

COMMISSION ON STATE MANDATES

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December 8, 2008

Mr. Elliot Block
California Integrated Waste Management Board
1001 I Street
P.O. Box 4025
Sacramento, CA 95812-4025

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

RE: Draft Staff Analysis, Comment Period, and Hearing Date
Request to Amend Parameters and Guidelines
Integrated Waste Management, 05-PGA-16
Public Resources Code Sections 40148, 40196.3, 42920-42928
Public Contract Code Sections 12167 and 12167.1
Statutes 1999, Chapter 764; Statutes 1992, Chapter 1116
State Agency Model Integrated Waste Management Plan (February 2000)

Dear Mr. Block:

The draft staff analysis for these proposed amendments to parameters and guidelines is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by Monday, **December 29, 2009**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) Please note changes to the mailing list. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on Friday, January 30, 2009, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, CA. The final staff analysis will be issued on or about January 16, 2009. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Camille Shelton at (916) 323-8215 if you have any questions.

Sincerely,

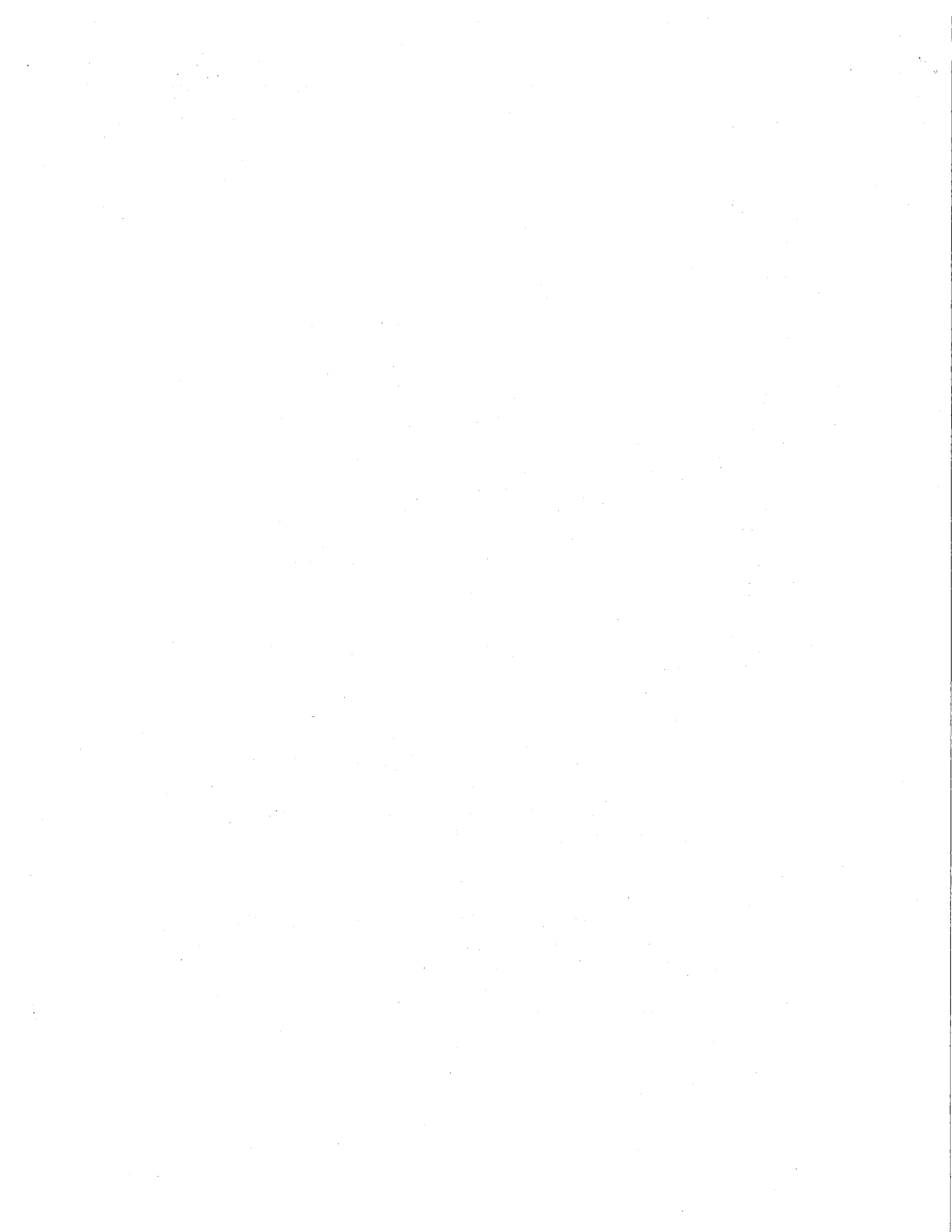
A handwritten signature in black ink, appearing to read "Nancy Patton".

NANCY PATTON
Assistant Executive Director

Enclosure

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ITEM ____
DRAFT STAFF ANALYSIS
PROPOSED AMENDMENTS TO PARAMETERS AND
GUIDELINES

Public Resources Code Sections 40148, 40196.3, 42920-42928
Public Contract Code Sections 12167 and 12167.1

Statutes 1999, Chapter 764 (A.B. 75)
Statutes 1992, Chapter 1116 (A.B. 3521)

State Agency Model Integrated Waste Management Plan (February 2000)

Integrated Waste Management
05-PGA-16

Integrated Waste Management Board, Requestor

EXECUTIVE SUMMARY

Background

This is a request filed by the Integrated Waste Management Board pursuant to Government Code section 17557, subdivision (d), to amend the parameters and guidelines for the *Integrated Waste Management* program. If the Commission approves the Board's request, the amendments would be effective for costs incurred beginning July 1, 2005.

The Board requests that the parameters and guidelines be amended in Section VIII, Offsetting Cost Savings, to include language requiring community college districts to analyze avoided disposal costs and other offsetting savings relating to staffing, overhead, materials, storage, etc., as a result of the test claim statutes when filing reimbursement claims.

The Board also requests that the following additional language be included in Section IX, State Controller's Claiming Instructions:

The claiming instructions shall include sufficient instructions to ensure that only additional expenses related to this mandate are included and that any offsetting savings, as described above, are not included.

The Board contends that the proposed amendments should be made "to more accurately capture the information necessary to provide accurate claims and a Statewide Cost Estimates [sic]."

The request to amend the parameters and guidelines was issued for comment on April 10, 2006. No comments have been received.

Staff Analysis

Staff recommends that the Commission deny the request to amend the parameters and guidelines by requiring community colleges to specifically analyze the cost savings information identified by the Board when filing reimbursement claims for the following reasons:

- There is no requirement in statute or Board regulations that community college districts perform the analysis specified by the Board.
- The Commission does not have the authority to impose additional requirements on community college districts regarding this program.
- The current offsetting cost savings paragraph identifies the offsetting savings consistent with the language of Public Resources Code section 42925, subdivision (a), and Public Contract Code sections 12167 and 12167.1, and with the court's judgment and writ in *State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355).
- Information on cost savings is already available to the Board in the community colleges' annual report submitted to the Board pursuant to Public Resources Code section 42926, subdivision (b)(1).

Staff further recommends that the Commission deny the proposed language to amend Section IX of the parameters and guidelines to require that the claiming instructions include sufficient instructions to ensure that only additional expenses related to this mandate are included and that any offsetting savings are not included, for the following reasons:

- The requirement that only increased costs be claimed is already provided in the boilerplate language of Section IV of the parameters and guidelines.
- The offsetting cost savings are adequately described in Section VIII of the parameters and guidelines, the first sentence of which states that “[r]educd or avoided costs realized from implementation of the community college districts’ Integrated Waste Management plans *shall be identified and offset from this claim* as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1.” (Emphasis added.)
- The claiming instructions prepared by the State’s Controller’s Office are required to be derived from the test claim decision and the adopted parameters and guidelines. (Gov. Code, § 17558, subd. (b).)

Conclusion and Staff Recommendation

Staff recommends that the Commission deny the request of the Integrated Waste Management Board to amend the parameters and guidelines.

STAFF ANALYSIS

Requestor

Integrated Waste Management Board

Chronology

- 03/25/04 Statement of Decision adopted by Commission
- 03/30/05 Parameters and guidelines adopted by Commission
- 03/30/06 Integrated Waste Management Board files comments to the proposed statewide cost estimate and requests that the Commission amend the parameters and guidelines
- 04/10/06 Integrated Waste Management Board's request to amend the parameters and guidelines is issued for comment
- 10/26/06 Commission adopts statewide cost estimate
- 03/--/07 Integrated Waste Management Board and Department of Finance file petition for writ of mandate challenging the Statement of Decision and parameters and guidelines (Sacramento County Superior Court, Case No. 07CS00355)
- 06/30/08 Sacramento County Superior Court issues judgment and writ of mandate in Case No. 07CS00355 ordering Commission to amend the parameters and guidelines with respect to offsetting revenue and cost savings
- 09/26/08 Commission amends parameters and guidelines in compliance with the court's writ of mandate
- 12/--/08 Draft Staff Analysis issued on the request to amend the parameters and guidelines by the Integrated Waste Management Board

Background

The Board's Request to Amend the Parameters and Guidelines

This is a request filed by the Integrated Waste Management Board (hereafter "the Board") pursuant to Government Code section 17557, subdivision (d), to amend the parameters and guidelines for the *Integrated Waste Management* program.¹ If the Commission approves the Board's request, the amendments would be effective for costs incurred beginning July 1, 2005.

The Board requests that the parameters and guidelines be amended in Section VIII, Offsetting Cost Savings,² to include the following language requiring community college districts to analyze avoided disposal costs and other offsetting savings as a result of the test claim statutes when filing reimbursement claims.

¹ Exhibit A.

² Exhibit B, parameters and guidelines.

Only additional expenses related to this mandate may be included in a claim and offsetting savings to the same program experienced as a result of this same mandate shall be subtracted from the amount of the claim. Claimants shall analyze the following items in determining what to include in their claims:

Staffing:

Through the implementation of the program being claimed a reduction in staff hours (PYs) can be achieved. In order to determine any cost increases or decreases the claimant will need to evaluate the total staff required to implement the program being claimed prior to AB 75 and the staff needed to implement and operate the current program. All values identified must be calculated based on a conversion to the dollar values for the particular year being claimed.

Overhead:

Costs incurred for overhead, such as benefits, for the PYs identified under "staffing."

Materials:

Through the implementation of the program being claimed a reduction or elimination of supplies and materials may have been achieved. This could include, and is not limited to: White office paper, mixed office paper, cardboard, printed catalogs, postage, envelopes, and other office supplies.

Storage:

Through the implementation of this program being claimed a reduction or elimination of storage of supplies and materials may have been achieved. The elimination of storage is a cost savings that must be allotted to offset any costs associated to the implementation of the identified program(s) being claimed by the claimant.

Transportation Costs:

The transportation of supplies and waste materials has a cost. The claimant should determine how many trips staff was making to purchase, pick-up and deliver supplies needed for the program being claimed and the current level of the activity.

Claimant should also consider the cost incurred or avoided for the collection of waste materials associated with the activity being claimed.

Equipment:

Any costs associated with new/replacement equipment, including any costs avoided for maintenance of obsolete equipment.

Sale of Commodities:

This would include any and all revenues generated due to the sale of materials collected through the implementation of the specific program being claimed. This could include, but is not limited to white office paper, mixed office paper, cardboard, beverage containers, ferrous and nonferrous metals, glass, plastic, re-sale of used text books, compost, mulch, and firewood.

Avoided disposal fees:

Through the implementation of the AB 75 program(s) a facility will see a direct reduction in the amount of materials that would have been placed into a landfill or a trash dumpster on the campus. These direct savings are to be credited to the program based on today's disposal costs.

Sale of obsolete equipment:

Proceeds of any sales of obsolete equipment.

Other revenue related to program:

Dependent on the particular program or activity being submitted to the Commission for reimbursement several other factors can and will generate a cost savings.

The Board also requests that the following additional language be included in Section IX, State Controller's Claiming Instructions:

The claiming instructions shall include sufficient instructions to ensure that only additional expenses related to this mandate are included and that any offsetting savings, as described above, are not included.

The Board contends that the proposed amendments should be made "to more accurately capture the information necessary to provide accurate claims and a Statewide Cost Estimates [sic]."

History of the Claim

The *Integrated Waste Management* program requires community college districts to develop and adopt, in consultation with the Integrated Waste Management Board, an integrated waste management plan. Each community college is required to divert from landfills at least 25 percent of generated solid waste by January 1, 2002, and at least 50 percent by January 1, 2004. Community college districts are also required to submit annual reports to the Integrated Waste Management Board describing the calculations of annual disposal reduction and information on changes in waste generated or disposed for the year. The Commission approved the test claim and adopted the Statement of Decision on March 25, 2004.³

³ Exhibit C.

Parameters and guidelines were adopted in March 2005.⁴ In comments to the proposed parameters and guidelines, the Integrated Waste Management Board argued that the program would inevitably result in cost savings as a result of avoided disposal costs and recommended that the parameters and guidelines require information on cost savings in any claim submitted to the State Controller's Office. Similar to the Board's request in this item, the Board proposed that the Commission adopt the following costs/savings worksheet to be attached to the parameters and guidelines "as guidance for collecting relevant information."

Expenses

- *Staffing.* Through the implementation of the program being claimed a reduction in staff hours (PYs) can be achieved. In order to determine any cost increases or decreases the claimants will need to evaluate the total staff required to implement the program being claimed prior to AB 75 and the staff needed to implement and operate the current program. All values identified must be calculated based on a conversion to the dollar values for the particular year being claimed.
- *Overhead.* Costs incurred for overhead, such as benefits, for the PYs identified under "staffing."
- *Materials.* Through the implementation of the program being claimed a reduction or elimination of supplies and materials may have been achieved. This could include, and is not limited to: white office paper, mixed office paper, cardboard, printed catalogs, postage, envelopes, and other office supplies.
- *Storage.* Through the implementation of the program being claimed a reduction or elimination of storage of supplies and materials may have been achieved. The elimination of storage is a cost savings that must be allocated to offset any costs associated to the implementation of the identified program(s) being claimed by the claimants.
- *Transportation costs:* The transportation of supplies and waste materials has a cost. The claimants should determine how many trips staff was making to purchase, pick-up and deliver supplies needed for the program being claimed and the current level of the activity. It should be calculated based on a conversion of the previous programs' activities being converted to the dollar values for the particular year for which a claim is being submitted.

Claimants should also consider the cost incurred for the collection of waste materials associated with the activity being claimed.

- *Equipment.* Any costs associated with new/replacement equipment, including any costs avoided for maintenance of obsolete equipment.

⁴ Exhibit D.

- *Disposal fees.* Costs associated to the disposal of materials prior to the implementation of the specific program being implemented. Since the intent and impact of the legislation is to divert materials from the landfill, a direct savings is seen.
- *Other expenses related to program.* The claimants should take into consideration the specific program being claimed for reimbursement and identify all areas that have been impacted.

Revenue

- *Sale of commodities.* This would include any and all revenues generated due to the sale of materials collected through the implementation of the specific program being claimed. This could include, but is not limited to, white office paper, mixed office paper, cardboard, beverage containers, ferrous and nonferrous metals, glass, plastic, re-sale of used text books, compost, mulch, and firewood.
- *Avoided disposal fees.* Through the implementation of the AB 75 program(s) a facility will see a direct reduction in the amount of materials that would have been placed into a landfill or a trash dumpster on the campus. These direct savings are to be credited to the program based on today's disposal costs.
- *Sale of obsolete equipment.* Proceeds of any sales of obsolete equipment.
- *Other revenue related to program.* Dependent on the particular program or activity being submitted to the Commission for reimbursement several other factors can and will generate a cost savings. It is suggested that the claimants be required to identify all savings associated to the particular program or activity as per the findings of the Commission.⁵

In the parameters and guidelines analysis adopted in March 2005, the Commission found that community colleges are not required to identify in their reimbursement claims the potential costs savings that may result from avoiding disposal costs. The Commission also found that community college districts are not required by law to submit with their reimbursement claims a program worksheet recommended by the Board.⁶

Thus, the parameters and guidelines did not identify any offsetting cost savings for avoided disposal costs as a result of the mandate to divert solid waste.

In October 2006, the Commission adopted a statewide cost estimate in the amount of \$10,785,532 (with an average annual cost of \$1,198,392), covering fiscal years 1999-2000 through 2006-2007. The statewide cost estimate was based on 142 actual, unaudited, reimbursement claims filed by 27 community college districts for fiscal years 1999-2000 through 2004-2005, and estimated costs using the implicit price deflator for fiscal years 2005-2006 through 2006-2007. During the proceedings for the statewide cost

⁵ Exhibit D.

⁶ Exhibit D.

estimate, the Board contended that the Commission's failure to include offsetting cost savings in the parameters and guidelines resulted in inaccurate cost claims. The Board filed comments arguing that the statewide cost estimate should be set at zero since community college districts collectively reported to the Board the diversion of waste in a tonnage amount that equaled \$22 million in avoided disposal costs.⁷

The Integrated Waste Management Board and the Department of Finance then filed a petition for writ of mandate in March 2007, asking the court to set aside the Commission's decision granting the test claim and to require the Commission to issue a new Statement of Decision and parameters and guidelines that give full consideration to the community colleges' cost savings (e.g. avoided landfill disposal fees) and revenues (from recyclables) by complying with the test claim statutes. They contended that the Commission did not properly account for all the offsetting cost savings from avoided disposal costs, or offsetting revenues from the sale of recyclable materials in the Statement of Decision or parameters and guidelines. (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* Sacramento County Superior Court, Case No. 07CS00355.)

On May 29, 2008, the Sacramento County Superior Court issued its Ruling on Submitted Matter, finding that the Commission's rationale for the treatment of cost savings and revenues in the parameters and guidelines was erroneous and required that the parameters and guidelines be amended.⁸

With regard to cost savings, the court found that the reduction or avoidance of costs resulting from solid waste diversion activities represent savings that must be offset and deducted from the claim for costs incurred as a result of the mandated activities in accordance with Public Contract Code section 12167 and 12167.1. Cost savings may be determined from the calculations of annual solid waste disposal reduction or diversion that community colleges must annually report to the Board pursuant to Public Resources Code section 42926, subdivision (b)(1).⁹ The court further concluded that offsetting savings are limited by Public Contract Code section 12167 and 12167.1, which require community colleges to deposit cost savings into the Integrated Waste Management Account in the Integrated Waste Management Fund. These funds may, on appropriation by the Legislature, be spent by the Board to offset integrated waste management plan implementation costs. The cost savings that do not exceed \$2000 annually are continuously appropriated for the colleges to spend to offset implementing and administering the costs of the integrated waste management plan. Cost savings in excess of \$2000 annually are available for this same purpose when appropriated by the Legislature.¹⁰ The judgment and writ issued by the court on June 30, 2008, directed the Commission to amend the parameters and guidelines with respect to cost savings as follows:

⁷ Exhibit E.

⁸ Exhibit F.

⁹ Exhibit F, Ruling, page 7.

¹⁰ Exhibit F, Ruling, pages 8-9.

Amend the parameters and guidelines in Test Claim No. 00-TC-07 to require community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify and offset from their claims, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans.¹¹

The hearing on the parameters and guidelines on remand from the court took place on September 26, 2008. In addition to making the changes required by the court's writ, the Board requested that the Commission amend the parameters and guidelines to further require community college districts to provide information with their claims identifying all cost savings resulting from the plans, including amounts that exceed \$2000. The Board also requested that the Commission require community college districts to analyze the following categories of potential cost savings in determining what to include in their claims:

Staffing:

Through the implementation of the program being claimed a reduction in staff hours (PYs) can be achieved. In order to determine any cost increases or decreases the claimant will need to evaluate the total staff required to implement the program being claimed prior to AB 75 and the staff needed to implement and operate the current program. All values identified must be calculated based on a conversion to the dollar values for the particular year being claimed.

Overhead:

Costs incurred for overhead, such as benefits, for the PYs identified under "staffing."

Materials:

Through the implementation of the program being claimed a reduction or elimination of supplies and materials may have been achieved. This could include, and is not limited to: White office paper, mixed office paper, cardboard, printed catalogs, postage, envelopes, and other office supplies.

Storage:

Through the implementation of this program being claimed a reduction or elimination of storage of supplies and materials may have been achieved. The elimination of storage is a cost savings that must be allotted to offset any costs association to the implementation of the identified program(s) being claimed by the claimant.

¹¹ Exhibit F.

Transportation Costs:

The transportation of supplies and waste materials has a cost. The claimant should determine how many trips staff was making to purchase, pick-up and deliver supplies needed for the program being claimed and the current level of the activity.

Claimant should also consider the cost incurred or avoided for the collection of waste materials associated with the activity being claimed.

Equipment:

Any costs associated with new/replacement equipment, including any costs avoided for maintenance of obsolete equipment.

Sale of Commodities:

This would include any and all revenues generated due to the sale of materials collected through the implementation of the specific program being claimed. This could include, but is not limited to white office paper, mixed office paper, cardboard, beverage containers, ferrous and nonferrous metals, glass, plastic, re-sale of used text books, compost, mulch, and firewood.

Avoided disposal fees:

Through the implementation of the AB 75 program(s) a facility will see a direct reduction in the amount of materials that would have been placed into a landfill or a trash dumpster on the campus. These direct savings are to be credited to the program based on today's disposal costs.

Sale of obsolete equipment:

Proceeds of any sales of obsolete equipment.

Other revenue related to program:

Dependent on the particular program or activity being submitted to the Commission for reimbursement several other factors can and will generate a cost savings.

The Board argued that "this change is consistent with the Commission's statutes which provide that the 'reasonable reimbursement methodology' used should identify the costs to implement the mandate in a cost-efficient manner."¹²

The Commission disagreed with the Board's argument and denied the request. The Commission found that the request to require community college districts to provide offsetting savings information whether or not the offsetting savings generated exceeds the \$2000 continuous appropriation was not consistent with the statutes or the court's judgment and writ. Pages 6-8 of the analysis adopted by the Commission makes the following findings in this regard:

¹² Exhibit G.

Rather, as described below, the court interpreted the plain language of these statutes as requiring community college districts to deposit all cost savings resulting from their Integrated Waste Management plans in the Integrated Waste Management Account in the Integrated Waste Management Fund. The funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, and approval of the Integrated Waste Management Board, may be appropriated for the expenditure by those community college districts for the purposes of offsetting program costs.

Public Resources Code section 42925, subdivision (a), states the following:

Any cost savings realized as a result of the state agency integrated waste management plan shall, to the extent feasible, be redirected to the agency's integrated waste management plan to fund plan implementation and administration costs, in accordance with Sections 12167 and 12167.1 of the Public Contract Code.

Public Contract Code section 12167 states:

Revenues received from this plan or any other activity involving the collection and sale of recyclable materials in state and legislative offices located in state-owned and state-leased buildings, such as the sale of waste materials through recycling programs operated by the California Integrated Waste Management Board or in agreement with the board, shall be deposited in the Integrated Waste Management Account in the Integrated Waste Management Fund and are hereby continuously appropriated to the board, without regard to fiscal years, until June 30, 1994, for the purposes of offsetting recycling program costs. On and after July 1, 1994, the funds in the Integrated Waste Management Account may be expended by the board, only upon appropriation by the Legislature, for the purpose of offsetting recycling program costs.

Public Contract Code section 12167.1 states:

Notwithstanding Section 12167, upon approval by the California Integrated Waste Management Board, revenues derived from the sale of recyclable materials by state agencies and institutions that do not exceed two thousand dollars (\$2,000) annually are hereby continuously appropriated, without regard to fiscal years, for expenditure by those state agencies and institutions for the purposes of offsetting recycling program costs. Revenues that exceed two thousand dollars (\$2,000) annually shall be available for expenditure by those state agencies and institutions when appropriated by the Legislature. Information on the quantities of recyclable materials collected for recycling shall be provided to the board on an annual basis according to a schedule determined by the board and participating agencies.

The court interpreted these statutes as follows:

By requiring the redirection of cost savings from state agency IWM plans to fund plan implementation and administration costs “in accordance with Sections 12167 and 12167.1 of the Public Contract Code,” section 42925 assures that cost savings realized from state agencies’ IWM plans are handled in a manner consistent with the handling of revenues received from state agencies’ recycling plans under the State Assistance for Recycling Markets Act. Thus, in accordance with section 12167, state agencies, along with California Community Colleges which are defined as state agencies for purposes of IWM plan requirements in Public Resources Code section 42920 et seq. [citations omitted], must deposit cost savings resulting from IWM plans in the Integrated Waste Management Account in the Integrated Waste Management Fund; the funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the Integrated Waste Management Board for the purpose of offsetting IWM plan costs. In accordance with section 12167.1 and notwithstanding section 12167, cost savings from the IWM plans of the agencies and colleges that do not exceed \$2000 annually are continuously appropriated for expenditure by the agencies and colleges for the purpose of offsetting IWM plan implementation and administration costs; cost savings resulting from IWM plans in excess of \$2000 annually are available for such expenditure by the agencies and colleges when appropriated by the Legislature.¹³

Accordingly, the Board’s request is not consistent with these statutes or the court’s judgment and writ. Thus, the Commission does not have jurisdiction to make the changes requested by the Board.

The Commission also found that the Board’s request to require community college districts to analyze specified categories of potential cost savings in staffing, overhead, materials, etc., when filing their claims was not required by the test claim statutes and not consistent with the court’s ruling, judgment, and writ. The Commission’s findings are as follows:

The Commission’s jurisdiction on this item is limited by the court’s judgment and writ. The court’s judgment and writ do not direct the Commission to include the additional language requested by the Board in the parameters and guidelines.

The court agreed with the Board that community college districts are required by Public Resources Code section 42925, subdivision (a), to redirect any cost savings realized as a result of the diversion activities to fund the district’s implementation and administration of the integrated waste management plan. But the court determined that the amount or value of cost savings is already available from the annual report the community colleges provide to the Board

¹³ Exhibit F, Ruling, page 9.

pursuant to Public Resources Code section 42926, subdivision (b).¹⁴ This report is required to include the district's "calculations of annual disposal reduction" and "information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors." The court's writ requires the Commission to amend the parameters and guidelines as follows:

Amend the parameters and guidelines in Test Claim No. 00-TC-07 to require community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. *to identify and offset from their claims, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans.*

The writ does not direct the Commission to amend the parameters and guidelines to require community college districts to analyze the potential categories of cost savings identified by the Board.

Thus, the offsetting cost language adopted by the Commission on September 26, 2008, tracks the statutory language of Public Resources Code sections 42925 and Public Contract Code sections 12167 and 12167.1. Section VIII of the parameters and guidelines, Offsetting Cost Savings, states the following:

VIII. OFFSETTING COST SAVINGS

Reduced or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans shall be identified and offset from this claim as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1.

Pursuant to these statutes, community college districts are required to deposit cost savings resulting from their Integrated Waste Management plans in the Integrated Waste Management Account in the Integrated Waste Management Fund; the funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the California Integrated Waste Management Board for the purpose of offsetting Integrated Waste Management plan costs. Subject to the approval of the California Integrated Waste Management Board, cost savings by a community college that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community college for the purpose of offsetting Integrated Waste Management program costs. Cost savings exceeding two thousand dollars (\$2,000) annually may be available for expenditure by the community college only when appropriated by the Legislature. To the extent so approved or appropriated and applied to the college, these amounts shall

¹⁴ Exhibit F, Ruling, page 7.

be identified and offset from the costs claimed for implementing the Integrated Waste Management Plan.¹⁵

Issue 1: Should the Commission amend Section VIII of the parameters and guidelines to require community college districts to analyze specified categories of potential cost savings in staffing, overhead, materials, etc., when filing their claims?

The Board requests that the parameters and guidelines be amended in Section VIII, Offsetting Cost Savings, to include the following language requiring community college districts to analyze avoided disposal costs and other offsetting savings as a result of the test claim statutes when filing reimbursement claims.

Only additional expenses related to this mandate may be included in a claim and offsetting savings to the same program experienced as a result of this same mandate shall be subtracted from the amount of the claim. Claimants shall analyze the following items in determining what to include in their claims:

Staffing:

Through the implementation of the program being claimed a reduction in staff hours (PYs) can be achieved. In order to determine any cost increases or decreases the claimant will need to evaluate the total staff required to implement the program being claimed prior to AB 75 and the staff needed to implement and operate the current program. All values identified must be calculated based on a conversion to the dollar values for the particular year being claimed.

Overhead:

Costs incurred for overhead, such as benefits, for the PYs identified under "staffing."

Materials:

Through the implementation of the program being claimed a reduction or elimination of supplies and materials may have been achieved. This could include, and is not limited to: White office paper, mixed office paper, cardboard, printed catalogs, postage, envelopes, and other office supplies.

Storage:

Through the implementation of this program being claimed a reduction or elimination of storage of supplies and materials may have been achieved. The elimination of storage is a cost savings that must be allotted to offset any costs associated to the implementation of the identified program(s) being claimed by the claimant.

¹⁵ Exhibit B.

Transportation Costs:

The transportation of supplies and waste materials has a cost. The claimant should determine how many trips staff was making to purchase, pick-up and deliver supplies needed for the program being claimed and the current level of the activity.

Claimant should also consider the cost incurred or avoided for the collection of waste materials associated with the activity being claimed.

Equipment:

Any costs associated with new/replacement equipment, including any costs avoided for maintenance of obsolete equipment.

Sale of Commodities:

This would include any and all revenues generated due to the sale of materials collected through the implementation of the specific program being claimed. This could include, but is not limited to white office paper, mixed office paper, cardboard, beverage containers, ferrous and nonferrous metals, glass, plastic, re-sale of used text books, compost, mulch, and firewood.

Avoided disposal fees:

Through the implementation of the AB 75 program(s) a facility will see a direct reduction in the amount of materials that would have been placed into a landfill or a trash dumpster on the campus. These direct savings are to be credited to the program based on today's disposal costs.

Sale of obsolete equipment:

Proceeds of any sales of obsolete equipment.

Other revenue related to program:

Dependent on the particular program or activity being submitted to the Commission for reimbursement several other factors can and will generate a cost savings.

The Board contends that the proposed amendments should be made "to more accurately capture the information necessary to provide accurate claims and a Statewide Cost Estimates [sic]."

Staff recommends that the Commission deny the request to amend the parameters and guidelines by requiring community colleges to specifically analyze the cost savings information identified by the Board when filing reimbursement claims. There is no requirement in statute or Board regulations that community college districts perform the analysis specified by the Board. Moreover, the Commission does not have the authority to impose additional requirements on community college districts regarding this program. Rather, section 1183.1, subdivision (a)(8), of the Commission's regulations simply requires that the parameters and guidelines include an identification of offsetting savings in the same program experienced because of the state statutes or executive orders found

to contain a mandate. The current offsetting cost savings paragraph identifies the offsetting savings consistent with the language of Public Resources Code section 42925, subdivision (a), and Public Contract Code sections 12167 and 12167.1, and with the court's judgment and writ. The language is also consistent with Public Resources Code section 42927, subdivision (b), which becomes operative and effective on January 1, 2009. (Stats. 2008, ch. 343, Sen. Bill No. 1016.) Section 42927 is consistent with the court's ruling and judgment, and requires a community college to "expend all cost savings that result from implementation of the district's integrated waste management plan pursuant to this chapter to fund the continued implementation of the plan consistent with the requirement that revenues from the sale of recyclable materials be used to offset recycling program costs, as specified in Sections 12167 and 12167.1 of the Public Contract code."

Furthermore, the Board incorrectly argues that "this change is consistent with the Commission's statutes which provide that the 'reasonable reimbursement methodology' used should identify the costs to implement the mandate in a cost-efficient manner." A reasonable reimbursement methodology is defined in Government Code section 17518.5 to mean a formula for reimbursing school districts for costs mandated by the state that is based on general allocation formulas, uniform cost allowances, and other approximations of local costs. Reasonable reimbursement methodologies are used in lieu of a district maintaining detailed documentation of actual local costs and may be developed by the Department of Finance, the State Controller's Office, an affected state agency, a claimant, or an interested party. The Commission has not adopted a reasonable reimbursement methodology in this case, and one has not yet been proposed.

Finally, the Board contends that the proposed amendments are necessary to capture information necessary to provide accurate claims. But the information on cost savings is already available to the Board. The court found that cost savings can be determined from the calculations of annual solid waste disposal reduction or diversion included in the community colleges' annual report to the Board pursuant to Public Resources Code section 42926, subdivision (b)(1).¹⁶ In comments to the proposed statewide cost estimate, the Board was able to determine from this report the dollar amount of cost savings for the fiscal years in question and argued that the statewide cost estimate should be set at zero "since community college districts collectively reported to the Board the diversion of waste in a tonnage amount that equaled \$22 million in avoided disposal costs."¹⁷

Therefore, staff recommends that the Commission deny the Board's request to amend the parameters and guidelines to require community colleges to specifically analyze the cost savings information identified by the Board when filing reimbursement claims.

¹⁶ Exhibit F, Ruling, page 7.

¹⁷ Exhibit E.

Issue 2: Should the Commission amend Section IX of the parameters and guidelines to add language regarding the State Controller's claiming instructions?

Section IX of the parameters and guidelines states the following:

IX. STATE CONTROLLER'S REVISED CLAIMING INSTRUCTIONS

The Controller shall, within 60 days after receiving amended parameters and guidelines prepare and issue revised claiming instructions for mandates that require state reimbursement after any decision or order of the commission pursuant to section 17558. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission. Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission. In preparing revised claiming instructions, the Controller may request the assistance of other state agencies. (Gov. Code, § 17558, subdivision (c).)

If revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

The Board requests that the Commission add the following language to Section IX:

The claiming instructions shall include sufficient instructions to ensure that only additional expenses related to this mandate are included and that any offsetting savings, as described above, are not included.

Staff recommends that the Commission deny the proposed language. The requirement that only increased costs be claimed is already provided in the boilerplate language of Section IV of the parameters and guidelines, Reimbursable Activities, which states that:

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

Furthermore, staff finds that offsetting cost savings are adequately described in Section VIII of the parameters and guidelines, the first sentence of which states that “[r]educed or avoided costs realized from implementation of the community college districts’ Integrated Waste Management plans *shall be identified and offset from this claim* as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1.” (Emphasis added.)

The claiming instructions prepared by the State's Controller's Office are required to be derived from the test claim decision and the adopted parameters and guidelines. (Gov. Code, § 17558, subd. (b).)

Accordingly, staff recommends that the Commission deny the proposed amendments to Section IX of the parameters and guidelines.

Conclusion and Staff Recommendation

Staff recommends that the Commission deny the request of the Integrated Waste Management Board to amend the parameters and guidelines.

Commission on State Mandates

Original List Date: 4/7/2006
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Issue: Integrated Waste Management

Mailing Information: Draft Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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