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AQUACELL TECHNOLOGIES INC

Form S-8

June 26, 2003

As filed with the Securities and Exchange Commission on June 26, 2003.

Registration No. _____

Securities and Exchange Commission
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

AQUACELL TECHNOLOGIES, INC.
(Exact Name of Registrant as Specified in Its Charter)

| | |
|--|---|
| Delaware | 33-0750453 |
| (State or Jurisdiction of Incorporation or Organization) | (I.R.S. Employer Identification No.) |

10410 Trademark Street
Rancho Cucamonga, CA 91730
(Address of Principal Executive Offices)

1998 Incentive Stock Plan
(Full Title of Plan)

James C. Witham
AquaCell Technologies, Inc.
10410 Trademark Street
Rancho Cucamonga, CA 91730
(909) 987-0456
(Name, Address and Telephone Number, Including Area
Code, of Agent for Service)

with a copy to:

Harold W. Paul, LLC.
1465 Post Road East
Westport, CT 06880
(203) 256-8005

CALCULATION OF REGISTRATION FEE

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| Title of Securities to be registered | Amount to be registered | Proposed maximum offering price per share(1) | Proposed maximum aggregate offering price |
|--|-------------------------|--|---|
| Common Stock, par value \$.001 per share | 1,000,000 (3) | \$ 2.76 | \$ 1,882,430 |

(1) Represents the maximum exercise price payable for 1,000,000 shares of Common Stock registered under this Registration Statement. The exercise prices payable for the shares of Common Stock registered under this Registration Statement and the number of shares purchasable are as follows:

The proposed maximum offering price per share is disclosed in accordance with Rule 457(h)(1) promulgated under the Securities Act of 1933, as amended.

(2) The proposed maximum aggregate offering price is the sum of the aggregate option prices of issued options subject to this registration and the total of unissued options remaining in the Plan as follows: 75,000 options exercisable at \$1.00 per share; 12,500 options exercisable at \$1.14 per share; 120,000 options exercisable at \$1.15 per share; 83,500 options exercisable at \$1.16 per share; 184,500 options exercisable at \$0.60 per share; and 524,500 unissued options remaining in the Plan at the closing price on AMEX of \$2.76 on June 23, 2003 in accordance with Rule 457(h)(1) under the Securities Act of 1933, as amended.

(3) Pursuant to Rule 416, there are also being registered additional shares of Common Stock as may become issuable pursuant to the anti-dilution provisions of all plans.

In accordance with the provisions of Rule 462 promulgated under the Securities Act of 1933, as amended, the Registration Statement will become effective upon filing with the Securities and Exchange Commission.

The Registration Statement, including all exhibits and attachments, contains 20 pages. The exhibit index may be found on page 7 of the consecutively numbered pages of the Registration Statement.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.*

Item 2. Registrant Information and Employee Plan Annual Information.*

* Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act of 1933 and the Note to Part I of Form S-8.

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THIS DOCUMENT CONSTITUTES A PART OF A PROSPECTUS
COVERING SECURITIES THAT HAVE BEEN REGISTERED
UNDER THE SECURITIES ACT OF 1933.

PROSPECTUS

AQUACELL TECHNOLOGIES, INC.

1,000,000 Shares of Common Stock

This Prospectus relates to 1,000,000 shares of Common Stock, which may be acquired upon exercise of stock options granted under the 1998 Incentive Stock Plan, (the "Plan").

The Common Stock is traded on AMEX under the symbol "AQA". On June 23, 2003, the last reported sales price of the Common Stock as reported by AMEX was \$2.76.

Persons who acquire shares of Common Stock under the Plan by the exercise of the options granted thereunder will be free to resell such shares without restriction unless they are "affiliates" of the Company, as defined in Rule 405 promulgated under the Securities Act of 1933 (the "Securities Act"). Directors and other affiliates may resell such shares only under a registration statement with an appropriate prospectus, an appropriate exemption, or pursuant to Rule 144 of the Securities Act.

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THE SECURITIES OFFERED HEREBY INVOLVE A HIGH DEGREE OF RISK.

SEE "THE COMPANY".

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY

THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this Prospectus is June 26, 2003.

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AVAILABLE INFORMATION

The Company has filed with the Securities and Exchange Commission (the "Commission"), Washington, D.C., a Registration Statement on Form S-8 (the "Registration Statement") under the Securities Act of 1933 (the "Securities Act") with respect to the securities offered hereby. This Prospectus does not contain all of the information set forth in the Registration Statement and exhibits thereto. For further information with respect to the Company and such securities, reference is hereby made to the Registration Statement and exhibits. The statements contained in this Prospectus as to the contents of any agreement or other document filed as an Exhibit are not complete and the description of such agreement or document is qualified in its entirety by reference to such agreement or document. The Registration Statement, together with the exhibits, may be inspected at the Commission's principal office in Washington, D.C. and copies may be obtained upon payment of the fees prescribed by the Commission.

The Company is subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith files reports, proxy statements and other information with the Commission. Copies of such information, reports, proxy statements and other information filed by the Company under the Exchange Act may be examined without charge at the public reference facilities of the Commission, Judiciary Plaza, 450 Fifth Street, N.W., Washington, D.C. 20549, as well as at the following Regional Offices: 233 Broadway, New York, New York 10279; and 500 West Madison Street, Suite 1400, Chicago, Illinois 60661-2511. Copies can also be obtained at prescribed rates from the Commission's Public Reference Section, Judiciary Plaza, 450 Fifth Street, N.W., Washington, D.C. 20549. The Commission also maintains a Worldwide Web site (address: <http://www.sec.gov>) that contains reports, proxy and information statements, and the information regarding registrants that file electronically with the

Commission.

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DOCUMENTS INCORPORATED BY REFERENCE

The following documents filed by the Company with the Commission are incorporated herein by reference in this Prospectus:

(a) The Company's Annual Report on Form 10-KSB for the fiscal year ended June 30, 2002, filed with the Commission pursuant to Section 13(a) of the Exchange Act;

(b) The Company's Quarterly Reports on Form 10-QSB for the quarterly periods ended September 30, 2002, December 31, 2002 and March 31, 2003 respectively, filed with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act;

(c) The Company's Proxy Statement dated October 28, 2002; and

(d) The description of the Company's common stock, par value \$.001 per share (the "Common Stock"), contained in the Registrant's 8-A Registration Statement filed with the Commission pursuant to Section 12(b) of the Exchange Act, including any subsequent amendment(s) or report(s) filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which de-registers all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the respective date of filing of such documents. Any statement contained in a document incorporated by reference herein is modified or superseded for all purposes to the extent that a statement contained in this Registration Statement or in any other subsequently filed document which is incorporated by reference modifies or replaces such statement.

The Company will furnish without charge, upon oral or written request, to each person to whom this Prospectus is delivered, a copy of any or all of the documents incorporated by reference herein other than

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exhibits to such documents not specifically incorporated by reference thereto. In addition, participants in the Plan may obtain information about the plan or its administration from the Company. Such request should be directed to AquaCell Technologies, Inc., 10410 Trademark Street, Rancho Cucamonga, CA 91730, Attention: Corporate Secretary.

The delivery of this document at any time does not imply that information herein is correct as of the time subsequent to the date hereof. Statements in this document as to the provisions of the Plan are not necessarily complete and in each instance reference is made to the copy of such plan which appears as an Exhibit to the Company's Registration Statement on Form S-8 filed with the Commission on June 26, 2003 and each such statement in this document is qualified in all respects by such reference.

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THE COMPANY

AquaCell Technologies, Inc. (the "Company") is engaged in the manufacture and sale of products for water filtration and purification through our operating subsidiaries, Global Water-Aquacell, Inc. and Water Science Technologies, Inc. (WST). Our products address various water treatment applications for industrial, commercial, institutional and residential purposes. These applications range from providing purified drinking water- through our point-of-use patented self-filling Purific Water Cooler and production of water bottling plant equipment- to equipment for processing water for ultra-pure purposes, such as micro-chip and pharmaceutical manufacturing.

Our flagship product is our patented five-gallon self-refilling bottle Purific water cooler, manufactured by our Global Water-Aquacell subsidiary. The various filtration systems available on our cooler contain different combinations of systems, which utilize sediment filters, reverse osmosis, carbon block, multi-media filters and ultra-violet light. We replace traditional five-gallon bottle water coolers with a permanently installed convenient alternative where the bottle never needs changing and water bottles no longer need to be delivered, stored or replaced. In addition, we replace water fountains where users tend to have greater concerns as to sanitation and water quality.

Investment Considerations

The Company's business is subject to numerous risks including, among other things, risks related to (i) recent losses; (ii) recent change in business strategy; (iii) strength of competitors; (iv)

dependence on key personnel; and (v) potential dilution from the exercise of outstanding options and warrants.

The Company was incorporated in Delaware in March 1997. Its principal executive offices are located at 10410 Trademark Street, Rancho Cucamonga, California 91370. Its telephone number is (909) 987-0456 and its World Wide Web home page can be accessed at www.aquacell.com.

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PURPOSE OF THE PLAN

The purpose of the 1998 Incentive Stock Plan is to enable the Company to attract and retain employees.

Summary of the 1998 Incentive Stock Plan

Our 1998 Incentive Stock Plan, covering 1,000,000 shares of our Common Stock, is administered by the Compensation Committee of our Board of Directors. Among the Compensation Committee's powers will be the authority to:

- . interpret the Plan;
- . establish rules and regulations for its operation;
- . select officers, other key employees, consultants and advisors to receive awards; and
- . determine the form, amount and other terms and conditions of awards.

Directors, officers, key employees and independent contractors will be eligible to participate in the Plan. The selection of participants is within the discretion of the Compensation Committee.

The Plan provides for the grant of any or all of the following types of awards:

- . stock options, including nonqualified stock options and incentive stock options;
- . stock awards;
- . stock appreciation rights;
- . performance shares; and
- . performance units.

Awards may be granted by themselves, in combination or in tandem with other awards as determined by the Compensation Committee.

- . Under the Plan, the Compensation Committee may grant awards in the form of nonqualified stock options or incentive stock options, shares of our Common Stock,

stock appreciation rights, performance shares or performance units. The Compensation Committee, with regard to each stock option, will determine the number of shares subject to the option, the manner and time of the option's exercise and vesting, and the exercise price per share of stock subject to the option. The following limitations are applicable under the Plan: no incentive stock options may be exercisable later than ten years after the date they are granted and no nonqualified stock options may be exercisable later than fifteen years after the date they are granted;

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- . the aggregate fair market value at the time of grant of shares of Common Stock with respect to which incentive stock options are exercisable for the first time by a participant during any calendar year cannot be more than \$100,000;
- . the exercise price of a stock option will not be less than 100% of the fair market value of the shares of Common Stock on the date the option is granted for incentive stock options or less than 85% of the market value for non qualified stock options (or, in either case, not less than 110% of fair market value if the optionee is an officer, director or a 10% stockholder);
- . the option price must be paid by a participant by check or, in the discretion of the Compensation Committee, by delivery of our Common Stock; and
- . awards may be subject to such terms, conditions, restrictions or limitations, as the Compensation Committee deems appropriate, including restrictions on transferability and continued employment.

Under the Plan, each stock appreciation right will entitle the holder to elect to receive the appreciation in the fair market value of the shares subject to the stock appreciation right up to the date the right is exercised. Stock appreciation rights may be granted independent of, or in connection with, stock options. In the case of stock appreciation rights issued independent of stock options, the appreciation shall not be measured from a value less than 85% of the fair market value of the shares on the date of grant. If the stock appreciation rights are issued in connection with stock options, the appreciation shall be measured from not less than the option price. No stock appreciation right may be exercised earlier than six months after the date of grant or later than the earlier of the term of the related option or fifteen years after the date it was granted.

Performance shares and units may be awarded either alone or in addition to other awards and

will consist of:

- . in the case of performance shares, the right to receive shares of Common Stock or cash of equal value at the end of a specified performance period; or
- . in the case of performance units, the right to receive a fixed dollar amount, payable in cash or shares of Common Stock or a combination of both at the end of a specified performance period.

The Compensation Committee may condition the performance shares or units on the attainment of specified performance goals or such other facts or criteria as the committee shall determine.

The Plan provides that awards shall not be transferable otherwise than by law or by will or the laws of descent and distribution. However, the Compensation Committee may permit the transferability of an award to members of the participant's immediate family or trusts or family partnerships for the benefit of such family members.

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The Board of Directors has the right to amend, suspend or terminate the Plan at any time, subject to the rights of participants under any outstanding awards. However, no amendment to the Plan may be made without the approval of our stockholders if such approval is required by law or regulatory authority.

RESTRICTIONS ON RESALE

Options

Persons who purchase shares of Common Stock upon the exercise of Options under the Plan after the date hereof, will be free to resell those shares without restriction under the exemption from registration provided by Section 4(1) of the Securities Act of 1933, as amended, (the "Securities Act"), except for those persons who are "affiliates" of the Company. Such affiliates may resell such shares pursuant to an appropriate prospectus under an effective registration statement under the Securities Act or pursuant to an available exemption from registration. "Affiliate" is defined under the Securities Act as a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Company. In general, persons with the power to manage and direct the policies of the Company, and relatives of such persons, among others, may be deemed to be affiliates of the Company.

If an affiliate wishes to resell or re-offer shares of Common Stock purchased under the Plan, and if a registration statement is not in effect and an appropriate prospectus is not available with respect to such shares, the affiliate will be obliged as a

precondition to any resale or re-offer to comply with either (i) Rule 144 under the Securities Act; or (ii) some other applicable exemption under the Securities Act.

Each person who may be an affiliate should, prior to reselling or re-offering any option shares, consult with counsel to determine whether he may be subject to the foregoing restrictions.

16(b) Restrictions

Certain participants in the Plan are subject to limitations imposed by Section 16(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and, as such, may not purchase and sell securities of the Company in any six-month period without subjecting themselves to liability thereunder. Persons subject to the limitations of Section 16(b) should consult with counsel before purchasing, selling or otherwise transferring securities of the Company.

FEDERAL INCOME TAX CONSEQUENCES

The following discussion of the federal income tax consequences of participation in the Plan is only a summary, does not purport to be complete and does not cover, among other things, state, local and foreign tax treatment of participation in the Plan. Furthermore, differences in individual financial situations may cause federal, state, local and foreign income tax consequences of participation in the Plan to vary. Therefore, each participant is urged to consult his own accountant, legal counsel or other tax advisor regarding the tax consequences of participation in the Plan to him. The information contained in this Section, FEDERAL INCOME TAX CONSEQUENCES, is based on existing law, which is subject to change.

The right to acquire Common Stock under the Plan are non-qualified or incentive options. With respect to the non-qualified options, (i) upon grant of the option, the participant will recognize no income; (ii) upon exercise of the option (if the shares of Common Stock are not subject to a substantial risk of forfeiture), the participant will recognize ordinary compensation income in an amount equal to the excess, if any, of the fair market value of the shares on the date of exercise over the exercise price, and the Company will qualify for a deduction in the same amount, subject to the requirement that the

compensation be reasonable; (iii) the Company will be required to comply with applicable Federal income tax withholding requirements with respect to the amount of ordinary compensation income recognized by the participant. On a disposition of the shares, the participant will recognize gain or loss equal to the difference between the amount realized and the sum of the exercise price and the ordinary compensation income recognized. Such gain or loss will be treated as capital gain or loss if the shares are capital assets and as short-term or long-term capital gain or loss, depending upon the length of time that the participant held the shares.

If the shares acquired upon exercise of the option are subject to a substantial risk of forfeiture, the participant will recognize income at the time when the substantial risk of forfeiture is removed and the Company will qualify for a corresponding deduction at such time.

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PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Company with the Commission are incorporated herein by reference in this Prospectus:

(a) The Company's Annual Report on Form 10-KSB for the fiscal year ended June 30, 2002, filed with the Commission pursuant to Section 13(a) of the Exchange Act;

(b) The Company's Quarterly Reports on Form 10-QSB for the quarterly periods ended September 30, 2002, December 31, 2002 and March 31, 2003 respectively, filed with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act;

(c) The Company's Proxy Statement dated October 28, 2002; and

(d) The description of the Company's common stock, par value \$.001 per share (the "Common Stock"), contained in the Registrant's 8-A Registration Statement filed with the Commission pursuant to Section 12(b) of the Exchange Act, including any subsequent amendment(s) or report(s) filed for the purpose of updating such description.

All documents subsequently filed by the Registrant

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pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which de-registers all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the respective date of filing of such documents. Any statement contained in a document incorporated by reference herein is modified or superseded for all purposes to the extent that a statement contained in this Registration Statement or in any other subsequently filed document which is incorporated by reference modifies or replaces such statement.

The Company will furnish without charge, upon oral or written request, to each person to whom this Prospectus is delivered, a copy of any or all of the documents incorporated by reference herein other than exhibits to such documents not specifically incorporated by reference thereto. In addition, participants in the Plan may obtain information about the plan or its administration from the Company. Such request should be directed to AquaCell Technologies, Inc., 10410 Trademark Street, Rancho Cucamonga, CA 91730, Attention: Corporate Secretary.

The delivery of this document at any time does not imply that information herein is correct as of the time subsequent to the date hereof. Statements in this document as to the provisions of the Plan are not necessarily complete and in each instance reference is made to the copy of such plan which appears as an Exhibit to the Company's Registration Statement on Form S-8 filed with the Commission on June 26, 2003 and each such statement in this document is qualified in all respects by such reference.

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Item 4. Description of Securities.

The Common Stock of the Registrant is registered under Section 12 of the Exchange Act.

Item 5. Interests of Named Experts and Counsel.

Certain legal matters in connection with the shares of common stock being registered are being passed upon by Harold Paul, LLC, 1465 Post Road East, Westport, CT 06880, counsel to the Registrant. Mr. Paul owns 50,000 common shares, 40,000 Class A Convertible Preferred shares and 90,000 common stock purchase warrants.

Item 6. Indemnification of Directors and Officers.

Under Section 145 of the Delaware General Corporation Law we have broad powers to indemnify our

directors and officers against liabilities they may incur in such capacities, including liabilities under the Securities Act. Our Bylaws (the "Bylaws") provide that we shall indemnify our directors and officers if such officer or director acted (i) in good faith, (ii) in a manner reasonably believed to be in or not opposed to our best interest, and (iii) with respect to any criminal action or proceeding, with reasonable cause to believe such conduct was lawful. We believe that indemnification under our Bylaws covers at least negligence and gross negligence, and requires us to advance litigation expenses in the case of stockholder derivative actions or other actions, against an undertaking by the directors and officers to repay such advances if it is ultimately determined that the director or officer is not entitled to indemnification. Our Bylaws further provide that rights conferred under our Bylaws shall not be deemed to be exclusive of any right such persons may have or acquire under any agreement, vote of stockholders or disinterested directors, or otherwise.

In addition, our Restated Certificate of Incorporation provides that, pursuant to Delaware law, our directors shall not be liable to us for monetary damages for breach of their fiduciary duty of care to us and our stockholders. This provision in our Restated Certificate of Incorporation does not eliminate the duty of care, and in appropriate circumstances equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to us for acts or omissions not in good faith or involving intentional misconduct, for knowing violations of law, for actions leading to improper personal benefit to the director, and or payment of dividends or approval of stock repurchases or redemptions that are unlawful under Delaware law. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws. Our Restated Certificate of Incorporation further provides that we shall indemnify our directors and officers to the fullest extent permitted by law, and requires us to advance litigation expenses in the case of stockholder derivative actions or other actions, against an undertaking by the director to repay such advances if it is ultimately determine that the director is not entitled to indemnification. Our Restated Certificate of Incorporation also provides that rights it confers shall not be deemed to be exclusive of any other right such persons may have or acquire under any statute, our Bylaws, agreement, vote of stockholders or disinterested directors, or otherwise.

In addition, we have entered into agreements to

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indemnify our directors and certain of our officers in addition to the indemnification provided for in our Restated Certificate of Incorporation and Bylaws. These agreements will, among other things, indemnify our directors and certain of our officers for certain expenses (including attorneys' fees), judgments, fines and settlement amounts incurred by such person in any action or proceeding, including any action by or in the right of ours, on account of services as a director or officer of the Company or as a director or officer of any subsidiary of ours, or as a director or officer of any other company or enterprise that the person provides services to at our request.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

| Exhibit No. | Description |
|-------------|---|
| 4.1 | 1998 Incentive Stock Plan |
| 5.1 | Opinion of Harold Paul, LLC |
| 23.1 | Consent of Wolinetz, Lafazan & Company, PC, independent accountants |
| 23.2 | Consent of Harold Paul, LLC (included in Exhibit 5.1) |

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment or appendix to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the registration statement;

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Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the Registration Statement is on Form S-3 or Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of post-effective amendment any of the securities registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and were applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing procedures, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by a final adjudication of such issue.

EXHIBIT INDEX

Exhibit Description
No.

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- 4.1 1998 Incentive Stock Plan
- 5.1 Opinion of Harold Paul, LLC
- 23.1 Consent of Wolinetz, Lafazan & Company, PC,
independent accountants
- 23.2 Consent of Harold Paul, LLC
(included in Exhibit 5.1)

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has authorized this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Rancho Cucamonga, California on June 26, 2003.

AQUACELL TECHNOLOGIES, INC.

By: /s/ James C. Witham

James C. Witham,
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Post Effective Amendment to its Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

| Signatures | Title | Date |
|---|--|---------------|
| /s/ James C. Witham ----- James C. Witham | Chairman of the Board of Directors and Chief Executive Officer (Principal Executive Officer) | June 26, 2003 |
| /s/ Karen B. Laustsen ----- Karen B. Laustsen | Director and President | June 26, 2003 |
| /s/ Gary S. Wolff ----- Gary S. Wolff | Director and Chief Financial Officer (and Principal Accounting Officer) | June 26, 2003 |
| /s/ Glenn Bergenfield ----- Glenn Bergenfield | Director | June 26, 2003 |
| /s/ Dr. William DiTuro | Director | June 26, 2003 |

Dr. William DiTuro