UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

ATLANTA, GEORGIA

In the Matter of: BioLab Incorporated 1739 Dogwood Drive Conyers, Georgia 30207 Respondent	Docket No. EPCRA-IV-88-001 CIVIL COMPLAINT and NOTICE OF OPPORTUNITY FOR HEARING

10114954

COMPLAINT

This is a civil administrative action issued under the authority of Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11001 et seq. (also known as the Emergency Planning and Community Right-to-Know Act of 1986, (hereinafter "EPCRA")). The Administrator has delegated this authority under EPCRA to the Regional Administrators by EPA Delegation Number 22-3 dated September 13, 1987, and redelegated to Director, Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency (EPA), Region IV, on December 13, 1988.

1. The Complainant is Winston A. Smith, Director, Air, Pesticides and Toxics Management Division, EPA, Region IV, who has been duly delegated the authority to institute this action. Respondent is

BioLab Incorporated, 1739 Dogwood Drive, Conyers, Georgia 30207.

2. This complaint serves as notice that Respondent failed to submit a timely, complete, and correct Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (1-88) (hereinafter "Form R"), as required by Section 313 of EPCRA, 42 U.S.C. § 11023, and the Federal regulations which set out in greater detail the Section 313 reporting requirements, 40 C.F.R. Part 372 et seq.

3. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting, Community Right-to-Know Rule, 40 C.F.R. Part 372.

4. Under Subsection 313(b) of EPCRA and 40 C.F.R. Part 372.22, owners or operators of a facility subject to the requirements of Subsection (b) are required to annually submit, no later than July 1 of each year, a Form R for each toxic chemical listed under 40 C.F.R. Part 372.65 that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds.

5. The completed and correct Form R, as published under Subsection 313(g) was required to be submitted to the Administrator of the EPA (hereinafter Administrator) and to the State in which the subject facility is located on or before July 1, 1988.

PRELIMINARY STATEMENT

6. BioLab Incorporated ("Respondent") is a corporation incorporated under the laws of the State of Georgia and is authorized to do business in the State.

7. Respondent is a "person" as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

8. On or about August 11, 1988, an authorized employee of EPA inspected Respondent's facility. The purpose of the inspection was to determine Respondent's compliance with the EPCRA Section 313 reporting requirements.

9. Respondent is an owner or operator of a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. Part 372.3.

10. Respondent's facility has 10 or more "full-time employees" as that term is defined by 40 C.F.R. Part 372.3.

11. Respondent's facility is in Standard Industrial Classification code 28 - "Chemicals and Allied Products."

12. During the calendar year 1987, toxic chemicals at Respondent's facility were "processed" as that term is defined

in 40 C.F.R. Part 372.3, in quantities exceeding the established threshold for the 1987 calendar year, 75,000 lbs.

13. Section 313(b) of EPCRA, and 40 C.F.R. Part 372.22 require that owners or operators of facilities that have 10 or more fulltime employees, that are in Standard Industrial Classification Codes 20 - 39, and that manufactured, imported, processed, or otherwise used a toxic chemical listed under Subsection 313(c) of EPCRA and 40 C.F.R. Part 372.65 in excess of the quantity established under Subsection 313(f) and 40 C.F.R. Part 372.25, are required to submit a Form R for those substances for the 1987 reporting year. The requirements of EPCRA Section 313, 42 U.S.C. § 11023, therefore apply to Respondent's facility.

COUNT I

[FAILURE TO REPORT]

14. Paragraphs 1 through 13 of this Complaint are alleged as though fully set forth herein and are incorporated by reference.

15. During the calendar year 1987, Respondent processed Phosphoric Acid (CAS# 7664-38-2), a chemical listed under 40 C.F.R. Part 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator and to the State of Georgia a Form R for this chemical on or

before July 1, 1988.

16. Respondent failed to submit said forms to the Administrator and to the State of Georgia on or before July 1, 1988.

17. Respondent's failure to submit said forms is in violation of EPCRA Section 313 and 40 C.F.R. Part 372.

18. Respondent submitted said form to the Administrator and/or the State of Georgia on October 27, 1988.

19. Section 325(c) of EPCRA provides that any person who violates any requirement of Section 313 shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 per day for each such violation.

COUNT II

[FAILURE TO REPORT]

20. Paragraphs 1 through 13 of this Complaint are alleged as though fully set forth herein and are incorporated by reference.

21. During the calendar year 1987, Respondent processed Copper Sulfate, a chemical compound listed under 40 C.F.R. Part 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator and to the State

of Georgia a Form R for this chemical on or before July 1, 1988.

22. Respondent failed to submit said forms to the Administrator and to the State of Georgia on or before July 1, 1988.

23. Respondent's failure to submit said forms is in violation of EPCRA Section 313 and 40 C.F.R. Part 372.

24. Respondent submitted said form to the Administrator and/or the State of Georgia on October 27, 1988.

25. Section 325(c) of EPCRA provides that any person who violates any requirement of Section 313 shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 per day for each such violation.

PROPOSED CIVIL PENALTY

Section 325(c) of EPCRA, 42 U.S.C. §11045(c), authorizes EPA to assess a civil penalty of up to $25,000 per day for each violation of Section 313. Based upon the violations cited in this Complaint; upon the nature, circumstances, and gravity of the violation alleged; Respondent's history of prior violations of EPCRA; and the degree of culpability (as set forth in the Toxic Chemical Release Inventory Reporting Enforcement Response Civil Penalty Policy), the Complainant proposes that Respondent be

assessed the following civil penalty for the violations alleged in this Complaint:

COUNT I

Failure to submit a Toxic Chemical Release Inventory Reporting Form (Form R) for Phosphoric Acid $17,000.00

COUNT II

Failure to submit a Toxic Chemical Release Inventory Reporting Form (Form R) for Copper Sulfate $17,000.00

TOTAL PROPOSED CIVIL PENALTY $34,000.00

NOTICE OF OPPORTUNITY TO
REQUEST A HEARING

Complainant intends to propose to the Presiding Officer that the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22 (45 FR 24360) (Consolidated Rules) govern the procedures of the hearing. A copy of the Consolidated Rules accompanies this Complaint. Under these rules, you have the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty.

To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and having the above-cited penalty assessed without further proceedings, you must file a written Answer within twenty (20) days of your receipt of this Complaint. Your Answer must: (1) clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny an allegation constitutes an admission; (2) briefly state all facts and circumstances, if any, which constitute grounds for a defense; and (3) specifically request an administrative hearing (if desired). If you deny any material fact or raise any affirmative defense, you will be considered to have requested a hearing. The Answer must be sent to:

Regional Hearing Clerk
United States Environmental
Protection Agency, Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

You must also send a copy of the Answer and all other documents which you file in this action to Donald D. J. Stack, the attorney assigned to represent EPA in this matter, at:

Donald D. J. Stack, Attorney
Office of Regional Counsel, Region IV
U. S. Environmental Protection Agency
345 Courtland Street, N.E.
Atlanta, Georgia 30365
(404) 347-2335

INFORMAL SETTLEMENT CONFERENCE

Whether or not you request a hearing, you may confer informally with Donald D. J. Stack to discuss the facts of this case, or amount of the proposed penalty, and the possibility of settlement. An informal settlement conference does not, however, affect your obligation to file a written Answer to the Complaint.

EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with you in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by EPA and yourself would be binding as to all terms and conditions specified therein upon signature by the EPA Regional Administrator.

Please be advised that pursuant to § 22.08 of the Consolidated Rules any ex parte (unilateral) discussion of the merits of any action with the Administrator, Regional Administrator, Judicial Officer, Regional Judicial Officer, Presiding Officer, or any person likely to advise these officials in the decision of the case, is prohibited after the Complaint is issued.

PAYMENT OF PENALTY

Instead of filing a written Answer requesting a hearing or requesting an informal settlement conference, you may choose to pay the proposed penalty. Such payment must be made by sending a

cashier's or certified check in the amount of the penalty assessed in this Complaint to the address identified below. Your check must be made payable to the Treasurer, United States of America and sent to:

EPA-Washington
(Hearing Clerk)
P. O. Lock Box 360277M
Pittsburgh, PA 15251

Your check must also include on the face information sufficient to identify the case for which payment is being tendered, specifically the docket number stated on page one of this Complaint.

Payment of the civil penalty alone does not satisfy your legal obligation to file a complete and accurate Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (1-88) (Form R). If you choose to remit the proposed penalty, you are still under a legal duty to submit a complete and accurate Form R to both the EPA and the State of Georgia at the following addresses:

U.S. EPA
P. O. Box 70266
Washington, D. C. 20024-0226
Attn: Toxic Chemical Release Inventory

Georgia Department of Natural Resources
205 Butler Street, S.E.
Floyd Towers East
Atlanta, Georgia 30334

Failure or refusal to file Form R with both the Administrator and with the State of Georgia may subject you to additional civil penalties up to $25,000 per day of violation. Failure to file an Answer or respond to this Civil Complaint may result in a default

order being issued for collection of the full civil penalty.

UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

Complainant

Winston A. Smith

Winston A. Smith, Director

Air, Pesticides and Toxics Management Division

U.S. Environmental Protection Agency, Region IV

Date: DEC 16 1988

CERTIFICATE OF SERVICE

I certify that the original and one copy of the Complaint was filed this day with the Hearing Clerk, U.S. EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365 and that a true and correct copy was sent to Respondent, along with the Consolidated Rules of Practice, 40 C.F.R. Part 22 and the Toxic Chemical Release Inventory Reporting Enforcement Response Policy at the following address:

Jim Gorham
BioLab Incorporated
1739 Dogwood Drive
Conyers, Georgia 30207

Dated: DEC 16 1988

Mary Summers

Mary Summers, Secretary
Pesticides & Toxic Substances Branch
Air, Pesticides & Toxics
Management Division
U.S. Environmental Protection Agency
Region IV