallon drums with APAK 4050 (Polyaluminum Chloride);
    p. Various 5-gallon containers with unknown laboratory waste; and,
    q. Numerous abandoned bottles with chemical reagents at the Chemical Laboratory area.

42. Prior to at least February 2, 2007, Respondent abandoned at its Former Facility the materials identified above in paragraph "41".

43. Each of the materials identified in paragraph "41" above is an "abandoned material" and "solid waste," as defined in 40 C.F.R. § 261.2.

44. As of at least February 2, 2007, Respondent had not determined if the materials identified in paragraph "41" constituted hazardous wastes.

45. Respondent's failure to determine whether each solid waste generated and abandoned at its Former Facility constitutes a hazardous waste is a violation of 40 C.F.R. § 262.11.

COUNT 2 – Failure to Minimize Risks of a Fire, Explosion, or Release

46. Complainant re-alleges each allegation contained in paragraphs "1" through "36", inclusive, as if fully set forth herein.

47. The Respondent became a generator of hazardous waste as defined in § 260.10 on or about December 28, 2006.

48. Pursuant to 40 C.F.R. § 262.34(a)(4), a generator must comply with the requirements for owners or operators in Subparts C, 40 C.F.R part 265.

49. Pursuant to 40 C.F.R. § 265.31 (of Subpart C), a facility must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment.

50. Prior to at least February 2, 2007, the Respondent had failed to implement practices to satisfactorily maintain and operate its Former facility to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste at the following areas:

    a. Outside Area (Northwest) of its Former Facility in Building 6 - One (1) 1-cubic yard (1,040 liters) corroded container with a liquid identified as "FERROUS CHLORIDE," was on top of a stormwater catch basin. The stormwater at this area discharges directly into the Caribbean Sea, located at approximately 250 meters from the catch basin.

        1. Ferrous chloride, CAS No. 7758-97-3, the material safety data sheet (MSDS) describes it as a corrosive that dissolves in water to form an acidic solution (e.g. hydrogen chloride) of a pH less than two (<2).

        2. Ferrous chloride is used by the Respondent to manufacture a ferrous chloride solution identified as A-FERRIC 2000.

    b. Inside Area (North Area) of its Former Facility in Building 6 - Several stacks of 1-cubic yard containers labeled as "Sump Water-Low pH," APAK 4050 and A-Ferric were located from the west wall to the center of its Former Facility in Building 6, with other 55-gallon plastic and corroded metal drums labeled as "Sodium Aluminate".

1. APAK-4050 is Respondent's brand name for a coagulant/flocculant product. According to the product's MSDS, it has a pH of 1.5 to 2.5, it is incompatible with alkalis. On thermal decomposition it may release toxic gases such as aluminum, hydrochloric acid, and dichlorine.

2. A-FERRIC is Respondent's brand name for a line of products. According to the product's MSDS, its main ingredients are ferric chloride, hydrochloric acid and water. It has a pH of less than one (<1), and it may produce explosive hydrogen gas.

3. Sodium Aluminate, CAS No. 1302-42-7, a corrosive and inorganic salt. Soluble in water to form strong alkaline solutions.

4. According to the MSDS, containers of sodium aluminate must be kept in a ventilated area and away from ignition sources. In contact with metal it may evolve a flammable fume.

c. Southeast Area of its Former Facility in Building 6 - Several stacks of $1yd^3$ containers and 55-gallon plastic drums were placed on wood pallets on the east side of the Former Facility in Building 6. Most of the drums were labeled as "Sodium Aluminate," two of them were leaking and one was uncovered.

d. Southwest Area of its Former Facility in Building 6- Five (5) 2,600-gallon above ground storage tanks and respective secondary containment units were located in this area. The tanks were identified as "Ferric Sulfate", "Ferrous Chloride," and as "Corrosive Solution". The level indicator of the tanks showed as being one-eighth (1/8) full. The floor of the secondary containment unit had a yellow powder material spread all over its surface. In addition, within this area one (1), 30-gallon and 5-gallon containers were identified as "Sodium Benzoate" and the other contained an unidentified material.

1. Ferric sulfate, CAS No. 10028-22-5, a ferric salt used as coagulant or flocculant, for odor control to minimize hydrogen sulfide release, for phosphorus removal, and as a sludge thickening, conditioning and dewatering agent.

2. Sodium benzoate, CAS No. 532-32-4, organic solid, the MSDS indicates that it must be stored in a cool, dry, and ventilated area away from sources of heat, moisture and incompatibilities. It is incompatible with acids, ferric salts and strong oxidizers. Fire is possible at elevated temperatures or by contact with an ignition source.

e. The Former Facility in Building 6- The surface of the floors, including broken secondary containment units, had spills of different substances (e.g. granular material, wet sediment) at diverse locations. At the time of the Inspection, all accesses were unlocked and opened, exposing to the environment and

construction personnel that were working in the vicinity of Former Facility, the scattered uncontained material, such as the granular material and the vapors coming from the opened containers and floor spills,. The Former Facility also had several chemicals spills, such as hydrochloric acid, sulfuric acid, low pH sump water, ferrous chloride, ferric sulfate, sodium aluminate, and other spills from containers with corrosives, presenting a potential contamination to the soil surface and waterway in the area, specifically the Caribbean Sea located at approximately 250 meters from the facility.

51. Respondent's failure to properly manage the contents of the containers, which contained hazardous waste, to protect the containers from deterioration, and to properly manage the spills as described in paragraph "50" above, indicates that Respondent did not maintain or operate its Former facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. This failure constitutes a violation of 40 C.F.R. § 265.31 as referenced by § 262.34(d)(4).

COUNT 3 – Failure To Comply With Used Oil Requirements

52. Complainant realleges each allegation contained in paragraphs "1" through "36", inclusive, as if fully set forth herein.

53. Pursuant to 40 C.F.R. § 279.22(c)(1), containers used to store used oil at generator facilities must be labeled or marked clearly with the words "USED OIL"

54. At the time of the Inspection, and, at times prior thereto, Respondent was storing used oil in a 5-gallon drum. Respondent had failed to label or mark the used oil container with the words "USED OIL"

55. Respondent's failure to have the container described in paragraph "54" above, labeled with the words "Used Oil", constitutes a violation of 40 C.F.R. § 279.22(c)(1).

II. PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements." To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address:

http://www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf

This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. The penalty amounts were amended for violations occurring between January 31, 1997 and March 14, 2004. The maximum civil penalty under Sections 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for those violations is $27,500 per day of violation. For violations after March 15, 2004, the maximum penalty is $32,500 per day of violations.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the following civil penalty for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint is included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included as Attachments II, and III, below.

In view of the above-cited violations, and pursuant to the authority of Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations and any good faith efforts by the Respondent to comply with applicable requirements, the Complainant herewith proposes the assessment of a civil penalty in the total amount of Three Hundred Thirty Two Thousand Nine Sixty Three dollars ($332.963.00) as follows:

Count 1:	$ 114,598.00
Count 2:	$ 214,497.00
Count 3:	$ 3,868.00
Total Proposed Penalty:	$332,963.00

III. COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant herewith issues the following Compliance Order to the Respondent, which shall take effect (i.e., the effective date) thirty (30) days after service of this Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. See 42 U.S.C. § 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c):

1. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall always, to the extent it has not already done so, and to the extent possible, make required determinations whether solid wastes generated by Aguakem are hazardous wastes. Respondent shall comply with 40 C.F.R. § 262.11 for any newly generated solid waste.

2. Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall always, take all necessary steps to minimize the possibility of a fire, explosion or

any unplanned sudden or non-sudden release of hazardous waste or hazardous constituents.

3. Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall always make sure that all containers with "Used Oil" are properly labeled with the words "Used Oil".

4. All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

   Zolymar Luna
   U.S. Environmental Protection Agency, Region 2
   Caribbean Environmental Protection Division
   Response & Remediation Branch
   Centro Europa Building, Suite 417
   1492 Ponce de Leon Avenue
   San Juan, Puerto Rico 00907

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or Commonwealth) provisions, nor does such compliance release Respondent from liability for any violations at the Facility. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at the Facility.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order is liable for a civil penalty of up to $32,500 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by EPA.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," ("CROP") and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint, Compliance Order and Notice of Opportunity for Hearing."

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint (40 C.F.R. §§ 22.15(a) and 22.7(c)). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and the Assistant Regional Counsel mentioned in Section VI below and any other party to the action (40 C.F.R. § 22.15(a)).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge (40 C.F.R. § 22.15(b)). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied (40 C.F.R. § 22.15(b)).

The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing (40 C.F.R. § 22.15(b)).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held (40 C.F.R. § 22.15(c)). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication (40 C.F.R. § 22.15(c)). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final (40 C.F.R. § 22.37).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions

of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation (40 C.F.R. § 22.15(d)). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion (40 C.F.R. § 22.17(a)). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations (40 C.F.R. § 22.17(a)). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c) as set forth in 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c) as set forth in 40 C.F.R. § 22.17(d).

D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB"; see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review.(40 C.F.R. § 22.27(d)).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (30) days after the initial decision is served" (40 C.F.R. § 22.30(a)). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

VI. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations (40 C.F.R. § 22.18(b)). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any

information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Lourdes del Carmen Rodríguez, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, PR 00907
Telephone: (787) 977-5819

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing (40 C.F.R. § 22.18(b)(1)). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c). A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement (40 C.F.R. § 22.18(b)(2)). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waive its right to appeal the final order that is to accompany the consent agreement (40 C.F.R. § 22.18(b)(2)). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed (40 C.F.R.§ 22.18(b)(3)).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified in Section VI.

COMPLAINANT:

DATE: September 25, 2009

Carl Axel-Peter Soderberg
Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2

To: Mr. Jorge Unanue
President
Aguakem Caribe, Inc.
PO Box 177
Mercedita, PR 00715-9998

cc: Ms. María V. Rodríguez, Director
Land Pollution Regulation Program
Puerto Rico Environmental Quality Board
P.O. Box 11488
Santurce, PR 00910

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

IN THE MATTER OF: Aguakem Caribe, Inc. Respondent: Proceeding under Section 3008 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6928	COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING Docket No. RCRA-02-2009-7110

CERTIFICATE OF SERVICE

This is to certify that I have on this day caused to be mailed a copy of the foregoing Complaint, with attachments, bearing docket number RCRA-02-2009-7110 and a copy of the Consolidated Rules of Practice which are codified at 40 C.F.R. Part 22, as follows:
Certified Mail/Return Receipt Requested, to:

Mr. Jorge Unanue
President
Aguakem Caribe, Inc.
PO Box 177
Mercedita, PR 00715-9998

Original and a copy of the Complaint for filing by Fed Ex:

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

Dated: September 28, 2009

ORC-CT, San Juan, Puerto Rico