RANDOLPH C. VISSER (State Bar No. 64689)
MARTIN "KELLY" J. McTIGUE (State Bar No. 150854)
LILIT GARIBYAN (State Bar No. 208801)
MORGAN, LEWIS & BOCKIUS LLP
300 South Grand Avenue
Twenty-Second Floor
Los Angeles, California 90071-3132
Tel: 213.612.2500
Fax: 213.612.2501

Attorneys for Petitioner
OLIN CORPORATION

BEFORE THE CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of OLIN CORPORATION, Petitioner,	CASE NO. _____ OLIN CORPORATION'S PETITION FOR REVIEW OF CLEANUP AND ABATEMENT ORDER NO. R4-2004-0101 AND REQUESTS FOR STAY, HEARING (ORAL ARGUMENT) AND LEAVE TO PRESENT SUPPLEMENTAL EVIDENCE (EXPERT OPINION AND PUBLIC DOCUMENTS) [Water Code § 13320; 22 C.C.R. § 2050, *et seq.*]

TO THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD:

I. INTRODUCTION

Petitioner Olin Corporation ("Olin") respectfully petitions the State Water Resources Control Board ("State Board") for review of Cleanup and Abatement Order No. R4-2004-0101 issued by the Regional Water Quality Control Board, Central Coast Region ("Regional Board") on July 6, 2004 ("CAO"). Olin additionally requests an immediate stay, a hearing for oral argument and leave to present supplemental evidence, i.e., expert opinion declaration and public documents.

On June 4, 2004, the State Water Resources Control Board ("State Board") held that the Regional Board's recent "direction" to Olin Corporation ("Olin") to continue to provide interim, uninterrupted replacement water, i.e., bottled water, to all affected well owners with well

perchlorate concentrations at 4 ppb or higher in accordance with a prior Water Code § 13267 Order, despite California's issuance of a formal, final perchlorate Public Health Goal (PHG) and revised Action Level of 6 ppb perchlorate PHG, did not constitute a final action and, thus, was not reviewable. The State Board advised, however, that: "Should the Regional Board issue a [Water Code § 13304] cleanup and abatement order with this requirement, a petition would be appropriate."

On July 6, 2004, the Regional Board issued such a Water Code § 13304 Order for both interim and long term replacement water to domestic well owners, again refusing to conform the replacement water level to the final California 6 ppb PHG and current 6 ppb Action Level rather than the prior action level of 4 ppb. The Regional Board also required in the CAO that Olin supply replacement water to wells which have sampled perchlorate concentrations below 4 ppb until four consecutive quarters of samples confirm perchlorate is below the CAO's 4 ppb compliance level. Moreover, the Regional Board prematurely imposed long term replacement water requirements at the same 4 ppb level (1) prior to determining (or even allowing Olin to present evidence on) the appropriate final groundwater aquifer restoration cleanup standard ("GW Aquifer Cleanup Standard"); and, (2) prior to California's issuance of an enforceable perchlorate drinking water maximum contaminant level (MCL). Finally, the Regional Board imposed both interim and long term replacement water requirements prior to, and without requesting from Olin, a replacement water plan as expressly required by Water Code § 13304 ("Replacement Water Plan"). In taking these actions, the Regional Board abused its discretion by improperly and inappropriately: (1) substituting its subjective judgment, without a reasonable factual basis, for California's official, solely health-based safe drinking water PHG decision; (2) unreasonably imposing long term water replacement requirements based on a presumed background GW Aquifer Cleanup Standard, when an actual GW Aquifer Cleanup Standard has yet to be determined and prior to California's issuance of a final perchlorate MCL; and, (3) failing to proceed as required by statutory and regulatory law.

The Regional Board's CAO here adversely impacts Olin and its site remediation efforts in a serious and substantial manner, including forcing Olin: (1) to unnecessarily spend over

$782,000/year to replace safe drinking well water with bottled water; and, (2) to unnecessarily provide and implement costly long term and permanent well water treatment at the 4 ppb to 6 ppb level estimated to cost in the range of $3.6- $4.1 million, which is likely to prove unnecessary in the near future when a GW Aquifer Cleanup Standard and perchlorate MCL are determined, and the appropriate final GW Aquifer remediation is implemented.

Moreover, this Petition raises substantial issues of first impression and precedential importance as to the appropriate regional board supervision and management of perchlorate contaminated groundwater cases, a significant Statewide issue requiring the highest level of review and guidance by the State Board to ensure fairness and equity to all involved parties and consistent practices and procedures by Regional Boards across all regions. Conflict already exists as, in May 2004, the San Francisco Regional Board set a 6 ppb perchlorate GW Aquifer Cleanup Standard (pending issuance of an MCL) at the United Technologies site in Santa Clara County (including the Anderson drinking water reservoir), upgradient from the Olin/Standard Fusee Site. The United Technologies site is just 14 miles north of the Olin Site.

Importantly, the CAO to Olin here is also the first known case involving a Regional Board's issuance of a CAO under newly amended Water Code § 13304. This is also the first case requiring a party to provide both interim and long term replacement water supplies and to replace existing well water already meeting a California final and exclusively health-based PHG and current Action Level. The Regional Board has done this, before even setting a final GW Aquifer Cleanup Standard and before the issuance of the expected California perchlorate MCL governing future remediation and without first requesting a replacement water plan as required by statute.

II. SUMMARY OF PETITION

By this petition, Olin seeks review of the Regional Board's July 6, 2004 CAO which requires Olin to: supply "uninterrupted replacement water service" to owners of wells with detectable perchlorate concentrations. The CAO is two-pronged, imposing both interim and long term replacement water obligations.

First, "[e]ffective immediately," the CAO requires Olin to provide interim, uninterrupted replacement water service, i.e., bottled water, for all domestic wells in which perchlorate has been

detected both at concentrations above and below 4 ppb, until Olin can demonstrate, and the Regional Board concurs, that there are four consecutive quarters of sampling data below 4 ppb (with additional well monitoring requirements for a three-year period thereafter) ("Interim Water Replacement Requirements").

Second, the CAO requires Olin to provide long term, uninterrupted water service, i.e., bottled water or well water treatment, for wells between 4 and 9.9 ppb (after submittal of a detailed implementation work plan) and for wells at or over 10 ppb (after submittal of an implementation time schedule) ("Long Term Replacement Water Requirements"). The Regional Board does not request in the CAO that Olin provide the Water Code § 13304 statutorily-required Replacement Water Plan, and admits that "the work plans and monitoring required by this Order are necessary to design a [Water Code §13304] water replacement plan and implementation schedule..." [CAO (emphasis added); Declaration of Randolph C. Visser ("Visser Decl."), Exh. A, p. 9.]

The background to the present CAO which continues pre-existing Regional Board "directions," if not enforceable order requirements as held by the State Board, is critically important. On October 18, 2002, the Regional Board issued an order pursuant to Water Code § 13267 (the "October 18, 2002 Order") requesting certain well monitoring and reports as well as directing Olin to provide "treatment or an alternative water supply," *e.g.,* bottled water, to all owners (and their tenants) of domestic water wells in which perchlorate concentrations exceeded the then-prevailing "4ug/l [i.e., 4 ppb] action level" established by the California Department of Health Services (DHS). The Regional Board based the October 18, 2002 Order and alternative water supply requirement on the fact and finding that:

> *"An action level is the level of contaminant in drinking water that is considered safe to people ingesting the water on a daily basis."*
> [Visser Decl., Exh. E, p. 18 (emphasis added).]

Thus, the Regional Board based its original and first "direction" to supply replacement water solely on the prevailing DHS Action Level, which at that time was 4 ppb. In substance and effect, the Regional Board deferred to, adopted and incorporated into its October 18, 2002 Order the DHS Action Level (which at that time was 4 ppb) as its applicable provisional standard for

determining the safe perchlorate level in drinking water for purposes of requiring Olin to provide interim replacement water at that level prior to issuance of a final MCL. Moreover, numerous subsequent Regional Board actions corroborate that the Regional Board intended, correctly, that the California Action Level be the applicable provisional interim water replacement standard until a final MCL-based cleanup standard is set. The Regional Board's adoption of the Action Level is consistent with its past practice in other cases (and other regional board practices) as the Action Level is the governing most conservative, health-protective drinking water standard until an enforceable MCL is issued.

On March 12, 2004, after lengthy and extensive public and regulatory hearings and rigorous review and evaluation, California's Office of Environmental Health Hazard Assessment (the agency statutorily charged with authority over chemical toxicological risk assessments and PHGs; "OEHHA") issued its formal and final perchlorate PHG of 6 ppb. California's PHG is the exclusively health-based drinking water goal established by OEHHA without regard to technology or cost impacts, as a concentration of perchlorate in drinking water that poses no significant health risk to individuals, including sensitive populations, e.g., infants, pregnant women and their fetuses, consuming the water on a daily basis over a lifetime. [Visser Decl., Exh. K, pp. 50-51.] On the same day OEHHA established its 6 ppb PHG, DHS (the agency statutorily charged with authority over drinking water standards and well water protections) immediately revised its perchlorate Action Level from 4 ppb to 6 ppb to conform to the PHG and initiated the requisite regulatory process to determine a drinking water MCL. [Visser Decl., Exh. N, p. 170.] On April 7, 2004, Olin formally requested the Regional Board to modify its October 18, 2002 Order to also conform to the revised DHS Action Level and OEHHA PHG of 6 ppb. [Visser Decl., Exh. D, p. 17.] The DHS's issuance of a revised Action Level based on the newly established PHG required the Regional Board to make a conforming change to the interim well perchlorate level triggering Olin's water replacement requirements (pending issuance of an MCL). As a PHG/Action Level is, under California law, the most conservative and protective drinking water standard, as it is strictly health-based (even more so than an MCL which must be set only as close as technically and economically feasible), there was no factual, scientific or legal

basis for the Regional Board not to do so for purposes of provisional or interim replacement water requirements.

On April 29, 2004, the Regional Board denied Olin's formal request to modify the alternative water supply standard from 4 ppb to 6 ppb to conform to the perchlorate Action Level. The Regional Board neither disputed having based its original replacement water requirements on the DHS Action Level nor provided a reasonable factual basis for its refusal to make the conforming change, now that the final PHG-based Action Level had been established. Therefore, on May 28, 2004, Olin petitioned the State Board for review of the Regional Board's April 29, 2004 denial of Olin's request for a modification. By its June 4, 2004 letter, the State Board held that, as the Regional Board's water replacement "directions" to Olin were pursuant to Water Code § 13267 (and not § 13304), the Regional Board's action was not final and, thus, was not reviewable by the State Board. The State Board advised, however, that, "[s]hould the Regional Board issue a cleanup and abatement order with this requirement, a petition would be appropriate." [Visser Decl., Exh. B, p. 12.]

On July 6, 2004, apparently in response to the State Board's June 4, 2004 decision finding that the Regional Board had not issued an enforceable water replacement order, the Regional Board issued CAO R4-2004-0101 imposing both Interim and Long Term Replacement Water Requirements as described above. In its CAO, now currently issued pursuant to Water Code § 13304, the Regional Board disregards the prior original and sole basis for its water replacement requirements, i.e., the DHS Action Level, but provides no new or reasonable factual basis for failing to conform the water replacement standard to the DHS Action Level, the drinking water level earlier deemed by the Regional Board itself (when not in dispute) to be "safe to people ingesting that water on a daily basis." In its CAO, the Regional Board merely attempts to provide *post hoc* justifications and rationalizations for choosing to be "conservative", for now, and substituting its own subjective judgment to "effectively over-rule" OEHHA's PHG and DHS' Action Level decisions. Given the background, it is evident that the Regional Board's true reason for imposing the 4 ppb level as the touchstone of its CAO is to avoid local citizen controversy should it instead follow the effective 6 ppb standard. Decisions regarding appropriate regulatory

levels for drinking water must be based on law, sound science, policy and reason, not feared public or political controversy. The Regional Board's CAO decisions here are without reasonable factual basis and not in accordance with law. Thus, Olin petitions the State Board to vacate the Regional Board's CAO, and additionally requests an immediate stay and leave to present supplemental evidence.

III. PETITION FOR REVIEW OF REGIONAL BOARD'S JULY 6, 2004 CLEANUP AND ABATEMENT ORDER

A. OLIN CORPORATION

Petitioner Olin Corporation owns the 13-acre property located at 425 Tennant Avenue, Morgan Hill, California ("Site"). The Site and off-Site aquifer is located in the Pajaro River Hydrologic Unit, South Santa Clara Valley Area Boundary, Llagas Sub-Basin of the Central Coast Basin. The Site is presently fenced and vacant except for the on-Site remediation activities and equipment. [Declaration of Richard McClure ("McClure Decl."), ¶ 5.]

Olin operated a facility at the Site that at various times from 1956 to 1988 was used to manufacture and package a variety of products, e.g., signal flares for highway, marine and railway applications, clay targets and pool supplies. [McClure Decl., ¶ 3.] In 1988, Standard Fusee, an unrelated company, acquired Olin's signal flare business and operated the Site under lease from 1988 through 1996, at which time Standard Fusee formally closed the facility in accordance with Santa Clara County Central Fire Department procedures. Subsequently, in 1997-1998, Olin razed all buildings at the Site to prepare the property for redevelopment. [McClure Decl., ¶ 4.] Olin complied with all applicable environmental, health, safety and other laws during its tenure at the Site.

B. SITE INVESTIGATION

In August 2000, in the course of a due diligence investigation conducted as part of the process to sell the property, Olin first discovered and reported to the California Office of Emergency Services (OES) and Santa Clara County Environmental Health Department (Santa Clara EHD) the detection of perchlorate in soil and groundwater. Since February, 2001, under the supervision of and in cooperation with the Regional Board, Olin has undertaken an extensive

investigation of the nature and extent of perchlorate in on-Site soil and groundwater and in off-Site groundwater, has implemented an on-Site ion exchange perchlorate removal and treatment system, and has installed three ion exchange perchlorate removal systems at the West San Martin Water Works and San Martin County Water District water supply wells. Olin has also funded a replacement well for the City of Morgan Hill Tennant Avenue well. [McClure Decl., ¶ 6.]

Olin's extensive on-Site and off-Site groundwater investigation and monitoring detected perchlorate downgradient of the Site in the Santa Clara Valley and into an area east of Gilroy. In December 2003, Olin implemented on-Site perchlorate source removal and remediation through construction of an on-Site groundwater containment and treatment system to prevent any further off-Site migration of perchlorate. Olin has submitted a work plan to excavate perchlorate-containing soils to the residential Preliminary Remedial Goal of 7800 mg/kg and for *in situ* bioremediation of over 100,000 square feet of soil to further protect the groundwater resources in the Santa Clara Valley. [McClure Decl., ¶ 7.] Olin's investigation, monitoring and remedial costs to date are approximately $9,126,000 (excluding the cost of providing alternative bottled water to off-Site well owners beyond the reach of the installed treatment systems). [McClure Decl., ¶ 8.] Olin presently expects to complete the off-Site groundwater investigation and characterization phase of its remediation effort by close of 2005, followed by remediation feasibility and risk assessment studies leading to preparation and submittal of a Remedial Action Plan (RAP) and cleanup implementation. [McClure Decl., ¶ 9.]

At the present time, there are 768 off-Site wells with reported detections of perchlorate at or above the perchlorate Method Detection Limit[1] ("MDL") of 2 ppb and, therefore, subject to the CAO's water replacement requirements. Of these 768 off-Site wells, when last tested, 275 wells had perchlorate concentrations between 2-3.99 ppb, 291 wells between 4-5.99 ppb, 189 wells between 6-9.99 ppb and 13 wells greater than 10 ppb. Therefore, 566 wells (almost three-fourths of the total off-Site wells) below the current 6 ppb PHG and Action Level are subject to the

[1] The method detection limit (MDL) is defined as the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero. 40 CFR, Ch. 1, Pt. 1, 36 Appendix B.

CAO's water replacement requirements. [McClure Decl., ¶ 10.] For clarity and convenience, the number of wells, perchlorate concentration ranges and applicable CAO requirements are set forth in the following chart.

PERCHLORATE CONCENTRATION RANGE	NO. OF WELLS	APPLICABLE CAO REQUIREMENTS
greater than 10 ppb	13	Interim bottled water and monitoring. Long term replacement water (after submittal of time schedule). CAO, ¶¶ 5 & 6.
6-9.99 ppb	189	Interim bottled water and monitoring. Long term replacement water (after submittal of implementation work plan). CAO, ¶¶ 1, 3, 4 & 6.
4-5.99 ppb	291	Interim bottled water and monitoring. Long term replacement water (after submittal of implementation work plan). CAO, ¶¶ 1, 3, 4 & 6.
2-3.99 ppb	275	Interim bottled water and monitoring. CAO, ¶¶ 2 & 6.
Non-detect (below 2 ppb MDL)	467	None if sampling confirms non-detect

C. REPLACEMENT WATER SUPPLY

At the present time, Olin is providing bottled water to well owners and tenants at 493 wells with perchlorate test results at or above 4 ppb (including 291 wells that meet the current PHG and Action Level).[2] [McClure Decl., ¶ 11.] Olin's actual cost (January-July 2004) for providing the alternative bottled water supply at the 493 wells exceeding 4 ppb is approximately $398,000. Olin's cost (August-December 2004) to provide the alternative bottled water supply at the 275 wells below 4 ppb is estimated at $158,000. Olin's projected bottled water cost for the remainder of 2004 (August-December) for all 768 wells governed by the CAO is $442,000. Thus, Olin's estimated annualized cost to provide bottled water as required by the CAO is $1,060,000 (average $115 per month per well) at the 4 ppb replacement water level (including wells presently in the 2-4 ppb range requiring four consecutive quarters of confirmation

[2] Olin is initiating bottled water, as required by the CAO, to the 275 additional wells below 4 ppb, until four consecutive quarters of sampling confirm well perchlorate levels are below the 4 ppb CAO compliance standard.

sampling). [McClure Decl., ¶ 11.] In contrast, Olin's projected off-Site replacement bottled water supply cost for wells exceeding 6 ppb (covering 202 wells in that category) would be $279,000 per year. A chart comparing the number of wells and alternative water supply costs at the 2 ppb, 4 ppb and 6 ppb levels is set forth below. [McClure Decl., ¶ 11.]

OFF-SITE REPLACEMENT WATER SUPPLY REQUIREMENTS	NO. OF WELLS	REPLACEMENT WATER SUPPLY PROJECTED COSTS
2-3.99 ppb	275	Annualized cost: $380,000/year
4 –5.99 ppb	493	Annualized cost: $402,000/year
6 ppb and higher	202	Annualized cost: $279,000/year

As is apparent from the above chart, the Regional Board's refusal to accept the California PHG and Action Level significantly increases Olin's annual cost of providing replacement water by a minimum of $402,000 per year (excluding the bottled water cost for wells below 4 ppb, subject to the CAO's four consecutive quarterly sampling confirmation requirement). Adding in the wells presently below 4 ppb (estimated $380,000/yr.), Olin's additional bottled water costs under the CAO increase to approximately $782,000 per year more than at the 6 ppb level, while providing no significant health benefit, since a 6 ppb standard is completely protective of human health, including all sensitive populations, as determined by California's OEHHA and DHS. [McClure Decl., ¶ 12.] Thus, to require Olin to continue to replace, with bottled water, safe well drinking water which already meets the conservative drinking water PHG and Action Level is unreasonable. With no reasonable factual or legal basis, such a requirement is an abuse of discretion.

Additionally, the CAO's Long Term Replacement Water Requirements will require Olin to spend (depending on the chosen feasible technology) an estimated $3.6 million to $4.1 million to implement long term and permanent well water treatment for wells between 4 ppb and 6 ppb even though such is expected to be unnecessary when the final California MCL and GW Aquifer Cleanup Standard (expected to be 6 ppb or higher) is determined in the near future. [McClure Decl., ¶ 13.] The May 2004 San Francisco Regional Board UTC Order setting a perchlorate GW

Aquifer Cleanup Standard of 6 ppb pending issuance of the MCL supports this contention. [UTC Order, attached as Exh. M to Compendium of Orders submitted concurrently herewith.]

Olin's representatives authorized to receive notice are:

For Olin Corporation:

Curt M. Richards
Vice President
Olin Corporation
P. O. Box 248
Charleston, TN 37310-0248
Tel.: 423.336.4007/Fax: 423.336.4166
E-mail: cmrichards@olin.com

And

Randolph C. Visser
Morgan, Lewis & Bockius LLP
300 S. Grand Avenue, 22nd Floor
Los Angeles, CA 90071-3132
Tel.: 213.612.2500/Fax: 213.612.2501
E-mail: rvisser@morganlewis.com

D. ACTION TO BE REVIEWED

The action to be reviewed is the Regional Board's July 6, 2004 CAO imposing Interim and Long Term Replacement Water Requirements on Olin. [Visser Decl., Exh. A, pp. 1-11.] In particular, Olin requests review of the following CAO requirements:

1. Provision of interim replacement water: (a) at a 4 ppb replacement water compliance level; and, (b) down to a 2 ppb confirmation level, rather than the current PHG/Action Level of 6 ppb (CAO, ¶¶ 1&2); and,

2. Provision of long term replacement water at 4 ppb (a) prior to the Regional Board's setting of a GW Aquifer Cleanup Standard and California's MCL decision when it is unnecessary and unreasonable to do so, as long as Olin continues to supply interim bottled water; and (b) prior to the Regional Board's requesting a Water Replacement Plan in the CAO (CAO, ¶¶ 3-5).

E. RELIEF AND STATE BOARD ACTION REQUESTED

Olin requests the State Board direct the Regional Board to:

(1) revise or modify its CAO's Interim Replacement Water Requirements (CAO, ¶¶ 1&2) to conform to the current perchlorate Action Level and PHG of 6 ppb, thus, requiring Olin to

supply alternative bottled water to domestic well owners only at wells above 6 ppb perchlorate concentrations;

(2) vacate its CAO's Long Term Replacement Water Requirements (CAO, ¶¶ 3-5) until a final perchlorate GW Aquifer Cleanup Standard and MCL are set, conditioned upon Olin continuing to supply interim replacement water at the PHG/Action Level of 6 ppb until that time; or,

(3) vacate the Regional Board CAO in its entirety for failure to request a Water Replacement Plan as required by Water Code § 13304.

Alternatively, Olin requests the State Board directly provide the requested relief and modify the CAO as set forth above, or vacate the CAO in its entirety.

F. DATE OF ACTION

The Regional Board issued its CAO on July 6, 2004 which Olin petitions to have reviewed. [Visser Decl., Exh. A, pp. 1-11.]

G. THE REGIONAL BOARD ABUSED ITS DISCRETION: ITS ACTIONS ARE INAPPROPRIATE AND IMPROPER

The Regional Board abused its discretion, acting inappropriately and improperly by issuing the CAO imposing both Interim and Long Term Replacement Water Requirements on Olin. The Regional Board's CAO raises substantial and significant precedential issues of statewide importance for review concerning management and implementation of perchlorate alternative water and remediation requirements governed by Water Code § 13304 and existing State Board and Regional Board cleanup and abatement policies, including State Board Resolution ("Res.") No. 92-49 (as yet not amended to conform to the new Water Code replacement water requirements).

First, by the CAO, the Regional Board abused its discretion as there is no reasonable factual basis or substantial evidence in the record to support its Interim and Long Term Replacement Water Requirements which require Olin to supply replacement water below a 6 ppb perchlorate level. By doing so, the Regional Board unnecessarily substituted its unsupported and subjective judgment for California's controlling perchlorate drinking water 6 ppb PHG and Action Level decisions. The current PHG and Action Level are a <u>more</u> conservative and health

protective interim standard for drinking water than even an enforceable MCL, as they exclude consideration of economic and technical feasibility factors. In fact, OEHHA recognizes that even concentrations above the PHG may be safe for lifetime consumption. In its original October 18, 2002 Order, the Regional Board deferred to, adopted and incorporated into its Order the DHS Action Level as the perchlorate concentration at which Olin was to provide alternative water. Once the DHS formally issued a revised 6 ppb Action Level to conform to OEHHA's 6 ppb PHG, the Regional Board lacked any discretion or reasonable factual basis to require Olin to provide alternative water for wells with drinking water concentrations of perchlorate less than 6 ppb. The Regional Board provided no new or independent basis for maintaining 4 ppb (and below) as the standard for requiring replacement water rather than the current 6 ppb Action Level and PHG. In light of the California PHG and Action Level, there is neither a reasonable basis nor substantial evidence to support the Regional Board's requirements that Olin replace safe well water that is at or below California's Action Level and PHG of 6 ppb with alternative bottled water.

Second, the Regional Board abused its discretion as it is unreasonable and premature for the Regional Board to impose the CAO's Long Term Replacement Water Requirements prior to setting the necessary GW Aquifer Cleanup Standard and prior to California's decision on a final perchlorate MCL, both of which will necessarily impact or "drive" the long term replacement water standard and final GW Aquifer remediation. The Regional Board CAO preempts the necessary, requisite and governing "phased" approach to and "progressive sequence" of cleanup and abatement procedures, i.e., GW Aquifer investigation and characterization, remedial investigation and feasibility and risk assessment studies, RAP and actual remediation, required by law (including State Board Res. No. 92-49) and prejudges the final GW Aquifer Cleanup Standard without allowing Olin to develop and submit evidence to demonstrate that a higher alternative cleanup standard above background is appropriate. The Long Term Replacement Water Requirements remain unnecessary as long as Olin continues to supply interim replacement water until RAP completion and implementation. The San Francisco Regional Board's May 2004 UTC Order setting a 6 ppb perchlorate GW Aquifer Cleanup Standard based upon California's perchlorate PHG and Action Level is a case in point. To require expensive, long term

replacement water and permanent well treatment at the 4 ppb level when the final GW Cleanup Standard will be no lower than 6 ppb and could well be higher – depending on Olin's RAP submittal and the final MCL – makes no sense. By doing so, the Regional Board failed to proceed in the manner required by law.

Third, the Regional Board abused its discretion failing to request a Water Replacement Plan as statutorily required by newly-amended Water Code § 13304 for replacement water requirements beyond 30 days, which must then be approved prior to implementation. The CAO's Interim and Long Term Replacement Water Requirements require Olin to supply replacement water beyond 30 days. Thus, the Regional Board failed to proceed as required by law.

H. MANNER IN WHICH OLIN HAS BEEN AGGRIEVED

Olin has been aggrieved by the Regional Board's July 6, 2004 CAO which does not conform the CAO's Interim and Long Term Replacement Water Requirements to California's 6 ppb perchlorate PHG and Action Level, the standards the Regional Board itself adopted and deemed "safe to people ingesting that water on a daily basis." The Regional Board's CAO results in Olin being required to spend almost $800,000 more each year for bottled water than it would be required to spend for bottled water using the current 6 ppb PHG and Action Level standard.

In addition, Olin has been aggrieved by the Regional Board's CAO's Long Term Replacement Water Requirements obligating Olin to supply long term replacement water at the 4 ppb level by implementing long term and permanent well treatment:

(1) prior to the Regional Board's consideration and decision on a GW Aquifer Cleanup Standard providing Olin the requisite opportunity to complete the State Board Res. No. 92-49 sanctioned "phased approach" to GW investigation, cleanup and abatement, and to develop and present evidence that a higher-than-backyard alternative cleanup standard is appropriate as required by State Board Res. No. 92-49; and,

(2) prior to California's setting of the final perchlorate MCL.

The Regional Board's Long Term Replacement Water Requirements will force Olin to spend an estimated $3.6-4.1 million for long term well treatment technology to be implemented at wells between 4 ppb and 6 ppb which will prove costly and likely unnecessary when a final MCL and

GW Aquifer Cleanup Standard at 6 or above is set (as the San Francisco Regional Board has already done in the May 2004 UTC Order).

I. STATEMENT OF POINTS AND AUTHORITIES

A statement of points and authorities is filed with this Petition.

J. COPY OF PETITION SENT TO REGIONAL BOARD

A copy of this Petition has been sent to the Regional Board.

K. STATEMENT CONCERNING SUBSTANTIVE ISSUES AND OBJECTIONS

The substantive issues and objections raised in this Petition were raised before the Regional Board in correspondence, discussions and at a meeting with the Regional Board staff on May 18, 2004, as well as in the prior petition Olin filed with the State Board on May 28, 2004.

L. REQUEST FOR HEARING (ORAL ARGUMENT) AND LEAVE TO PRESENT SUPPLEMENTAL EVIDENCE (EXPERT OPINION AND PUBLIC DOCUMENTS)

Olin requests that the State Board: (1) grant a hearing; and, (2) grant leave to present supplemental evidence pursuant to 23 C.C.R. §§ 2050.6 & 2052(c). The Regional Board did not provide Olin a formal hearing prior to issuance of the CAO.

Olin requests the hearing solely for oral argument of the issues presented in Olin's Petition. Olin requests leave to present supplemental evidence in the nature of an expert opinion declaration and public documents as further described below.

Olin requests the State Board to consider and admit evidence in the form of noted toxicologist Dr. Richard D. Pleus' expert opinion as set forth in his declaration filed concurrently herewith. In its CAO, the Regional Board based its Interim and Long Term Replacement Water Requirements at the 4 ppb level (not 6 ppb PHG and Action Level) on certain draft EPA perchlorate reference dose studies and guidelines. In his declaration, Dr. Pleus provides his expert opinion on the validity and scientific merit of the Regional Board's use of those draft studies to support its adoption of the 4 ppb replacement water level. Dr. Pleus details in his Declaration the basis for his overall conclusion that the Regional Board made "a significant number of scientific errors and misstatements of fact" regarding the EPA studies which undermine the foundational basis for the Regional Board's CAO and its 4 ppb replacement water

level. Dr. Pleus' opinion, as presented in his Declaration, is relevant to Olin's contentions that the Regional Board lacked a reasonable basis to adopt the 4 ppb replacement water level over California's 6 ppb perchlorate and Action Level and that its use and reliance upon the EPA studies is misplaced in fact, science and law. The Regional Board raised the draft studies for the first time in its CAO. Thus, this is the first opportunity Olin has had to provide evidence that the Regional Board's use and reliance upon the draft EPA studies are misplaced.

Olin also submits concurrently herewith a request for judicial notice for certain California regulatory documents pertaining to California's actions in issuing and adopting the perchlorate 6 ppb PHG and revised Action Level and the EPA and Massachusetts reference dose documents relied upon by the Regional Board as a basis for its CAO as further supplemental evidence supporting its contentions.

In summary, for the aforesaid reasons, Olin requests the State Board to accept into the record Dr. Pleus' declaration and the aforedescribed public documents and that the State Board grant a hearing solely for purposes of oral argument on tie issues presented in Olin's Petition.

M. REQUEST FOR AN IMMEDIATE STAY

In accordance with 23 C.C.R. § 2053, Olin requests the State Board to stay: (1) the effect of the CAO and both its Interim and Long Term Replacement Water Requirements; or, alternatively, (2) the effect of CAO's Long Term Replacement Water Requirements alone, pending a hearing by the State Board.

A stay is appropriate on the grounds that:

(1) Olin will be substantially harmed if a stay is not granted (as detailed in Section III.C. & H. above);

(2) other interested parties and the public interest will not be substantially harmed if a stay is granted, as Olin agrees to provide interim bottled water according to the 6 ppb PHG and Action Level or as otherwise determined by the State Board; and,

(3) substantial questions of fact and law (and, of a precedential nature) exist regarding the Regional Board's action in issuance of the CAO, as to: (a) the basis, timeliness and reasonableness of its perchlorate Interim and Long Term Water Replacement

Requirements (as detailed in Section I above); (b) the developing conflicts and inconsistencies in regional board management of perchlorate cleanup and abatement cases (including at the UTC site) across the State of California; and, (c) the requirements, appropriate interpretation and procedural application of the new Water Code § 13304 replacement water (including Replacement Water Plan) requirements.

IV. CONCLUSION

For the foregoing reasons, Olin requests the State Board to direct the Regional Board to or, directly itself, grant Olin its requested relief herein

Dated: August 2, 2004

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP
RANDOLPH C. VISSER
MARTIN "KELLY" J. McTIGUE

By _____
Randolph C. Visser

Attorneys for Petitioner
OLIN CORPORATION