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FACSIMILE TRANSMITTAL SHEET

DATE: August 27, 2004

TO: Liz Cannon, Phil Orozco, Mike Williford,  
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FAX NOS: HW-Raleigh & WS  
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FROM: Allison S. Corum  
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FAX NO: 919-716-6939

SUBJECT: Laboratory Corp. of America v. DENR, DWM ; 04 EHR 1146  
Compliance Order with Administrative Penalty, Docket No. 2004-031

NO. OF PAGES INCLUDING TRANSMITTAL SHEET: 7

COMMENTS:

Enclosed is a the Petitioner's Prehearing Statement. Please distribute this document among yourselves as shown in the To: box above. Thanks.

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STATE OF NORTH CAROLINA  
COUNTY OF ALAMANCE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
File No. 04 EHR 1146

LABORATORY CORPORATION OF )  
AMERICA )

Petitioner, )

v. )

NORTH CAROLINA DEPARTMENT )  
OF ENVIRONMENT AND NATURAL )  
RESOURCES, )

Respondent. )

PETITIONER'S  
PREHEARING STATEMENT

Petitioner Laboratory Corporation of America ("LabCorp"), through counsel,  
hereby submits its Prehearing Statement.

1. Issues; Statutes; Rules; Precedents.

On 4 June 2004, the North Carolina Department of Environment and Natural Resources, Division of Waste Management (NCDENR), issued a Compliance Order with Administrative Penalty to LabCorp based on an inspection at LabCorp's facility at 1904 Alexander Drive, Research Triangle Park, North Carolina. NCDENR found LabCorp in violation of the North Carolina Solid Waste Management Act, N.C. Gen. Stat. § 130A-290, *et seq.*, and in violation of the North Carolina Hazardous Waste Management Rules, N.C. Admin. Code tit. 15A, r. 13A.0101, *et seq.* The Hazardous Waste Management Rules expressly incorporate federal regulations governing

hazardous waste management, which are also at issue. The specific statutes and rules at issue in this matter are identified in the Compliance Order with Administrative Penalty.

LabCorp contends that NCDENR made erroneous findings of fact, misapplied the applicable laws, and abused its discretion in imposing the penalties. NCDENR erroneously determined that LabCorp was a large quantity generator and erroneously determined the number of employees involved. As a result of these and other erroneous findings of fact, NCDENR erroneously found that LabCorp had violated the hazardous waste rules, and it assessed penalties that did not properly account for the factors that NCDENR must consider in setting an administrative penalty.

At this early stage of the proceedings, LabCorp is unable to cite any specific controlling or persuasive precedent.

2. Statement of Facts.

LabCorp is a national reference laboratory with locations throughout the United States. LabCorp operates laboratory facility at 1904 Alexander Drive in Research Triangle Park, North Carolina. This laboratory facility generates hazardous and non-hazardous waste. Hazardous waste is placed in a locked location away from the general employee population prior to shipment off site, and only trained technical employees have access to this area.

NCDENR conducted an inspection at LabCorp's RTP facility on 16 October 2003. Following the inspection, LabCorp promptly took steps to comply with the initial findings suggested by NCDENR's inspector.

LabCorp did not receive formal notice from NCDENR of alleged violations until July 2004. As identified in the Compliance Order with Administrative Penalty, NCDENR found LabCorp in violation of certain hazardous waste laws.

3. List of Proposed Witnesses.

LabCorp may offer the following as fact witnesses at the hearing.

Jacob Naeyaert

Eileen Andrews

Dalton Kornegay

Selina Iheanchor

All witnesses identified by NCDENR.

LabCorp has not yet identified any expert witness it intends to call at the hearing.

4. Discovery.

LabCorp expects that fact and perhaps expert discovery will be required in this case. LabCorp believes that discovery in this matter can be concluded by 29 November 2004, as provided in the Scheduling Order.

5. Hearing Location.

The Scheduling Order provides that the hearing will be held in Raleigh, North Carolina.

6. Hearing Length.

LabCorp estimates that one day will be required for the hearing.

7. Attorney.

Paul K. Sun, Jr. will serve as lead counsel for LabCorp.

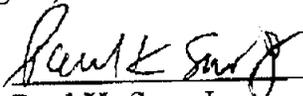
8. Hearing Date.

LabCorp believes that this matter can be ready for hearing by the week of 13 December 2004, as set forth in the Scheduling Order.

9. Other Considerations.

The parties have been involved in informal discussions to determine whether this matter can be resolved without further litigation. At this point, LabCorp does not believe that involvement of Administrative Law Judge Conner would facilitate this effort.

This the 23<sup>rd</sup> day of August, 2004.



Paul K. Sun, Jr.

N.C. State Bar No. 16847

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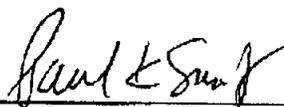
Attorneys for Petitioner Laboratory Corporation  
of America

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Petitioner's Prehearing Statement was served on counsel for the Respondent by depositing a copy thereof in the United States mail, postage prepaid, first class, addressed to its attorneys of record as follows:

Allison S. Corum, Esq.  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

This the 27<sup>th</sup> day of August, 2004.



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Paul K. Sun, Jr.