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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF:  
AGUAKEM CARIBE, INC.

Respondent : COMPLAINT COMPLIANCE  
Proceedings under Section : ORDER, AND NOTICE OF  
3008 of the Solid Waste : OPPORTUNITY FOR  
HEARING  
Disposal Act, as amended, : Docket No. RCRA-  
49 U.S.C. 6928 : 02-2009-7110

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Hearing

was taken on December 9, 2010 at Federico Degetau  
Federal Building, 1560 Carlos Degetau Building,  
Courtroom 11, Fourth Floor, San Juan, Puerto Rico at  
9:25 a.m.

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2011 JAN -6 P 3:40  
RECEIVED HEARING  
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1 APPEARANCES :

2 UNITED STATES ADMINISTRATIVE

3 LAW JUDGE :

4 BARBARA GUNNING

5

6 REPRESENTING UNITED STATES

7 ENVIRONMENTAL PROTECTION AGENCY,

8 REGION 2

9 LOURDES DEL CARMEN RODRIGUEZ, ESQ.

10 ROBERTO MATEO DURANGO, ESQ.

11 REPRESENTING RESPONDENT :

12 ARMANDO LLORENS, ESQ.

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1 THE JUDGE: Are we prepared to go  
2 forward?

3 MS. RODRIGUEZ: Yes, Your Honor.

4 THE JUDGE: Counsel?

5 MR. LLORENS: Yes, Your Honor.

6 Good morning, Your Honor, good  
7 morning, Brother Counsel. The Respondent calls  
8 Mr. Eduardo Guzman as a witness.

9 THE JUDGE: Take the stand.

10 MR. LLORENS: Your Honor, I have  
11 handed to the court reporter two documents and  
12 I ask him to mark them as I.D. 2, Respondent's  
13 2A and 2B. The documents are a June 30, 2009  
14 audited financial statement from Aguakem  
15 Caribe, Inc. and June 30, 2010 audited  
16 financial statements from Aguakem Caribe, Inc.  
17 Copies of these documents have been provided to  
18 counsel for EPA and if the judge permits, I  
19 would like to provide you copies of the  
20 document.

21 THE JUDGE: That would be excellent.  
22 Now, these were initially included as either  
23 supplemental pre-hearing exchange?

24 MR. LLORENS: Yes.

25 THE JUDGE: Or pre-hearing exchange?

1 MR. LLORENS: That is right.

2 Whereupon,

3 EDGARDO GUZMAN

4 was called as a witness, having been duly  
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. LLORENS:

8 Q Ready. Good morning, Mr. Guzman.

9 A Good morning.

10 Q Could you please state your name for  
11 the record.

12 A Edgardo Guzman Villanueva.

13 Q Can you tell me what your profession  
14 is?

15 A I am a certified public accountant  
16 with active licenses in Puerto Rico and in the  
17 state of Florida and I also have a license as a  
18 certified business analyst.

19 Q Okay. How long have you been a  
20 certified public accountant?

21 A Around 28 years.

22 Q Okay.

23 THE JUDGE: I am just going to remind  
24 you. I know it may be a bit of a strain but to  
25 try to keep your voice up and project as much

1 as possible. Thank you.

2 EXAMINATION CONTINUED

3 BY MR. LLORENS:

4 Q Are you familiar with a company  
5 called Aguakem Caribe, Inc.?

6 A Yes. I have been the independent  
7 auditor of the company since the start of  
8 operations.

9 Q When was that?

10 A Oh, around thirteen or fourteen years  
11 ago.

12 Q Okay. I am going to show, if Your  
13 Honor permits, that I show the witness two  
14 documents that have been marked as I.D.  
15 Respondent 2A and 2B. Mr. Guzman, I ask you to  
16 look at Respondent I.D. 2A and 2B. Okay.

17 A Respondent's 2A is the audited  
18 financial statements for the year ended June  
19 30, 2009 and the Respondent's 2B is the audited  
20 financial statement for the year ended June 30,  
21 2010.

22 Q Did you prepare those document?

23 A Yes.

24 Q Are they true and correct copies of  
25 the statements that you prepared?

1           A     Correct.

2                   MR. LLORENS: Your Honor, I move for  
3 the admission of these documents into the  
4 record.

5                   MS. RODRIGUEZ: Your Honor, I believe  
6 he has physically Mr. Guzman that then he can  
7 admit that into evidence.

8                   THE JUDGE: Okay. Yes, I think at  
9 this stage it would be better to have more of a  
10 foundation. We need to remember to move it in  
11 at the end.

12                   MR. LLORENS: Okay, Your Honor. If  
13 Your Honor permits, I would like to question  
14 the witness from the seat because -

15                   THE JUDGE: That would be fine.

16                                   EXAMINATION CONTINUED

17 BY MR. LLORENS:

18           Q     Mr. Guzman, look at Respondent's 2,  
19 Respondent's 2 Exhibit 2, excuse me, ID 2A. I  
20 am going to direct your attention to page one  
21 at the bottom of the document and I see a  
22 signature at the bottom of the document. Do  
23 you recognize the signature?

24           A     Yes, that is my signature.

25           Q     Okay. Can you tell me who this page



1 is directed to?

2 A This page is, the page number one is  
3 the opinion paragraph, the auditor's opinion  
4 paragraph.

5 Q Okay. Can you tell me what your  
6 opinion is stated as described in this page of  
7 the audited financial statement?

8 A This page describes an exception on  
9 the opinion paragraph related to the company  
10 going concern and financial position as of the  
11 end of June 30, 2009.

12 Q Could you tell me where in this page  
13 that opinion is stated.

14 A In the fourth paragraph it says "In  
15 our opinion except for the matters discussed in  
16 note one and eleven the financial statements  
17 referred to above presents fairly, in all  
18 material respective and that is the financial  
19 position of Aguakem, Inc as of June 30, 2009  
20 and the results of its operations and of its  
21 cash flows for the year ended in conformity  
22 with generally accepted accounting principles."

23 Q Okay. Can you find note one in this  
24 audited financial statement?

25 A Yes.

1 Q Okay. Can you tell me what page that  
2 is on.

3 A The note one starts at page seven  
4 through page eight.

5 A Okay.

6 Q Now, in the first page that has the  
7 narrative opinion, there was a reference to a  
8 substantial doubt and I am quoting from that  
9 page and it says "They are raising substantial  
10 doubt about its ability to continue as a going  
11 concern."

12 A Yes. On page -

13 MS. RODRIGUEZ: Excuse me, what page?

14 MR. LLORENS: The note, note one?

15 MS. RODRIGUEZ: Where are you reading  
16 from?

17 MR. LLORENS: That is page one of the  
18 audited financial statement. That is what I was  
19 reading from.

20 THE WITNESS: Yes, on the page one of  
21 the opinion paragraph, on the third paragraph.  
22 It says "The accompanying financial statements  
23 have been prepared assuming that the company  
24 will continue as a going concern. As discussed  
25 in Notes 1 and 11 to the financial statements,

1 the company had sustained accumulated losses  
2 amounted to \$690,430 as of June 30, 2009 which  
3 raise substantial doubt about its ability to  
4 continue as a going concern. Management's  
5 plans regarding the matters also described in  
6 Note 1. The financial statements do not include  
7 any adjustments that might result from the  
8 outcome of this uncertainty."

9 EXAMINATION CONTINUED

10 BY MR. LLORENS:

11 Q Can you point out to us where this  
12 matter is discussed in note one of this audited  
13 financial statement?

14 A Yes. It is in note one on page  
15 eight, item B.

16 Q Okay.

17 A "The company has sustained a net  
18 accumulated loss amounting to \$690,430 as of  
19 June 30, 2009. Although the company is  
20 currently in negotiations with potential future  
21 customers and additional line of businesses,  
22 this situation raises substantial doubt about  
23 its ability to continue as a going concern,  
24 although management is working with its  
25 indebtedness and is currently evaluating

1 methods to reduce costs, improve profit margins  
2 and increase capital, the ability to continue  
3 as a going concern is dependent on increasing  
4 gross sales and gross margins, obtaining  
5 additional capitalization and restructuring of  
6 its debts. The financial statements do not  
7 include any adjustments that might result from  
8 the outcome of this uncertainty."

9 Q That was the opinion you expressed in  
10 the audited financial statement?

11 A Correct.

12 Q Let me refer you now to Respondent's  
13 I.D. 2B which I believe is the 2010 audited  
14 financial statement.

15 A Okay.

16 Q And do the same exercise. I want to  
17 point you to page one of that document.

18 A Okay. On page one the third paragraph  
19 contains mostly the same kind of notes raising  
20 the uncertainty about the going concern and it  
21 also refer to note one and note nine of the  
22 financial statement. The note one is similar to  
23 the one of the 2009 and it has contained about  
24 the same paragraph on the page eight which is  
25 explaining again the matter of the uncertainty

1 and the matter of the accumulating losses as of  
2 June 30, 2010 which amount to \$680,834.00.

3 Q And you are making a reference to  
4 page eight of the --

5 A June 10, 2010 financial statement on  
6 paragraph B.

7 Q And this was the opinion that you  
8 expressed in the audited financial statement?

9 A Yes. The opinion is the one that is  
10 on page one.

11 Q Is this the opinion you hold today?

12 A Correct.

13 Q Now, just for housekeeping, back on  
14 page one there is a signature at the bottom of  
15 page one of 2B. Is that your signature?

16 A Yes, that is my signature.

17 Q Is this a true and correct copy of  
18 this document?

19 A Yes, it is.

20 Q Now, in this matter the EPA is  
21 proposing a fine against Aguakem Caribe of  
22 \$332,000 and an additional amount. In your  
23 view, what would be the effect on Aguakem  
24 Caribe were such a fine imposed on it?

25 A Well, as the financial statement

1 shows, the financial position of the company is  
2 very weak and the company has not been able to  
3 provide a profitable operation for recent years  
4 and if you know on page three is the financial  
5 statement on the capital section, on the  
6 shareholder's equity on the bottom, you can see  
7 as of June 30, 2010 that the company only have  
8 \$93,990 of capital so the company will be  
9 decapitalized and it will be somehow insolvent  
10 with an amount or claim like that.

11 Q Could it continue as a going concern?

12 A Well, it is very doubtful. I mean,  
13 you know, because with this financial position,  
14 the company cannot pay an amount like that.

15 Q Okay. Now, does Aguakem Caribe have  
16 the ability to pay a fine of \$332,000?

17 A Not with this actual financial  
18 position. They cannot provide the funds from  
19 the operation to pay the claim like that.

20 Q As of the date of the audited  
21 financial statement for June 30, 2010, how much  
22 cash on hand did Aguakem Caribe have?

23 A It has a bank overdraft which is  
24 shown on page three at the top on the section  
25 of current liabilities, it has a bank over

1 draft of \$27,158.

2 Q So it has a negative cash?

3 A Yes, negative cash.

4 Q Okay. Just for clarity sake, does  
5 Aguakem Caribe have the ability to pay a fine  
6 of \$332,000?

7 MS. RODRIGUEZ: Your Honor, he is only  
8 --

9 MR. LLORENS: If it already has been  
10 asked and answered, that will be fine. I  
11 withdraw the question. Your Honor, I move to  
12 admit Respondent's I.D. 2A and 2B into  
13 evidence.

14 THE JUDGE: Okay. Any objection?

15 MS. RODRIGUEZ: No.

16 THE JUDGE: Okay. Please mark  
17 Respondent's Exhibits 2A and B as received.

18 (Whereupon Exhibits 2A and 2 B  
19 were received into evidence for  
20 Identification)

21 MR. LLORENS: No further questions.

22 MS. RODRIGUEZ: Your Honor, may I  
23 conduct my cross from here?

24 THE JUDGE: Yes, you may.

25 CROSS EXAMINATION

1 BY MS. RODRIGUEZ:

2 Q Good morning, Mr. Guzman.

3 A Good morning.

4 Q Could you please take a look at page  
5 seven of Exhibit 2 or Exhibit 1B, the one of  
6 2010?

7 THE JUDGE: 2B.

8 MS. RODRIGUEZ: 2B.

9 THE JUDGE: And page what was that?

10 EXAMINATION CONTINUED

11 BY MS. RODRIGUEZ:

12 Q Page, I am sorry. Yes, page seven. I  
13 am sorry, page ten under item 6. Could you  
14 please read what it states out loud, please.

15 A Yes. Note six to the financial  
16 statement is titled Lease Agreement. It says  
17 "On December, 2006 the company relocated its  
18 operations to a new facility owned by La Huella  
19 Taina, Inc., an affiliated company located at  
20 Villa Street in Ponce, Puerto Rico. Since  
21 January, 2008 a monthly rent charge of \$8,400  
22 was recorded for the use of the 8,400 square  
23 feet building and facilities, rent amounted to  
24 \$100,800 in 2010. No formal lease agreement  
25 has been made."



1 Q I am asking you, who provided you  
2 this information?

3 A The information is, the payment has  
4 been taken from the books of the company upon  
5 examination of the management of the company.

6 Q Who provided you the information?

7 A The management of the company.

8 Q Have you seen the books?

9 A Yes.

10 Q And you saw that?

11 A Yes.

12 Q Do you know a term used as arm's  
13 length, arm's length?

14 A Yes.

15 Q Could you explain what it is?

16 A An arm length's transaction is a  
17 transaction which is transparent and is  
18 comparable to any transaction that can be  
19 handed -

20 Q What does it mean? What does it mean  
21 when you say arm's length? Isn't it when one  
22 company seems to lend, one company lends from  
23 another subsidiary or leases from another  
24 subsidiary like in this case? Could this be  
25 considered an arm length?

1           A     Yes, yes. It could be considered  
2           because in order to be an arm length  
3           transaction, what it has to be taken into  
4           consideration is that the amount that is fixed  
5           as if rent, is comparable to the market.

6           Q     But doesn't it also mean that  
7           sometimes they are questionable because it is  
8           one, it is like the two, one brother lending to  
9           another brother as a difference of somebody  
10          lending to a third party that has no interest  
11          and no bearings?

12          A     No. It is common use in business.

13          Q     In business, right but the comparison  
14          -

15          A     To have -

16          Q     Answer my question, please. Isn't it  
17          compared in your line of business that arm's  
18          length means or is interpreted or could be  
19          interpreted as when one brother lends to  
20          another brother who has an interest instead of  
21          like when somebody lends to a third party which  
22          could be that sometimes they are, could be  
23          questionable?

24          A     No. For me it is not questionable.  
25          It is common.

1 Q But isn't it also known as that that  
2 is what arm's length means?

3 A No, not always.

4 Q No?

5 A No.

6 Q Okay. Now, you mentioned also and  
7 you just mentioned under statement, you read  
8 from page eight. You have under going concern,  
9 it is basically identical from Exhibit 1A  
10 except that there is, they mention and could  
11 you please read. Instead I will read it to you.  
12 "That the company management believes that  
13 \$441,000 of such accumulated loss representing  
14 64.6 percent of total loss is attributable to  
15 the damages claimed against checkpoint for  
16 breach of contract. In addition during 2007  
17 and 2008 the company had to move their  
18 production facilities from the Port of Ponce to  
19 new facilities leased to La Huella Taina, an  
20 affiliated company affecting their production  
21 output."

22 Now, I ask you, was it during 2007 or  
23 2008? When did they move? Do you know when they  
24 moved?

25 A Yes, it was around October or

1 November, 2007.

2 Q So it wasn't 2008? So 2008 shouldnt  
3 be there?

4 A No. What I refer for both years -

5 Q No, no. I am saying, when did they  
6 move because this document says specifically  
7 "In addition 2007 and 2008 the company had to  
8 move their production facility. So, I am  
9 asking you when did they move in 2007 or 2008?

10 A As far as I remember the moving  
11 started one year and ended in the next year.

12 Q Oh, it ended in 2008?

13 A It took some time.

14 Q You don't know when it ended?

15 A I know that it was passed from one  
16 year to the other.

17 Q So you said that it began in 2007 and  
18 it ended in 2008?

19 A I think it ended at the beginning of  
20 the year, of 2008.

21 Q Of 2008?

22 A Yes.

23 Q So really you don't know then  
24 specifically can you say specifically when it  
25 ended or not?

1 A Exactly no, the same date, no.

2 Q No.

3 A But I know -

4 Q How do you know that it moved its  
5 facilities?

6 A Because I personally saw the -

7 Q That you saw it personally?

8 A The physical facility move.

9 Q Okay. Then what if I told you that  
10 if you saw it physically when they moved, that  
11 actually they moved the facility in October,  
12 2007?

13 MR. LLORENS: Objection. I am not  
14 sure I understand that question.

15 THE WITNESS: That is what I said --

16 MR. LLORENS: Wait, wait. I made an  
17 objection.

18 THE JUDGE: Just a moment. Counsel, do  
19 you want to respond to the objection?

20 MS. RODRIGUEZ: I am sorry, I didn't  
21 hear it.

22 MR. LLORENS: Objection, I don't  
23 understand what the question is and I don't  
24 think it is a proper question to present to the  
25 witness.

1 MS. RODRIGUEZ: Well, I am trying to,  
2 first of all, okay. I will try to go to the  
3 credibility of the report of some information  
4 that is provided and I will rephrase my  
5 statement.

6 MR. LLORENS: Okay. I mean, the  
7 purpose I don't -

8 THE JUDGE: Okay, once again, direct  
9 your objections to me and we will go from  
10 there.

11 EXAMINATION CONTINUED

12 BY MS. RODRIGUEZ:

13 Q You say 2007 and 2008. What if I told  
14 you or do you know whether they moved in 2006?

15 A I told you that I remember that they  
16 started in 2007 and ended at the beginning,  
17 sometime at the beginning of the year of 2008.

18 Q What if I told you they moved in 2006  
19 and that they didn't move until 2007?

20 A Well, it might be correct. Maybe the  
21 years that I have are confused or something  
22 like that but -

23 Q So what if I told you that 2007 and  
24 2008 are not the years that they moved?

25 A It may be true.

1 Q And didn't you check to see? You are  
2 certifying this document. Didn't you check to  
3 see when they actually moved?

4 A Yes, when they moved, I saw the move.

5 Q No, I am talking about the document  
6 because you are including this in the document  
7 and you are saying it is a going concern but  
8 you put 2007 and 2008.

9 A Yes, but what happens is that the  
10 emphasis of this sentence is not really related  
11 to the -

12 Q No, I am reading very clear from what  
13 it says in black and white. Black and white  
14 and what it says there is very clear but I am  
15 asking you, if you want we can go back, you  
16 stated that they began moving in 2007 and they  
17 finished in 2008 and I said if I told you that  
18 that is not correct, you know, didn't you check?  
19 How did you check in order to put those here?  
20 Who provided to you those years, 2007 and 2008?

21 A When I wrote the note I took it from  
22 my experience.

23 Q Oh, so you didn't check to see  
24 whether those were correct or not? What note?

25 A I thought that it was correct.

1 Q Oh you thought you were correct?

2 A Yes, but I cannot assure that now.

3 Q Okay. You said you have known Aguakem  
4 Caribe for thirteen plus years ago, right?

5 A Yes.

6 Q And you were aware that they were in  
7 the Port of Ponce, correct?

8 A Correct, yes.

9 Q Were you also aware that they were  
10 under eviction from that facility?

11 A Yes.

12 Q And do you know how long was the  
13 eviction ordered by the court, how long ago?

14 A No, I don't remember that at this  
15 time.

16 Q What if I told you that prior to 2006  
17 the court ordered eviction five years before  
18 2006? Would that be correct?

19 A Could be correct.

20 Q Could be corect and that they were in  
21 the facility. What if I told you that they  
22 were in that facility while there was an  
23 eviction against them but that they continued  
24 in that facility? Do you know what an eviction  
25 is?



1 A Yes, yes.

2 Q Can you tell us what an eviction is?  
3 Do you know?

4 A An order to vacate the property.

5 Q To vacate, right?

6 A Yes.

7 Q And Could you tell me since you have  
8 known them, what is La Huella Taina?

9 A La Huella Taina is an affiliated  
10 company.

11 Q And what is it dedicated to, I mean,  
12 what type of company is it?

13 A La Huella Taina develop real estate  
14 property which are one of the buildings that is  
15 constructed there is being rented to Aguakem.

16 Q Who is the president of Huella Taina?

17 A Mr. Jorge Unanue.

18 Q Do they have anymore affiliates?

19 A In operations I don't think so. In  
20 Puerto Rico, I don't know of any other.

21 Q Okay. So they just have Huella Taina  
22 and Aguakem Caribe, Inc.?

23 A Yes, in Puerto Rico those are the  
24 business of them.

25 Q And who is the parent company, if you

1 know?

2 A They are separate companies. They are  
3 just affiliated because of the ownership.

4 Q Because of the ownership and they  
5 have filed before the Puerto Rico Corporate,  
6 you know, State Department the Corporate  
7 Division?

8 A Yes.

9 Q And do you think that these are the  
10 financial statements that they filed before the  
11 State Department?

12 A Of the Aguakem.

13 Q Yes.

14 A These are the financial statements.  
15 The same ones that I filed.

16 Q And you have been filing these for  
17 the time that you have known them?

18 A I didn't file them. I just prepare  
19 and provide to the management and the  
20 management is responsible to file it.

21 Q And how many financial statements  
22 have you done for the company?

23 A Every one since they start the  
24 corporation.

25 Q Okay. Now, if you could clarify for

1 me, because I know the rest of that paragraph B  
2 and again I am going to paragraph B except with  
3 that sentence that I read, the rest is  
4 identical to the other one and it says that it  
5 is working with its indebtedness and is  
6 currently evaluating methods to reduce cost,  
7 improve profit margins and increase capital.  
8 Now, since 2009 to 2010, what have they done to  
9 reduce the cost and improve the profit margins?

10 A They are developing a new line of  
11 business related to the acids. They are trying  
12 to sell more products to private companies in  
13 order to diminish the concentration of sales to  
14 the government agency, the Aqueduct Authority  
15 of Puerto Rico.

16 Q Puerto Rico Aqueduct and Sewer  
17 Authority?

18 A Yes and they have been also working  
19 with the production lines making changes to  
20 improve the output and provide more operational  
21 profit margins for the products that they  
22 prepare.

23 Q Okay. Now, I take you to page six of  
24 Exhibit B3. Now it says total, at the  
25 beginning net cash provided by operating

1 activity and it says \$797,000. Is that correct?

2 A Where are you reading that from?

3 Q Page six.

4 A Page six, what line?

5 Q It is the line that says total  
6 adjustments to net income. It is \$297,000  
7 approximately so they do have some income, a  
8 net income, you say. That is correct?

9 A No.

10 Q Net income?

11 A They have a net income which is at  
12 the top of the page. That income is \$7,470.00

13 Q But I am saying total adjustments to  
14 net income, the net cash provided by operating  
15 activities \$297,000. The income that generates  
16 the operation, you know, the operations  
17 generate. I am not talking about the rest.

18 A The -

19 Q I know that the other is the cash  
20 flow and then you go down.

21 A Yes. This is the, \$297,000 is the  
22 cash provided by the operational activities.

23 Q Right and then if you go down you say  
24 cash flow from investing activities. Could you  
25 please tell me what that is.

1           A     Okay. This statement of cash flow,  
2           what it does, let me explain generally so you  
3           can understand it. It does talk about the net  
4           income and analyze the financial operation of  
5           the company so you can understand from where,  
6           from what sources the cash came in and in what  
7           sources the cash was invested.

8           Q     Right.

9           A     And in this cash flow investing  
10          activities it has an increase in the fixed  
11          assets of \$7,900 which was basically due to the  
12          improvement of the line of operations that I  
13          explained before.

14          Q     That means money they have spent in  
15          investing, right?

16          A     Investing, yes.

17          Q     That amount -

18          A     In the manufacturing operations, the  
19          line of products.

20          Q     Okay and what would be increased, the  
21          investing in other assets? No, in that same  
22          page, I am sorry, that same page, the number  
23          below which is \$50,747.00.

24          A     Yes. That is the increase between  
25          2009 and 2010 of the other asset caption of the

1 asset segment in the balance sheet.

2 Q Okay and then when you say bank  
3 overdraft at the end of the year, do you know  
4 what is their line of credit?

5 A The line of credit is explained on  
6 page nine, note three to the financial  
7 statements.

8 Q Where?

9 A Page nine at the top is the note  
10 number three, demand credit line. That is the  
11 line of credit that the company has. As far as  
12 I know it has a total amount of, outstanding  
13 amount of \$92,754 and I think the amount  
14 authorized has a limit of a hundred thousand  
15 dollars.

16 Q Okay. So that is the line of credit?

17 A Yes.

18 Q Okay.

19 MS. RODRIGUEZ: Just a minute, Your  
20 Honor.

21 THE JUDGE: Yes.

22 MS. RODRIGUEZ: Your Honor, may I  
23 allow Counsel Roberto Durango to continue with  
24 the cross examination of the witness?

25 MR. LLORENS: No objection, Your

1 Honor.

2 THE JUDGE: Yes, that would be fine.

3 MR. MATEO DURANGO: I just have a few  
4 questions.

5 THE JUDGE: Okay.

6 EXAMINATION CONTINUED

7 BY MATEO DURANGO:

8 Q Mr. Guzman, can you please point out  
9 to the line on the financial statement that you  
10 provided where it explains how much Aguakem set  
11 aside for environmental compliance.

12 MR. LLORENS: Would you direct the  
13 question to one or the other of the documents.

14 THE JUDGE: A or B.

15 MR. MATEO DURANGO: B3 in 2009 or  
16 2010.

17 THE WITNESS: Can you do the question  
18 again?

19 EXAMINATION CONTINUED

20 BY MR. MATEO DURANGO:

21 Q May you please point out to the line  
22 in the financial statements where it says how  
23 much Aguakem set aside for environmental  
24 compliance?

25 A In this financial statement I don't

1 remember any place in which the company has a  
2 reference to a budget for environmental  
3 compliance.

4 Q Okay. Can you point out to the line  
5 then. This is a different question of how much  
6 Aguakem actually spent on environmental  
7 compliance during 2009 and 2010?

8 A No, the detail is not in the  
9 financial statements.

10 Q Okay. In the ten or thirteen years  
11 that you audited Aguakem, from your knowledge,  
12 how much has Aguakem spent on environmental  
13 compliance?

14 A Well, there is a line item in the  
15 statement which is referred to professional  
16 services. In 2009 -

17 Q This is specifically in environmental  
18 compliance?

19 A The services could be there, in that  
20 part. In the professional services caption,  
21 page five of 2009 it has \$41,204.

22 Q That is not my question. My question  
23 is specifically how much it has spent in  
24 environmental compliance. You mentioned that  
25 they have not so are you changing your answer?



1 MR. LLORENS: Objection, that is not  
2 what he testified.

3 THE WITNESS: No. I state that the  
4 company doesn't have a caption or a budget item  
5 labeled environmental compliance and -

6 EXAMINATION CONTINUED

7 BY MR. MATEO DURANGO:

8 Q How much did they actually spend on  
9 environmental compliance?

10 A I cannot tell you exactly that.

11 Q Did you not review the financial  
12 statements?

13 A Yes.

14 Q In your review, how much was spent?

15 A It is not detailed, in the financial  
16 statement, it is not detailed. If there are any  
17 payments related to those services are on the  
18 caption of professional services in both years  
19 but it is not detailed.

20 Q Okay. In your opinion, does Aguakem  
21 have the ability to comply with environmental  
22 statutes based on your going concern?

23 A I am not an expert on environmental  
24 compliance.

25 Q But based on the going concern theory



1           A     I don't know.

2           MS. RODRIGUEZ: You have been  
3 reviewing and you have been doing --

4           MR. LLORENS: Now I have to object,  
5 Your Honor. Switching from one to the other --

6           THE JUDGE: Right. Sustained. We  
7 can't do tag team here. If the other person,  
8 unless that has concluded an then no more  
9 questions.

10          MS. RODRIGUEZ: We he can continue  
11 then.

12          THE JUDGE: Okay.

13          MS. RODRIGUEZ: One minute then, Your  
14 Honor.

15          THE JUDGE: Yes.

16          MS. RODRIGUEZ: Could you give us a  
17 few minutes, Your Honor?

18          THE JUDGE: Yes.

19          MS. RODRIGUEZ: Thank you.

20                   EXAMINATION CONTINUED

21           BY MR. MATEO DURANGO:

22           Q     Going back to what the financial  
23 statement says. You mentioned that they had  
24 certain moving expenses in 2007 and 2008. Are  
25 those all the moving expenses that Aguakem had?

1 A What page you are referring to?

2 Q I believe it is page eight of  
3 Exhibit 2B, Respondent's Exhibit 2B.

4 A Page?

5 Q Page eight.

6 A Page eight?

7 Q Aha.

8 A Where?

9 Q The second sentence, of sub  
10 caption B where it says going concern. Third  
11 sentence, I am sorry where it says "In addition  
12 during 2007-2008".

13 THE JUDGE: Where are you reading? I  
14 don't see it.

15 MR. MATEO DURANGO: It is page eight,  
16 Respondent's Exhibit 2B.

17 THE JUDGE: 2B or 1A?

18 MR. MATEO DURANGO: I believe it  
19 is 2B, page eight, sub heading B, going  
20 concern.

21 THE JUDGE: Okay. That is 1B.

22 MR. MATEO DURANGO: 1B.

23 THE JUDGE: Okay and what  
24 sentence?

25 MR. MATEO DURANGO: The third

1 sentence. Where it says in addition during  
2 2007.

3 THE JUDGE: And this is document  
4 2B, right?

5 MR. MATEO DURANGO: Right.

6 THE JUDGE: Okay.

7 THE JUDGE: 1B, third sentence.  
8 So could you please restate the question.

9 EXAMINATION CONTINUED

10 BY MR. MATEO DURANGO:

11 Q The question is what were the  
12 expenses during 2007 and 2008 according to your  
13 statement here?

14 MR. LLORENS: Objection to the  
15 foundation of the question. The statement  
16 being read makes no mention of expenses on  
17 moving. It talks about a reduction of  
18 production output.

19 THE JUDGE: Sustained.

20 EXAMINATION CONTINUED

21 BY MR. MATEO DURANGO:

22 Q What was the effect of the move  
23 during 2007 and 2008 according to the  
24 statement?

25 A What was the move?

1 Q What was the effect of the move?

2 A The financial effect was that the  
3 production output was reduced at that time.

4 Q Okay. If I were to say that the move  
5 did not take place in 2007 and 2008, would your  
6 recommendation change?

7 MR. LLORENS: Objection. There was no  
8 recommendation, Your Honor.

9 MR. MATEO DURANGO: Your Honor, it is  
10 his recommendation according to the going  
11 concern.

12 THE JUDGE: I will allow the question.

13 THE WITNESS: The recommendation, I  
14 mean there is no recommendation. There is a  
15 qualification, an exception for the going  
16 concern of the company due to the uncertainty  
17 that is raised on a company that is sustaining  
18 operational losses. That is reducing their  
19 capital, working capital and reducing their  
20 profitability margin. That is what raised the  
21 going concern. It doesn't have to be with the  
22 movement. I mean the effect of the movement is  
23 affected the financial position of the company  
24 but we evaluate is the financial position of  
25 the company as of that date and at that time we

1 understood before that because this going  
2 concern comes from years before 2010.

3 Q But you mentioned 2007 and 2008.

4 A That is related to the output.

5 Q But if there was no move during 2007  
6 and 2008 -

7 A I explained that already. I may be  
8 wrong on the dates but the emphasis of the note  
9 is on the effect of the output. I knew that the  
10 output was affected by the move of the  
11 facility.

12 Q How is it currently affected?

13 A Pardon me?

14 Q This is a 2010 document. How is it  
15 currently affected?

16 A Well now the company is, it is my  
17 opinion that it is better organized in terms of  
18 the line of production because they have been  
19 investing on the facility, on the line of  
20 production and they are organized. At the  
21 beginning of the move there was a mess of items  
22 around outside the building, and in the floor,  
23 unclassified materials everywhere and they re-  
24 arranged that.

25 Q So if I understand correctly what you

1 just stated is that as of today they are in a  
2 better position because they are better  
3 organized?

4 A That is my understanding without  
5 being an expert on production or chemical  
6 things. It is just an observation that I did.

7 MR. MATEO DURANGO: Thank you. No  
8 more questions.

9 MR. LLORENS: Just to clarify the  
10 point about the date of the move.

11 REDIRECT EXAMINATION

12 BY MR. LLORENS:

13 Q I am going to refer you to Exhibit 2B  
14 and on page ten, it is note six on page ten.  
15 Do you see that? That is from your 2010 audited  
16 financial.

17 MS. RODRIGUEZ: I am sorry. What page  
18 did you say counsel?

19 MR. LLORENS: Page ten.

20 MS. RODRIGUEZ: Ten or six?

21 MR. LLORENS: Note six, lease  
22 agreement.

23 EXAMINATION CONTINUED

24 BY MR. LLORENS:

25 Q Do you want to read your first



1 sentence there?

2 A Okay.

3 Q Lease agreement.

4 A Okay.

5 Q On the bottom of page ten.

6 A Okay. On page ten it says, "On  
7 December, 2006 the company relocated its  
8 operation to a new facility owned by La Huella  
9 Taina, Inc."

10 Q So you got that date. Let's go back  
11 to the other note on the going concern which is  
12 on page eight, is it. Okay and let's look at  
13 the line that we have been discussing which  
14 says "In addition, during 2007, 2008 the  
15 company had to move their production facilities  
16 from the Port of Ponce to new facilities leased  
17 to La Huella Taina." In light of what you  
18 wrote in the other note, do you think that you  
19 were correct on the dates in your going concern  
20 note?

21 MS. RODRIGUEZ: Objection, Your Honor.  
22 I mean, he has already stated that he didn't  
23 know when we discussed this.

24 THE JUDGE: Okay. I am going to allow  
25 the question.

EXAMINATION CONTINUED

BY MR. LLORENS:

Q Yes, please answer.

A What is the question?

Q The question was, why the note on the lease agreement, do you believe that the dates, the years you placed in the going concern note are correct now after looking at the note on the lease agreement?

A Related to the date of the movement of the facilities, maybe I am not correct but this sentence on the going concern matter is really emphasizing the effect of the movement to the production, not to the date exactly of the move.

Q Okay.

MR. LLORENS: No further questions.

THE JUDGE: Counsel?

RE CROSS EXAMINATION

BY MS. RODRIGUEZ:

Q Yes. I mean, I still don't understand then your interpretation of this sentence because it is very and again let me just state, "In addition during 2007 and 2008 the company had to move their production facilities. It is

1 very clear. Then in the other one you state  
2 2006. Don't you review the whole document to  
3 see whether there are any corrections or not? I  
4 mean, now you are trying to give, either you  
5 made a mistake here and you accept you made a  
6 mistake here.

7 A Let me explain you something.

8 Q No, no. I am asking you very clear,  
9 did you make a mistake when you said that they  
10 moved during 2007 and 2008 and you even --

11 THE JUDGE: Just ask the question.

12 EXAMINATION CONTINUED

13 BY MS. RODRIGUEZ:

14 Q Did you make a mistake when you said  
15 during 2007 and 2008, yes or no? Yes or no.

16 Answer yes or no.

17 A Maybe.

18 Q You made a mistake?

19 A Maybe.

20 Q Okay.

21 A But -

22 Q No, that is all.

23 THE JUDGE: Now, I have one question  
24 of this witness and I will give both parties an  
25 opportunity to follow up after this. My

1 question to you, sir is if it were determined  
2 that the Respondent was liable in this case,  
3 what in your opinion would be the amount of the  
4 penalty that could be paid and allow Aguakem to  
5 be an ongoing business, to continue in  
6 business?

7 THE WITNESS: Your Honor, if you see  
8 the financial statement on page two -

9 THE JUDGE: Of 2B or 2A?

10 THE WITNESS: 2B, the June 30, 2010,  
11 the company has total quoted assets amounting  
12 to \$240,000 rounded figure. If you compare that  
13 asset amount to the current liabilities which  
14 are shown on page three amounting to \$482,000  
15 rough figure. From there you can understand  
16 that the company has current obligations that  
17 has to be liquidated within the following year.  
18 That is why they are classified as current.

19 In the next twelve months the company  
20 has to pay those current liabilities of  
21 \$482,000 and they only have available assets,  
22 current assets that are going to be converted  
23 to cash, only by \$245,000. They have a  
24 deficiency of working capital right now. So  
25 this company has no capacity of cash flow and

1 working capital, okay even to assume the  
2 payments in the ordinary course of the  
3 business.

4 THE JUDGE: And I give both parties an  
5 opportunity to follow up if they would like to.

6  
7 MR. LLORENS: Not from the respondent.

8 MS. RODRIGUEZ: I have.

9 THE JUDGE: But it would be limited to  
10 what I asked.

11 MS. RODRIGUEZ: Yes, the liabilities.  
12 I am sorry, what page did you say under the  
13 liabilities?

14 THE WITNESS: On page three at the  
15 top, current liabilities.

16 EXAMINATION CONTINUED

17 BY MS. RODRIGUEZ:

18 Q Okay. You are talking about the four  
19 hundred and eighty two, is that the one or the  
20 total liability?

21 A Yes. No, the total liability is  
22 \$482,000 rounded figure.

23 Q Okay.

24 A If you compare that to the current  
25 assets which are on page two at the top, you

1 can see that they have \$225,000 round figure of  
2 assets available to pay their current debts so  
3 they are in a deficit of \$230,000 already.

4 Q And these liabilities that you  
5 describe here like the bank overdraft, that is  
6 not something that they have to pay right away,  
7 right?

8 A Yes.

9 Q They do?

10 A All those assets, I mean all those  
11 liabilities that are classified as current  
12 liabilities, the company has the obligation to  
13 pay those liabilities in the normal course of  
14 the business according to the terms, you know,  
15 with the suppliers or the agencies or whatever  
16 or the bank. If you can see the demand credit  
17 line, the credit line is demand. When the bank  
18 says you have to pay me the full amount of the  
19 credit line, you have to pay it.

20 Q Okay. Now, if we look at the other  
21 one, you know, you are talking about the  
22 liabilities and we go to Exhibit A, the same  
23 page, three, liabilities, current liabilities.

24 A Ahum.

25 Q It seems that the bank overdraft is

1 the same as the year before, right?

2 A In 2010?

3 Q No, I am talking about, yes, I am  
4 looking at the same page for liabilities on  
5 page three on both documents A and B. Bank  
6 overdraft, it is the same?

7 A No, it is not the same.

8 Q Yes. Well, 27,300 and 27,158.

9 A It is not the same.

10 Q Well, I know it is not the same but I  
11 think basically it is about the same, right?

12 A The same range.

13 Q Ah?

14 A It is the same range?

15 Q Yes and then it says demand credit  
16 line, note four and then in the other one it  
17 says a note three. Is that another -

18 A No, it is the same line of credit.

19 Q Demand credit line all three?

20 A Yes.

21 Q And where is that in the prior year?

22 A In '04. We moved the note.

23 Q But then there is demand credit line,  
24 note four and then there is current portion of  
25 long term debt, note four which in the other

1           one is mentioned as note five.

2           A       The referral to the notes, it doesn't  
3           have any meaning. I mean -

4           Q       I mean and forgive me, I mean, I am  
5           not an expert and I am not a CPA.

6           A       Yes. It is only to refer you to where  
7           the data or the details are.

8           Q       Okay.

9           A       But if you let me explain. The  
10          company on the current liability section has to  
11          pay the bank overdraft, the demand credit line,  
12          the current portion of the long term debt.  
13          Those are the monthly payments of the debt that  
14          they have already which is financed through the  
15          long term period but this is the amount that  
16          they have to pay on that year specifically and  
17          then they have the trade payables which are the  
18          suppliers and they have the accruals, other  
19          accrued expenses that are explained on note  
20          five of 2010 financial statement which are  
21          related to other kind of liabilities.

22          Q       But then the current liabilities from  
23          the year 2009 were 580,928, right?

24          A       Yes.

25          Q       And they have to be paid that year?



1           A     Yes. During, the classification of  
2           the total liability is all those liabilities  
3           that are expected to be paid within one year.

4           Q     And were they paid?

5           A     Ah?

6           Q     Were they paid in 2009?

7           A     Well, they are in the current  
8           operations. I mean, if he has a supplier and  
9           the supplier give you fifteen days, you have to  
10          pay in fifteen days. Others give you thirty  
11          days or sixty days, whatever the term is.

12          Q     Which means is, that this is at the  
13          time you do the report, right?

14          A     No. Those are the normal course of  
15          the business.

16          Q     No, no. I understand. What I am  
17          saying is, that the amounts that are reflected  
18          here -

19          A     At the time, yes, the cut off of the  
20          date, yes.

21          Q     And then the current year there were  
22          actually less liabilities than the previous  
23          year?

24          A     Yes, less liabilities and less assets  
25          also.

1 Q Okay, how many banks do they have  
2 loans with or --

3 A The loans are the note four.

4 Q I am sorry?

5 A Note four to the financials.

6 Q In which page?

7 A In page nine of 2010.

8 Q Aha.

9 A You have a detail of the note. There  
10 are seven, about seven loans with different  
11 terms.

12 Q Okay. So when you mentioned here,  
13 let me see, long term liabilities.

14 A It is referred to these ones.

15 Q Oh, okay and usually these notes,  
16 equal 191,000, you don't have to pay them in a  
17 year?

18 A No. The 191,000 is the long term  
19 portion.

20 Q Okay.

21 A And the short term portion which have  
22 to be paid in one year during the current  
23 operation is \$128,000.

24 Q And where is that \$128,000?

25 A In the page nine. You see the total

1 amount of the long term is \$320,000.

2 Q Okay.

3 A The current portion is 128 and the  
4 long term portion is 191,000.

5 Q Okay and where would the 128 come  
6 from because I want to understand this.

7 A Okay. Let me explain you. This is  
8 the detail of the loans that the company has.  
9 The commitments, the payments for a long term  
10 period, okay. It is total to \$320,000.

11 Q Okay.

12 A Of those \$320,000, \$128,000 have to  
13 be paid in a period of twelve months.

14 Q In a period of how much, I am sorry?

15 A In a period of twelve months.

16 Q Oh, twelve months. Okay.

17 A Yes, in a period of twelve months  
18 after the date of the financial statements.

19 Q Okay.

20 A The others, the \$191,000 have to be  
21 paid in the future.

22 Q Okay.

23 A In the future, not in that year, just  
24 in the future. If you see the note which goes  
25 in page ten, at the top, you have the amount

1           that they have to pay in the future.

2           Q     Oh, okay. I am sorry.

3           A     It is calculated there.

4           Q     So in essence some of the liabilities  
5           is really not that they have to pay right now  
6           but that it is something, you know, like they  
7           have a mortgage loan -

8           A     Correct.

9           Q     And they pay every other -

10          A     Correct.

11          Q     And I see that they have Banco  
12          Popular. It is the line of credit. Do they have  
13          a good credit with Banco Popular?

14                 MR. LLORENS: Objection, Your Honor.  
15          This witness hasn't testified about --

16                 MS. RODRIGUEZ: Your Honor, he opened  
17          the door. He is talking about their financial  
18          capability.

19                 THE JUDGE: Well, it is my  
20          understanding that questioning had concluded  
21          and it was just follow up questions on  
22          specifically --

23                 MS. RODRIGUEZ: Liabilities. So, you  
24          know, they have liabilities they have to pay so  
25          that is why I am asking whether, you know, they

1 will be able to pay those liabilities.

2 MR. LLORENS: Well, I am --

3 MS. RODRIGUEZ: How can I know -

4 MR. LLORENS: Whatever happens but  
5 your point was, you were going to ask one  
6 question and we can follow up on your question.

7 THE JUDGE: Okay. I will -

8 MS. RODRIGUEZ: That will be my last  
9 one, Your Honor.

10 THE JUDGE: Okay and I was going to  
11 allow the question.

12 MS. RODRIGUEZ: Okay.

13 EXAMINATION CONTINUED

14 BY MS. RODRIGUEZ:

15 Q Okay. Are they in good standing with  
16 Banco Popular at the credit? No, no. Look at  
17 what I am asking. Is Aguakem in good standing  
18 with Banco Popular, that you are aware of?

19 A I am not aware of the standing that  
20 they have with Banco Popular.

21 Q As a CPA who has known them for  
22 thirteen years and who reviews the books, you  
23 don't know whether they have good standing with  
24 the loans, the bank that gives them the loans  
25 for the overdrafts?

1           A     The policies of the banks has changed  
2           so much and the relationship has changed  
3           recently because of the financial difficulties  
4           of the company, I cannot explain you what the  
5           position of Banco Popular could be.

6           Q     No, I mean, do they have a good line  
7           of credit with Banco Popular?

8           A     That is different. A line of credit,  
9           they have it and they pay it.

10          Q     They pay it regularly?

11          A     Yes. They are paying it, you know,  
12          in the normal course of business. That is in  
13          the financial.

14          Q     And that is the only thing they have  
15          with Banco Popular?

16          A     I think so, yes.

17          Q     So you would say that they have a  
18          good relationship with Banco Popular?

19          A     I don't know what the position of  
20          Banco Popular is related to Aguakem.

21          Q     As a CPA you don't know?

22          A     I am not Banco Popular. I don't  
23          handle the credit -

24                THE JUDGE: Okay. I believe the question  
25                has been asked and answered.

1 MS. RODRIGUEZ: Okay. That will be all,  
2 Your Honor.

3 THE JUDGE: Okay. Anything further. Would  
4 you like to reserve this witness?

5 MR. LLORENS: No, Your Honor. In fact the  
6 witness has pressing family business and I just  
7 want to thank him for making the time for us.

8 THE JUDGE: Anything further?

9 MS. RODRIGUEZ: No.

10 THE JUDGE: Thank you for your testimony  
11 today.

12 THE WITNESS: Okay.

13 THE JUDGE: Now, my recommendation is  
14 before we start with the last witness, we take  
15 a decent size break. It is hard to see that  
16 clock.

17 MS. RODRIGUEZ: I think it is like ten  
18 fifteen.

19 THE JUDGE: Okay. No later than ten thirty  
20 we should be back here.

21 MR. LLORENS: Yes, Your Honor.

22 THE JUDGE: Thank you.

23 MS. RODRIGUEZ: Thank you, Your Honor.

24 (Whereupon a recess was taken)

25 MR. LLORENS: Your Honor. May I please the

1 court. The Respondent will be calling Mr.  
2 Jorge Unanue as a witness.

3 THE JUDGE: Okay.

4 Whereupon,

5 JORGE UNANUE

6 was called as a witness, having been duly  
7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. LLORENS:

10 Q Good morning.

11 A Good morning.

12 Q Mr. Unanue, could you state your name  
13 for the record, please.

14 A Yes. My name is Jorge Unanue.

15 Q Okay. Can you tell us where you live?

16 A I live in Ponce.

17 Q Can you tell us what your occupation  
18 is?

19 A I am the owner and president, CEO of  
20 Aguakem Caribe and I basically do everything in  
21 the company.

22 Q Okay. Do you own any other companies?

23 A Yes, I own Huella Taina which is a  
24 land company, real estate company.

25 Q Okay. Do you own any companies



1           besides those two?

2                   A     No, I do not.

3                   Q     Okay.  On the Huella Taina, what  
4           properties does it own?

5                   A     Excuse me?

6                   Q     What properties does Huella Taina  
7           own?

8                   A     The Huella Taina owns a property that  
9           is located in La Villa Final in Ponce and it is  
10          a piece of land about nine acres.

11                  Q     Okay and does it lease any of the  
12          land?

13                  A     It leases a portion of the land with  
14          a building to Aguakem Caribe.

15                  Q     Okay.  Now, does Huella Taina charge  
16          rent to Aguakem Caribe?

17                  A     Yes, it does.

18                  Q     Okay.  How much does it charge?

19                  A     8,400 I believe.

20                  Q     And how did that charge get  
21          determined?

22                  A     Well, it was a factor of what the  
23          market will bear and also is what Huella Taina  
24          pays on its loan to buy the property.

25                  Q     Does Huella Taina report a profit?

1 A No, it does not.

2 Q Does it report a loss?

3 A Yes, it does.

4 Q What is the amount of the loss?

5 A I don't recall.

6 Q Now, Aguakem Caribe, what can you  
7 tell me about Aguakem Caribe in terms of when  
8 it was formed and what it does?

9 A Yes. I incorporated Aguakem Caribe in  
10 1995. I am not from Puerto Rico so I came over  
11 looking for an opportunity. I went to explore  
12 different areas in San Juan and I went to Ponce  
13 and I really liked Ponce. In Ponce I went to  
14 the port and they were very, very favorable,  
15 very proactive. There was a warehouse there,  
16 warehouse number 6 that an operation had left,  
17 it was a hot liver processing plant and they  
18 offered that building for us and we were  
19 looking at the facility and where it was  
20 located, the security. You know, I liked that  
21 facility a lot and I rented a portion of the  
22 warehouse and it was starting I believe it was  
23 in 1995. We had a lease, original lease for  
24 five years and when I negotiated the lease I  
25 asked for a renewal of five years to the

1           Municipio and they said, "Look, we cannot do  
2           that but you know, in five years, you put your  
3           operation here, you know, we will renew it."

4           Q     Let me stop you at 1995. You moved  
5           into the facility at the port in 1995. That  
6           was your testimony, correct?

7           A     Yes.

8           Q     What was the operation that you moved  
9           into the facility?

10          A     What do you mean exactly?

11          Q     Okay. What was Aguakem doing at the  
12          facility?

13          A     Okay. We started a manufacturing  
14          process of iron salts at the facility. We  
15          basically, you know, started putting a tank  
16          form and building the facility and the official  
17          start date was January 1st of 1996.

18          Q     But you were in the facility before  
19          that date?

20          A     Yes. I was in the facility building  
21          the office, putting a tank farm, putting  
22          everything together.

23          Q     In general terms, what was Aguakem  
24          Caribe doing, what was it producing?

25          A     We were producing at that time iron

1 salts, specifically ferric sulfate. I had a lot  
2 of experience with ferric sulfate. Also we have  
3 polymers and, you know, we were making blends.  
4 We were looking at the business with the Puerto  
5 Rico Water Authority in terms of potable and  
6 waste water and also we were looking at  
7 industry. Puerto Rico at that time had a very  
8 large industrial base.

9 Q Okay. Is it fair to describe what  
10 Aguakem was doing was manufacturing water  
11 treatment products?

12 A Yes. The products and manufacturing,  
13 you know, at the facility and depending on the  
14 use, the end user, we would deliver to that end  
15 user's plant, be it the Water Authority or an  
16 industrial processing plant and in that, you  
17 know, in those facilities they would have a  
18 water treatment plant, either potable water,  
19 waste water, industrial water which they used  
20 chemicals to treat that water and then we would  
21 supply those chemicals to those different water  
22 plants.

23 Q Okay. When you established the  
24 facility, the Aguakem facility at the port  
25 location warehouse 6, did you consider whether

1 your operation was creating waste?

2 A No. The design of Aguakem, you know,  
3 it was very important, we consider ourselves,  
4 you know, staying within a sewer discharge  
5 concept. That means that we do not discharge in  
6 water, we do not discharge anything in this  
7 regard, any materials, you know, unless we are,  
8 you know, going to do, dispose of office trash  
9 or, you know, packaging. Sometimes you would  
10 have a drum or a tote that really we deem, not  
11 usual anymore, we triple wash them and cut them  
12 up and would dispose of them that way but in  
13 the normal operations of the building, there  
14 were no products. There was a sealed discharge  
15 operation.

16 Q Okay. Now, you talked about leases.  
17 Can you tell me the years in which Aguakem  
18 executed a written lease with the Municipio of  
19 Ponce for the warehouse?

20 A Yes, the original lease which was for  
21 five years was executed in 1995 and again with  
22 the agreement to renew it for five years. When  
23 that time came around the -

24 Q Let me stop you right there. If you  
25 could refer specifically to the years as

1           opposed to that time.

2           A       Okay. The year was 2000. You know,  
3           it came around, it came the time to renew the  
4           lease and the Port Authority basically and the  
5           Municipio basically came to us, "Look, we  
6           cannot renew it for five years because we have  
7           a pending project coming up, you know, which is  
8           a sizeable project and we are going to require  
9           the space" which was, you know, the Puerto Las  
10          Americas which is a mega port. That concept was  
11          presented to me and, you know, he says,  
12          "Eventually you are going to have to move" and  
13          I said, "Okay." And he says, "We want to help  
14          you move. We want your company to stay in  
15          Ponce." I was directed to the office of the  
16          Mayor, you know, with Honorable Mayor Cordero  
17          who is deceased now, Churumba and he identified  
18          the property where we are located now. So we  
19          start working with that, meeting with the  
20          owners and negotiating that. In the meantime  
21          the port which actually is the Municipio of  
22          Ponce, the city of Ponce, was renewing the  
23          lease on a yearly basis, year to year.

24          Q       Let me stop you right there. Can you  
25          tell me the years that the lease for the port

1 facility was renewed?

2 A 2000, 2001, 2002, 2003, 2004, 2005  
3 and then after 2005 they renewed it on a month  
4 to month basis.

5 Q Okay. So from 2005 until a certain  
6 period afterwards you were on a month to month  
7 lease with the port facility?

8 A From 2005 on I was on a month to  
9 month basis.

10 Q Okay. Now, did your operation change  
11 at all during this period of time in terms of  
12 what you were doing, whether you were creating  
13 waste, what happened?

14 A No. We always, you know, and to the  
15 present, we are a sewer discharge company. You  
16 know, naturally we were growing, you know but  
17 we were staying with our same, you know,  
18 product line which basically is iron salts and  
19 aluminum salts and some organic polymers as an  
20 aid in the water treatment process, what is  
21 blending for the water treatment process.

22 Q Okay. Now, did you ever reach a time  
23 when you had to consider a move of the  
24 operations of Aguakem from the port facility?

25 A Yes. You know, we had an open

1 dialogue and frequent meetings with the Port  
2 Authority Director. I saw several of them while  
3 I was there and, you know, we were  
4 coordinating. Basically it was a kind of a  
5 double coordination because, you know, they  
6 were not certain about the Port of the  
7 Americas, when they were leaving, or whether  
8 that project was going to go full steam ahead  
9 and when we had to move but they helped me  
10 immensely in locating the land where I am at  
11 and also because it was the Municipio, getting  
12 the permitting and moving.

13 Q Let's just focus on the date when, if  
14 there was a date when you had to consider  
15 moving from the port facility.

16 A I think it was the year 2000 I  
17 started considering that this was, you know,  
18 sun rising for the company.

19 Q Let me ask you a different thing.  
20 Was there a sense or urgency added to when you  
21 had to move at any point in time?

22 MS. RODRIGUEZ: Objection, Your Honor.  
23 It is leading. I have been very flexible in  
24 order to -

25 THE JUDGE: The objection is



1           sustained.

2                       MR. LLORENS: Okay.

3                               EXAMINATION CONTINUED

4           BY MR. LLORENS:

5                       Q     Okay. In 2006 did you have any  
6                       conversations with the Municipality about  
7                       moving?

8                       A     Yes. At that time especially after  
9                       the summer, you know, the country was going  
10                      through a hard economic time and sales tax  
11                      legislation was passed and it was evident that,  
12                      you know, the mega port was going to go full  
13                      steam. At that time, you know, they asked,  
14                      "Look when are you going to move?"

15                      Q     I am sorry. Don't say that time.  
16                      Specify the date or at least the year when  
17                      these things happened.

18                      A     It was in 2006.

19                      Q     Okay.

20                      A     Probably in the spring, around there.

21                      Q     Okay and what was said to you by the  
22                      Municipalpty, if anything?

23                      A     When can you move. When can you, you  
24                      know, when can you move out of the facility,  
25                      you know and this was, you know, after they had

1 a source of funding and I said, "Well, you  
2 know, I can move by September."

3 Q Okay. So you told them you could  
4 move by September.

5 A Of 2006, yes.

6 Q Okay. Did the Municipality of the  
7 port agree to a move date of September, 2006?

8 A Yes, they did.

9 Q Okay. Did you execute any documents  
10 that memorialized this agreement?

11 A Yes, we executed some documents, you  
12 know, making the commitment of moving in  
13 September. You know, we modified those  
14 documents because basically, you know, I needed  
15 more time and we looked at November.

16 Q Okay. So there came a time when you  
17 informed the Municipality that you would need a  
18 date beyond September, 2006?

19 A Yes.

20 Q Okay. When did you tell them that?

21 A It was before September, you know, it  
22 was sometime before, around that time.

23 Q Okay. What did you tell them about  
24 the date you wanted to move?

25 A Well, you know, the reality is that

1           they knew that I was getting my permitting  
2           going on at, you know, the new facility, you  
3           know, to build so they were being helpful and  
4           at the same time, you know, their backs were  
5           against the wall because they wanted, you know,  
6           they had their project deadlines in order for  
7           the, you know, the Port of the Americas so, you  
8           know, I said, you know, "Listen by November,  
9           you know, it is okay because I have not gotten  
10          all my permitting yet" and, you know, they  
11          seemed to accept it but, you know, but they had  
12          a lot of pressure at that time.

13           Q     Okay. Were you able to move in  
14           November, 2006?

15           A     No. I was not able to move in  
16           November. I told them, you know, I came back to  
17           them and said, "Look, by December, end of  
18           December I will be out of the port facility."

19           Q     And what was their reaction to that?

20           A     Well, you know, they went through a  
21           court proceeding and at that time, you know, I  
22           received an eviction notice.

23           Q     Okay. Do you know when you received  
24           an eviction notice?

25           A     I don't know the date but it was

1           sometime in December.

2           Q     Okay. In December of 2006, did you  
3           have any conversations with the Municipality of  
4           Ponce about the proposed moved from the  
5           facility?

6           A     Yes, we were, you know, at that time  
7           they were wanting to know exactly, you know,  
8           what was the schedule and, you know, at that  
9           time in December 15th I remember very well I  
10          closed the loan for the Huella Taina and so we  
11          had the funding and that same day the marshals  
12          called me saying that I had to move over the  
13          weekend.

14          Q     Okay. When you say marshals, what do  
15          you mean by that?

16          A     Aguaciles, you know -

17          Q     Marshals for who?

18          A     For, well, I don't know, they were  
19          representing the court, you know, they wanted  
20          me to move and, you know, when I got the call  
21          late Friday on the 15th I said, "Look, you  
22          know, that is an impossibility. Why don't we  
23          get together on Monday and, you know, and sit  
24          down and talk, you know, because already I have  
25          a schedule to move but if you are gong to take

1 possession of the facility, you know, then let  
2 me know also. You know but I think that I am  
3 the most qualified person, you know, and I am  
4 all set to move and on Monday" --

5 Q Wait a second. What did they say to  
6 you in response to what you just said?

7 A Nothing. They just basically say, you  
8 know, "Try to move by the weekend."

9 Q Okay. Now, did you move on the  
10 weekend?

11 A No.

12 Q Okay. What happened after that?

13 A Well, in the weekend we started  
14 setting things up for moving following the  
15 schedule that was presented to the port. The  
16 first stage was to prepare the land, basically  
17 was land that we were going to move at the  
18 Huella Taina, you know, to put it in compliance  
19 as a temporary facility and what we did, you  
20 know, I contracted on Sunday, we got together  
21 with the contractor that was going to lay the  
22 land and, you know, put the lining and burrs  
23 around it, everything as the engineers had told  
24 me I had to and, you know, Monday, so that was  
25 going on when I had my meeting on Monday with

1 the marshals and at that meeting the Port  
2 Director Jorge Hernandez was present.

3 Q Let me ask you about this meeting in  
4 December 18th. Who was at this meeting?

5 A Well, I had the meeting on Monday?

6 Q On Monday, December 18th that you  
7 just testified about.

8 A December 18th it was early in the  
9 morning and it was the two alguaciles, marshals  
10 and Jorge Hernandez, the Director for the port.

11 Q Was anyone else at the meeting?

12 A No. At that time, there was no other  
13 person present.

14 Q Okay and what did you say at that  
15 meeting?

16 A Well, I basically stated "Look, I am  
17 moving. This is my schedule. You know, these  
18 are the dates that I am going to move my, you  
19 know, the chemicals, I am going to move the  
20 large tanks that I have, you know. This is when  
21 the contractor, you know, are going to come in  
22 with cranes and, you know, this is the  
23 schedule, the deadline. You know, I am  
24 committed to this deadline. I only ask for the  
25 24th and the 25th" that I was not going to have

1 any activity because of Christmas and, you  
2 know, Jorge Hernandez, you know, basically says  
3 well, you know, that is "Okay, let's proceed  
4 but I want to have somebody else also look at  
5 this" and I said, "Fine." I gave him the  
6 schedule and, you know, we proceeded, started  
7 the moving.

8 Q Okay. Before we go on, you presented  
9 your plan and the reaction of the Port  
10 Authority representative was what?

11 A At the beginning he was a little bit  
12 skeptical then he was very favorable. Then it  
13 was,  
14 "how can we help you to expedite this?" You  
15 know and I said, "Well, you know, there are  
16 certain things that can really help me, you  
17 know, to move quickly and one of the major  
18 items is that I have, you know, big tanks, you  
19 know, twenty five, you know, 14,000, 8,000  
20 tanks, you know. If we can, since you are going  
21 to demolish this building, if we can open the  
22 ceiling and I can come in with a crane, pick up  
23 the tanks and then move them into, you know, a  
24 flat bed and haul them to the facility" and  
25 they liked that idea and they had, you know,

1 subsequent to that we had a meeting with the  
2 construction company Del Valle.

3 Q Who is Del Valle?

4 A Del Valle was the contractor who was  
5 awarded the bid to do the demolition in  
6 construction of the port facility, asbestos, to  
7 my knowledge.

8 Q Okay and what was Del Valle doing  
9 with regard to warehouse 6?

10 A Well, Del Valle was demolishing a  
11 warehouse, identical warehouse to ours to the  
12 east of us. There was another warehouse to the  
13 west of us that was smaller and they were  
14 demolishing that, there was a lot of dust, you  
15 know, coming out of that process that had been  
16 going on, probably since November and my  
17 employees complained about it but they were, it  
18 was, you know, they were demolishing, they were  
19 building, you know, a lot of activity going on  
20 at that period of time. Also there was a lot of  
21 lumber at that time.

22 Q Let me ask you about Del Valle. Did  
23 they have access to warehouse 6 during this  
24 period of time in December of 2006?

25 A Yes. They had, like I was



1 explaining, they had a lot of lumber coming in  
2 from I believe it was Arjona which is a lumber  
3 company and on the east side, the east door of  
4 the building, okay, they basically took the  
5 door out and, you know, there was no door and,  
6 you know, they were, obviously they had come to  
7 an arrangement, a lease arrangement or  
8 something with this company and they were  
9 storing a lot of lumber in the portion of the  
10 warehouse that we did not occupy.

11 Q Okay. With regard to what you just  
12 testified, I am going to show the witness  
13 photograph identified layout. It is Exhibit 3.  
14 I am not sure. It says here on the back  
15 appendix for CX 3, I don't know the exhibit  
16 number of this document.

17 THE JUDGE: It is a photograph  
18 identified layout.

19 MR. LLORENS: That is correct and I am  
20 showing it to the witness and with regard to  
21 the area of the facility that you did not -

22 MS. RODRIGUEZ: Your Honor, we cannot  
23 see from here.

24 THE JUDGE: Okay.

25 EXAMINATION CONTINUED

1 BY MR. LLORENS:

2 Q With regard to the -- can I ask the  
3 witness to stand so everyone can -

4 THE JUDGE: Yes, that will be fine.

5 EXAMINATION CONTINUED

6 BY MR. LLORENS:

7 Q With regard to the area of the  
8 facility that Aguakem did not occupy, can you  
9 indicate that area on this exhibit?

10 A Yes, I can but I want to make a note.

11 Q No, don't make notes. Answer  
12 questions.

13 A Okay. Well, it was this end of the  
14 warehouse, this is not on scale.

15 Q What is this? What you are talking  
16 about?

17 A That would be I believe the west  
18 side.

19 Q Okay. Let the record reflect that  
20 the witness has pointed to the bottom of the  
21 photograph identified layout.

22 THE JUDGE: Okay. If you were attached  
23 to numbers, you see numbers written on there,  
24 are you saying below? Below being the lower  
25 portion? Below what numbers approximately?

1 MR. LLORENS: Your Honor is asking  
2 what the part of the facility that was Aguakem?

3 THE JUDGE: Yes.

4 EXAMINATION CONTINUED

5 BY MR. LLORENS:

6 Q So why don't you for purposes of Your  
7 Honor, identify by numbers if you can what part  
8 of the numbers falls within the Aguakem  
9 facility.

10 A If you look at seven, seven towards  
11 the west all the way to the door.

12 Q That was Aguakem's facility?

13 A That was Aguakem's facility.

14 THE JUDGE: Okay. Now, so from seven  
15 as you go down the diagram so you go seven,  
16 eleven, twelve, thirteen?

17 THE WITNESS: Well, basically, excuse  
18 me, I think it was around eleven, you know,  
19 because this door was not, this is not on  
20 scale.

21 THE JUDGE: Okay. This door refers to  
22 -

23 THE WITNESS: To the door next to  
24 number four on the east side.

25 THE JUDGE: Okay.

1 THE WITNESS: Okay. That is a door.  
2 This is not on scale.

3 THE JUDGE: Yes.

4 THE WITNESS: So I would say it would  
5 be around, you know, eleven down towards the  
6 west all the way to the door. Where number  
7 five is

8 THE JUDGE: Where Aguakem was?

9 THE WITNESS: Where Aquakem operated  
10 as of December, 2006.

11 THE JUDGE: Okay.

12 MR. LLORENS: If I may just follow up  
13 on my question.

14 EXAMINATION CONTINUED

15 BY MR. LLORENS:

16 Q So the premises that Aguakem leased  
17 in December, 2006 are the areas that you have  
18 just identified? Is that correct?

19 A Yes.

20 Q All right. Now, in your earlier  
21 testimony you talked about other parties  
22 accessing an area of the warehouse. Can you  
23 indicate what part of the warehouse other  
24 parties were accessing in December, 2006?

25 A Yes, the door on the east side.

1 MR. LLORENS: Let the record show that  
2 the witness is pointing to the door  
3 illustration at the top of the photograph  
4 identified layout.

5 THE JUDGE: Okay.

6 THE WITNESS: The port decided to take  
7 it out. There was no door and basically, you  
8 know, from eleven to the door, okay, around  
9 there, this is not on scale, you know, there  
10 was constant activity of, you know, huge  
11 forklifts storing lumber, special treated  
12 lumber in and out, you know, while we were  
13 operating.

14 THE JUDGE: And this was approximately  
15 what month?

16 THE WITNESS: It went on in November,  
17 December and one of the issues that I had when  
18 the port was trying to, you know, ask me what  
19 are the things that I can do, you know, they  
20 can help me, we first considered the roof  
21 scenario and then we considered, you know,  
22 trying to put the tanks down and take them  
23 through this door because there was a lot of  
24 demolition here, a lot of demolition -

25 THE JUDGE: When you said this door,

1           that was the eastern door?

2                         THE WITNESS: The eastern door. That  
3           would give us a good access to put those huge  
4           tanks and flat beds and to bring the cranes in,  
5           put them in and drive them out.

6                                 EXAMINATION CONTINUED

7           BY MR. LLORENS:

8                         Q       Okay. I am going to ask the witness  
9           to sit down. You just testified about  
10          requesting assistance from the municipality  
11          with regard to the move. What was their  
12          reaction to your request?

13                        A       Well, they wanted to be very  
14          proactive to see how we can expedite the move.  
15          It was a win/win situation and, you know, the  
16          first scenario that we considered, like I  
17          mentioned before, was opening a hole in the  
18          roof so we can bring the crane, position the  
19          tanks and lift them up, put them in a flat bed  
20          and the port -

21                        Q       What did the port say to that idea?

22                        A       Well, the port basically said, "well,  
23          let's get together with our contractor so that  
24          we can, you know, get the form.

25                        Q       Who was their contractor?

1 A Del Valle.

2 Q Okay.

3 A Construction I believe, Del Valle  
4 something.

5 Q Okay and did you have a meeting with  
6 their contractor and the port?

7 A Yes, I had a meeting with the  
8 contractor, with the port and a gentleman that  
9 really in Spanish is "fiscalisando", he was  
10 like making sure that the construction was  
11 being performed per specs like an inspector, an  
12 inside inspector and we had a meeting and, you  
13 know, Del Valle, immediately said, "no, we  
14 cannot do that."

15 Q Why did they, did they explain why  
16 you couldn't do it?

17 A Yes, they said that the roof was  
18 asbestos and they cannot touch that. So that  
19 scenario of, you know, taking the tanks through  
20 the roof, you know, basically was a dead end  
21 run but I was very concerned, you know, to hear  
22 that there was asbestos, you know, in the  
23 premises at that time.

24 Q Okay. Now, sticking to the move,  
25 what occurred after the meeting with Del Valle

1 and the port with regard to the roof scenario?

2 A Well, that was, I mentioned, came to  
3 a dead end.

4 Q Right.

5 A The port brought in a consulting  
6 company, De Maco that wanted to see, you know,  
7 study what we were going to do, the proposal of  
8 the time table and we met I think it was, you  
9 know, that Tuesday the 17th, it was very quick  
10 and they examined everything and they said,  
11 "no, they are doing a good job, you know, maybe  
12 they need more equipment and you know, in order  
13 to expedite it" and I mentioned, yes, we have  
14 equipment at te new facility, at the Canas  
15 facility and we had equipment here but we  
16 needed to have, you know, a time table met but  
17 they were very happy and, you know. I don't  
18 know if the port retained him to kind of keep  
19 an eye on us, but at that time we basically  
20 were full steam ahead in meeting the deadlines  
21 with moving from the port.

22 Q Okay. So what date did the move from  
23 the port commence?

24 A I would say that when the loan was  
25 closed on the 15th and, you know, immediately



1 after that, the 16th we started, you know, we  
2 had, everything was ready to go.

3 Q Okay and what did you move if you  
4 could tell me, if you could specify the dates?  
5 What was moved by Aguakem?

6 A Okay. We moved our inventory, our  
7 chemicals, you know from the facility. There  
8 were chemicals in tanks, there were chemicals,  
9 you know, in totes regarding our tanker cars.  
10 You know, we filled our tanker cars and we  
11 don't drive our tanker cars. Everything is  
12 contracted out. You know, we don't put any  
13 chemicals on the road so, you know, this  
14 movement was going on so we had basically  
15 tanker cars, we had flat beds, you know, we had  
16 small trucks. We started moving, you know, the  
17 chemicals. We started moving, you know,  
18 everything out of the warehouse.

19 Q Can you specify what you moved on  
20 what days?

21 A I would have to look at the bill of  
22 lading, you know, but it was an ongoing process  
23 from, you know, from the 17th on.

24 Q Okay. Well, let's say on December  
25 17th, what materials were being moved just as a

1 category as opposed to an amount, what were you  
2 moving on that day?

3 A We started moving with the big tanks.  
4 We wanted to get those big tanks with aluminum  
5 salts and iron salts.

6 Q Okay.

7 A There were, you know, these were  
8 large tanks, you know, 14,000 gallons that  
9 makes, you know, probably three trips on a  
10 tanker car.

11 Q Okay and was that the only thing you  
12 were moving the first day?

13 A We started that process and we also  
14 started consolidating, you know, the different  
15 chemicals in order to move but it was, you  
16 know, a lot of attention was given to, you  
17 know, dispatching and receiving so we had any,  
18 you know, it was a seamless transition as much  
19 as we could.

20 Q Why did you need a seamless  
21 transition?

22 A Because of, you know, we were dealing  
23 with, you know, corrosive chemicals and, you  
24 know, we wanted to put everything, you know, to  
25 transport the chemicals in a safe and secure

1 way to the new facility and at that facility we  
2 wanted to receive it and store it in the area  
3 that we had lined in a safe and secure way.

4 Q Did you close down operations during  
5 this moving process?

6 A Yes, pretty much so. You know,  
7 December typically is a slow month but we  
8 closed down. We stopped, you know, any  
9 manufacturing going on at the port of Ponce.

10 Q Okay. What did you do with regard to  
11 your customers?

12 A Well, we had some finished product,  
13 inventory so we were able to service our  
14 customers that were in need of product with  
15 that finished, you know, product inventory. We  
16 made a nice bubble for ourselves so we don't  
17 have to go and process.

18 Q Okay. When we talked about the first  
19 day or days of the move, can you tell me  
20 subsequent days what were you doing in terms of  
21 the moving process?

22 A It was pretty much putting, you know,  
23 all the chemicals into the tanker cars or flat  
24 beds in the drums or totes and moving them to  
25 the new facility. At the same time, you know,

1 we were trying to break down the tanks in terms  
2 of the piping and the valves and, you know,  
3 staples and you know that was an ongoing  
4 process. It was long days, very long days.

5 Q Okay. Did there come a moment when  
6 this process of moving was interrupted?

7 A Well, yes, when we started, you know,  
8 when I heard about the asbestos and, you know,  
9 I had hired a consultant to help me, a person  
10 that had a lot of experience and, you know, and  
11 we basically, he says, "Look, we need to look  
12 at this asbestos and there is probably lead"  
13 and there was a lot of complaints from my  
14 employees, you know, the dust was so heavy they  
15 could not breathe.

16 Q Wait. What is this about dust?

17 A Well, in November, around there, in  
18 December they were demolishing buildings, okay  
19 and all that dust came into our warehouse and  
20 then, you know, the activity of the lumber kind  
21 of churned the dust up and, you know, I was  
22 pretty busy trying to get everything set up,  
23 you know, many times outside of the plant but  
24 when I came into the plant my employees  
25 complained and said, "Look, this is impossible

1 to work here, all the dust that is here" and,  
2 you know, I had, the women working in the  
3 office especially one that was pregnant, you  
4 know, says, "We have called the agencies, you  
5 know, to come and see what this is about. This  
6 is not normal" and I said, "Oh, okay." Then I  
7 became concerned. One day I was there, you  
8 know, that I started to see all this dust and  
9 my, you know, then came the whole thing with  
10 the asbestos. This was in the time frame of  
11 November and December, you know. I wanted to  
12 find out what was going on here and, you know,  
13 my consultant, Mr. Tommy Ramirez which had  
14 many, many years of Phillips Petroleum  
15 experience he said, "Look, you know, the best  
16 way to do this is to hire a company that will  
17 do, you know, sampling and test it to see if  
18 there is asbestos, you know and lead, you know,  
19 within our premises and if it is dust" and I  
20 said, "Well, okay. Who is the best company  
21 here" and he says, I don't remember the name of  
22 the company but he said, "This is the only  
23 company in Puerto Rico that is able to do this  
24 work."

25 Q Okay. Could you put a time frame on

1           this discussion about the company that you were  
2           hiring?

3           A       This was when I decided, you know, to  
4           look into this, it was in December.

5           Q       Okay.

6           A       Of 2006.

7           Q       Okay.

8           A       I said, "Okay, set it up, you know,  
9           let's have an entry meeting and see what the  
10          scope of the work is" so they came in, you  
11          know, it was a fellow. We sat down at the  
12          conference room and, you know, he said, this is  
13          what is going on, you know, and he basically  
14          informed us that, you know, all these buildings  
15          in the port had lead and asbestos and, you  
16          know, when he said, "Listen, there has been a  
17          lot of dust, I want to know, if, you know,  
18          there has been fugitive, you know, this  
19          fugitive dust has asbestos or lead or both."  
20          He says, "Well, let me look and I will put a  
21          proposal." So he said, "Okay go with Mr.  
22          Ramirez and look around."

23          Q       Okay. Hold on a second. Do you now  
24          recall the name of the company that you brought  
25          in to have these discussions with you?

1           A     No. Mr. Ramirez knows the company  
2           very well.

3           Q     If you don't, you don't. Okay and,  
4           okay, you sat down and you had the meeting and  
5           then what happened?

6           A     Then Mr. Ramirez and this fellow went  
7           to look at the warehouse, you know, in the  
8           outside and as they were walking on the east  
9           side where they had removed the door I was told  
10          by Mr. Ramirez a fellow that was with him saw  
11          one of his co-workers, he asked him, "What are  
12          you doing here." "Well, they just hired us,  
13          the port just hired us." And then he says,  
14          "Well, you know, this is becoming a conflict of  
15          interest but anyway let me do the work and we  
16          will get back to you with a quote." Then the  
17          owner of this company called and said, "We  
18          cannot do this work. There is a conflict of  
19          interest."

20          Q     What did he say exactly to you. Why  
21          was it a conflict of interest?

22          A     Because the port had hired them.

23          Q     The port had hired him to do  
24          analysis?

25          A     The port had hired him I don't know

1 for what.

2 Q Okay. All you know is that the port  
3 had hired him?

4 A I don't know but I pleaded with him,  
5 I said, "Look if there is asbestos and lead,  
6 you know, we are here working, we need to  
7 know."

8 Q Okay. Did you take any other steps  
9 after you could not hire this company?

10 A Yes. I basically, told, you know, Mr.  
11 Ramirez, "What can we do? We can start  
12 investigating" and there were no other  
13 companies that can do the work here in Puerto  
14 Rico but there were companies that were  
15 qualified to take samples and those samples  
16 under their chain of custody could be sent to  
17 the United States for analysis and, you know,  
18 we, I decided to hire the company that made the  
19 report and -

20 Q What was the name of the company that  
21 you hired?

22 A Enviro - I don't remember.

23 Q All right. Now, what did you ask this  
24 company to do?

25 A Well, we had an entry meeting and I



1           said, "Look, this is what we want to do" and  
2           they said, "Well, you know, in order for us to  
3           do this, you know, we have to take, you know,  
4           the normal procedure is to take a wide sample  
5           of the different areas and then, you know, we  
6           put them in the proper bags and then send them,  
7           you know, to the states" and I said, "Well,  
8           fine but I want these wipes to be where I have  
9           been operating inside Building number 6,  
10          warehouse number 6 and where I have never been  
11          operating on Building number 6." I wanted the  
12          whole building to be wiped and he said, "Well,  
13          how many samples would that be" and I don't  
14          remember the samples that they told me and we  
15          came to an economic term and I paid him a  
16          deposit and then within, I think it was, you  
17          know, the 22nd or something like that of  
18          December they came in, you know, the technician  
19          and I went with him and we took samples. You  
20          know, in Aguakem and at the entrance where the  
21          door was opened.

22                   MR. LLORENS: Your Honor, I am going  
23                   to mark this document as Respondent's I.D. 3.

24                   MS RODRIGUEZ: Your Honor, we have  
25                   objections and we made objections to the same,

1           you know, reiterate the objections we made  
2           initially in our motion in limine. This was  
3           not, even though it was prepared for Mr.  
4           Unanue, it was not prepared by him. We would  
5           have no way to cross examine whoever prepared  
6           this document and he has not shown, counsel has  
7           not shown that Mr. Hernandez even had, you  
8           know, the adequate preparation, educational  
9           background to actually be able to know what  
10          these tests are. We do not know whether this is  
11          the complete report that this company did so we  
12          want it to be stricken from the record and we  
13          cannot expect this to be entered into as  
14          evidence, not even to be used.

15  
16                   MR. LLORENS: Your Honor, I mean, of  
17          course, I haven't moved to have it into the  
18          record yet but I will, we will eventually do  
19          that so I might as well address the argument  
20          now. The purpose of this document is not to  
21          establish that is what is in there is true or  
22          false. In essence the need for expertise is  
23          irrelevant. All you need to do is be able to  
24          read English in that sense. The question of  
25          whether it is the full report that Mr. Unanue

1 received, I think he is perfectly competent to  
2 testify to what was provided to him by this  
3 company but I urge the Court to consider, we  
4 are not arguing that you have to accept the  
5 results of the findings. We could believe or  
6 disbelieve but what the purpose of the document  
7 is to show that Mr. Unanue received a report  
8 that stated these things and that because of  
9 that he took certain actions. So, whether the  
10 report is accurate or inaccurate is not really  
11 the purpose of the document. The purpose of the  
12 document is to show that such a report was  
13 delivered to Mr. Unanue who then took steps  
14 subsequent to that as a result of having  
15 received that report.

16 MS. RODRIGUEZ: Your Honor.

17 THE JUDGE: Okay.

18 MS. RODRIGUEZ: Your Honor, even now  
19 counsel states that the reason why he took all  
20 those precautions and I have been very, very  
21 flexible in the way he has been conducting his  
22 direct. He has been asking a lot of -

23 THE JUDGE: Okay. So you have an  
24 objection -

25 MS. RODRIGUEZ: I know, Your Honor,

1 but I want to move this along but he has  
2 testified about asbestos. He has testified he  
3 was concerned and even one of his allegations  
4 in this complaint is that he moved because of  
5 the asbestos that they found there;  
6 that there was going to be harm. How can you  
7 prove that there was harm if he is not going to  
8 allow this? I mean, this is the whole basis for  
9 that.

10 THE JUDGE: Okay. What I am going to  
11 do, the first question I have is, was this  
12 included in the pre-hearing exchange that was  
13 the subject of the motion in limine?

14 MS. RODRIGUEZ: Yes, Your Honor.

15 THE JUDGE: Okay. So it is an  
16 accurate, no additional pages -

17 MS. RODRIGUEZ: Well, counsel can  
18 state whether this is -

19 MR. LLORENS: This is -

20 MS. RODRIGUEZ: The one that you  
21 showed today.

22 THE JUDGE: And what I am going to do  
23 is it hasn't been introduced yet into the  
24 record. I am going to allow the document in.  
25 The probative value that is accorded this

1 document has not been determined yet. It would  
2 be appropriate for some of the issues raised by  
3 counsel for the EPA to explore this on cross  
4 examination and that will be the more  
5 appropriate forum. For the limited purposes  
6 that counsel states it is being sought for  
7 admission, I am going to allow it.

8 MR. LLORENS: Thank you, Your Honor.

9 THE JUDGE: Like I said, it may be  
10 afforded no probative value whatsoever or  
11 depending on the testimony and counsel should  
12 explore all of the objections that were raised  
13 as part of cross.

14 MS. RODRIGUEZ: Your Honor, just to  
15 make it clear, that it would be only for  
16 identification purposes just to say that he  
17 received the document.

18 THE JUDGE: Well, if counsel is  
19 willing to stipulate to that.

20 MR. LLORENS: That the document was  
21 received, yes, absolutely.

22 MS. RODRIGUEZ: No, I am not going to  
23 stipulate as to the admissibility. I mean, what  
24 I want to clarify is that he just stated that  
25 he was just going to show it so that the

1 witness -

2 THE JUDGE: No, I believe he then  
3 indicated he is going to build it into the  
4 record.

5 MR. LLORENS: I am going to move the  
6 document into the record but for the limited  
7 purpose that he received it and obviously I am  
8 going to ask him about what it says.

9 THE JUDGE: Inasmuch as negligence is  
10 one of the penalty factors that was raised, and  
11 that goes to the conduct of both the Respondent  
12 in this situation, I believe it is relevant.  
13 Like I said, the probative value that is  
14 accorded is something determined at a later  
15 date but it is going to be admitted.

16 MS. RODRIGUEZ: Your Honor, who is  
17 going to authenticate this if the individual  
18 who generated it, I think that was one of our  
19 discussions during our motion in limine.

20 THE JUDGE: Like I said, this is  
21 something that is appropriate to explore on  
22 cross of this witness. We haven't had the  
23 foundation laid yet as to whether it was  
24 received by this individual, the pages,  
25 etcetera but assuming that is established, your

1 objection is noted for the record and it is  
2 overruled.

3 MR. LLORENS: Thank you, Your Honor.

4 MR. MATEO DURANGO: I have a quick  
5 question, Your Honor.

6 THE JUDGE: Yes.

7 MR. MATEO DURANGO: It appears and we  
8 haven't gotten into it yet, that counsel is  
9 going to ask the witness some questions  
10 regarding what appears to be opinions of a  
11 report and I know that we are a little bit  
12 flexible sometimes with respect to the hearsay  
13 rule and so forth. Should I object that each  
14 one of the opinions that he asked from the  
15 witness of what -

16 THE JUDGE: Well, what we could do is,  
17 when the situation arises, state your objection  
18 and then note that it is a standing objection,  
19 ongoing objection to any further questions  
20 requiring an opinion.

21 MR. MATEO DURANGO: Okay. So just to  
22 be clear, can I note my standing objection to  
23 any opinions that were rendered by the preparer  
24 of the document with the understanding that I  
25 don't have to interrupt counsel each time he

1 asks?

2 THE JUDGE: That would be excellent  
3 and appreciated.

4 MR. MATEO DURANGO: Thank you. I just  
5 wanted to state that for the record.

6 THE JUDGE: Okay.

7 MR. MATEO DURANGO: It is an ongoing  
8 objection to any opinion that the preparer of  
9 the document -

10 THE JUDGE: And the record now  
11 reflects that ongoing objection.

12 MR. MATEO DURANGO: Thank you, Your  
13 Honor.

14 MR. LLORENS: Your Honor, I am going  
15 to hand, can we mark this as I.D., Respondent  
16 I.D. 3, I think that is right, isn't it?

17 EXAMINATION CONTINUED

18 BY MR. LLORENS:

19 Q Mr. Unanue I am handing you a  
20 document that has been marked as Respondent  
21 I.D. 3. It is labeled Enviro Recycling, Inc.  
22 dated December 2006. It states that it was  
23 prepared for Jorge Unanue and prepared by  
24 Enviro Recycling, Inc. I am going to ask you  
25 to look at the document. Do you know what that



1 document is?

2 A This is the report that was prepared  
3 for Aguakem for the lead and asbestos issue  
4 that we had at the warehouse.

5 Q Did Aguakem Caribe receive this  
6 report?

7 A Yes.

8 Q Who transmitted this report to  
9 Aguakem Caribe?

10 A It was Enviro Recycling that  
11 transmitted it to us.

12 Q Okay. Did Aguakem Caribe, Inc. keep  
13 a copy of this report in its records?

14 A Yes, we did. This report was handed  
15 to me while I was working at the warehouse at  
16 the port, physically handed to me.

17 Q And after it was handed to you, what  
18 did you do with it in terms of the report  
19 itself, what did you do with it?

20 A Well, we were moving and I stopped  
21 and I looked at it and I, you know -

22 Q Physically I want to know did you,  
23 what did you do with that paper that was handed  
24 to you?

25 A Well, I read it.

1 Q Okay and then what did you do?

2 A You know, then, you know -

3 Q Not what you did about it, what did  
4 you do with the report?

5 A With the report?

6 Q Yes.

7 A Well, I looked at it when I put it  
8 away and I had to make decisions.

9 Q Where did you put it away? Forget  
10 about what you did.

11 A I put it in my car.

12 Q Okay and then where did it go?

13 A Well, then it went, you know, I  
14 brought it with me because, you know, I had a  
15 concern about what was going on and I wanted to  
16 give a copy, you know, to the port, to Jorge  
17 Hernandez.

18 Q Okay. Let's look at the report. Did  
19 you read the report?

20 A Yes, I read the report.

21 Q Okay. Did you read at page two the  
22 recommendation of the report?

23 A Yes. I read the recommendation.

24 Q Okay. Did you act upon the  
25 recommendation?

1 A Yes, I acted, you know --

2 Q No, it was a yes or no question.

3 A Yes, I acted.

4 Q What did you do?

5 A I called everybody that was working  
6 inside the warehouse. I pulled them to the  
7 outside and I said, "We cannot go back in  
8 there. We need to close the doors and this is,  
9 you know, we have to have a time out until we  
10 get further clarification of what was going on  
11 here."

12 Q Okay. Did you do anything else?

13 A After that, you know, I got a copy  
14 and I immediately picked up the phone to Jorge  
15 Hernandez and I told him, "I have received this  
16 report that basically states that there is lead  
17 contamination" you know, dust and there is lead  
18 contamination, you know and I have a problem  
19 with this" and he says, "Well, can you provide  
20 me with me a copy."

21 Q Before you start there, who is Jorge  
22 Hernandez?

23 A He is the Director of the port of  
24 Ponce, well, at that time.

25 Q Okay. Now, after you told this to

1 Mr. Hernandez, did he say anything to you?

2 A No. I brought it over and I said,  
3 "You know" --

4 Q Listen to my question. Did he say  
5 anything to you when you told him the things  
6 you just testified to?

7 A He asked me to take the report to  
8 him.

9 Q Okay.

10 A Which we did.

11 Q Wait. Stop. Wait for my next  
12 question. Did you take the report to him?

13 A Yes, I did.

14 Q Okay. Did you deliver the report to  
15 him?

16 A Yes, I did.

17 Q Okay. Then what did you do?

18 A I instructed counsel to let  
19 everybody, my attorney, to let everybody know  
20 what was going on because, you know, we had to  
21 have clarification in order to continue moving.

22  
23 Q Now, what date did you receive that  
24 report?

25 A I believe it was the 28th of

1 December.

2 Q Okay. Now, on December 28th I think  
3 you just testified that you instructed your  
4 counsel to do something. What did you -

5 MS. RODRIGUEZ: Your Honor, no. If I  
6 recall he stated that he received that report  
7 on December 28th.

8 MR. LLORENS: Okay, fair enough.

9 MS. RODRIGUEZ: Counsel is --

10 THE JUDGE: Yes.

11

12 EXAMINATION CONTINUED

13 BY MR. LLORENS:

14 Q Okay. Did I hear your testimony  
15 correctly, that you at some point instructed  
16 your counsel to inform the parties regarding  
17 this report?

18 A Yes. Once I saw this document and,  
19 you know, there was a series concern to my  
20 workers, to the people that were working, to  
21 the contractors and I wanted this to be out in  
22 a very formal way so I called my attorney and  
23 asked him to communicate this to the attorney  
24 over at the port and at the same time I was  
25 reporting it, giving a copy to the director.

1 Q Okay. Now, did you have anymore  
2 conversations with anyone from the municipality  
3 or the port on that day, December 28th?

4 A No.

5 Q Did you have any conversations with  
6 them on December 29th?

7 A No.

8 Q How about December 30th?

9 MS. RODRIGUEZ: Your Honor, objection.  
10 He is being leading.

11 MR. LLORENS: Okay.

12 MS. RODRIGUEZ: He is asking for a  
13 specific date. He should be asking in general.

14 MR. LLORENS: Okay. Generally.

15 EXAMINATION CONTINUED

16 BY MR. LLORENS:

17 Q When was the next conversation you  
18 had with anyone from the port or the  
19 municipality regarding this situation of  
20 warehouse 6?

21 A I received a call from Mr. Jorge  
22 Hernandez towards the end of January. Mr.  
23 Hernandez asked me "When are you going to  
24 finish moving" and I said, "You know, I really  
25 want to finish moving. There is a lot of

1 equipment and tanks but I need you, the port to  
2 certify that there is no lead problem. There  
3 is not lead issue" and Mr. Hernandez said,  
4 "Well, you know, if you don't move, we are  
5 going to call the EPA."

6 Q What did you say to Mr. Hernandez  
7 after he said that to you?

8 A I said, "Well, I am, you know, I am  
9 not going to continue moving if you are not  
10 certifying to me that, you know, this lead  
11 issue has been resolved, you know. I have a  
12 report and it is very clear as to what I am  
13 supposed to do and if you certify that there is  
14 not a lead problem, you know, in the facility,  
15 I will go in and finish moving all of my  
16 equipment, my pumps, my air conditioners, my  
17 chemicals, everything and conclude the move."

18 Q And what did he say to you in  
19 response?

20 A "Well, if you don't move, we are  
21 going to call the EPA."

22 Q Okay and when did you speak with him  
23 again if at all?

24 A I don't recollect talking to him  
25 again.

1 MR. LLORENS: Your Honor -

2 MS. RODRIGUEZ: Your Honor -

3 THE JUDGE: Your Honor, let's just  
4 receive the document.

5 MR. LLORENS: Your Honor, I have  
6 just handed to the court reporter a document  
7 that I am going to request be marked as I.D.,  
8 Respondent's I.D. 4. At the top of it, it  
9 says Jorge Unanue, it says from Armando  
10 Llorens, sent January 29, 2007 to  
11 jjunanue@aguakem.net. It has a subject line.  
12 It says For Municipio Autonomo De Ponce  
13 Versus Aguakem Caribe, Inc. The forwarded  
14 message again it says from Armando Llorens,  
15 to Armando Llorens, retorres@coqui.net, copy  
16 to jjunanue@aguakem.net sent Thursday,  
17 December 28th 2006 at 10:50 a.m., subject re:  
18 Municipio Autonomo De Ponce Versus Aguakem  
19 Caribe, Inc. and then there is a  
20 correspondence there.

21 MS. RODRIGUEZ: Your Honor, can we  
22 approach?

23 THE JUDGE: Yes.

24 MS. RODRIGUEZ: Side bar.

25 MR. LLORENS: Side bar.



1 (Discussion off the record)

2 THE JUDGE: Now, a document has been  
3 marked for identification as Respondent's  
4 Exhibit 4 and the question I have for counsel  
5 for Respondent is, is this a document that  
6 was produced as a proposed exhibit and  
7 included as part of the pre-hearing exchange  
8 for any supplements thereto?

9 MR. LLORENS: Not in this forum,  
10 Your Honor.

11 THE JUDGE: Okay. Therefore, under  
12 the Rules of Procedure just taking an  
13 opportunity to find the exact, I believe it  
14 is 22.22 provides that exhibits which are  
15 not produced prior to fifteen days before the  
16 hearing may not be received into evidence  
17 unless there is good cause for failure to  
18 produce it at an earlier date. Is there any  
19 explanation offered as to why it was not  
20 available for production prior to fifteen  
21 days before the hearing?

22 MR. LLORENS: To answer your  
23 question directly, I would say, yes, Your  
24 Honor. The reason this form of the document  
25 was not produced prior to fifteen days

1 before, was because an earlier version of the  
2 document in substance which is the forwarded  
3 message was produced to the witness and it  
4 was the belief of counsel for Respondent that  
5 such a document would be admissible. The  
6 reason we have gone to this document is to  
7 make clear that this is a document that was  
8 kept in the ordinary course of business and  
9 came directly from the computer of Mr.  
10 Unanue. That is why it says Mr. Unanue at the  
11 top. I would also add Your Honor that there  
12 was no prejudice to counsel for EPA as not  
13 only did they make a motion in limine to try  
14 to exclude the substance of this document  
15 many months ago, they were able to re-argue  
16 that point here so the answer is yes, we  
17 believe there was good cause for why this  
18 particular form of the document was not  
19 produced in the fifteen day period.

20 THE JUDGE: Counsel?

21 MS. RODRIGUEZ: Your Honor, yes, we  
22 object. We have been, this is the third day  
23 we are here in this hearing. He had the  
24 opportunity when we filed the motion in  
25 limine and when this honorable court decided

1           that motion in limine afterwards he submitted  
2           his supplemental pre-hearing exchange and  
3           Your Honor was very clear as to what date we  
4           could submit any additional information or  
5           any additional documents. He could have at  
6           that time submitted the document. It is dated  
7           2007. I mean, it is not a document that was  
8           recently generated and we would have  
9           objection even when he says there is  
10          something in the document that is already in  
11          the document that we have objected and it is  
12          not part of the stipulated documents. So, to  
13          bring this now is really, I mean, we see no  
14          reason for it, no valuable excuse for  
15          bringing this document that he has had since  
16          2007.

17                   MR. LLORENS: Your Honor --

18                   MR. MATEO DURANGO: Furthermore,  
19           Your Honor, the content of the message is  
20           attorney/client communication.

21                   MR. LLORENS: Well, Your Honor, the  
22           one thing that counsel for EPA does not state  
23           in its response to me is that they were  
24           prejudiced in any way and the reason is they  
25           weren't. They have seen the substance of

1 this document for months and months. They  
2 raised objections about the substance of this  
3 document for months and months. The only  
4 difference is that this copy came not from my  
5 computer, Your Honor, it came from the  
6 witness' computer so the substance of what is  
7 being offered as proof has been disclosed for  
8 many, many months. We have wrangled over  
9 this very point for a long time.

10 MS. RODRIGUEZ: Your Honor, it comes  
11 from his computer. It says from Armando  
12 Llorens to Mr. Jorge J. Unanue. Let me  
13 correct counsel.

14 MR. LLORENS: No, Your Honor.

15 MS. RODRIGUEZ: And secondly -

16 THE JUDGE: One at a time, please.

17 MS. RODRIGUEZ: And secondly if he  
18 is stating that part of the document below is  
19 the same, I see no reason then why he has to  
20 include another one where he sent it to Mr.  
21 Unanue.

22 THE JUDGE: Okay. I am going to  
23 reject admission of the document under  
24 Section 22.22a, however, I am going to afford  
25 Respondent's counsel the opportunity to make

1 an offer of proof pursuant to Rule 22.23b  
2 and, therefore, if counsel would like to  
3 state briefly.

4 MR. LLORENS: Yes, Your Honor.

5 THE JUDGE: A statement describing  
6 the nature of the information excluded and  
7 what you had hoped to prove by admitting this  
8 document.

9 MS. LLORENS: Your Honor, this  
10 document is an e-mail that was retrieved from  
11 the computer of the president of Aguakem  
12 Caribe, Jorge Unanue. It contains a forwarded  
13 message that was forwarded on January 29,  
14 2007. The forwarded message is an e-mail from  
15 Armando Llorens to a Mr. R. E. Torres at  
16 coqui.net with a copy to Mr. Unanue. It was  
17 sent on Thursday, December 28, 2006 at 10:50  
18 in the morning. The e-mail says, "Dear  
19 Colleague, my client, Aguakem Caribe, Inc.  
20 has just this moment received test results  
21 performed at warehouse 6 regarding the levels  
22 of lead. The results are extremely alarming.  
23 They demonstrate that the work performed by  
24 Del Valle and other contractors --"

25 THE JUDGE: Now, reading the

1 document into the record won't be necessary.

2 MR. LLORENS: Very good, Your Honor.  
3 At the bottom of it states that it was sent  
4 by me with a copy to the president of Aguakem  
5 Caribe, Jorge Unanue.

6 THE JUDGE: Okay and this is  
7 submitted for the purpose of?

8 MR. LLORENS: The purpose of this is  
9 to buttress the testimony that we have heard  
10 that the witness instructed his attorney to  
11 inform the municipality of Ponce that there  
12 was this problem and that Aguakem had to  
13 suspend its removal process until such time  
14 as the warehouse 6 lead problem was  
15 satisfactorily resolved.

16 THE JUDGE: Okay. Thank you. So if  
17 the court reporter could attach a label  
18 marking this as Respondent's Exhibit 4  
19 rejected.

20 (Whereupon the above mentioned  
21 document was marked as Exhibit  
22 No. 4 for Identification)

23 EXAMINATION CONTINUED

24 BY MR. LLORENS:

25 Q Mr. Unanue, if I may continue, Your

1 Honor?

2 THE JUDGE: Yes.

3 EXAMINATION CONTINUED

4 BY MR. LLORENS:

5 Q Mr. Unanue, your last testimony was  
6 about a conversation you had with Mr.  
7 Hernandez of the Port Authority on January  
8 29, 2007. What was the next occurrence with  
9 regard, that you know, with regard to the  
10 facility at the port?

11 A Well, there was a visit from the  
12 EPA to the new facility, the Canas facility.  
13 My nephew was there and he received them and  
14 he told me they were very cordial, very nice.  
15 They came in late in the afternoon. They  
16 looked at everything. It was a very positive  
17 meeting and then they left and then they  
18 called back on the phone not too far away and  
19 said, "We are coming back" and then when they  
20 came back the tone was very different and it  
21 was all about, questions about the port and  
22 the port facility, the Ponce port facility.  
23 I think that was the next occurrence. I was  
24 not present at that time.

25 Q Okay. What was the next event that

1           you recall?

2           A       The next event that I recall was  
3           receiving, you know, they requested copies of  
4           the MSDS on our products which we provided  
5           and then the next issue that came in was a  
6           letter from an attorney in the states. I  
7           think it was New York requesting, you know,  
8           information, letting us know everything that  
9           was going on. This was coming from an  
10          attorney so I got that letter and I sent it  
11          to my attorney and said, "Look, please, you  
12          know, address this issue with the EPA  
13          attorney."

14          Q       Okay.

15          MR. LLORENS: May I approach the witness,  
16          Your Honor?

17          THE JUDGE: Yes.

18          MR. LLORENS: Showing him what has been  
19          marked as Respondent's Exhibit 1A.

20          THE JUDGE: Let me locate my copy.

21          MR. LLORENS: It is listed as Exhibit 1A,  
22          Your Honor. It is actually Respondent's  
23          Exhibit 1A.

24          THE JUDGE: Right.

25          MR. LLORENS: It is a February 7,



1 2007 e-mail.

2 THE JUDGE: Let me locate my copy.

3 MS. RODRIGUEZ: Was there a  
4 supplemental one?

5 MR. LLORENS: It was entered in my  
6 cross examination of Mr. Edgardo Gonzalez.

7 MS. RODRIGUEZ: Okay but it was not  
8 admitted?

9 MR. LLORENS: It was admitted as  
10 received by Mr. Edgardo Gonzalez.

11 MS. RODRIGUEZ: Your Honor?

12 THE JUDGE: Yes. I am first trying  
13 to locate it. Let me get to that point.  
14 What does it look like? It is a single page?

15 MR. LLORENS: Yes.

16 THE JUDGE: Okay.

17 MS. RODRIGUEZ: Your Honor.

18 THE JUDGE: Yes.

19 MS. RODRIGUEZ: As I recall it was  
20 identified -

21 THE JUDGE: Okay. I can't get, do  
22 anything until I find the copy.

23 MS. RODRIGUEZ: Oh, I am sorry, Your  
24 Honor. I am sorry, I thought you had it.

25 THE JUDGE: No, I haven't located it

1 yet. How about if we take a brief recess and  
2 I will try to locate this.

3 MS. RODRIGUEZ: Yes, I can't find  
4 mine either.

5 (Whereupon a recess was taken)

6 THE JUDGE: Counsel for Respondent  
7 is referring to an exhibit that was  
8 previously introduced into the record. I was  
9 provided a copy that I left on the bench and  
10 I cannot locate at this point so how about if  
11 I look at the copy, if the court reporter  
12 could hand me the court copy. Okay.  
13 Let me take a look at this. It is my  
14 recollection and if the parties are willing  
15 to agree then we don't need to go back and  
16 review the record as to the status. It is my  
17 recollection that this was admitted as part  
18 of the direct examination of Mr. Gonzalez and  
19 it was admitted for the purpose of  
20 establishing that he received it.

21 MR. LLORENS: It was in the cross  
22 examination

23 THE JUDGE: Yes.

24 MR. LLORENS: That was the sole  
25 purpose and nothing else.

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THE JUDGE: Okay. Both parties agree that it was what it was received for?  
MS. RODRIGUEZ: Right.  
THE JUDGE: Okay so we don't need to go back and examine the record.  
MR. LLORENS: And I am not going to touch into it, Your Honor. So I have decided to bypass it.  
THE JUDGE: Well, I didn't want to cut off discussion if you want to pursue it.  
MR. LLORENS: I am freely waiving my right to discuss that.  
THE JUDGE: Okay and I am handing back to the court reporter now the original. Thank you.  
EXAMINATION CONTINUED  
BY MR. LLORENS:  
Q Mr. Unanue -  
MS. RODRIGUEZ: I am sorry, since we had recessed I thought it would be, I mean, if it is okay with counsel and the judge to recess for lunch?  
MR. LLORENS: Is it already that time? I am sorry.  
MS. RODRIGUEZ: I am sorry.  
THE JUDGE: If it is a good time, if it is not we can postpone it another few minutes if you are in the middle of something.  
MR. LLORENS: No, it could wait.  
THE JUDGE: Okay. We will recess then.  
MR. LLORENS: I was hoping by some miracle to be done before lunch but it didn't happen.  
THE JUDGE: One o'clock.  
MR. LLORENS: I probably have maybe half an hour more to go.  
THE JUDGE: Okay. I think we are very much on target now and there shouldnt' be any problems concluding it today.  
(A recess was taken at 11:55 a.m.)

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AFTERNOON SESSION 1:00 P.M.

THE JUDGE: Back on the record?

MR. LLORENS: Your Honor, at side bar, as along with counsel for the EPA, I informed the Court that I was concerned that documents that I had moved for admission yesterday, I might have led the Court to believe that they were submitted in a pre-hearing exchange. That was not the case. These were documents that while I believe are identical, except for they came from the computer at Aguakem, as a document submitted in a pre-hearing exchange, given the Court's prior ruling, I felt it incumbent upon me to inform the Court as the trier of the record about the situation.

THE JUDGE: And I do appreciate your honesty in this matter.

MR. LLORENS: And I now would like to, just for the record to make an offer of proof, the documents that are not going to be admitted that were formerly admitted as exhibits, Respondent's Exhibit 1A and Respondent's Exhibit 1B which are now withdrawn from the admission into the record

1 and I am going to make an offer of proof for  
2 each of these documents.

3 With regard to Respondent's Exhibit 1A,  
4 it is a February 7, 2007 email from Armando  
5 Llorens at epa.gov and with a copy to Mr.  
6 Jorge Unanue and the subject line is EPA  
7 investigation of Port 6 of the Port of Ponce.  
8 The purpose of this document, Your Honor, was  
9 to evidence that in fact Aguakem Caribe was  
10 responsive to the EPA's request, particularly  
11 after its inspection of February 2, 2007 when  
12 Aguakem was first apprised of the EPA's  
13 interest in the facility. The second  
14 document, which is Exhibit 1B is a March 5th,  
15 2007 from Armando Llorens to Edgardo Gonzalez  
16 intended for Angel Rodriguez, intended for  
17 Lourdes Rodriguez and to Raymond Baso, all of  
18 the EPA with a copy to Mr. Jorge Unanue of  
19 Aguakem. The subject line is Re: EPA  
20 Investigation of Muelle 6 which is Muelle in  
21 Spanish for pier, Port of Ponce and it has an  
22 attachment, excuse me, it includes as the  
23 attached response a communication given to  
24 the EPA earlier. The purpose of this document  
25 is again to evidence the Aguakem's

1           responsiveness to EPA request and its intent  
2           to meet the requirements of the EPA and what  
3           they were required and as well to express  
4           Aguakem's interest in regaining its materials  
5           that were left at the warehouse at the port,  
6           Pier 6.

7           THE JUDGE: Thank you. Now, they were  
8           previously identified as Respondent's  
9           Exhibits 1A and 1B and they do not have the  
10          yahoo on top. Is that correct?

11          MR. LLORENS: That is the difference in  
12          the two, Your Honor, and if the court wants  
13          this for identification purposes I can enter  
14          the ones that have yahoo.

15          THE JUDGE: No, I would like to take the  
16          originals that were received into the record  
17          and if the court reporter could mark or cross  
18          and strike out received, and now insert,  
19          rejected.

20          MR. LLORENS: And finally, Your Honor, I  
21          sincerely apologize for the confusion.

22          THE JUDGE: Thank you. I appreciate your  
23          forthrightness in this matter. Why don't we  
24          give the court reporter a moment to do that,  
25          put these documents so what has happened is

1 the document as originally proposed was not  
2 identical to what was offered, proffered as  
3 part of the pre-hearing exchange and so in  
4 retrospect in light of the other ruling and  
5 again I have individually ruled on these to  
6 reject them with objection of counsel for the  
7 EPA.

8 Also I incorrectly wrote on the original  
9 document by mistake in the last minute so I  
10 struck out my handwritten note and initial,  
11 "strike out." You know what I am going to  
12 do, I am going to make copies of those right  
13 now because I have not been able to locate my  
14 originals and I believe there was a copier on  
15 the side of the room here and I am thinking  
16 that would be an opportune time to do this.

17 MS. RODRIGUEZ: Your Honor, I was just  
18 looking at my file and I think they were not  
19 under when he initially submitted the other  
20 one, the one with yahoo, they were not under  
21 tab one. Mine are under tab three so maybe  
22 they were -

23 THE JUDGE: I don't have a tab.

24 MS. RODRIGUEZ: Oh, when he submitted it,  
25 he submitted as a proposed exhibit three of





1 received a visit from the EPA on February 2,  
2 2007. What did you do in response to that?

3 A Yes. My nephew indicated to me that  
4 the EPA had gone to the Canas facility and  
5 had performed an inspection there and that  
6 late in the afternoon they left, they called,  
7 they came back and they start asking a lot of  
8 questions about the facility at the port of  
9 Ponce and they also asked for MSDS's so  
10 basically, you know, I had the MSDS's sent to  
11 the EPA and I also instructed my counsel to  
12 respond to Mr. Eduardo Gonzalez.

13 MR. LLORENS: Your Honor, if I may, I  
14 would like to have a document marked as  
15 Respondent's I.D., I don't know if you want  
16 to start new numbers or?

17 THE JUDGE: Yes.

18 MR. LLORENS: New Numbers, I.D. 1.

19 THE JUDGE: So that would be number five,  
20 Exhibit 5?

21 MR. LLORENS: Okay, yes, Exhibit 5 I  
22 suppose.

23 THE JUDGE: Okay.

24 MS. RODRIGUEZ: If you could show it --

25 MR. LLORENS: Oh, I am sorry. Just give

1 me a moment.

2 THE JUDGE: I can hand this back since  
3 you had already provided me a copy.

4 Now, the first question I have is, is  
5 this identical to what was provided in the  
6 pre-hearing exchange?

7 MR. LLORENS: Yes, Your Honor, it was.

8 THE JUDGE: Okay. Now, counsel, have you  
9 had an opportunity to view this?

10 MS. RODRIGUEZ: Yes, Your Honor, we would  
11 restate again the same arguments that we made  
12 in our motion to strike. As we can see from  
13 this document, it was generated actually by  
14 the attorney in this case and it was  
15 addressed to Mr. Eduardo Gonzalez and I guess  
16 the best evidence would be to have Mr.  
17 Llorens consent so we can actually cross  
18 examine him regarding the contents of the  
19 document so this would not be the best  
20 evidence so we object to having it introduced  
21 into evidence.

22 THE JUDGE: Okay.

23 MR. LLORENS: Your Honor, the document  
24 can be authenticated by Mr. Unanue the  
25 witness here for two reasons; number one, he

1 instructed his attorney to send a letter,  
2 number two, he received a copy of this e-mail  
3 and he can testify that he received a copy of  
4 this e-mail.

5 THE JUDGE: Okay. I am going to allow  
6 this document inasmuch as it is addressed to  
7 this witness and although the best evidence  
8 would be the author of the document, as you  
9 well know, we don't strictly follow the rules  
10 of evidence in administrative proceedings. We  
11 track them as closely as possible but  
12 inasmuch as this witness is a recipient of  
13 the document under the CC, I am going to  
14 allow it and if you would like to embark any  
15 objection for the record, please state that  
16 at this time.

17 MS. RODRIGUEZ: Well, I would object, I  
18 mean, I would only as to the complainant, I  
19 would have no problem just as did initially  
20 that it was actually received by his client,  
21 not as to the actual content of the client,  
22 and just again, the only one that could  
23 discuss what was actually told to him would  
24 be Mr. Llorens and --

25 MR. LLORENS: Your Honor --

1 THE JUDGE: As a general proposition  
2 there is usually an avoidance of having the  
3 attorney for the Respondent testify in  
4 administrative proceedings simply because of  
5 the nature of adversarial position and we try  
6 to avoid that at all cost and since the  
7 witness here has been CCd on the document, I  
8 am going to allow it.

9 (Whereupon the above mentioned  
10 document was marked as Exhibit  
11 No. 5 for Identification)

12 MR. LLORENS: Thank you, Your Honor.

13 EXAMINATION CONTINUED

14 BY MR. LLORENS:

15 Q Mr. Unanue, I am going to show you  
16 what has been marked as Respondent's Exhibit  
17 5, Respondent number 5. Can you take a look  
18 at that, please? Do you recognize it?

19 A Yes, I recognize the exhibit.

20 Q Can you tell me what it is.

21 A Well, basically it is my  
22 attorney's, you know, responding to my  
23 request to communicate with the EPA after the  
24 visit to the Villa Pinal Canas facility,  
25 Aguakem's facility. Basically we are saying

1           that, you know, that the interim facility and  
2           we are committed to comply with all  
3           regulations and regarding the port facility,  
4           you know, EPA can make a request in writing  
5           and as soon as we receive it, we will be able  
6           to respond to it.

7           Q       Thank you. Now, after you received  
8           a copy of this communication, did you have  
9           any further communication with the EPA, did  
10          you have any communication with the EPA?

11          A       I think later on I got call from  
12          Angel Rodriguez, it was later on and then  
13          there was another inspection later on.

14          Q       When did you speak with Angel  
15          Rodriguez?

16          A       I don't recall the date.

17          Q       Was it in February of 2007?

18          A       No.

19          Q       Okay.

20          A       We received a -

21          Q       There is no question. Wait for a  
22          question. What was the next event that  
23          occurred with regard to the port facility  
24          situation that you remember after the  
25          February 7th communication you received?

1           A     We received a communication from  
2           port representatives and, you know, about  
3           bringing our stuff to our facility and, you  
4           know, I said, "Look I want all my inventory,  
5           my pumps, my tanks, you know. I mean it is a  
6           lot of money in there but I need to get this  
7           lead issue cleared, which I have been asked  
8           several times already."

9           Q     Do you recall the date on which  
10          these communications took place?

11          A     It was around March.

12          Q     Okay. Did you have, after the  
13          communication with the port officials, what  
14          was the next communication, if any, that you  
15          had with regard to the port facilities?

16          A     Well, I received a letter from the  
17          EPA, from I think is an attorney in New York,  
18          you know, requesting information, you know,  
19          what was going on there and I instructed my  
20          attorney to respond to that letter.

21          Q     Okay and after that communication,  
22          did you have any other communications  
23          regarding the port facility?

24          A     I don't believe so.

25          Q     Okay. I am going to show the

1 witness a document which appears to have been  
2 marked Exhibit 3. It is the Administrative  
3 Agreement and Order on Consent for a removal  
4 action and the caption is in this, the matter  
5 of the Aguakem Chemical site. It is a CERCLA  
6 matter. I think it is Exhibit 3. Am I making  
7 the right reference? I show that to the  
8 witness.

9 THE JUDGE: I believe it Exhibit 13.

10 MR. LLORENS: It is Exhibit 13 in the  
11 hearing?

12 THE JUDGE: Complainant's Exhibit 13.

13 MS. RODRIGUEZ: I think it was already  
14 introduced into evidence, Your Honor.

15 THE JUDGE: Yes.

16 MS. RODRIGUEZ: As exhibit 13.

17 MR. LLORENS: As Exhibit 13?

18 THE JUDGE: Yes, I believe so. The  
19 Administrative Agreement and Order on Consent  
20 For A Removal Action.

21 MS. RODRIGUEZ: Yes, 13.

22 MR. LLORENS: 13.

23 THE JUDGE: 13.

24 MR. LLORENS: Can we go off the record a  
25 second?

1 (Discussion off the record)

2 MR. LLORENS: Your Honor, the sticker, I am  
3 going to ask the court reporter to make it a  
4 little clearer.

5 THE JUDGE: That will be fine.

6 EXAMINATION CONTINUED

7 BY MR. LLORENS:

8 Q Have you ever seen that document  
9 before?

10 A Yes, I have.

11 Q What is that document?

12 A It is the Administrative Agreement  
13 and Order on Consent For Removal Action.

14 Q Did you have any communications  
15 with the EPA regarding this document?

16 A I had communications through my  
17 attorney regarding this document.

18 Q Okay. Mr. Unanue, did you ever  
19 communicate to anyone regarding your  
20 intentions with regard to the materials at  
21 the facility?

22 A Yes, in several occasions.

23 Q And what did you say?

24 A That I wanted to complete bringing  
25 to my new facility all the inventory that was



1 in warehouse number 6, all of my pumps, all  
2 of my air conditioning, all my lockers, all  
3 my mixers, everything that was there had a  
4 lot of value for me and I wanted to take it  
5 to my facility.

6 Q What was the value of those  
7 materials to you, to Aguakem Caribe?

8 A I estimate between, you know, 75 to  
9 \$100,000.

10 Q Do you know what happened to the  
11 materials?

12 A I know that it was moved from  
13 warehouse number 6 and then it was disposed  
14 of.

15 Q Did anyone ever offer you an  
16 opportunity to recover the materials?

17 A Only the time in March that they,  
18 you know, the port representative got in  
19 touch with me. Other than that, no.

20 MR. LLORENS: Thank you. No further  
21 questions.

22 THE JUDGE: Now, I just want to ascertain  
23 the March 5 e-mail has not been proffered. Is  
24 that correct?

25 MR. LLORENS: That is correct.

1 MS. RODRIGUEZ: Your Honor, may we  
2 conduct the cross examination from here?

3 THE JUDGE: Yes.

4 CROSS EXAMINATION

5 BY MS. RODRIGUEZ:

6 Q Good afternoon, Mr. Unanue.

7 A Good afternoon.

8 Q You stated that you are the owner  
9 and the President of Aguakem Caribe and  
10 Huella Taina Real Estate, that is correct?

11 A Huella Taina, Inc.

12 Q Huella Taina, Inc. Are you a  
13 stockholder in any other company?

14 A No.

15 Q Okay.

16 A I have some publically traded.

17 Q I am sorry?

18 A I have some publically traded  
19 stocks but not a controlling interest or a  
20 decision making interest.

21 Q Okay. Do you know what the value  
22 of the piece of land that you mentioned  
23 Huella Taina has, the value of the property?

24 A As of when?

25 Q As of today.

1           A     I don't know. I have not done an  
2 appraisal on it.

3           Q     And when was the last appraisal?

4           A     The last appraisal was done when  
5 the bank financed the property and it was on  
6 a completed basis.

7           Q     How much was it appraised?

8           A     I believe it was around two million  
9 dollars.

10          Q     And that was for 2007, correct, you  
11 mentioned?

12          A     No. The transaction was concluded  
13 the 15th of December of 2006 so it must have  
14 been done through the loan application  
15 process at one time prior to that.

16          Q     And you only have one mortgage over  
17 that property, that initial mortgage for the  
18 loan?

19          A     I have the original loan and then I  
20 have additional monies that I borrowed on it.  
21 I do not know if a separate mortgage was  
22 filed. It was with the same bank.

23          Q     Okay. So you do not know whether  
24 you signed another mortgage?

25          A     I do not know if there is per se a

1 second mortgage.

2 Q Well, you have to sign it, because  
3 in Puerto Rico mortgages are documents that  
4 you have to sign.

5 A I think it was done through an  
6 amendment of the first mortgage because it  
7 was the same bank.

8 Q Okay.

9 A But, you know, I can ascertain  
10 that.

11 Q And you don't know the current  
12 value of the property right now?

13 A I do not have an appraisal on that.

14 Q No, no.

15 THE JUDGE: If you just could up the  
16 level one little bit of your voice.

17 MS. RODRIGUEZ: Okay.

18 THE JUDGE: Thank you.

19 EXAMINATION CONTINUED

20 BY MS. RODRIGUEZ:

21 Q Now, you said that the Port of  
22 Ponce asked you to move and that they told  
23 you around September, 2006. Is that correct?

24 A They informed me around that date.

25 Q Prior to September, 2006 had the

1 Port of Ponce told you before that you had to  
2 move?

3 A Yes. I had a lease, the original  
4 lease was for five years that I signed in  
5 1995 and the understanding was that I would  
6 be able to renew that lease.

7 Q No. I am asking you prior to 2006,  
8 had Port of Ponce told you that you had to  
9 move from the property?

10 A I am getting there.

11 Q No, no. It is a yes or no.

12 A Yes.

13 Q Yes and can you tell me what year  
14 they told you for the first time?

15 A 2000.

16 Q In 2000. Did they again mention it  
17 in 2001?

18 A What was that?

19 Q Did they again ask you to move in  
20 2001?

21 MR. LLORENS: Objection to the form in  
22 that the question implies he was asked to  
23 move in 2001 as opposed to -

24 MS. RODRIGUEZ: No, I am asking -

25 MR. LLORENS: At a later time.

1 MS. RODRIGUEZ: No, I am asking whether  
2 they asked again.

3 THE JUDGE: Okay. Qualify it again.

4 MR. LLORENS: When you say asked him to  
5 move, I don't think that property  
6 characterizes his testimony. He is saying  
7 that there would be a need to move at some  
8 time.

9 THE JUDGE: Okay. How about if we go back  
10 to the original question on 2000?

11 MS. RODRIGUEZ: Yes. I asked him when was  
12 the first time they asked him to move and he  
13 said, 2000.

14 THE JUDGE: Okay but reask that question  
15 and then we have it on the record.

16 EXAMINATION CONTINUED

17 BY MS. RODRIGUEZ:

18 Q When was the first time they asked  
19 you to move?

20 A Well, when I went to renew the  
21 lease.

22 Q What year? What was the year?

23 A That is not what I was saying.

24 Q No, no. I am just asking you what  
25 year.

1 THE JUDGE: Okay.

2 THE WITNESS: In 2000 that was the first  
3 five year turn. We got together and I said,  
4 "Well, I want to renew it for five years" and  
5 they said, "No, because we have, the mega  
6 port is coming. We don't know when, you know,  
7 but, you know, you can stay here but  
8 eventually you are going to have to move  
9 because this project is coming. We don't know  
10 exactly when. There is a lot of things that  
11 need to happen."

12 EXAMINATION CONTINUED

13 BY MS. RODRIGUEZ:

14 Q And that is in 2000 and after 2000  
15 did they ever again ask you specifically to  
16 move?

17 A We had a continuing -

18 Q No, no. After 2000 did they  
19 specifically ask you that you had to move?  
20 Yes or no?

21 A Yes and no.

22 Q What do you mean yes and no? It is  
23 either yes or no.

24 A At one point they asked me to rent  
25 more space.

1 Q And I am asking you whether, it is  
2 very simple the question I am asking you.  
3 Whether after 2000 and before 2006 whether  
4 they asked you again that you had to move?

5 MR. LLORENS: Objection.

6 MS. RODRIGUEZ: Let me rephrase.

7 THE JUDGE: Okay. Let's hear the  
8 objection.

9 MR. LLORENS: The objection is, Your  
10 Honor, as the witness has just testified,  
11 they said that you would need to eventually  
12 move. The question is trying to imply that he  
13 was told "You have to move now." I think  
14 that the point is pretty clear with what the  
15 witness is telling you and I think that the  
16 questions are misleading.

17 MS. RODRIGUEZ: They are not misleading.  
18 I am asking him a simple question, whether he  
19 was asked again, you know. He set the basis  
20 that he was on a month to month rent with the  
21 Port of Ponce. There is some discrepancy as  
22 to, you know, the eviction, when the eviction  
23 actually occurred and he mentioned the  
24 eviction. An eviction takes time.

25 THE JUDGE: Okay. Why don't we just set



1 up these questions with simple and I have to  
2 ask the witness to answer yes or no. I  
3 understand that you may believe an  
4 explanation is warranted but for the time  
5 being you ask short direct questions. We can  
6 maybe get to the same point.

7 EXAMINATION CONTINUED

8 BY MS. RODRIGUEZ:

9 Q Did the port of Ponce ask you to  
10 move in 2005?

11 A I don't recall.

12 Q Did the port of Ponce ask you to  
13 move in 2004?

14 A I don't recall.

15 Q Did the port of Ponce ask you to  
16 move in 2006?

17 A In 2006, yes.

18 Q Do you recall in 2006 but not in  
19 2005?

20 A You didn't ask me about 2005.

21 Q When were you first notified of an  
22 eviction?

23 A It was in 2006 and it was towards  
24 late spring, early summer.

25 Q I am sorry.

1 A Late spring, early summer.

2 Q Early summer, late spring, early  
3 summer?

4 A Late spring, or early summer.

5 Q Was that -

6 A 2006.

7 Q Could you be a little bit more  
8 specific. Was that when you were actually  
9 notified of the court decision of eviction?

10 A I don't recall.

11 Q What happened then in that early,  
12 what type of notice did you receive of  
13 eviction?

14 A It was discussed, I don't know if  
15 we received it, a notice but it was discussed  
16 that I needed to move and I said, "I will  
17 move in September."

18 Q No, but an eviction. We are talking  
19 about the eviction.

20 A I don't know when the eviction  
21 came, exactly came in. I don't know the  
22 date.

23 Q Do you know, you said you don't  
24 know the date, you mentioned early 2006?

25 A I think, no, I mentioned late



1 THE JUDGE: Okay. Please don't argue  
2 between yourselves.

3 EXAMINATION CONTINUED

4 BY MS. RODRIGUEZ:

5 Q Now, you mentioned you had  
6 chemicals and that you had tanks and you had  
7 other equipment in the Building 6, right?

8 A Correct.

9 Q What chemicals did you have?

10 A Iron salts, aluminum salts, some  
11 acid, hydrochloric acid.

12 Q When did you begin actually the  
13 move?

14 A We actually started, December 15th  
15 is when I got the call from the marshals and  
16 we had a meeting that Monday, I believe it is  
17 the 18th.

18 Q So you began the move December  
19 28th?

20 A No. We had a meeting and after that  
21 meeting they asked me, you know, well, you  
22 know, the meeting was, the marshal had said,  
23 "We are going to move you" and, you know, we  
24 had to get clarification from the port."

25 Q So I am asking a very simple

1 question. When was the date you began to move  
2 whatever you had?

3 A That day.

4 Q December 18th?

5 A We commenced the process of.

6 Q That is what I am saying, when did  
7 you begin the move?

8 A I commenced the process of moving  
9 on the 18th.

10 Q Okay. Now, can you tell me what  
11 were you able to move? What, on December  
12 18th, what did you begin to move?

13 A We started setting things up with  
14 the tankers, the truckers, the equipment,  
15 getting additional help.

16 Q What did you move?

17 A I don't recall exactly what I  
18 moved.

19 Q No and during the week from  
20 December 18th to December 28th what did you  
21 move?

22 A You know, probably about two to  
23 three flat beds material and tankers of the,  
24 you know, a trip and a half to go in.

25 Q How did you get the tankers out of

1 the facility?

2 A The tankers, those are tank cars.  
3 They are cylindrical on wheels.

4 Q Okay.

5 A So they are parked and you fill  
6 them up with liquid.

7 Q They were inside?

8 A No, they were outside.

9 Q Okay but inside the facility, oh,  
10 so you had those tankers. Where were they  
11 located? I am sorry, outside?

12 A To me, a tanker car -

13 Q No, okay, I mean, I am asking about  
14 equipment that was at the facility.

15 A Right.

16 Q And you state you started moving  
17 tanks or tanker cart?

18 A Tank cart are a movable unit in  
19 which you transport chemicals or liquids.

20 Q And equipment?

21 A Yes, moveable equipment.

22 Q It would be a movable equipment,  
23 right?

24 A Kind of a trailer.

25 Q Okay. Oh, a trailer where you would

1 store the chemicals, I mean, illustrate me so  
2 I can have a better idea.

3 A Okay. For instance you need to move  
4 5,000 gallons from point A in the island to  
5 point B in the island. You use a tank car to  
6 achieve that objective by having a truck  
7 hooked up to the trailer and moving that.

8 Q Oh, okay and where were those  
9 trailers located? Usually, where were they  
10 located when you operated Aguakem in Port of  
11 Ponce?

12 A Well, if they were not in use in  
13 our facility.

14 Q Inside or outside?

15 A Outside.

16 Q Okay. So it would be around the  
17 perimeters of the facility?

18 A No. There was actually a specific  
19 area that was moved to another area but -

20 Q When you are talking about areas,  
21 where?

22 MS. RODRIGUEZ: If I show you, can I  
23 approach, Your Honor?

24 THE JUDGE: Yes.

25 EXAMINATION CONTINUED

1 BY MS. RODRIGUEZ:

2 Q Maybe this might be easier. I am  
3 showing the witness, let the record reflect  
4 the facility layout which is facility layout  
5 -

6 THE JUDGE: Okay, now all along we have  
7 used the photograph identified layout.

8 MS. RODRIGUEZ: Well, I will use the  
9 photograph.

10 THE JUDGE: I think it will be preferable  
11 to stay with the documents that were used.

12 MS. RODRIGUEZ: It is bigger. It is much  
13 better. EXAMINATION CONTINUED

14 BY MS. RODRIGUEZ:

15 Q Now, I am showing the witness the  
16 layout. Let's say that this is the layout of  
17 the building. Right? I am pointing to the  
18 layout that is in the -

19 THE JUDGE: That is great. Excellent.

20 MS. RODRIGUEZ: Over here.

21 EXAMINATION CONTINUED

22 BY MS. RODRIGUEZ:

23 Q Now, where were those equipment  
24 located, those trailers?

25 A Okay. At one time, okay, the



1 normal way we had the boat unloading in the  
2 area here.

3 THE JUDGE: Okay. Let the record reflect  
4 -

5 MS. RODRIGUEZ: He is pointing to, let  
6 the record reflect that he is pointing to the  
7 right side where number eleven are, Your  
8 Honor?

9 THE WITNESS: Yes, the south side.

10 THE JUDGE: The south side, right.

11 THE WITNESS: Okay.

12 MS. RODRIGUEZ: But in the graph is where  
13 number eleven and seven are.

14 THE JUDGE: Okay.

15 THE WITNESS: Right.

16 MS. RODRIGUEZ: And where were they when  
17 you started moving them?

18 THE JUDGE: No, we haven't established  
19 where they were or are we saying the word  
20 they. What does it refer to?

21 THE WITNESS: The tanker cars.

22 MS. RODRIGUEZ: The tanker cars.

23 THE JUDGE: Okay.

24 THE WITNESS: Four thousand gallons more  
25 or less.

1 THE JUDGE: Okay.

2 MS. RODRIGUEZ: Okay so they were placed  
3 there originally you said?

4 THE WITNESS: Again, I have not said this  
5 but in my mind. This is out of scale  
6 completely.

7 THE JUDGE: Okay. They were on the  
8 inside?

9 MS. RODRIGUEZ: Outside.

10 THE JUDGE: Outside. Okay. Outside that  
11 exit?

12 THE WITNESS: Yes. They had a separate  
13 entrance, you know, and they were on this  
14 general area.

15 MS. RODRIGUEZ: He is pointing --

16 THE WITNESS: At the south side between  
17 eleven, south side of eleven into the door so  
18 we can walk in here and load or unload bulk  
19 materials. That means that it comes in, four  
20 thousand gallons, five thousand gallons into  
21 that area. At the time it was around  
22 September, I don't know the exact date, this  
23 whole area was closed up by the construction  
24 going on.

25 THE JUDGE: That would be the southern

1 side?

2 THE WITNESS: The southern side.

3 THE JUDGE: You are referring to?

4 MS. RODRIGUEZ: Yes.

5 THE JUDGE: Okay.

6 THE WITNESS: It was blocked.

7 THE JUDGE: See, I have to remind you  
8 that the record when you say, this and that,  
9 the record won't show that.

10 MS. RODRIGUEZ: In the graph, if we look  
11 at the graph it would be the right side.

12 THE JUDGE: Okay.

13 THE WITNESS: The south side, all the  
14 south side was closed up. I didn't have  
15 anything to do with that. Okay. What we did  
16 we moved the tankers and we moved them on the  
17 north side of the facility.

18 MS. RODRIGUEZ: Which is the left side  
19 of the graph, Your Honor.

20 THE JUDGE: Okay.

21 THE WITNESS: And they were, again, this  
22 is not representative because there was a  
23 door here but they were, you know, somewhere  
24 around there.

25 EXAMINATION CONTINUED

1 BY MS. RODRIGUEZ:

2 Q This is a door over here?

3 A No. This is not a door over here.

4 Q Okay.

5 A That is not even there. That is  
6 another door.

7 Q So they were relocated then to what  
8 we can see in the graph to the left side -

9 THE JUDGE: The north side of the  
10 building.

11 THE WITNESS: The north side.

12 THE JUDGE: On the outside.

13 MS. RODRIGUEZ: Right.

14 THE JUDGE: Okay.

15 EXAMINATION CONTINUED

16 BY MS. RODRIGUEZ:

17 Q Okay so what else were you able to  
18 move during that period of time?

19 A Well, we started, we had a trailer  
20 office and we started having trailer flat  
21 beds and we were moving totes and we were  
22 moving some of the dry products in bags. We  
23 were just having a movement and, you know,  
24 constantly coming and going.

25 Q And what were the normal working

1 hours during that movement from the former  
2 facility to the other facility?

3 A We did not have normal hours. It  
4 was an extraordinary period and we were  
5 working very long hours with our truckers and  
6 the people working for us.

7 Q Okay. When you say dry products,  
8 what dry products were they?

9 A Polymers.

10 Q What color are they?

11 A White usually.

12 Q Okay. Now, you stated that you  
13 hired the services of an engineer regarding  
14 the new facility, you know, I imagine that, I  
15 leave it up to you to explain so how you  
16 would set up the new facility, right?

17 A I don't believe I said that.

18 Q You mentioned that engineer.

19 A I mentioned Mr. Tony Ramirez.

20 Q No, no. I am talking about how you  
21 were going to be doing the move and you  
22 wanted everything to go smoothly and you had  
23 hired an engineer regarding the new facility  
24 that you were going to -

25 A I hired, you know, several

1 engineers at different times for different  
2 purposes so you have to be more specific,  
3 please.

4 Q I am saying when you were going to  
5 move, during the move you hired an engineer  
6 for the new facility because you were going  
7 to be moving big tanks, you were going to be  
8 consolidating chemicals and you wanted a, I  
9 am almost quoting you, a seamless transition  
10 because you were dealing with corrosive  
11 chemicals and, you know, you wanted  
12 everything to go smoothly.

13 A During that period I did not hire  
14 an engineer.

15 Q Oh, okay. Now, you said that  
16 somebody told you that, you know, as a result  
17 of the construction that was going on, that  
18 somebody told you that they complained of the  
19 dust that was going around, all the dust that  
20 it contained lead or asbestos, who told you  
21 that specifically?

22 A I saw a communication from Del  
23 Valle mentioned the asbestos removal for the  
24 first time.

25 THE JUDGE: From whom?

1 THE WITNESS: It is the company, the  
2 contractor that built the mega port. Their  
3 name is Del Valle.

4 THE JUDGE: Okay.

5 THE WITNESS: I don't know if it is Inc.  
6 or construction but Del Valle.

7 EXAMINATION CONTINUED

8 BY MS. RODRIGUEZ:

9 Q And around what time was that, when  
10 was that communication or when was that  
11 mentioned for the first time?

12 A It was late fall.

13 Q When you say late fall, could you  
14 tell me a month?

15 A Early winter. I don't know exactly.

16 Q No, no. I am asking you what month  
17 because you say for some things you know the  
18 month and then for others you just say a  
19 season. I want to know the month.

20 MR. LLORENS: Objection, Your Honor. It  
21 is rather argumentative.

22 THE JUDGE: Okay. Yes, if he does not  
23 recall, you should state so.

24 EXAMINATION CONTINUED

25 BY MS. RODRIGUEZ:

1 Q Could it be October?

2 A I do not recall.

3 Q November?

4 A I do not recall.

5 Q September?

6 A December, no.

7 Q December, no?

8 A December it was a different series  
9 of events.

10 Q Okay. So it must have been before  
11 December.

12 A Definitely.

13 Q But you don't know whether it was  
14 November?

15 A I do not recollect.

16 Q You don't know whether it was  
17 October?

18 A I do not recollect.

19 Q September?

20 A I do not recollect.

21 Q But it was before December?

22 A Yes, it was before December.

23 Q Okay. So since you knew that there  
24 might be these problems before December, what  
25 measures were you taking regarding your



1 employees?

2 A Well, I started, you know,  
3 regarding my employees, I mean, I didn't take  
4 specific measures. I was just questioning of  
5 what was going on.

6 Q No, I am asking you what measures.

7 A I did not take any specific  
8 actions.

9 Q Okay. That is what I am asking you.  
10 Could you tell me who performed the move,  
11 what company performed the move, were there  
12 several?

13 A Several.

14 Q Okay. Who was in charge of the  
15 move?

16 A I was supervising it personally.

17 Q You were supervising it personally.  
18 In order to move anything from inside the  
19 building, did you have to use what you said  
20 were the doors that were demolished by Port  
21 of Ponce? Did you move your stuff through  
22 there?

23 A Could you be more specific, please.

24 Q The equipment that was inside,  
25 since I was not there and I want to see like

1 a visual, I want to have a visual.

2 THE JUDGE: Is that facility 6 or  
3 Building 6?

4 MS. RODRIGUEZ: Building 6, Your Honor,  
5 yes.

6 EXAMINATION CONTINUED

7 BY MS. RODRIGUEZ:

8 Q Okay. Could you tell me  
9 approximately how big was let's say the  
10 biggest equipment you moved out of that  
11 building?

12 A The biggest equipment was a tank  
13 and it is about 14,000 maybe 15,000 gallons  
14 and it is about ten to twelve foot diameter  
15 and it is about I would say, just guessing,  
16 you know, without having that, your drawing,  
17 18 feet or more.

18 Q Okay.

19 A Or around there.

20 Q Okay and how did you take that out  
21 of the building?

22 A Okay. When the time was  
23 appropriate, okay and those tanks were empty,  
24 the first activity that occurred was to bring  
25 a contractor to break down the dikes, okay

1           because they were against the north side and  
2           the south side. The building had a very big  
3           crown so we removed the dikes so, you know,  
4           we really wanted to put them through the roof  
5           but that could not happen so equipment came  
6           in which was a cherry picker or a crane, you  
7           know, to lower the tanks slowly to the  
8           ground, okay and then let it rest on the  
9           ground, pick it up and put it in a flat bed.  
10          Now, the west entrance, you know, which was  
11          our entrance to the facility -

12                   Q     Let me show you -

13                   MS. RODRIGUEZ: Your Honor, may I  
14                   approach the witness?

15                   THE JUDGE: Yes.

16                               EXAMINATION CONTINUED

17                   BY MS. RODRIGUEZ:

18                   Q     Let me again so it is easier again  
19                   for all of us, and for you, when you  
20                   reference west--

21                   A     The west entrance here had a big  
22                   ramp and there was a building here that they  
23                   were demolishing.

24                   THE JUDGE: Okay. Let the record reflect  
25                   that you are referring to the lower portion

1 of the diagram.

2 MS. RODRIGUEZ: That is correct almost in  
3 the center.

4 THE JUDGE: Okay and below the door  
5 entrance.

6 MS. RODRIGUEZ: Right.

7 THE JUDGE: Was another building that was  
8 being demolished?

9 THE WITNESS: Yes, right next to it there  
10 was another building that was being  
11 demolished and we also learned it had  
12 asbestos.

13 This building because where it was  
14 located in all of the activity that was going  
15 on, it was very difficult, also it had a ramp  
16 because the building really was sitting down.  
17 It was like a third containment, you know, we  
18 had the dikes and then they were sitting  
19 down. There was no way that liquids could  
20 come out. That was very good for us and it  
21 also had a big crown with trenches on the  
22 side so we could collect. It was a good  
23 building but here we could not come in with a  
24 crane, you know, with a cherry picker and  
25 pull it out so I asked the port, you know, to

1 please remove all of the lumber that was  
2 there because they were coming in and  
3 churning up the dust and I said, "Look, we  
4 want to make a straight shot through this  
5 door and then we could pull it easy around."

6 THE JUDGE: On the eastern side?

7 THE WITNESS: On the eastern, on the  
8 opposite side, the eastern side.

9 THE JUDGE: Okay.

10 MR. RODRIGUEZ: The top of the wreck?

11 THE WITNESS: Right. So there were  
12 certain walls here which we broke, you know,  
13 with the equipment and with the port's  
14 permission and then we put one tank, two  
15 tanks, three tanks, there were four or five  
16 tanks.

17 EXAMINATION CONTINUED

18 BY MS. RODRIGUEZ:

19 Q And you were able to, again,  
20 please, correct me if I am wrong, you  
21 expected to take it through the top part as  
22 you mentioned?

23 A Yes. We went through there. This  
24 was opened. The door was taken out so we  
25 moved, we, the trucker, they are very good at

1           this and, you know, it was able to make an  
2           easy turn to go around and this is where they  
3           exit to the road.

4           Q       And where were the dikes that you  
5           mentioned that had to, you had to break?

6           A       Everything was dike.

7           Q       Oh.

8           A       There was, first of all, the whole  
9           building had a crown and trenches on the -

10          THE JUDGE: When you say crown, what do  
11          you mean by that?

12          THE WITNESS: Okay. If you would look, I  
13          don't know if you have ever seen a football  
14          field.

15          THE JUDGE: Yes.

16          THE WITNESS: You stand on one end of the  
17          field and you can't see the other end because  
18          it has a crown so if rain comes, the water  
19          will not stay on the field but it will go,  
20          spill to the sides.

21          THE JUDGE: Okay.

22          THE WITNESS: This was the same  
23          principle, the high point being the center  
24          and the low point being the sides and along  
25          the sides because of the cod fish operation

1 that was there before they had a trench which  
2 was an ideal collection system for us. We  
3 had a tank farm here that was diked. We had  
4 another tank farm here that was dike.

5 MS. RODRIGUEZ: I am sorry. Let the  
6 record reflect that he is showing the lower  
7 part to the left and the right of the -

8 THE WITNESS: No, not the lower part.  
9 Okay.

10 MS. RODRIGUEZ: Where?

11 THE WITNESS: The lower part on the north  
12 side, north west side.

13 MS. RODRIGUEZ: No, I am saying here but  
14 I am saying the left side here of the graph.

15 THE JUDGE: Okay.

16 MS. RODRIGUEZ: And the right side of the  
17 graphic.

18 THE WITNESS: No, no, no. That is not  
19 what I am saying.

20 EXAMINATION CONTINUED

21 BY MS. RODRIGUEZ:

22 Q You are pointing to that. Okay.

23 A If you allow me to say it, so I  
24 could describe it.

25 THE WITNESS: Your Honor can -

1 THE JUDGE: Okay. So how about if we use  
2 approximate numbers.

3 MS. RODRIGUEZ: Yes.

4 THE WITNESS: Okay. This is the outside.  
5 The closest numbers will be nine and ten all  
6 the way to the western wall. There was a dike  
7 there.

8 THE JUDGE: Okay.

9 THE WITNESS: Then there was a dike on 13  
10 and there was a dike on 12 and there was a  
11 dike on 11.

12 THE JUDGE: Okay.

13 EXAMINATION CONTINUED

14 BY MS. RODRIGUEZ:

15 Q And you had to break all those  
16 dikes in order to get the tanks out?

17 A We had to, of course.

18 Q No, no. I mean, I was not there. I  
19 am sorry.

20 A Yes. You have to break dikes once  
21 they were, you know, pretty much empty, and  
22 you didn't have a chance of a spill, okay  
23 then, you know, you come in and break the  
24 dikes and then immediately bring in the  
25 cranes and lower the tanks and put them on



1           there and move on.

2           Q     Okay. Thank you. Oh, I am sorry,  
3           Your Honor, one more question.

4                     Do you know what this over here is?

5           THE JUDGE: And you are referring to?

6           MS. RODRIGUEZ: I am referring to an area  
7           in the layout between number three and number  
8           two. What is number two?

9           MR. LLORENS: If he knows. Objection.

10          MS. RODRIGUEZ: Well, if he knows.

11          THE JUDGE: Yes.

12                     EXAMINATION CONTINUED

13          BY MS. RODRIGUEZ:

14                 Q     Do you know -

15                 A     Yes, yes. I know what it is. I  
16                 remember. It was another dike area, okay, so  
17                 if we had to, at one time we were loading and  
18                 unloading both there and that area was a  
19                 containment area, you know, to bring the  
20                 hoses in so it will not spill or anything.  
21                 That was an old dike area.

22                 Q     And do you know, if I show you this  
23                 photograph and I am showing photo number  
24                 three, Your Honor.

25                 THE JUDGE: Yes.

EXAMINATION CONTINUED

1  
2 BY MS. RODRIGUEZ:

3 Q Now could you tell me what, if  
4 anything, do you see below the equipment that  
5 is there?

6 A I see what it looks to me as a  
7 storm water drain.

8 Q Okay. And would that be an  
9 accurate depiction, I mean, I am saying about  
10 that there was a storm water drain around  
11 that area which you just pointed and  
12 described before?

13 A They were in the middle of  
14 construction.

15 Q No, I am asking whether -

16 A I cannot ascertain that.

17 Q Oh, so you don't know whether there  
18 was a storm water drain?

19 A I don't know if this was -

20 Q No, I am asking. Let me rephrase.  
21 I will withdraw.

22 A Okay.

23 Q Was there a storm water trench  
24 between and we will mark number three and two  
25 where you just described. Was there a storm

1 water trench around that area?

2 A There was what appeared to be a  
3 drain.

4 Q A storm water drain?

5 A Right. I don't know if it was  
6 operational.

7 Q You don't know?

8 A I don't know.

9 Q But it appeared to be a storm water  
10 drain?

11 A By the picture.

12 Q Okay and then you also mentioned  
13 that chemicals were actually left; that you  
14 were not able to remove chemicals. You  
15 mentioned that among the things that were  
16 left and correct me if I am wrong, that among  
17 the things that were left, that you were not  
18 able to move to the new facility were also  
19 chemicals.

20 A Yes, my inventory.

21 Q Was there, part of your inventory?

22 A Part of my inventory.

23 Q And do you know what chemicals?

24 A Iron salts, aluminum salts,  
25 hydrochloric acid.

1 Q Okay.

2 A And some polymers?

3 Q And some what?

4 A Polymers.

5 Q Now, you mentioned that although,  
6 even though you knew it before December, that  
7 you hired somebody because you wanted some  
8 sampling to be conducted because you were  
9 concerned for the health of your employees,  
10 is that correct?

11 A Well, the Enviro Recycling Company.

12 Q Well, what you mentioned, you said  
13 that yes, that there were some, and he  
14 mentioned Enviro Recycling Company.

15 MS. RODRIGUEZ: Can I have a moment, Your  
16 Honor?

17 THE JUDGE: Yes.

18 EXAMINATION CONTINUED

19 BY MS. RODRIGUEZ:

20 Q Enviro Recycling, Inc.

21 A Yes, that is right, Inc.

22 MS. RODRIGUEZ: Can we mark this one -

23 THE JUDGE: Respondent's Exhibit 3.

24 MR. LLORENS: I am sorry. It is going to  
25 be 3, Your Honor.

1 (Whereupon the above mentioned  
2 document was marked Exhibit  
3 No. 3 for Identification.)

4 EXAMINATION CONTINUED

5 BY MS. RODRIGUEZ:

6 Q And you hired them to conduct  
7 samplings, right?

8 A I hired them to do an evaluation  
9 for asbestos and lead.

10 Q And lead and what did they tell  
11 you?

12 A Basically it was how much it would  
13 cost.

14 Q I am sorry?

15 A How much it was going to cost and  
16 also what the process would be.

17 Q Okay and also they discussed with  
18 you what the process would be, you know, how  
19 they would perform it and, you know, what  
20 they would be doing, right?

21 A Yes. We went through, you know, the  
22 method and the chain of custody.

23 Q Okay. Now, do you know, do you  
24 have a copy of that, you read it, you said  
25 you read it?

1 A Yes.

2 Q It is part of your business  
3 records?

4 A Yes.

5 Q Okay. Could you please read me on  
6 page one of the sampling part, this  
7 paragraph, please.

8 A "Samples number one through seven.  
9 Results were there --"

10 Q Could you please speak a bit louder  
11 because we cannot hear you.

12 A "Samples number one through seven.  
13 Result for these white samples do not meet  
14 EPA standards for sample matrix and are not  
15 recognized under the NLLAP accreditation  
16 program."

17 Q Okay. Thank you. In that same  
18 page you tell me, in the first one, do you  
19 know what that means? It doesn't meet EPA  
20 requirements?

21 A I don't know what it means.

22 Q Didn't you say you discussed the  
23 process with the entity you contracted?

24 A I discussed the process for taking  
25 samples.

1 Q Right and wouldn't you be concerned  
2 that it met all the requirements in order to  
3 know that those samples were actually valid?

4 A I knew that the lab that it was  
5 being used was accredited.

6 Q But did you know -

7 A An accredited lab in the United  
8 States.

9 Q But it could be accredited but not  
10 maybe the way the samplings were going to be  
11 taken where samples were going to be valid?

12 A Oh, I think, but what I know in my  
13 industry that was a good chain of custody for  
14 the samples collected and -

15 Q Do you know what a chain of custody  
16 is?

17 A Yes, ma'am, I do.

18 Q A chain of custody tell me if I am  
19 wrong, is just that you know that whoever  
20 took the samples all the way to when it gets  
21 to the laboratory, you know, you could track  
22 down who had it all the day, you know, until  
23 it is analyzed, correct?

24 A It is a record.

25 Q Right.

1           A     Of our receiving and surrendering  
2           the samples.

3           Q     So you know that because of the  
4           industry you work for, right?

5           A     Yes.

6           Q     And you have knowledge of how you  
7           have to, you know, keep the chain of custody?

8           A     I have knowledge in terms of water.

9           Q     Of water. Okay. Then in water when  
10          you do samplings would you also be concerned  
11          that they meet certain parameters?

12          A     Who is they?

13          Q     Let's say whenever you sample, you  
14          know about water, whenever they sample any  
15          water, would they have to, in order to be  
16          safer drinking water, would it have to meet  
17          certain parameters in order to be safe for  
18          drinking water? It is an example, a  
19          hypothetical question.

20          A     Drinking water under the Clean  
21          Water Act has to meet federal law.

22          Q     Right. So but it would have to  
23          meet certain parameters, right, in order to  
24          be considered safe drinking water?

25          A     The Clean Water Act parameters



1 established by law.

2 Q Right. So you just read that these  
3 parameters, at least that these samples did  
4 not meet EPA standards.

5 MR. LLORENS: I object to the form of the  
6 question.

7 MS. RODRIGUEZ: It was a hypothetical  
8 one.

9 MR. LLORENS: Oh, I am sorry. This is  
10 all hypothetical?

11 MR. RODRIGUEZ: The first part, yes.

12 MR. LLORENS: The question you just said  
13 that you just characterized -

14 THE JUDGE: You were referring to the  
15 Clean Water Act, was a hypothetical?

16 MS. RODRIGUEZ: Right, Your Honor.

17 MR. LLORENS: I thought you were  
18 characterizing the document that was in the  
19 exhibit.

20 MS. RODRIGUEZ: I was just asking that he  
21 knew that, they did not meet EPA  
22 requirements, he just read it.

23 MR. LLORENS: That is what I am objecting  
24 to. I don't agree that that is what the  
25 document said.

1 MS. RODRIGUEZ: Your Honor, let me read  
2 the document.

3 THE JUDGE: Well, how about if we ask.  
4 The question is what this witness believed.

5 EXAMINATION CONTINUED

6 BY MS. RODRIGUEZ:

7 Q Do you believe when you read the  
8 paragraph that you just read that the samples  
9 taken met EPA requirements?

10 A I believe that the process -

11 Q No, I am asking about -

12 A I don't know. I just simply do not  
13 know.

14 Q And do you know or did you ask the  
15 company why they had the company why they had  
16 that paragraph there?

17 A I did not ask.

18 Q You did not ask?

19 A I did not ask.

20 Q You were not concerned about it?

21 A I was not concerned about it.

22 Q Okay and do you know the difference  
23 between taking samples in places of  
24 residential use and the difference in samples  
25 for worker protection use?

1           A     I don't even know what kind of  
2           samples you are talking about.

3           Q     Let's say air. Let me lay a  
4           foundation for that question and be more  
5           specific. You mentioned that you were  
6           concerned because of the dust that was  
7           affecting your employees, correct?

8           A     I was concerned because my  
9           employees were complaining -

10          Q     About the dust?

11          A     Excessive dust.

12          Q     And you as a result of that waited  
13          about a month and asked the company to  
14          perform some air sampling or some sample to  
15          see whether there was lead or asbestos where  
16          your employees were working?

17          A     I did not say that.

18          Q     No, what did you say?

19          A     I said that in terms of the  
20          asbestos which is a passive situation, okay.  
21          I learned before when they were demolishing  
22          the buildings, okay, and all this dust came  
23          in, my employees started to complain, it was  
24          around November and December. They called the  
25          EPA, they called -

1 Q Who?

2 A My employees.

3 Q Could you tell me the name?

4 A I think, you know, it was Leticia  
5 Rivera.

6 Q Who did she speak with?

7 A We all called the EPA.

8 Q Who did you speak with?

9 A It was very difficult to get ahold  
10 of the EPA.

11 Q But weren't you the supervisor and  
12 weren't you the employer of those people?

13 A We wanted to get -

14 Q Wasn't it Your responsibility -

15 THE JUDGE: Okay. I think we are going  
16 beyond the line of questioning.

17 EXAMINATION CONTINUED

18 BY MS. RODRIGUEZ:

19 Q Okay. Now, again, you asked because  
20 you were concerned about the dust air, right?

21 A I did not ask, my employees asked.

22 Q Okay and you performed after a  
23 month, you performed, you asked this company  
24 to conduct these tests?

25 MR. LLORENS: I object to the after a

1 month characterization.

2 MS. RODRIGUEZ: Your Honor -

3 MR. LLORENS: I don't think there was any  
4 testimony as -

5 MS. RODRIGUEZ: Your Honor --

6 THE JUDGE: How about if we state the  
7 dates.

8 MS. RODRIGUEZ: I asked him and I tried  
9 to get a response from him.

10 THE JUDGE: Okay.

11 MS. RODRIGUEZ: And remember he stated  
12 that it was in late fall and he said it was  
13 before December but he could not pinpoint  
14 whether it was November, October or September  
15 so I have to assume that it was at least a  
16 month before the actual samples were taken  
17 which were in December 21st.

18 MR. LLORENS: Objection.

19 THE JUDGE: You need to lay the  
20 foundation for this line of questioning.

21 MS. RODRIGUEZ: I thought I already had  
22 when he mentioned them.

23 EXAMINATION CONTINUED

24 BY MS. RODRIGUEZ:

25 Q When did your employees start

1 telling you that they were concerned?

2 A It was in November, sometime.

3 Q November. Okay. Now, you  
4 remember.

5 A Sometime.

6 Q Okay. So now if it was in  
7 November, let me go. Why did you wait a month  
8 then to do the samples?

9 MR. LLORENS: Objection, argumentative.  
10 Why did you wait a month? I just think that  
11 is asking for an argument. It is not -

12 THE JUDGE: Well, first I think you need  
13 to lay the foundation as to the month.

14 EXAMINATION CONTINUED

15 BY MS. RODRIGUEZ:

16 Q Okay, you say in November, the  
17 workers started complaining about the air  
18 dust. When in November?

19 A Probably the beginning of November.

20

21 Q Oh, beginning of November. Okay.

22 So taking the beginning of November and

23 taking as a reference the date when the

24 samples were taken, do you remember when they

25 were taken?

1 A Yes, more or less.

2 Q Could you tell us?

3 A I think it was December 22nd.

4 Q Okay. So taking that as a  
5 reference, if they started complaining early  
6 in November, I am asking you, was there a  
7 reason why you waited until December 21st or  
8 22nd to conduct a sampling?

9 A I did not wait. Okay. First of  
10 all, I think there was a responsibility from  
11 the port to advise us that there was lead in  
12 here and it was going all over the port and  
13 it was going all over the community. I could  
14 not believe that they were not advising us of  
15 this situation so I was a little bit  
16 disbelieved. Also at the time we started a  
17 process of evaluation. You cannot say whites  
18 at this place tomorrow. You have to go -

19 Q I am asking you then -

20 A Go out, I am explaining.

21 THE JUDGE: And allow him to finish.

22 MS. RODRIGUEZ: Okay.

23 THE WITNESS: So you know you have to go  
24 through a process, an evaluation process and  
25 in that evaluation process we ended up with a

1 second candidate which is the company that we  
2 used before because we first contacted the  
3 company that was hired by the port. These  
4 things take time and I know that you are  
5 fully aware that in Puerto Rico in December  
6 things move slow.

7 Q Now, I ask you, since you have this  
8 concern, since early November until December  
9 21 when the samples were taken, what measures  
10 did you take to protect your employees?

11 MR. LLORENS: Objection, asked and  
12 answered.

13 THE JUDGE: I will allow the question.

14 THE WITNESS: My employees basically when  
15 there was too much dust, they were not  
16 working. They were inside the office until  
17 they could work but there was a lot of  
18 complaints about that and I was in and out,  
19 out of the office and they, you know, when  
20 they caught me they said, "Look, you know,  
21 there is this problem" and I started to look  
22 into it aggressively.

23 EXAMINATION CONTINUED

24 BY MS. RODRIGUEZ:

25 Q Okay, so they just went inside the



1 office? That is what you said?

2 A That is what they told me, that is  
3 what, you know, I said, "Well, if it gets too  
4 dusty, stop working."

5 Q How many employees did you have?

6 A We usually have about twelve, you  
7 know, fourteen employees.

8 Q And since you were moving stuff  
9 from there to the new facility beginning  
10 December 18th, how many were in the new  
11 facility, were they the same employees?

12 A No. We hired some temporary workers  
13 to assist us.

14 Q Okay and do you know whether there  
15 is any, there are any measures you could have  
16 taken besides going into the office, you  
17 know, into an office, that those workers  
18 could have taken in order to address that  
19 concern they had in your business?

20 A Yes. We tried to find out what we  
21 had to do. We called the EPA, we called the  
22 EQB, we called, you know, OSHA. We called  
23 everybody.

24 Q Did you call your attorney?

25 A At that time?

1 Q Yes, maybe he could find something  
2 regarding what you could do?

3 A No. We were going to, I don't  
4 remember if I called my attorney or not.

5 Q Okay. That is it. You don't  
6 remember. Okay. I don't recall whether I  
7 asked this question and if I did and you  
8 responded, I ask my apologies but do you know  
9 whether these samples would be samples that  
10 the results would fall under the parameters  
11 used in the industrial field or whether these  
12 are for residential?

13 A Could you be more specific?

14 Q Yes. Do you know that they might be  
15 doing samplings, let's say. Do you know if  
16 samples can be taken for various purposes  
17 when there is samples for people who live in  
18 a house, you know, residential? I mean, I  
19 don't know. I am asking you because I don't  
20 know either.

21 A I am not an expert.

22 Q You are not. I forgot to ask you  
23 at the beginning. What is your background?

24 A In terms of?

25 Q Education.

1           A     I have a bachelor's degree in  
2           psychology, a bachelor's degree in literature  
3           and a master's in business administration.

4           Q     And before Aguakem, what did you  
5           do?

6           A     I worked for a company called Kemi,  
7           Inc.

8           Q     What is that, I am sorry, what is  
9           the business?

10          A     I was the chief financial officer  
11          for a water treatment company and chemical  
12          manufacturer coast to coast in the United  
13          States.

14          Q     So you do have knowledge about the  
15          chemical manufacturing industry that you are  
16          in right now?

17          A     I have knowledge.

18          Q     Okay. When you left because you  
19          were concerned of how, you know, what was  
20          going on in the building, knowing that you  
21          had chemicals there, did you secure those  
22          chemicals?

23          MR. LLORENS: Object to the question. He  
24          did not testify that he left because he was  
25          concerned. She was asking why he left. That

1 is all.

2 THE JUDGE: Please restate the question.

3 EXAMINATION CONTINUED

4 BY MS. RODRIGUEZ:

5 Q I think it has been said  
6 abundantly, Your Honor but I will restate it.  
7 Why did you leave Building 6?

8 A Okay. We were in the process of  
9 moving and I received the report that we have  
10 been talking about. I said, "time out." You  
11 know, the recommendation was very clear as  
12 far as what to do. Now, what I proceeded to  
13 do was pull all my employees out of the  
14 building and I said, even though we cannot  
15 lock the facility, at least let's close the  
16 doors that, you know, we can close. The whole  
17 place was opened and, you know, once I closed  
18 the doors that were opened, I immediately  
19 proceed to call the port director and to  
20 inform him of, you know, the information that  
21 we had obtained.

22 Q And those chemicals that you left,  
23 were they yours? Were they Aguakem Caribe's  
24 chemicals?

25 A At the time that, you know, we took

1 a time out, yes.

2 Q Yes and again, I am asking you,  
3 what measures, if any, did you do to secure  
4 the area where the chemicals were?

5 A I closed two doors. That is all the  
6 doors that I could close. I did not go inside  
7 the building again.

8 Q You did not again. I am asking you  
9 and you can either say yes or no. Did you  
10 secure that area where the chemicals were?

11 A Could you define secure?

12 Q Well, let's see where the chemicals  
13 were maybe.

14 MS. RODRIGUEZ: If I can approach?

15 THE JUDGE: Yes.

16 EXAMINATION CONTINUED

17 BY MS. RODRIGUEZ:

18 Q Maybe that would clarify and it  
19 would help you. Where did you leave? I am  
20 showing the witness photograph identified  
21 layout. Can you please tell me where the  
22 chemicals were?

23 MR. LLORENS: I object to this line of  
24 questioning. This witness has never testified  
25 about whether the chemicals location depicted

1 in this facility is accurate to my knowledge.  
2 Do you want to ask him?

3 MS. RODRIGUEZ: No. I am asking him first  
4 of all -

5 THE JUDGE: How about if we ask questions  
6 as to location and ascertain that, then we  
7 can move forward.

8 EXAMINATION CONTINUED

9 BY MS. RODRIGUEZ:

10 Q You said there were chemicals that  
11 you left and this is a graph that I know you  
12 say that it might be different because of how  
13 they are. To the best of your recollection  
14 and as far as you can tell or know, could you  
15 point to where those chemicals were left?

16 A Some things come to my mind. You  
17 know, we had tanks in this area.

18 THE JUDGE: Okay. This area -

19 THE WITNESS: This area being the south  
20 side on the middle next to the door. I think  
21 there is a number twelve.

22 THE JUDGE: Okay.

23 THE WITNESS: Other than that, I cannot  
24 ascertain.

25 EXAMINATION CONTINUED

1 BY MS. RODRIGUEZ:

2 Q The chemicals, just to be clear in  
3 your response, the chemicals were left around  
4 at least, what you are saying, approximately  
5 where area twelve is marked on this graph?

6 A That is not what I said. I said  
7 there were some tanks in this area that I  
8 have a clear recollection. Other than that,  
9 I don't know.

10 Q And then I have to ask you, when  
11 you mentioned those tanks, were there  
12 chemicals in those tanks?

13 A There were heels in the tanks. In  
14 other words, a heel is when you empty the  
15 tank and it gets to the point, you know, that  
16 you connect the valve, the bolt fitting and a  
17 valve that, you know, it empties but there is  
18 always a little bit. It is just that, you  
19 know, you have to get that and you have to  
20 come in and vacuum it out and we were in the  
21 process, those tanks were empty and we were  
22 in the process of vaccumning out, laying them  
23 down so we can move them.

24 THE JUDGE: Just one moment. We are  
25 taking a break.

1 (Whereupon a recess was taken)

2 EXAMINATION CONTINUED

3 BY MS. RODRIGUEZ:

4 Q Let me see if I get it right. You  
5 have stated on numerous occasions that you  
6 left equipment, that you left tanks, that you  
7 left chemicals and you mentioned the  
8 chemicals that you left, right?

9 A Among other things.

10 Q Among other things. Where or how  
11 were these chemicals, where were they stored,  
12 what type of equipment?

13 A In that location, but the vessel in  
14 which they were contained?

15 Q Right, right.

16 A Typically totes, drums and heels on  
17 the tanks.

18 Q And give me a ball park figure of  
19 how many totes.

20 A I imagine around fifty.

21 Q I am sorry?

22 A Fifty.

23 Q Fifty?

24 A Five zero.

25 Q Okay and tanks?



1 A Tanks, I don't know, four, fie.

2 Q And what was it that you said, I am  
3 sorry, I didn't, heels?

4 A Well, those are inside the tanks.

5 Q Tanks. So you mentioned totes,  
6 heels?

7 A Totes, drums, and tanks.

8 Q And drums, how many?

9 A Probably around twenty five,  
10 thirty.

11 Q Okay and without, let me take that  
12 map, I am going to be using, the graphs so I  
13 don't confuse you. Where were those totes,  
14 the tanks and the drums located in the  
15 facility?

16 A I can ascertain to the tanks which  
17 are already demonstrated but the other ones  
18 I, you know, I don't know exact location on  
19 that drawing.

20 Q Forget about, let's forget about  
21 the drawing to make it easier for you. Where  
22 were the drums located in that building?

23 A Inside the warehouse.

24 Q Let's say the warehouse is north,  
25 south, west, east, where were they located?

1 A I cannot ascertain.

2 Q You don't remember?

3 A I cannot, I cannot remember.

4 Q Okay. Where were the drums?

5 A I don't recall.

6 Q I am sorry. Where were the totes?

7 A The totes they were, I cannot  
8 ascertain the location of them.

9 Q I am sorry?

10 A I cannot ascertain the location of  
11 the totes.

12 Q So you cannot ascertain where the  
13 drums were. You cannot ascertain where the  
14 totes were, you can only ascertain where the  
15 tank was.

16 A Yes. Well, everything was inside  
17 the building, inside the warehouse.

18 Q Okay. So you don't remember any of  
19 that?

20 MR. LLORENS: Objection. He just said  
21 that those materials were inside this  
22 facility. Where exactly, he can't remember  
23 exactly.

24 MS. RODRIGUEZ: Well, Your Honor -

25 THE JUDGE: Okay. Where are we going with

1 this?

2 MS. RODRIGUEZ: Well, Your Honor, first  
3 of all, he has said that part of that was  
4 used for lumber; that he has even stated, you  
5 know, that a portion of his testimony was  
6 used by other companies so I just want to  
7 know whether they were actually all within  
8 the building, within the area that he said at  
9 the beginning -

10 THE JUDGE: Where, what does this point  
11 to?

12 MS. RODRIGUEZ: Where were they, where  
13 were they?

14 THE JUDGE: And what is the purpose of  
15 ascertaining where they were?

16 MS. RODRIGUEZ: To know actually the  
17 complete, you know, the property, whether  
18 everything was stored within, you know, his  
19 property, whether there were -

20 THE JUDGE: Okay and I think that has  
21 been answered.

22 MS. RODRIGUEZ: Okay.

23 EXAMINATION CONTINUED

24 BY MS. RODRIGUEZ:

25 Q Now I am going to show you, I don't

1 know how it was marked.

2 MS. RODRIGUEZ: Your Honor, may I  
3 approach the witness?

4 THE JUDGE: Yes.

5 EXAMINATION CONTINUED

6 BY MS. RODRIGUEZ:

7 Q I am going to show you what is  
8 marked as Respondent number five. Can you  
9 please take a look at the second paragraph.  
10 Could you read me the second paragraph, Mr.  
11 Guzman.

12 A Unanue.

13 Q I am sorry, I am sorry. Forgive  
14 me.

15 A "We trust that your inspection of  
16 Aguakem's interim facility demonstrated  
17 Aguakem's commitment to and success--"

18 Q I am sorry, I am sorry. Which  
19 paragraph did I say?

20 A You said two.

21 Q Oh, I am sorry. Paragraph four.

22 A "Aguakem is committed to fully  
23 cooperating with the EPA as it suffered great  
24 harm because of the latent negligence and  
25 failure to comply with lawful regulations

1 demonstrated by the port and its designated  
2 agents. Indeed we are hopeful that the EPA  
3 can provide us guidance with regard to lead  
4 contamination as Aguakem employees have been  
5 exposed to illegal lead levels and lab  
6 testing has evidenced unusual high level of  
7 lead in the blood of Aguakem's employees. We  
8 performed testing of the atmosphere in our  
9 facility as well. If you need copies of the  
10 tests, of these tests, please do not hesitate  
11 to request them."

12 Q Could you tell me which employees  
13 demonstrated high levels of lead in the  
14 blood?

15 A Okay. Right after, you know, we  
16 took a time out, I wanted to establish the  
17 lead level my employees, you know, the lead  
18 level in the blood of my employees. I was  
19 counseled by medical doctors.

20 Q Who, could you please tell us who?

21 A Dr. Elizabeth Barraco with the  
22 University of Ponce, research facility. You  
23 know, I serve on a volunteer basis there and  
24 also with my brother. He is a gynecologist  
25 and an obstetrician and there was a lot of

1 concern about Leticia Rivera. She was  
2 pregnant so at my cost I had everybody  
3 tested.

4 Q How many?

5 A Um?

6 Q And who resulted with high levels  
7 of lead?

8 A What is high levels of lead?

9 Q You mentioned here, I am sorry, you  
10 mentioned here -

11 A Well, there was lead on everybody's  
12 blood. The highest was mine.

13 Q Okay and do you know whether that  
14 is normal, that some people might -

15 A I am not a medical doctor.

16 Q I am sorry?

17 A I am not a medical doctor.

18 Q What did they tell you?

19 A They were concerned.

20 Q What did tell you, did they tell  
21 you whether it is normal for people to have  
22 some type of, you know, level of lead -

23 A We asked for guidance from the EPA.

24 MR. LLORENS: Wait.

25 MS. RODRIGUEZ: I am just asking.

1 MR. LLORENS: Let her finish the  
2 question.

3 EXAMINATION CONTINUED

4 BY MS. RODRIGUEZ:

5 Q Okay. So all your employees were  
6 tested, when?

7 A In January.

8 Q Oh, in January. What time in  
9 January?

10 A During the month of January. I  
11 think -

12 Q End of January?

13 A Probably it was the middle. I am  
14 not certain about the time.

15 THE JUDGE: Of 2007?

16 THE WITNESS: 2007.

17 MS. RODRIGUEZ: Oh, I am sorry.

18 EXAMINATION CONTINUED

19 BY MS. RODRIGUEZ:

20 Q And what did they do, those  
21 employees that had the high levels of lead?  
22 What measures did you take regarding those  
23 results?

24 A I basically advised everybody of  
25 the situation given the samples, you know,

1           advised them of their rights, you know. I  
2           also contacted contractors and told them what  
3           the situation was. We did not know really  
4           what was going on.

5           Q       In December going back to November  
6           when you first found out that there was, you  
7           know, a lot of dust and that you were told  
8           that there was lead or asbestos in the air,  
9           do you know what OSHA is?

10          A       Yes.

11          Q       Did you contact OSHA?

12          A       My employees did.

13          Q       No, but I am asking about you.

14          A       Did I did, no. I was already  
15          contacted by my staff.

16          Q       I said, did you?

17          A       Aguakem contacted OSHA.

18          Q       No. I am asking -

19               MR. LLORENS: Objection, not responsive  
20               to the question. I move to strike his  
21               answer.

22               MS. RODRIGUEZ: Your Honor, I am asking  
23               him, if he can say yes or no, whether he as a  
24               president of Aguakem -

25               THE JUDGE: Please answer the question



1 directly as posed.

2 THE WITNESS: No.

3 EXAMINATION CONTINUED

4 BY MS. RODRIGUEZ:

5 Q Did OSHA at any time come to your  
6 facility?

7 A They said it was not their  
8 jurisdiction.

9 Q Who in OSHA said that?

10 A I don't know. I did not contact  
11 OSHA directly.

12 Q Oh, so you did not contact. Did any  
13 of your employees go to OSHA that you are  
14 aware of?

15 A What do you mean?

16 Q Did they go, did they visit, you  
17 know, the office so they could explain, you  
18 know, what had, their concerns?

19 A My recollection is they called.

20 Q They just called.

21 MS. RODRIGUEZ: Your Honor, I am going to  
22 be showing the exhibit that has already been  
23 entered into evidence, Exhibit number 13.

24 THE JUDGE: Okay.

25 MS. RODRIGUEZ: The Administrative Order

1 on Consent. I am going to give it to the  
2 witness. I am showing him page 37.

3 EXAMINATION CONTINUED

4 BY MS. RODRIGUEZ:

5 Q Mr. Unanue. Do you recognize the  
6 signature in that page?

7 A Yes, I do.

8 Q Whose is that signature?

9 A That is my signature.

10 Q That is your signature. Did you  
11 read that document before you signed it?

12 A Yes.

13 Q You did? Did you have an attorney  
14 when you signed that document?

15 A What do you mean?

16 Q Did you have a counsel that was  
17 representing you? Let me rephrase.

18 Who advised you, if anyone, to sign  
19 that document?

20 A My attorney.

21 Q Will you please tell the name of  
22 the attorney.

23 A Armando Llorens.

24 MR. LLORENS: Your Honor, at this point  
25 to the degree that where this is going, at

1 least to the degree that it seems to be  
2 asking about communications between my client  
3 and myself, I am going to object and I am  
4 going to ask that I be given an opportunity  
5 to object on the basis of attorney/client  
6 communication/privilege before an answer is  
7 elicited from the witness. He just answered a  
8 question that frankly revealed  
9 attorney/client communication. I didn't have  
10 an opportunity to object. At least I want to  
11 admonish the witness given where this seems  
12 to be going, to give me an opportunity to  
13 determine where this is going.

14 THE JUDGE: Okay. Counsel?

15 MS. RODRIGUEZ: Your Honor, I only asked  
16 whether he had an attorney. He said he did  
17 not understand my question. So I asked him  
18 whether he had somebody that advised him to  
19 sign and he said an attorney and then I said,  
20 "What was the name?"

21 THE JUDGE: Okay.

22 MS. RODRIGUEZ: That is the only thing I  
23 am going to ask regarding an attorney.

24 THE JUDGE: And if it calls for anything  
25 that can possibly go in the direction of

1 attorney/client privilege --

2 MS. RODRIGUEZ: I will, Your Honor. I  
3 will, Your Honor.

4 THE JUDGE: Okay.

5 MS. RODRIGUEZ: But we do have to for the  
6 record state that one of the things that he  
7 has alleged is specifically regarding this  
8 Administrative Order on Consent.

9 THE JUDGE: Okay. So the question  
10 essentially is whether or not he had counsel.

11 MS. RODRIGUEZ: Correct.

12 MR. LLORENS: He stipulated, Your Honor,  
13 that he was advised by counsel with regard to  
14 the Administrative Order.

15 MS. RODRIGUEZ: And he already testified  
16 that it was by Mr. Armando Llorens. I mean, I  
17 don't think there is in any way, that is  
18 public knowledge and it would probably be a  
19 non issue by EPA records. I don't want to  
20 bring those EPA records.

21 THE JUDGE: Okay. How about we cut to the  
22 chase here?

23 MS. RODRIGUEZ: Your Honor, can you give  
24 me, can you give us a few minutes?

25 THE JUDGE: Yes.

1 MS. RODRIGUEZ: Maybe -

2 THE JUDGE: This may be an opportune time  
3 to take a break, five minutes.

4 (Whereupon a recess was taken)

5 MS. RODRIGUEZ: Yes, I want to note that  
6 by mistake, Your Honor, and counsel I am very  
7 sorry, I took the exhibit, the actual copy  
8 that is Exhibit 13 and without realizing that  
9 it was the one that had been admitted. I  
10 wrote on page 14, personal equipment and I  
11 will just black out over it.

12 THE JUDGE: Okay. Very good. Thank you.

13 MS. RODRIGUEZ: With a magic marker.

14 THE JUDGE: Okay. Thank you for letting  
15 us know.

16 MS. RODRIGUEZ: Yes, I am sorry.

17 THE JUDGE: Off the record for a moment.

18 (Discussion off the record)

19 THE JUDGE: Now we are back on the record  
20 and again I remind the witness that he is  
21 under oath.

22 THE WITNESS: Okay.

23 EXAMINATION CONTINUED

24 BY MS. RODRIGUEZ:

25 Q Mr. Unanue, regarding that

1 Administrative Order on Consent, did you  
2 comply with that order? Yes or no?

3 A Yes.

4 Q What did you do to comply?

5 A I signed the document.

6 Q And that is not my question. After  
7 you signed this - let's rephrase it. After  
8 you signed the order, the order asked that  
9 the parties who signed had to conduct some  
10 work and had to do, you know, certain  
11 actions. Is that correct or not? You can look  
12 at the document.

13 THE JUDGE: Objection?

14 MR. LLORENS: Yes, I have an objection as  
15 to the interpretation of what the agreement  
16 requires. I think that is a legal conclusion  
17 there.

18 THE JUDGE: I agree.

19 MS. RODRIGUEZ: I will take it back, Your  
20 Honor. I withdraw.

21 EXAMINATION CONTINUED

22 BY MS. RODRIGUEZ:

23 Q Under that order, under that  
24 document, were you supposed to do anything?

25 MR. LLORENS: Again it is his

1 understanding that he was supposed to do  
2 something?

3 THE JUDGE: Yes. He stated whether his  
4 belief --

5 EXAMINATION CONTINUED

6 BY MS. RODRIGUEZ:

7 Q After he signed it, was it your  
8 understanding or belief that you had to do  
9 anything after he signed it?

10 A I stated clearly that I didn't have  
11 any money and was not responsible and, you  
12 know, this was a moving train and the best  
13 thing was for me to sign it. I clearly stated  
14 that I didn't have any resources or monies.

15 Q Who did you tell that?

16 A I told my counsel.

17 MR. LLORENS: Objection. This is all on  
18 the witness. Don't tell people what you told  
19 me.

20 THE WITNESS: Okay.

21 EXAMINATION CONTINUED

22 BY MS. RODRIGUEZ:

23 Q Without mentioning your counsel I  
24 will re-ask the question. Did you tell  
25 anybody outside your counsel that you had no

1 money?

2 A Relating to ths specific document?

3 Q Yes, sir.

4 A This one, no.

5 Q No. Did you, in your information I  
6 believe had to do anything by signing that  
7 document after he signed it?

8 A I said I was not going to do  
9 anything. I signed it. I agreed to it.

10 Q Taking outside your attorney, did  
11 you tell anybody that you were not going to  
12 do anything after you signed it?

13 A No, I didn't tell anybody.

14 Q You didn't tell anybody. As a  
15 businessman, did you read that Administrative  
16 Order?

17 A Yes, I read it.

18 Q Was it your understanding that  
19 there is work to be performed under that  
20 Administrative Order?

21 A I read it.

22 Q And do you know, if you know, if  
23 you don't, you don't, the consequences that  
24 might occur after you sign that and you don't  
25 comply with what is required if you do?



1 A I do. I was signing an agreement.

2 Q You were signing an agreement.

3 MS. LLORENS: Your Honor, are there  
4 claims of violations of the Consent Order  
5 that are part of this proceeding or what is  
6 this relevant to?

7 MS. RODRIGUEZ: Your Honor, this is  
8 relevant. He has stated that, one of his  
9 allegations is that he was never given the  
10 opportunity to go inside and take his  
11 materials, to take anything that was there.  
12 However, he signed an order that would have  
13 allowed him to go inside and have the  
14 opportunity to take out whatever was his.

15 THE JUDGE: Quite frankly, most of that  
16 came in the form of attempted testimony  
17 through questioning of the witness for  
18 Respondent's to counsel. I don't know if we  
19 had much direct testimony from this witness  
20 on that subject so I believe it may be better  
21 to lay a foundation for that line of  
22 questioning. MS. RODRIGUEZ: Okay. Let me  
23 take that back and let me go back. Let me  
24 just go back to one of the questions I had  
25 previously -- I am giving the reporter, Your

1 Honor, the exhibit so I don't write on it.

2 EXAMINATION CONTINUED

3 BY MS. RODRIGUEZ:

4 Q Let me go back to one of the  
5 questinos I previously asked regarding when  
6 you left the facility and left your  
7 materials, what was there because of your  
8 concern and I forgot to ask you this, in the  
9 efforts that you did to recover those  
10 materials, you said you contacted Port of  
11 Ponce?

12 A Yes.

13 Q Besides that, did you contact any  
14 environmental company that could have removed  
15 those materials with the appropriate  
16 measures?

17 A I was -

18 Q Yes or no?

19 A No.

20 Q No. Did you give your employees  
21 while they were there from, you know, before  
22 you left that facility, any protective  
23 equipment or any protective items to prevent  
24 any type, to protect them, from exposure to  
25 the dust that was around? Yes or no?

1 A Yes.

2 Q You gave them?

3 A Yes.

4 Q Could you tell us what you gave  
5 them?

6 A I gave protective gear.

7 Q Which were?

8 A Glasses, masks, gloves.

9 Q Okay.

10 A And everybody was wearing steel toe  
11 boots, boots with steel toes.

12 MS. RODRIGUEZ: One moment, Your Honor.  
13 Your Honor, I don't have anymore questions  
14 right now for the witness but I do have  
15 rebuttal witnesses.

16 THE JUDGE: Okay. How about if we have  
17 redirect?

18 REDIRECT EXAMINATION

19 BY MR. LLORENS:

20 Q I ask you to look at Exhibit 3, no,  
21 excuse me, that is not 3.

22 THE JUDGE: That would be Respondent  
23 Exhibit 3.

24 MR. LLORENS: Yes. It is Respondent's 3.

25 EXAMINATION CONTINUED

1 BY MR. LLORENS:

2 Q Did you follow the recommendation  
3 delivered to you as described in page two?

4 A I followed part of the  
5 recommendation.

6 Q Okay. What recommendation did you  
7 not follow?

8 A Warning signs, I did not post it.

9 Q Anything else?

10 A Not that I can see.

11 Q Okay. Why did didn't you post  
12 warning signs?

13 A I didn't have any.

14 Q Okay. Did anyone ever comment to  
15 you about this report?

16 A No, no one commented.

17 Q No. Did anyone ever tell you that  
18 the recommendations of the report need not be  
19 followed?

20 A No. Nobody told me that.

21 Q Not EPA?

22 A Not the EPA.

23 Q Not the Port of Ponce?

24 A Not the Port of Ponce.

25 Q Now, there were some questions from

1           counsel about securing the facility and  
2           without rehashing that, did you secure the  
3           facility when you left it on December 28,  
4           2006?

5           A       As best I could, I closed the door  
6           to the north side and I closed the door to  
7           the west side but the other doors, I mean,  
8           there is a door missing. I, you know, I  
9           couldn't do anything about it.

10          Q       There was no door?

11          A       There was no door. That would be on  
12          the eastern side.

13          Q       Okay. Who removed that door?

14          A       The Port of Ponce.

15          Q       Okay. Were you requested to do  
16          anything with regard to the agreement on  
17          consent, or Administrative Order on Consent?

18          A       No, I was not requested to do  
19          anything.

20          Q       You never refused to do any tests  
21          that was asked of you?

22          A       No, I never refused.

23          MR. LLORENS: I have no further  
24          questions.

25          MS. RODRIGUEZ: I have some questions for

1 the witness, Your Honor.

2 THE JUDGE: Okay. Related to the  
3 redirect?

4 MS. RODRIGUEZ: Yes. Just give me a  
5 minute.

6 RECROSS EXAMINATION

7 BY MS. RODRIGUEZ:

8 Q Mr. Unanue, regarding and I know we  
9 have gone over and over and counsel again  
10 asked you about how you secured the area.  
11 You said you closed the other doors; that  
12 there was an area that was open in that  
13 building. Did you hire by any chance a  
14 private guard to guard what you had left  
15 behind?

16 A No.

17 Q Okay.

18 MS. RODRIGUEZ: That is all.

19 RE-REDIRECT EXAMINATION

20 BY MR. LLORENS:

21 Q Mr. Unanue, did you have the legal  
22 right to hire a private guard to guard your  
23 facility?

24 MS. RODRIGUEZ: Your Honor, objection.

25 THE JUDGE: On the grounds?

1 MS. RODRIGUEZ: That is an legal  
2 question, legal right to hire. How would he  
3 know?

4 MR. LLORENS: Let me rephrase, Your  
5 Honor.

6 EXAMINATION CONTINUED

7 BY MR. LLORENS:

8 Q Was it your understanding that you  
9 had the authority to place a guard in the  
10 facility?

11 MS. RODRIGUEZ: Your Honor, I mean, it is  
12 leading.

13 MR. LLORENS: I am asking what -

14 EXAMINATION CONTINUED

15 BY MR. LLORENS:

16 Q What was your understanding with  
17 regard to placing a security guard -

18 MS. RODRIGUEZ: Your Honor -

19 THE JUDGE: Let him finish the question.

20 MR. LLORENS: I am done. What was his  
21 understanding with regard to placing security  
22 guards at the facility?

23 THE JUDGE: Okay. I will allow that  
24 question.

25 THE WITNESS: Any personnel that went to

1 the port -

2 MS. RODRIGUEZ: I cannot hear you.

3 THE WITNESS: Any personnel that went  
4 into the port had to be I.D.d by the port.

5 MS. RODRIGUEZ: I don't see the -

6 THE JUDGE: Pardon me?

7 MS. RODRIGUEZ: I am sorry, I am sorry.

8 THE WITNESS: So I didn't, there was not  
9 way I could put security in there. I did not  
10 have the right nor authority and besides  
11 there was security already.

12 MS. RODRIGUEZ: And I have another one.

13 RE-RE-CROSS EXAMINATION

14 BY MS. RODRIGUEZ:

15 Q Did you ask the Port Authority  
16 whether you could put a security guard there  
17 to protect your property?

18 A I did not.

19 MS. RODRIGUEZ: Thank you.

20 MR. LLORENS: Nothing further.

21 THE JUDGE: Do you wish to reserve this  
22 witness?

23 MR. LLORENS: Yes, in light of the  
24 announcement of the rebuttal witnesses.

25 THE JUDGE: Okay. Your testimony at this



1 time is appreciated but you are reserved by  
2 your counsel.

3 THE WITNESS: Thank you very much, Your  
4 Honor.

5 THE JUDGE: Okay. Now, it is  
6 approximately, I think it is almost 3:15 so  
7 we are still in good shape. How many  
8 rebuttal witnesses do you anticipate?

9 MS. RODRIGUEZ: Maybe two.

10 THE JUDGE: Okay. And rather short in  
11 duration?

12 MS. RODRIGUEZ: I hope, Your Honor.

13 THE JUDGE: Okay. How about if we call  
14 the first witness?

15 MS. RODRIGUEZ: I am sorry?

16 THE JUDGE: How about if we call the  
17 first witness?

18 MS. RODRIGUEZ: I am just going to ask  
19 for a five minute recess.

20 THE JUDGE: Okay. Five minutes.

21 MS. RODRIGUEZ: Thank you, Your Honor.

22 (Whereupon a recess was taken)

23 THE JUDGE: Okay and is his expertise  
24 challenged?

25 MR. LLORENS: On lead, yes, I have to say

1 I have heard nothing that indeed, some people  
2 at the EPA or did he have knowledge of lead.

3 THE JUDGE: Yes, I haven't heard, if you  
4 qualify the witness.

5 MS. RODRIGUEZ: I will withdraw the  
6 question, Your Honor. I will withdraw it. As  
7 a RCRA officer, you can use the document, are  
8 there any exceptions in the RCRA Regulations?

9 THE JUDGE: Pardon me?

10 MS. RODRIGUEZ: Are there any exceptions  
11 in the RCRA Regulations?

12 MS. LLORENS: Your Honor, I am sorry to  
13 be a pest but I have to -

14 THE JUDGE: Okay. How about if we get to  
15 the end of the question because I didn't hear  
16 any question.

17 MR. LLORENS: That is the reason he was  
18 called, right?

19 MS. RODRIGUEZ: No.

20 MR. LLORENS: Oh, I am sorry.

21 Whereupon,

22 JESSIE AVILES  
23 was recalled as a witness and having been  
24 previously duly sworn, was examined and  
25 testified as follows:

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REBUTTAL EXAMINATION

BY MS. RODRIGUEZ:

Q Are there any exceptions in the RCRA Regulation?

A RCRA does have exceptions.

MR. LLORENS: Objection.

Q No. I was going to say I haven't finished. I haven't finished, I am sorry, Your Honor. Regarding a company or a person from making a hazardous waste determination?

A No.

Q Would a person, let's say hypothetically be exempted from making a hazardous waste determination if he leaves for any reason a facility where his chemicals were stored?

A No.

Q A hypothetical scenario, if the person leaves the facility because and he is prevented, he allegedly could not go back, would that exempt him also from making a hazardous waste determination?

THE JUDGE: Don't answer.

MR. LLORENS: I object to the question. In some level this is legal argument but even

1           though we have been pretty lax on that, Your  
2           Honor, but I have to, since I disagree with  
3           the underlying legal premise of the question,  
4           I just want to object to the form. He can  
5           answer but I just state for the record that  
6           doesn't argue or state a legal question that  
7           is present in this case.

8           THE JUDGE: It is a mix. This is a thin  
9           line within this area when EPA employees are  
10          testifying on the status of the regulations  
11          and the statute.

12          MS. RODRIGUEZ: I will rephrase.

13          THE JUDGE: I will allow the question but  
14          strictly within the context of RCRA and the  
15          limited area of hazardous waste and solid  
16          waste.

17          THE WITNESS: Since it isn't a  
18          hypothetical question, we as enforcement  
19          agents are there to enforce the regulations  
20          and then if the company were to come to me  
21          and say, there was a reason I couldn't make a  
22          hazardous waste determination and these were  
23          the reasons, I will look at the reasons and  
24          establish if the reasons first are valid and  
25          then work very closely with the company to

1 have them in compliance as soon as these  
2 conditions are removed but then again the  
3 conditions have to be followed because there  
4 is nothing in the risk that exempts the  
5 company from making the hazardous waste  
6 determination so it will be our prerogative  
7 to actually do that without going against the  
8 company and enforcing the regulations.

9 MS. RODRIGUEZ: That will be all then for  
10 the witness.

11 THE JUDGE: Okay. Any follow up?

12 MR. LLORENS: No questions.

13 THE JUDGE: Okay. This witness is  
14 dismissed then. Thank you for your testimony.

15 (The witness was excused)

16 MS. RODRIGUEZ: Your Honor, I call Mr.  
17 Angel Rodriguez.

18 THE JUDGE: I remind the witness he still  
19 under oath having been sworn in yesterday.  
20 Whereupon,

21 ANGEL RODRIGUEZ  
22 was called as a witness and after having been  
23 previously duly sworn, was examined and  
24 testified as follows:

25 REBUTTAL EXAMINATION

1 BY MS. RODRIGUEZ:

2 Q Mr. Rodriguez, you testified  
3 yesterday about two types of removal that  
4 were conducted at the facility, at the Ponce  
5 facility. Is that correct?

6 A That is correct.

7 Q You discussed an emergency removal  
8 that took place from 2007 to 2008 and then a  
9 long term removal, part of an administrative  
10 order, is that correct?

11 A That is correct.

12 Q I ask you, did Mr. Jorge Unanue  
13 contact you at any time during the  
14 performance of the emergency removal?

15 A I answered yesterday he had. We  
16 spoke, whether he contacted me or not, I  
17 cannot recall but we spoke on the phone  
18 pertaining to the ongoing required  
19 stabilization but he did not participate in  
20 that action and then later on the consent  
21 order, they were also absent from the effort  
22 to eventually dispose of all the chemicals.

23 Q Did you allow or did you request to  
24 remove his material while the emergency  
25 removal was going on?

1           A     Yes, I did. I did it in the form of  
2           a Field Notice of Federal Interest and also  
3           in the form of the consent access.

4           Q     Did he remove the material?

5           A     He did not.

6           Q     Did he remove the material after he  
7           signed the Administrative Order on Consent?

8           A     He did not.

9           Q     Did he contact you in any way after  
10          he signed the Administrative Order on  
11          Consent?

12          A     I spoke to his attorney shortly  
13          after, maybe a couple of times but never with  
14          the intent of cooperating in the removing or  
15          performing the cleanup.

16          Q     And could you say that is the same  
17          regarding the emergency removal?

18          A     I will have to say that on the  
19          basis of emergency removal, we had a  
20          conversation and I don't recall whether I  
21          called him or he called me. Maybe I called  
22          him and he called me also but he was advised  
23          verbally that he had a responsibility. I did  
24          the same thing based on a Field Notice of  
25          Federal Interest, a FNFI that I sent to him

1 via fax.

2 Q Okay.

3 MS. RODRIGUEZ: That is all, Your Honor.

4 THE JUDGE: Okay.

5 MR. LLORENS: I have just have a couple  
6 for this witness.

7 CROSS EXAMINATION

8 BY MR. LLORENS:

9 Q The Agreement on Consent, the  
10 Administrative Order on Consent is number 13,  
11 correct?

12 THE JUDGE: Yes.

13 EXAMINATION CONTINUED

14 BY MR. LLORENS:

15 Q On I think it is page nine there is  
16 a paragraph thirty six that requires, it  
17 makes some statements about what the  
18 Municipality of Ponce was to do and I am  
19 going to direct your attention to 36a and it  
20 requires the Municipality of Ponce as I read  
21 it, and I am going to quote it, that it  
22 provide a "Listing of quantities of types of  
23 any materials removed from the site or  
24 handled on site during said period." Do you  
25 know if that listing was produced by the



1           Municipality of Ponce and in conformance with  
2           the agreement?

3           A     As I understand, it was produced.

4           Q     Okay. Do you know what materials  
5           were listed as having been removed from the  
6           site in that listing?

7           A     Now there is two questions that you  
8           are asking me. There is one item that has two  
9           issues there. One is the actual removal and  
10          one is the actual handling and because it  
11          says remove and/or, it doesn't say and/or it  
12          says or handled, I have to say at least  
13          handled.

14          Q     Right but do you know if they  
15          produced the listing that would identify the  
16          documents, excuse me, the materials that were  
17          removed from the site?

18          A     If they did, when they moved the  
19          materials and they were handled over in  
20          Building 5 all that list was provided.

21          Q     Okay but would the listing that was  
22          provided indicate what materials were removed  
23          from the site?

24          A     Like I said, removed or handled,  
25          two different issues here. Removed, there is

1 two lists there. They provided whatever it  
2 was on that, an inventory of whatever was  
3 there stabilized because they had to move  
4 that over to the Building number 5 and when  
5 eventually they disposed of the material,  
6 they also provided that list for disposal  
7 materials.

8 Q I agree but my question was, did  
9 you -

10 MS. RODRIGUEZ: Your Honor.

11 THE JUDGE: Wait a minute. Let him finish  
12 the question.

13 EXAMINATION CONTINUED

14 BY MR. LLORENS:

15 Q Did you receive from the  
16 Municipality of Ponce a listing of quantity  
17 and types of any materials removed from the  
18 site?

19 MR. MATEO DURANGO: Objection --

20 MR. LLORENS: He already said there  
21 wasn't any.

22 THE JUDGE: Let him answer.

23 THE WITNESS: Either the question is  
24 unclear as you need to state, if in my  
25 personal opinion, that you need to state in

1           what process, whether it was for disposal  
2           purposes and leaving the premises, for final  
3           disposition at an approved facility or  
4           whether that material, the list that you are  
5           asking for is the material that was handled  
6           at Building 6 and it was eventually moved  
7           over to Building 5.

8           MS. RODRIGUEZ: Your Honor.

9           THE JUDGE: Yes.

10          MS. RODRIGUEZ: My objection is that as  
11          to this Administrative Order on Consent which  
12          is not for the emergency removal, I only  
13          asked about what, whether the Respondent  
14          cooperated, whether the Respondent  
15          participated. He is going into other items  
16          that I did not discuss about this document.

17          MR. LLORENS: Your Honor, counsel for  
18          Respondent elicited through a series of  
19          questions responsive with regard to Aguakem's  
20          willingness to recover its materials under  
21          the Administrative Order on Consent. There  
22          was a question specifically to that point.

23          MS. RODRIGUEZ: And he stated, no. So I  
24          don't see -

25          MR. LLORENS: Well, whether he said yes

1 or no, Your Honor, the issue is now open for  
2 my question.

3 THE JUDGE: Yes, it is. The subject has  
4 been broached. It has been broached.

5 MR. LLORENS: And I would refer the  
6 witness to paragraph 36a to simplify it.

7 THE JUDGE: How about if we break it down  
8 into the two separate subjects of removal,  
9 ask questions with regard to removal and then  
10 separately ask if there was a list provided  
11 with regard to handling.

12 MR. LLORENS: I take it if you could  
13 answer the Judge's question.

14 THE WITNESS: Sure. On the removal of  
15 materials from the site, that means you are  
16 basically questioning, based on the consent  
17 order where this, you know, whether these  
18 materials left the facility once they were  
19 vaulted, the sample vault and eventually left  
20 the site and the answer is there were  
21 removal, there were materials removed from  
22 the site.

23 EXAMINATION CONTINUED

24 BY MR. LLORENS:

25 Q Okay. Do you know -

1           A     I haven't -

2           Q     Oh, I am sorry.

3           A     You asked me two questions here and  
4           the judge split the question in two as well.  
5           So, as a matter of handling materials on the  
6           site, we have two issues as well. First of  
7           all, the company hired by Del Valle  
8           Corporation which were somehow communicating  
9           with the Port of Ponce, they stabilized the  
10          materials in Building number 6 and we caught  
11          them doing something inappropriate. I mention  
12          that as well. They attempted to remove  
13          material from the site to a local landfill.  
14          We stopped them, okay. The material was not  
15          returned by us. Had we known in advance we  
16          would have done it as well but the landfill  
17          itself says, "No way, you are not - "

18          THE JUDGE: Did they provide a list to  
19          you?

20          THE WITNESS: They did, the list was  
21          provided on both and I already answered that.

22          THE JUDGE: Okay.

23          THE WITNESS: On one count they did and  
24          the other count on the other part, on site,  
25          they provided that as well.

1 THE JUDGE: Okay.

2 EXAMINATION CONTINUED

3 BY MR. LLORENS:

4 Q Okay. Do you remember what  
5 materials were listed as having been removed?

6 THE JUDGE: Where are we going with this?

7 MR. LLORENS: Your Honor, if I may  
8 explain where I am going is, the implication,  
9 his expressed statement was that my client  
10 apparently had an opportunity after the  
11 Adminsitrative Order on Consent that they did  
12 not avail themselves of removing the  
13 materials from the site. It is my  
14 understanding that by July 24, 2007 at least  
15 some of the material had already been removed  
16 from the site. It is my opinion, I will  
17 write it in the brief, undermine that  
18 assertion that in fact an opportunity was  
19 provided to my client to remove the  
20 materials.

21 MS. RODRIGUEZ: Your Honor --

22 MR. LLORENS: After the Administrative  
23 Order on Consent was entered.

24 MS. RODRIGUEZ: Your Honor, as to the  
25 Administrative Order on Consent my, I think

1 my questions were as to whether he  
2 participated, whether he cooperated. As to  
3 whether he had the opportunity to remove --  
4 could we side bar?

5 THE JUDGE: I think what we are doing is,  
6 we are now moving beyond what is necessary  
7 for this determination. The fact that maybe  
8 some of the materials had been removed,  
9 therefore, preventing the Respondent from  
10 having the opportunity to remove them is moot  
11 since it has been admitted that they were not  
12 removed. So the fact that he was prevented  
13 from removing them because they had already  
14 been removed by the EPA, and the Superfund  
15 Surplus Program. I think is immaterial at  
16 this stage.

17 MR. LLORENS: Okay. Very good, Your  
18 Honor. I then have no further questions of  
19 this witness.

20 THE JUDGE: Okay. EPA?

21 MS. RODRIGUEZ: Just a minute, Your  
22 Honor.

23 THE JUDGE: Okay.

24 MR. LLORENS: Indeed, Your Honor, if you  
25 would like, I would strike all my questions

1 from the record based on what you stated  
2 because everything I was asking was going  
3 towards the point that you just declared is  
4 moot. So as to clear up the record and to  
5 finish with this witness, I would have to  
6 stamp out my questions.

7 THE JUDGE: Since the questions are  
8 there, we will leave them.

9 MR. LLORENS: Okay.

10 MS. RODRIGUEZ: That will be all, Your  
11 Honor.

12 THE JUDGE: Okay. So anything further  
13 from either party?

14 MS. RODRIGUEZ: No, Your Honor.

15 THE JUDGE: Well, I will allow the  
16 witness, you are dismissed and thank you for  
17 your testimony.

18 (The witness was excused)

19 THE JUDGE: Okay. Now, I think a couple  
20 of housekeeping matters, if we could just  
21 quickly go through so that everyone is on the  
22 same page as to what the record consists of.  
23 It should just take a minute or two since it  
24 is not a voluminous record here. I have  
25 Complainant's Exhibit 1, not 2, 3, not 4, 5,



1 6, 7 in part, 8, 9, 10, 11, not 12, 13, 14.  
2 Anything further on Complainant's exhibits?  
3 With regard to Respondent, we have Exhibits  
4 1A marked, and 1B marked as rejected.  
5 Respondent's Exhibit 2A and B. Respondent's  
6 Exhibit 3, Exhibit 4 rejected, Exhibit 5 and  
7 that is it.

8 MR. LLORENS: Your Honor, I didn't notice  
9 that they were divided. Did I fail to move  
10 Exhibits 2A and B into the record?

11 THE JUDGE: I have them marked as  
12 received.

13 MR. LLORENS: Okay.

14 THE JUDGE: Does the court reporter have  
15 it marked as received, 2A and B?

16 THE COURT REPORTER: Yes.

17 THE JUDGE: Excellent. Now, just for  
18 clarification, so all of the same  
19 understanding, all the original exhibits in  
20 the case are now in the possession of the  
21 court reporter who is obliged to transfer  
22 them along with the hearing transcript to the  
23 regional hearing clerk for safekeeping. It  
24 is incumbent upon the attorneys for both  
25 parties to check to make sure the regional

1 hearing clerk gets all the original documents  
2 in case there is ever an appeal so if there  
3 is a problem, please notify the regional  
4 hearing clerk immediately.

5 MR. LLORENS: Your Honor, are we on the  
6 record?

7 THE JUDGE: I hope so.

8 MR. LLORENS: I am sorry, I just, I  
9 didn't want to draw attention because I  
10 wasn't sure.

11 THE JUDGE: Have we captured that?

12 THE COURT REPORTER: Yes, we have.

13 THE JUDGE: Okay. Excellent. Now, what we  
14 do is after the preparation of the hearing  
15 transcript and the parties are notified that  
16 the transcript is available, I will set a  
17 briefing schedule. Obviously we have the  
18 holidays coming up and we will not have it  
19 scheduled during that time and quite frankly  
20 I don't think the transcript will be prepared  
21 until after the holidays but who knows but I  
22 promise I will not schedule it during the  
23 holiday season.

24 MR. LLORENS: Thank you, Your Honor.

25 THE JUDGE: Okay. Now, as a favor to me

1 after listening to the testimony I think it  
2 would behoove both parties if you take deep  
3 breaths, step back and think about talking to  
4 each other for a few minutes. Obviously I  
5 cannot direct you to do that but I would  
6 appreciate, I think it would behoove both  
7 parties. You heard the testimony from each  
8 side and I will leave it at that. I think it  
9 could be beneficial.

10 As mentioned, even though we have  
11 had three days of testimony and a great deal  
12 of time and effort have been put into  
13 preparing for this, and having the trial, it  
14 would not be wasted time if the parties were  
15 to reach a settlement. Sometimes it is  
16 necessary to flush out all the strengths and  
17 weaknesses of each other's case to have the  
18 opposing counsel and party understand the  
19 pitfalls but otherwise, the hearing is now  
20 concluded and thank you very much.

21 MR. LLORENS: Thank you, Your Honor.

22 MS. RODRIGUEZ: Thank you.

23 (Whereupon the hearing adjourned at 3:45  
24 p.m.)  
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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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