

For the public record.

≤ omitted by
Dana Dillworth @
City Council Mtg of 3/21/06

lie¹

-*n.* A false statement made with deliberate intent to deceive; a falsehood.

-*v.i.* To speak falsely or utter untruth knowingly, as with intent to deceive.

To convey a false impression.

-*v.t* To bring about or affect by lying.

Idiom- lie through one's teeth, to tell a brazen, vicious lie.

[See also: lie by omission, calculated lie, perpetuating a lie.]

Lie # 1- Definition of Open Space Land. The state of California has one definition for open space land or water (Sec. 65560 (b)(1-4,) which can be for the preservation of natural resources, for managed protection of resources, for outdoor recreation, OR for public health and safety. It doesn't require public ownership, or include urban courtyards,² or multiple uses, as this document repeatedly states. By trying to pass off these open area figures as legitimate open space, the real estate speculator who has drafted this real estate speculator's proposal for new legislation (herein referred to as Spec. Doc.,) including statements like "The Baylands Phase I Specific Plan meets all of the requirements of State Law,"³ is a gross misrepresentation to the public, which is often called a lie.

When it is convenient to use lands owned by others (or are locked into right-of-ways, easements, and other recorded (or anticipate future) agreements) into calculations for open space,⁴ (such as the 600 foot wide State Lands Commission parcel,) the Spec. Doc. readily does so. However, when it is not to the real estate speculator's advantage, non-ownership lands are omitted from the totals.⁵

Using someone else's open space in the real estate speculator's totals is cheating the public. This form of misrepresentation is often called a lie.

¹ Random House Webster's College Dictionary April 2000

² Brisbane Baylands Phase I Specific Plan February 21, 2006 (Spec. Doc.) Appendix D, pg 309

³ Spec. Doc. pg 4

⁴ Spec. Doc. pg xi

⁵ Spec. Doc. pg 24

Lie # 2- Ownership. In this document and in the March 2006 edition of the City-sponsored *Luminary*, there are statements that “Universal Paragon Corporation (UPC) is the owner of most of the Brisbane Baylands,”⁶ yet the public records show a myriad of owners and agreements which may indicate otherwise (Oyster Point Properties, Inc., Van Arsdale, Papenhouse, Suntex Enterprises, Warehouse Properties, Inc., Sunquest Properties, Inc., Tuntex (U.S.A.) Inc., a Delaware Corporation, Tuntex Properties, Inc. (Sierra Point,) and the State of California, State Lands Commission. None of which are UPC.

(True ownership is withheld by a legal technicality.) This form of misrepresentation to the public is often called a lie.

Lie #3- Planning Area and Site Analysis omits maps of true site conditions. During discussion of “key environmental factors” the presence of toxins, geo-hazardous conditions, underground fuel line easements, and delineated wetlands for this area are clearly missing from this Spec. Doc. Utilizing 1994 General Plan Maps,⁷ for reference, seems to be an intentional omission. The real estate speculator has at their disposal two wetland delineations, (one in protest,⁸) yet fails to provide relevant documents so that determinations whether the Open Space offered in the public’s interest is suitable or a liability. Intentional or negligent omission of material information is a form of misrepresentation, often called a lie.

Lie # 4- Status of toxic poisonous substances. It has been claimed that \$20,000,000, now \$50,000,000 has been spent by the real estate speculator in an effort which is mischaracterized as a “remediation project.”⁹ This would be admirable, were it a true representation of the facts. A few tests and studies are all that have been done on the area in question. Testing methods are now in question, having produced inconclusive results. Tests

⁶ Brisbane Chamber of Commerce *Luminary* March 2006, pg 1

⁷ Spec. Doc., Figure 1.2 Site Analysis (B) page 10

⁸ Reference to Army Corps of Engineers August 2003 Delineation, Letter from Dana Dillworth dated October 13, 2004 to Bruce Wolfe, letter to “Dear Regulator” dated October 5, 2004 and all relevant photos, conversations, etc.

⁹ Brisbane Chamber of Commerce *Luminary* March 2006, pg 1

and studies often done in the wrong season tend to fragment and minimize the issues. It is incorrect to characterize these speculation tools as a “remediation effort.” In fact, the public record indicates the opposite¹⁰ that the real estate speculators have misrepresented the air quality, groundwater and stability of the toxic chemicals; proposed to be left in place.

Universal Paragon is under a Violation Order in the Phase !!¹¹ area for not doing even the most minimal absorption method to prevent toxins from freely flowing directly into the Bay. Their proposed measures are to leave most toxins in place. The use of the words “full cleanup” are an obfuscation of the truth, considered a lie.

Lie# 5- Permitted Uses. ¹² The Brisbane General Plan only considered uses; it does not permit them as this Spec. Doc. implies. Instead, “leaving alternatives for further analysis does not mean approval at this time or in the future. Much more extensive analysis and environmental review will be undertaken before any specific uses are even considered for approval or disapproval.” ¹³ Circumventing the public participation process though structured “informational presentations,” rather than hearings, where the public has repeatedly offered ideas toward uses, then been ignored. Discussion of permitted uses seems to intentionally mislead the public.

Lie# 6- Square footage of development increased over 100%, from (2,454,000 to 5,000,000 ft. sq.) in recent draft. “Desired flexibility” and “interchangeable uses” are not desirable. The mere fact that “market forces and other considerations will ultimately drive the specific nature of this development at the appropriate time”¹⁴ admits that this document is a Concept Plan in nature, renders this document meaningless, and an EIR is premature. Many factors cannot be calculated as the impacts of millions of

¹⁰ Herein incorporate by reference public and private letters, e-mails, notes, photographs, minutes, documents, plans, conversations, (etc.) regarding the Brisbane Baylands, Kinder Morgan Properties, Schlage Lock and other adjacent properties.

¹¹ Notice of Violation in Water Code Section 13267, dated March 16, 2003 refers to 1998 workplan.

¹² Spec. Doc. pg 38

¹³ Brisbane General Plan, October 15,2002 pg 74

¹⁴ Spec. Doc. pg 38

square feet of any one use, such as the differences between a 10-plex cinema and a stadium, are vast.

One need only look to Santa Clara and Redwood City, (Great America and Marine World) where market forces drove development. Entertainment, which is an extremely valuable and desirable use for the Brisbane Baylands, had to be reconsidered in their cases when offices and housing moved in. It would be remiss to leave development patterns up to speculator's whim simultaneously giving up constitutional rights to initiative and referendum.

Land use changes in Executive Park from office to residential have been proposed. Since there is a reference to "both existing and proposed" housing in the "Transit Oriented Subarea," the underlying information which supports this statement is insufficient; information which this same real estate speculator should be privy to.

Lie# 7- Agency approvals. It is clearly the intent of the Brisbane General Plan that this area be safe before proposal to develop is accepted. Brisbane as the Lead Agency, is bestowed the power to act in the public's interest, a greater good. Responsible agencies are secondary in position to the Citizens of Brisbane. Other projects can and should be considered.

The process should be tailored to allow the city council and the voters of Brisbane to maintain their constitutional rights and control and vote on all uses, plans, leases, and subsequent development agreements.

The Bay Area has the highest concentrations of breast cancers, asthma, and illnesses closely correlated to living near toxic sites. We must be judicious in insisting on the use of the Precautionary Principal, rather than accept falsely-characterized real estate speculator's data and free-range speculative proposals. Until toxic land cover-ups are proven, we should only allow "limited-exposure" uses. No more cover-ups. No more lies.

Dana Dillworth, Director, CLEAN

The following came from a discussion about

Reasonable uses for the Baylands:

While we can talk about reasonable uses, let's take it one step back:

1.) Ask for an assurance that an adequate San Bruno Mountain to the Bay habitat corridor be maintained. This Spring, Ice House Hill is in glorious bloom with *viola pendunculata*, the host plant for the rare and endangered Callippe Silverspot Butterfly and *Lupinus Albifrons* the host plant for the rare and endangered Mission Blue Butterflies. It must be protected for conservation purposes, not Human Recreation, passive or otherwise.

2.) Require an excess of 100 acres of reclaimed wetlands (more than the path proposed) primarily for conservation purposes, not street buffers, setbacks and the like. There are two paths, north connecting the wetlands we saved at Bayshore and Main and south of Ice House Hill which would pass by the Mission Blue Native Plant Nursery. These corridors still have frog (in abundance) and wildlife visitors. They go from fresh to salt water so have multiple ecosystems they cleanse and support.

3.) ANY uses for humans should be ones where we visit briefly and leave: like theatre shows, museums, golfing, conventions, modest shopping, etc.

Have you considered the impact of an earthquake? 10,000 or more workers trying to pass through these lands subject to liquefaction and the hundreds of thousands of people that will think that 101 is a way to get home? Current Subtitle D Landfills (the best technology for now, which they are not even proposing to remedy years of toxic filling) leak and fail. Though their failures have not YET been catastrophic (Northridge, Kobe, Olympic earthquakes) we don't want to set the precedent here. Did you know that there is a *presumed-dormant* fault at the base of San Bruno Mountain (after all, how did it get lifted out of the Bay?) San Andreas is a stone's throw away (sorry for the pun) in Daly City. The previously mentioned landfills did not have housing or businesses on top of them, as far as we know.

4.) Approve uses that solve contemporary problems, not create them, like:

a.) Wind, solar, and even hydrogen energy production, (Martin Service Center Grid is right there,)

b.) Arcata-style wastewater treatment,

c.) Desalinization plant,

d.) Zero-automobile use policy etc.

Have you been to Disneyland, IKEA, or the Airport? They are similar to what can be envisioned for future uses; you park at the outside fringe and either walk or are transported by solar/electric cars or possibly even a mag-lev people mover system. All products you want would be put on a conveyor system and delivered to your parking pod which could be gravity-fed, or some other renewable energy resource system.

A different way of thinking, but a wise and cooperative use of resources. People won't get into their car to go the next mall over, like South San Francisco/San Bruno Tanforan Retail District.

There already is a Caltrans rail system out on the Brisbane Baylands; two new tracks for the bullet train. There is a chance to utilize a visionary goods movement system. In the spirit of NOT attracting thousands of diesel-idling trucks, we need to come up with a different receiving/distribution zone.

IF YOU CAN'T, SORRY, NO COMMERCE. This will quickly become an environmental justice issue (affecting the low-income residents in surrounding communities) if we ignore the air pollution associated with BIG BOX retail sales on these 600 acres.

5.) and finally, safety, safety, safety (not necessarily in that order.)

OLD IDEAS ARE NEW AGAIN - Fifteen years ago we (CLEAN, Citizens' League for Environmental Action Now) worked with Clean Water Fund. A study on "The Toxic Crescent, Wasteland or Wetland?" was done, which included tertiary water treatment to pass through reclaimed wetlands in the Brisbane Baylands, then, a solution for overflow issues at SF's Southeast Waste Water Treatment. Recently, at a SFPUC meeting, they announced that San Francisco has \$\$\$150,000,000 to do an interim plan to increase (double) their waste/stormwater flows from the VisValley area, sending them north to an already over-burdened system. The State is working on an Integrated Regional Water Management Plan, mandated by Prop 50 to come up with regional solutions to water use and protection. Brisbane Baylands could be the solution.

While Brisbane adopted the Clean Water Fund concept as a "Wetlands River Park" as a flood protection measure, the property owners are packing all kinds of other uses into "our" open space--- Golden Gate Railway Museum, roads, setbacks, Promenade, drainage swales, etc.

Endangered Butterflies, SF Garter Snake, Clapper Rail, Saltwater Harvest Mice

and Steamtrains... ?

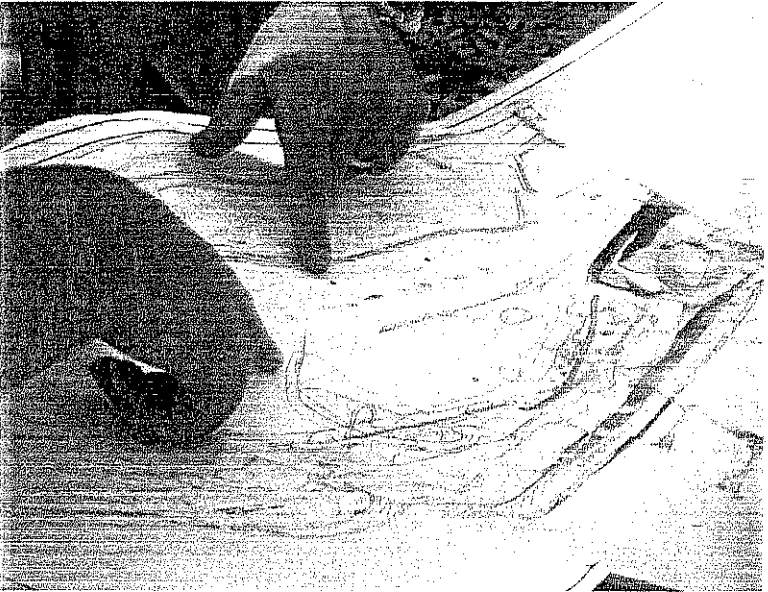
These are opportunities/uses we can consider without including housing. They are reasonable and don't deny the speculator-owner profit or use of their land.

Maybe in the future, when these "remediation" systems have thirty, forty years proven experience, we can be convinced otherwise. But for now, you just have to read the New York Times' recent article about the presumed closed landfills on Long Island --- or the families that bought homes on the Benicia Arsenal landfill--- or the folks being relocated to Love Canal--- landfills leak into their groundwater and objects work up through their regulated clay caps.

CURRENT LANDFILL REMEDIATION TECHNIQUES DON'T WORK

Fortunately we have the PRECAUTIONARY PRINCIPAL in California.
Let's stand on our collective right to err on the side of caution.

Dana Dillworth, 415-468-8587







California Regional Water Quality Control Board

San Francisco Bay Region



Ian C. Lloyd, Ph.D.
Agency Secretary

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<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger
Governor

Date: **MAR 16 2006**
File No. 41S0006 (DCE)

United Paragon Corporation
Attn: Jason Lin
150 Executive Park Blvd., #4200
San Francisco, California 94134

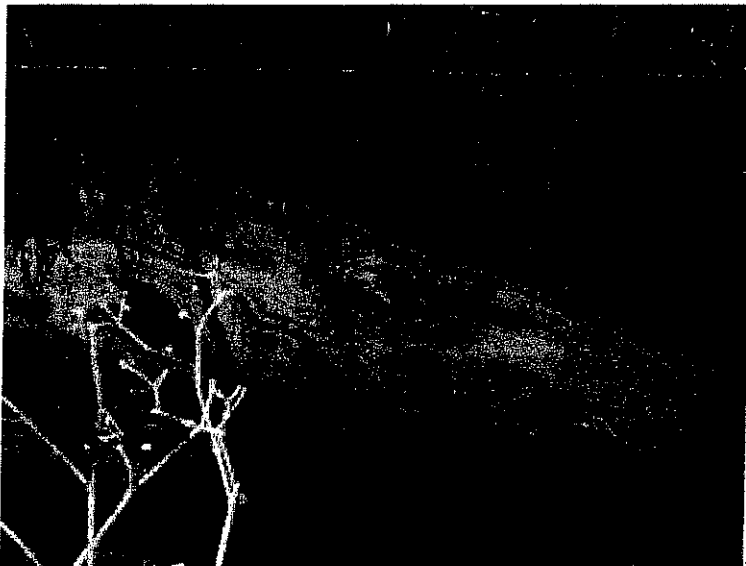
Subject: Notice of Violation and Water Code Section 13267 Technical Report Requirement – Former Bayshore Railyard, Brisbane, San Mateo County

Dear Mr. Lin:

This Notice of Violation documents the unauthorized release of free-product to waters of the state including the San Francisco Bay. In addition, this letter requires a detailed workplan to complete ongoing removal of free-product that exists in a storm water conveyance ditch located parallel to Industrial Way on your Former Bayshore Railyard site.

Notice of Violation

On March 1st, 2006, Dana Dillworth, a City of Brisbane citizen, photographed a hydrocarbon sheen in the unlined storm water conveyance ditch located parallel to Industrial Way. One of the photos she submitted is presented below.



These photos were submitted to the Water Board via email on March 3rd, 2006. On March 6th, 2006, Water Board staff completed a site inspection and verified the existence of the hydrocarbon sheen. A picture taken during that inspection is presented below.



Prior to 1960, historical fuel storage operations at the property resulted in the release of Bunker C oil to the subsurface in the immediate vicinity of the storm water conveyance. Numerous investigation reports and a draft remedial action plan document the extent of the release and the existence of the Bunker C oil in the storm water conveyance soils. There are no other known sources for the hydrocarbon sheen and United Paragon has never disputed their liability for the Bunker C oil in the subsurface.

In July 1998, United Paragon prepared and submitted to the Water Board an Interim Measure Workplan for Prevention of Preferential Pathway (Ditch) for Contaminated Groundwater Discharge into the Bay. This workplan committed to the placement of oil absorbent booms at several locations along the ditch and the replacement of the booms every 3 weeks during the rainy season. They also committed to soaking up all free-product with oil absorbent pads every three weeks (Attachment A).

This floating petroleum product mitigation had not been implemented at the time of the inspection. In fact, none of the Universal Paragon representatives seemed aware of the free-product issue, nor the commitment to remove the free-product from the conveyance.

The release of free-product to the San Francisco Bay is unacceptable and must be ceased forthwith. Therefore, Water Board Staff sent an email requiring immediate removal of free-product from the ditch on March 6, 2006 (Attachment B). United Paragon has responded to this request by placing hydrocarbon absorbing booms in the conveyance and has committed verbally and via email to abating the release.

Water Code Section 13267 Technical Report Requirement

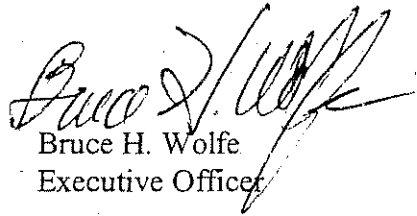
A revised Free-Product Sheen Management Plan shall be prepared and submitted to this agency by **March 30, 2006**. In the interim, the remedial measures documented in the July 1998 Interim Measure Workplan for Prevention of Preferential Pathway (Ditch) for Contaminated Groundwater Discharge into the Bay shall be implemented.

The Water Board needs the required Free-product Sheen Management Plan to ensure that surface water contamination from a storm water conveyance ditch located parallel to Industrial Way in Brisbane does not adversely impact beneficial uses of the State's waters. The surface water contamination is caused by Bunker C oil from an historical subsurface release seeping into the unlined storm water conveyance. You are being required to submit this information because, based on site inspections a free-product sheen exists on top of storm water collected in the storm water ditch and may pose a risk to waters of the state. More detailed information is available in the Water Board's public file on this matter.

You should be aware that this letter represents a requirement for technical reports pursuant to California Water Code Section 13267 (see Attachment C). Although we anticipate your cooperation in this matter, failure to respond or a late response to this request could potentially subject you to civil liability imposed by the Water Board.

If you have any questions, please contact David Elias of my staff at (510) 622-2509 or via e-mail: delias@waterboards.ca.gov.

Sincerely,



Bruce H. Wolfe
Executive Officer

Attachments: A - Interim Measure Workplan for Prevention of Preferential Pathway (Ditch) for Contaminated Groundwater Discharge into the Bay.
B - Water Board Email
C - Water Code Section 13267 Fact Sheet

Cc: ✓ Community Advisory Group, Attn: Dana Dillworth, 41 Humboldt Road, Brisbane, California 94005

City of Brisbane, Attn: Randy Breault, 50 Park Place, Brisbane, California 94005-1310

City of Brisbane, Attn: Matthew Fabry, 50 Park Place, Brisbane, CA 94005-1310

Attachment – A

Interim Measure Workplan for Prevention of Preferential Pathway (Ditch) for
Contaminated Groundwater Discharge into the Bay

Feb. 1990 and October 1991, and the samples were basically clear of metal contamination. Barium showed up at a concentration of 0.21 mg/l and arsenic was detected in the Oct. 91 sample at a concentration of 0.012 mg/l.

INTERIM MEASURES FOR PREVENTING FLOATING OIL FROM DISCHARGING INTO THE SF BAY

Sunquest Properties, Inc. proposes to continue the interim plan that was implemented over the past few years for preventing floating oil from being discharged to the drainage ditch outfall. The plan consists of the following:

Placement of floating oil adsorbent booms at several strategically located points along the northern and middle sections of the ditch. These floating booms along with the wooden baffles, effectively prevented floating oil from flowing down stream to the outflow of the ditch.

Replacement of the oil adsorbing floating booms every 3 weeks during the rainy season and monthly during the dry season.

Soaking up of surface oil with oil adsorbent pads (pigs) every 3 weeks during the rainy season, and monthly during the dry season.

Collection of the spent adsorbent pads and booms and disposal off site in 55 gallon drums.

IMPLEMENTATION SCHEDULE

This plan has been implemented over the past several years and has proven effective in preventing floating oil from migrating to the outfall of the drainage ditch. It has also been effective in maintaining the ditch water surface reasonably clean of floating oil, particularly in the South Ditch.

PERMANENT SOLUTION

Sunquest Properties, Inc. personnel have been in contact with CRWQCB, Army Corp. of Engineers and other regulatory agencies, to resolve the wetlands issue, which prevents us at this time from doing away with the drainage ditch. Alternate means of draining the railyard ditch will be investigated as a permanent solution.

Attachment – B

Water Board Email

From: David Elias
To: jasonlin@sfbayleasing.com, stevenh@sfbayleasing.com
Date: 3/6/2006 4:11:12 PM
Subject: Free Product Sheen - Former Bayshore Railyard - OU2 - Brisbane

Jason and Steve, based on the photos taken on both Friday and today, it appears that free product is entering the OU2 ditch that runs parallel to Industrial Way at your former railyard site in Brisbane. This free product is resulting in a visible sheen.

Today, your consultant, Burns and McDonnell, collected free product and surface water samples for laboratory analysis. The nature of the discharge will be further evaluated based on the results of these samples.

Assuming that the sheens are petroleum hydrocarbon in nature and not naturally occurring, this discharge is unacceptable and must be mitigated forthwith. To expedite your mitigation, a remediation plan to ensure that no free product is transported from the ditch into the San Francisco Bay shall be prepared and submitted to me via email forthwith.

I will communicate more regarding requirements to expedite the long-term remediation of this area in a formal letter.

Sincerely, David Elias

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David Elias CEG, CHG
Engineering Geologist
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 14
Oakland, California 94612
(510) 622-2509

CC: tseward,anaugle,rmozafar@burnsmcd.com

Attachment – C

Water Code Section 13267 Fact Sheet



Ian C. Lloyd, Ph.D.
Agency Secretary

California Regional Water Quality Control Board

San Francisco Bay Region



Arnold Schwarzenegger
Governor

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Fact Sheet – Requirements For Submitting Technical Reports Under Section 13267 of the California Water Code

What does it mean when the regional water board requires a technical report?

Section 13267¹ of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged or discharging, or who proposes to discharge waste...that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."

This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?

The requirement for a technical report is a tool the regional water board uses to investigate water quality issues or problems. The information provided can be used by the regional water board to clarify whether a given party has responsibility.

Are there limits to what the regional water board can ask for?

Yes. The information required must relate to an actual or suspected or proposed discharge of waste (including discharges of waste where the initial discharge occurred many years ago), and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The regional water board is required to explain the reasons for its request.

What if I can provide the information, but not by the date specified?

A time extension may be given for good cause. Your request should be promptly submitted in writing, giving reasons.

Are there penalties if I don't comply?

Depending on the situation, the regional water board can impose a fine of up to \$5,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information or fails to comply with a requirement to submit a technical report may be found guilty of a misdemeanor. For some reports, submission of false information may be a felony.

Do I have to use a consultant or attorney to comply?

There is no legal requirement for this, but as a practical matter, in most cases the specialized nature of the information required makes use of a consultant and/or attorney advisable.

What if I disagree with the 13267 requirements and the regional water board staff will not change the requirement and/or date to comply?

You may ask that the regional water board reconsider the requirement, and/or submit a petition to the State Water Resources Control Board. See California Water Code sections 13320 and 13321 for details. A request for reconsideration to the regional water board does not affect the 30-day deadline within which to file a petition to the State Water Resources Control Board

If I have more questions, whom do I ask?

Requirements for technical reports indicate the name, telephone number, and email address of the regional water board staff contact.

Revised August 20

¹ All code sections referenced herein can be found by going to www.leginfo.ca.gov.

