



California Regional Water Quality Control Board

Central Coast Region



Alan C. Lloyd, Ph.D.
Agency Secretary

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Arnold Schwarzenegger
Governor

February 22, 2005

Mr. Richard W. McClure
Olin Corporation
Environmental Remediation Group
PO Box 248
Charleston, TN 37310-0248

Mr. Jay McLaughlin
President and CEO
Standard Fusee Corporation
P. O. Box 1047
Easton, MD 21601

Dear Messer's McClure and Mr. McLaughlin:

SLIC: STAY OF MARCH 25, 2005 REGIONAL BOARD HEARING REGARDING REGIONAL BOARD STAFF'S DECEMBER 8, 2005 TECHNICAL REPORT ORDER, 425 TENNANT AVENUE FACILITY, MORGAN HILL, SANTA CLARA COUNTY

On December 8, 2004, I ordered Olin Corporation and Standard Fusee Incorporated (Dischargers), to install groundwater monitoring piezometers and conduct additional work. The additional work included perchlorate sampling of private wells and a forensic investigation. The Dischargers subsequently requested a Regional Board Hearing to reconsider Regional Board staff's December 8, 2004, Water Code Section 13267 Order. We scheduled a hearing for March 25, 2005, and published a Public notice. Regional Board staff and the Dischargers have subsequently agreed to stay the hearing pending execution of additional work.

This letter confirms that a Stipulated Conditional Stay (Stay) of the December 8, 2004, 13267 Order has been executed by the Dischargers and the Regional Board. The Stay is conditioned on the Dischargers performing one round of perchlorate sampling of private wells northeast of the facility and the Santa Clara Valley Water District performing a forensic analysis. Since the Stay is conditional, a hearing may be rescheduled if one or both requirements are not conducted satisfactorily.

We are looking forward to working with you to move the northeast perchlorate investigation forward. We have attached a copy of the Stay for your information. Should you have any questions, please call David Athey at (805) 542-4644 or Eric Gobler at (805) 549-3467.

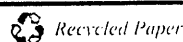
Sincerely,

Roger W. Briggs
Executive Officer

Enclosure: Stipulated Conditional Stay

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California Environmental Protection Agency



Item No. 14 Attachment No. 1
March 25, 2005 Meeting
Perchlorate Sites

cc via email: IP List

cc via U.S. Mail:

Mr. Jay Baska
City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020-6197

Mr. Eric Lacy
CA Dept. of Health Services
2151 Berkeley Way
Berkeley, CA 94704-1011

Ms. Helene Leichter
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Mr. Eugene Leung
CA Dept. of Health Services
2151 Berkeley Way
Berkeley, CA 94704-1011

Mr. Richard Peekema
4817 Wellington Park Dr.
San Jose, CA 95136

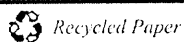
Ms. Suzanne Muzzio
Santa Clara Co. Env. Health Services
1555 Berger Drive, Suite 300
San Jose, CA 95112-2716

Mr. Keith M. Casto
Sedgwick, Detert, Moran & Arnold
One Embarcadero, 16th Floor
San Francisco, CA 94111-3628

Mr. Joe Root, General Manager
Corde Valle
One Corde Valle Club Drive
San Martin, CA 95046

Mr. Rob Stern
7510 Kenbrook Place
Suwanee, GA 30024

California Environmental Protection Agency



STIPULATED CONDITIONAL STAY OF THE REQUIREMENTS OF
DECEMBER 8, 2004 ORDER REQUIRING
INVESTIGATION OF NORTHEAST FLOW
ISSUED TO
OLIN CORPORATION
and
STANDARD FUSEE, INC.
for
425 TENNANT AVENUE, MORGAN HILL

PURSUANT TO GOVERNMENT CODE SECTION 11415.60, THE REGIONAL BOARD, OLIN CORPORATION AND STANDARD FUSEE, INC. ("PARTIES") HEREBY AGREE AS FOLLOWS, IN CONSIDERATION OF THE FOLLOWING:

1. On December 8, 2004, the Executive Officer of the Regional Water Quality Control Board, Central Coast Region ("Regional Board") issued an order pursuant to California Water Code section 13267 ("Order") requiring Olin Corporation and Standard Fusee, Inc. (collectively, "Dischargers") to submit the following technical or monitoring reports, referred to as Additional 13267 Requirements:
 - a. Collect and analyze perchlorate samples from the clustered monitoring wells installed as part of Task 2.2 of the November 21, 2003 Groundwater Flow Assessment Work Plan (Work Plan).
 - b. Collect perchlorate samples of wells in the area bounded by Railroad, Diane and Murphy Avenues. The Order requires Dischargers to (i) submit a work plan by December 30, 2004, identifying all known wells in the above-cited area, including a plan for gaining access and sampling the wells, and (ii) immediately proceed with quarterly monitoring and reporting after submission of the work plan. The Order requires the Discharger to provide notice to well owners in the event that monitoring results indicate that perchlorate is present. The Order states, "The Regional Board will not require Olin to comply with Clean up and Abatement Order No. R3-2004-0101 Requirements to supply short or long term alternative water supply if data collected by Olin demonstrates to the Executive Officer's satisfaction that the perchlorate did not originate from the 425 Tennant Ave former flare manufacturing facility."
 - c. Submit the following reports in order to substantiate the Dischargers' claim of non-responsibility for perchlorate to the northeast of the 425 Tennant Avenue site ("Site"):
 - i. By January 14, 2005, submit a draft forensics work plan that includes the following: (a) A method for distinguishing perchlorate that originates from the Site from other potential sources. (b) Delineation of the test area including target groundwater and surface water bodies. (c) A quality control plan.
 - ii. By February 4, 2005, submit the final forensics work plan including a time frame for implementation and reporting.

- d. The Order also referred to a requirement to collect groundwater elevation data from the clustered piezometers installed as part of Task 2.2 and required by the Regional Board's February 19, 2004 letter. The Order stated that according to the schedule presented in the Work Plan, these wells should have been installed by October 20, 2004, but that Regional Board staff would not recommend enforcement action for violation of the October 20, 2004 date, if the Dischargers installed the additional piezometers no later than January 25, 2005. The Executive Officer subsequently agreed to allow the Discharges until January 7, 2005, to submit a Work Plan and time schedule for piezometer installation. The Dischargers' Work Plan is currently being reviewed and Regional Board staff anticipates approving a new well installation time line upon approval. The Dischargers intend to perform this work. The requirements to install the proposed piezometers and to collect groundwater elevation data from the clustered monitoring wells are not included in this Stipulated Stay.
2. Dischargers requested the Regional Board to hold a hearing to reconsider the Order ("Reconsideration Hearing"). On January 14, 2005, Regional Board staff noticed the hearing for March 24, 2005.
3. Dischargers petitioned the Regional Board's adoption of the Order to the State Water Resources Control Board (the "State Board") in petitions dated January 6, 2005 (the "Petitions"). At the same time, Discharger requested that the State Board stay the Order. Discharger later requested the State Board to abey the Petitions pending the March 24, 2005 hearing, but did not request abeyance of the stay request. The State Board has not acted on the stay request.
4. The Santa Clara Valley Water District ("District") has indicated that it is willing to commence a forensics investigation to the northeast of the Site. The primary focus of the District's investigation will be outside of the area in which the area requires the Dischargers to conduct their forensics investigation (the "Forensics Area"). However, the District has indicated that it will also perform some of this investigation within the Forensics Area. The Parties believe that the District expects to complete its forensics investigation by Summer 2005.
5. The Parties wish to avoid litigation over the issues raised in the Petitions and to eliminate the need for the Reconsideration Hearing. The Parties acknowledge that further hearings or litigation regarding the subject matter of the Order may be necessary after this Stipulated Stay terminates. The well sampling and forensics investigation described below will provide additional data that is likely to be relevant to any further proceedings related to the source of perchlorate to the northeast of the Site.
6. This Stipulated Stay is a stay only, and does not waive any claims that the Regional Board may have against the Dischargers for violations that occurred prior to the Effective Date of this Stipulated Stay or that may occur after the termination of this Stipulated Stay. The Regional Board reserves all such claims, including claims for

administrative or judicial civil liability for such past or future violations of the Order. The Regional Board reserves its right to amend the Order based on new data or information, or for any other reason.

7. Although the Dischargers agree to assume the well sampling and reporting obligations described below, the Dischargers reserve all defenses to the Order set forth in the Petitions. The Dischargers expressly deny fault or liability for any and all requirements of the Order.
8. Dischargers agree to perform the work described in the Sampling Work Plan dated February 4, 2005. The Parties have agreed to delete the following sentence from Section 2.1 of the Sampling Work Plan: "Selection of domestic wells will be prioritized to provide coverage throughout the study area; however, continued evaluation could identify additional wells (non-domestic) that may also be considered for monitoring."
 - a. By February 17, 2005, Dischargers will provide the Regional Board a list of wells to be sampled, selection criteria, and rationale for their selection. The list of wells shall include (i) all wells within the proposed study area that have lithology and/or construction records (including the new piezometers), other than wells that the Dischargers believe would be redundant (considering, among other things, the depth of screened intervals of co-located wells) pursuant to Section 2.1 of the Sampling Work Plan, and (ii) all other wells designated by the Discharger that fill a spatial data gap relative to the location/depth of wells in (i). Prior to approving the list, the Executive Officer may designate additional wells that meet the above criteria to sample as necessary to fill spatial gaps. Within 15 days following Executive Officer acceptance of the selected wells, Dischargers shall request access from each well owner. By April 30, 2005, the Discharger shall provide the Regional Board with a list of alternate wells, if any, which meet the aforesaid criteria above for Executive Officer approval in lieu of any selected wells to which the Dischargers could not obtain access ("Refused Wells"). The Dischargers will sample the final list of wells derived from the above selection process and criteria by July 1, 2005.
 - b. All wells described in Paragraph 8.a other than Refused Wells shall be sampled by July 1, 2005. The Discharger shall provide a written certification by July 1, 2005 that the sampling has been completed.
 - c. Data shall be submitted to the Regional Board, the District and the City of Morgan Hill by July 31, 2005.
 - d. Dischargers must seek access agreements as stated in 8.a. Should the Dischargers identify additional wells for sampling, access agreements shall be provided to those well owners forthwith.
 - e. If contacted well owners deny sampling access, the Dischargers shall immediately notify the Regional Board, (via email to dathey@waterboards.ca.gov and Executive Officer via regular mail).
9. Within two business days of execution of this Stipulated Stay, the Dischargers shall request the State Board to abey the stay request in the Petitions. If acceptable to the State Board, the request to abey the Petitions and the stay request shall take effect as

of the date the State Board deems the Petitions complete. Following termination of this Stipulated Stay, the Dischargers may request the State Board to remove the Petitions and stay request from abeyance after giving 14 calendar days written notice to the Regional Board's Executive Officer.

10. In consideration of the foregoing, the Order is stayed with respect to the Additional 13267 Requirements described in Paragraphs 1.a., 1.b and 1.c above, as of the Effective Date. This Stipulated Stay shall terminate on the earliest of:
 - a. Fourteen calendar days after the Executive Officer provides written notice to the Dischargers that the District's forensics investigation is not proceeding in a satisfactory manner. The Dischargers waive any right they may have to seek review by the Regional Board, State Board or a court of a determination by the Executive Officer that the District's investigation is not proceeding in a satisfactory manner, including but not limited to: time delays, lack of sufficient investigative work, lack of areal coverage, and work not performed according to schedule.
 - b. March 15, 2005, if the Executive Officer and the Discharger have not agreed upon the list of selected wells (other than alternate wells in lieu of Refused Wells) by that date.
 - c. May 31, 2005, if the Executive Officer and the Discharger have not agreed upon the list of alternate wells in lieu of Refused Wells by that date.
 - d. July 1, 2005, if the Dischargers fail to complete the work described in Paragraphs 8.a, b and d by that date.
 - e. July 31, 2005, if the Dischargers fail to submit the data described in Paragraph 8.c by that date.
 - f. September 12, 2005.
11. Nothing in this Stipulated Stay shall prevent the Regional Board or Executive Officer from issuing orders and requirements, including orders and requirements under California Water Code sections 13267 or 13304, that (i) require any work or submission of technical or monitoring reports other than that described in Paragraphs 1.a, 1.b and 1.c, or (ii) are necessary due to an emergency. An "emergency" is an imminent threat to public health or the environment. Detection of perchlorate in sampled wells is not an "emergency" for purposes of this paragraph.
12. Neither the Dischargers' performance of the work described in Paragraph 8 nor the District's performance of any forensics investigation shall operate as an estoppel or waiver of any rights the Regional Board may have to enforce any provisions of the Order following termination of this Stipulated Stay.
13. Notwithstanding Paragraphs 10 and 11, the Parties may agree in writing to terminate this Stipulated Stay at an earlier date, or to extend it to a later date.
14. The Effective Date of this Stipulated Stay is February 10, 2005.

Olin Corporation,

By: Curt M Richards *WR*
Curt Richards, Vice President

Date: 2/9/05

Standard Fusee Incorporated,

By: _____
C. J. McLaughlin, President and CEO

Date: _____

Regional Water Quality Control Board,
Central Coast Region

By: _____
Roger W. Briggs, Executive Officer

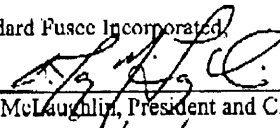
Date: _____

Olin Corporation,

By: _____
Curt Richards, Vice President

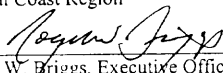
Date: _____

Standard Fusce Incorporated,

By:  _____
C. J. McLaughlin, President and CEO

Date: 2/9/05

Regional Water Quality Control Board,
Central Coast Region

By: 
Roger W. Briggs, Executive Officer

Date: 2-10-05

Olin Corporation,

By: _____
Curt Richards, Vice President

Date: _____

Standard Fusee Incorporated,

By: _____
C. J. McLaughlin, President and CEO

Date: _____