

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IV, ATLANTA, GEORGIA

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In the Matter of: )	
)	
BioLab Incorporated )	Docket No. EPCRA-IV-88-001
1739 Dogwood Drive )	
Conyers, Georgia 30207 )	
)	
Respondent )	
_____ )	

CONSENT AGREEMENT AND FINAL ORDER

I.

The United States Environmental Protection Agency ("EPA"), as Complainant, and BioLab Incorporated ("BioLab"), as Respondent, the parties herein, having consented to the terms of this Consent Agreement and Final Order (hereinafter "Consent Agreement"),

NOW THEREFORE, before the taking of any testimony, without any adjudication of any issues of law or fact herein, the parties agree to the terms of this Consent Agreement.

1. EPA initiated this proceeding for the assessment of a civil penalty pursuant to 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")). This action was instituted by issuance of a Civil Complaint and Notice of Opportunity for Hearing (hereinafter "Complaint"), dated December 16, 1988.

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2. The Complaint charged Respondent with failure to submit two timely, complete, and correct Toxic Chemical Release Inventory Reporting Forms [also known as Form R's] pursuant to Section 313 of EPCRA [42 U.S.C. §11023] and the regulations promulgated thereunder at 40 C.F.R. Part 372.

II.

A. In signing this Consent Agreement, Respondent certifies that, to the best of its knowledge, (1) it has now fully completed and submitted to EPA all of the required toxic chemical release forms in compliance with Section 313 of EPCRA and the regulations promulgated thereunder; and (2) it has complied with all other EPCRA requirements at all facilities under its control.

III.

A. Without trial or litigation of the issues set forth in the Complaint, Respondent (1) admits that it did not submit Form R's for phosphoric acid and copper sulfate on or before July 1, 1988 as required by §313 of EPCRA; (2) admits the EPA has jurisdiction over the subject matters alleged in the Complaint and over the parties thereto, pursuant to Section 325(c) of EPCRA [42 U.S.C. §11035(c)]; (3) consents to the terms of this Consent Agreement; and (4) waives its right to request a judicial or administrative hearing on any issue of law or fact in the Complaint or Consent Agreement.

C. Respondent and Complainant enter into this Consent

Agreement to address the allegations in the Complaint and to address Respondent's failure to submit, by July 1, 1988, Form R's for the substances phosphoric acid and copper sulfate, which were manufactured, imported, processed or otherwise used at its facilities during 1987.

IV.

The parties agree to a settlement consisting of the payment of a mitigated civil penalty in the amount of TWENTY-FIVE THOUSAND FIVE HUNDRED DOLLARS [\$25,500] as and for a full, final and complete settlement of the penalty proposed in the Complaint, Docket No. EPCRA-IV-88-001.

V.

Respondent certifies that payment of the mitigated civil penalty will be made within 30 calendar days of Respondent's receipt of a Final Order in the Form attached hereto by forwarding a cashier's or certified check, payable to the "Treasurer, United States of America" in the amount of TWENTY-FIVE THOUSAND FIVE HUNDRED DOLLARS [\$25,500] to:

EPA-Region IV  
Regional Hearing Clerk  
P.O. Box 100142  
Atlanta, GA 30384

This Consent Agreement shall be effective on the first date by which both Complainant and Respondent have signed this Consent Agreement and such Agreement has been approved and signed by the Regional Administrator, U.S. EPA, Region IV.

At the time the payment is mailed to the above address, Respondent shall send a copy of the above check to Donald D.J. Stack, EPA, Region IV, Office of Regional Counsel, along with

written certification that payment has been made pursuant to this Article.

In accordance with Section 11 of the Debt Collection Act of 1982, 31 U.S.C. 3717, and U.S. Treasury Cash Management Regulations (ITFM 6-8000), failure to send the penalty by the due date will result in imposition of interest from the effective date of this Consent Agreement at the current interest rate published by the U.S. Treasury (currently published at 53 Fed Reg. 46010). A late penalty charge of \$20.00 will be imposed if the due date is not met, with an additional charge of \$10.00 for each thirty day period full payment is not made. A six (6%) percent per annum penalty will be applied on any principal amount not paid within ninety days of the due date. In addition, Respondent shall be liable for stipulated penalties and for civil penalties as specified in Article VII below.

VI.

In the event that Respondent is unable to perform any task set forth in this Consent Agreement within the time specified for any reason, whether within or without Respondent's control, Respondent shall make application in writing to EPA, Regional Hearing Clerk, at the address specified in Article V above for extension of time. Any application for an extension of time shall be submitted at least seven (7) days in advance of the date for performance of the task from which relief is requested.

VII.

In the event that Respondent fails to perform any task set forth in this Consent Agreement within the specified time,

unless such time has been extended pursuant to Article VI, Respondent shall be deemed to be in default of this Consent Agreement.

In the event that Complainant determines that Respondent has not adequately performed any task set forth in this Consent Agreement within the specified time, unless such time has been extended pursuant to Article VI, Respondent shall have seven (7) days from receipt of notice from Complainant of the deficiencies to take corrective action. If Respondent fails to fully remedy the deficiencies within the seven (7) days, unless such time has been extended pursuant to Article VI, Respondent shall be deemed to be in default of this Consent Agreement.

In the event that Respondent is deemed to be in default of this Consent Agreement, Respondent agrees to pay Complainant a stipulated penalty in the amount of ONE THOUSAND DOLLARS (\$1,000.00) for each day of default upon written request by Complainant for such payment. In addition, Complainant reserves the right to take any additional action, including but not limited to the imposition of civil penalties, including but not limited to the full amount of the penalty originally proposed (i.e. \$34,000), to enforce compliance with this Agreement or with EPCRA and the implementing regulations.

VIII.

Complainant and Respondent consent to entry of this Consent Agreement and Final Order without further notice.

8.17.89  
Date

*Sally A. Boam*  
BioLab Incorporated

8/22/89  
Date

Nicholas Wheeler  
BioLab Incorporated

8/29/89  
Date

Winston A. Smith  
Winston A. Smith, Director  
Air, Pesticides, and Toxic Management  
Division  
EPA-Region IV

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IV, ATLANTA, GEORGIA

In the Matter of:

Biolab Incorporated  
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Respondent.

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ORDER

Pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. 11001 et seq. upon consideration of the foregoing Consent Agreement and after consideration of the good faith and Certifications exhibited by Respondent, it is this 5<sup>th</sup> day of September; 1989,


ORDERED THAT:

- (1) the terms of the Consent Agreement are incorporated by reference herein;
- (2) Respondent comply with terms of the Consent Agreement;
- (3) Respondent is assessed a mitigated civil penalty in the amount of \$25,500.00; and
- (4) Respondent pay the mitigated civil penalty within 30 days of Respondent's receipt of this Order, by forwarding a cashier's or certified check, payable to

the Treasurer, United States of America  
in the amount of \$25,500.00 to:

EPA-Region IV  
Regional Hearing Clerk  
P.O. Box 100142  
Atlanta, GA 30384

- (5) In the event Respondent fails to comply with the terms of this Order, or to perform any tasks set out in the attached Consent Agreement, unless such failure has been excused pursuant to Article VII of the attached Consent Agreement, Respondent shall be subject to, and Complainant reserves the right to assert, the terms of Article VII of the Consent Agreement herein incorporated by reference.

  
GREER C. TIDWELL  
Regional Administrator  
U.S. EPA - Region IV

Dated: AUG 29 1989