California Regional Water Quality Control Board
Central Coast Region

Alan C. Lloyd, PhD.
Secretary for Environmental Protection

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Arnold Schwarzenegger
Governor

July 19, 2005

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

Dear Mr. McLaughlin:

SLIC: REQUEST TO BE REMOVED AS A RESPONSIBLE PARTY, 425 TENNANT AVENUE FACILITY, MORGAN HILL, SANTA CLARA COUNTY

Standard Fusee has requested that the Central Coast Regional Water Quality Control Board (Water Board) issue a determination that Standard Fusee is not a discharger for purposes of California Water Code Sections 13267 or 13304. In order to make that determination under Section 13304, the Water Board would have to find that Standard Fusee has not caused or permitted, and does not threaten to cause or permit, any perchlorate to be discharged or deposited where it is or probably will be discharged into the waters of the State. Under Section 13267, the Water Board would have to find that there is no basis to suspect that Standard Fusee discharged or will discharge waste. In support of this request, Standard Fusee has submitted witness testimony it developed in the matter of *Palmisano v. Olin Corporation* (N.D. Cal. Case No. C 03-01607), and a partial summary judgment order dated May 20, 2005 in favor of Standard Fusee. The order finds that Standard Fusee is not liable for perchlorate contamination based on the plaintiffs' common law theories. Standard Fusee's motion for summary judgment on the plaintiffs' CERCLA claims is currently under submission.[1]

As counsel for Standard Fusee and the Water Board agreed, Water Board staff and counsel have not reviewed the *Palmisano* evidence and other materials, and have not made any determination regarding the merits of Standard Fusee's request for a determination that it is not a discharger under Sections 13267 or 13304. However, to our knowledge Olin Corporation has been complying with Water Board cleanup and investigation orders with no financial or other participation from Standard Fusee, and Olin has not indicated that it plans to stop doing so. In addition, Olin Corporation is currently preparing a conceptual model, investigating background perchlorate levels and other anthropogenic sources, and is undertaking additional investigation and analysis pursuant to Cleanup or Abatement Order No. R3-2005-0014. That investigation, as

[1] *Palmissano* does not involve claims by the Water Board or any other party under the Porter-Cologne Water Quality Control Act and is not determinative of liability under Porter-Cologne. In addition, as a non-party the Water Board is not bound by any factual or legal determinations in that case.

well as the investigation of the area to the site's northeast, may lead to evidence relevant to Standard Fusee's discharger status.

For these reasons, it is not necessary at this time to name Standard Fusee in Water Board orders. Standard Fusee is hereby removed without prejudice from all existing Cleanup or Abatement Orders[2] and Section 13267 investigation orders.[3] Until further notice, Standard Fusee is not required to comply with those orders. In the event the Water Board reissues any such order to Standard Fusee, Standard Fusee will not be retroactively liable. Rather, Standard Fusee may only be liable for noncompliance with a Water Board order prospectively from the date such order is issued or reissued to Standard Fusee.

The decision to remove Standard Fusee from our orders without prejudice is due in part to a desire to avoid the litigation we expect would result if the Water Board either granted or denied Standard Fusee's request on the merits. This letter is not a determination of Standard Fusee's responsibility, or lack thereof, for investigating, cleaning up or abating the perchlorate plume under Sections 13267 and 13304 or any other provision of law, and is not a determination that Standard Fusee is secondarily liable. In the event Standard Fusee renews its request for a determination on the merits regarding its status as a discharger, Olin Corporation and other interested persons will have the opportunity to submit evidence and legal argument to rebut Standard Fusee's claim before the Water Board makes any determination. Conversely, in the event the Water Board proposes to add Standard Fusee as an additional discharger in the future, the Water Board will notify Standard Fusee of such proposed determination, fully consider and address all evidence already submitted by Standard Fusee, and afford Standard Fusee the opportunity to present any additional evidence and legal argument to rebut such proposed determination.

This letter does not waive any right of the Water Board to take any future action involving Standard Fusee or Olin Corporation. The Water Board reserves its jurisdiction to name Standard Fusee in existing or future Section 13304 or Section 13267 orders and to take other actions against Standard Fusee, with respect to the site, under the Porter-Cologne Water Quality Control Act.

Please have your attorney, Keith Casto, call Lori Okun at 916-341-5165 should you have questions regarding this letter.

Sincerely,

Roger W. Briggs
Executive Officer

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[2] Cleanup or Abatement Order No. R3-2005-0014, Cleanup or Abatement Order No. R3-2004-0101 and State Water Board Order No. WQ-2005-0007. Copies of these Orders will be provided upon request.

[3] Copies of Water Code Section 13267 Orders are located in the Regional Board File and will be provided upon request.

cc via E-mail:

Olin Interested Party List

Ms. Lori Okun
Office of the Chief Counsel
State Water Resources Control Board

Mr. Curt Richards
Vice President, Olin

cc via U.S. Mail:

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