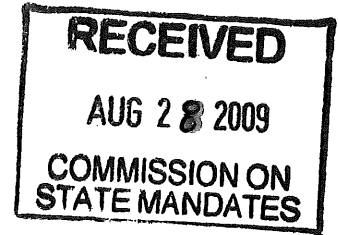


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August 27, 2009

VIA FEDEX

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Draft Parameters and Guidelines Submitted by Cities Regarding Transit
Trash Receptacles Required by Los Angeles Regional Water Quality
Control Board Executive Order

Dear Ms. Higashi:

Enclosed please find the original plus seven copies of the draft Parameters and Guidelines submitted by the Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Norwalk, Rancho Palos Verdes, Signal Hill, Vernon and Westlake Village concerning the state mandate found by the Commission in its Statement of Decision dated July 31, 2009 regarding trash receptacles required under the Los Angeles Regional Board municipal stormwater permit.

Please contact the undersigned if you have any questions.

Very truly yours,



David W. Burhenn

Encl.

cc: Mailing List (w/encl.)

Commission on State Mandates

Original List Date:

Mailing Information: Notice of Adopted SCE

Last Updated:

List Print Date: 08/04/2009

Mailing List

Claim Number: 03-TC-04, 19, 20, 21

Issue: Municipal Stormwater and Runoff Discharges

Related Matter(s)

03-TC-04	Transit Trash Receptacles
03-TC-19	Inspection of Industrial/Commercial Facilities
03-TC-20	Waste Discharge Requirements
03-TC-21	Stormwater Pollution Control Requirements

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Memorandum in Support of Parameters and Guidelines submitted by Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Norwalk, Rancho Palos Verdes, Signal Hill, Vernon and Westlake Village

The draft Parameters and Guidelines (“Ps & Gs”) proposed by the Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Norwalk, Rancho Palos Verdes, Signal Hill, Vernon and Westlake Village (“Claimants”) can be found on pages 2-11. These Ps & Gs provide the basis for reimbursing local agencies for certain costs incurred in implementing the municipal storm permit issued for the County of Los Angeles and cities therein, California Regional Water Quality Control Board, Los Angeles Region, Executive Order Number 01-182, Permit Number CAS004001, December 13, 2001 (“Permit”).

The proposed Ps and Gs follow and reference the July 31, 2009 decision of the Commission on State Mandates (“Commission”), which found that the costs of various activities relating to the placement and maintenance of trash receptacles at transit stops, mandated by the Permit, to be reimbursable.

The proposed Ps & Gs set forth that those local agencies specified in the Permit that are not covered by a trash Total Maximum Daily Load (“TMDL”) program are eligible claimants. The proposed Ps & Gs provide that eligible claimants are entitled to reimbursement for costs incurred on and after July 1, 2002, the date set in the Commission’s Statement of Decision.

Reimbursable Activities

The reimbursable activities set forth in the proposed Ps & Gs relate to the requirement in the Permit to

Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

Among the activities reasonably necessary to accomplish the above mandate are planning (including identifying trans stops, evaluating and selecting trash receptacle type, evaluation of placement of trash receptacles and specification and drawing preparation); preliminary engineering work (construction contract preparation and specification review, bid advertising and award process); construction and installation of trash receptacles (including fabrication and installation of receptacles and foundations and construction management); and trash collection and receptacle maintenance (including repair and replacement of receptacles as required, changes of receptacle locations to match changes in transit stops and fees associated with waste disposal).

Reimbursement Options

In the proposed Ps & Gs, Claimants propose two alternatives for reimbursement: actual cost method (for trash receptacle installation and maintenance) and time study method (for trash receptacle maintenance).

The proposed time study protocol requires that all reimbursable time for an employee on contracted staff be totaled and then multiplied by their productive hourly rate, as that term is defined in the State Controller's Office Annual Claiming Instruction Manual, found at www.sco.ca.gov. If a time study sample is used to claim time for four through nine staff members, at least two staff members should be time surveyed. If 10 or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken. Appropriate time records, as set forth in the proposed Ps & Gs, shall be used to support the time study.

In addition, while not included in the proposed Ps & Gs, Claimants plan to revise the Ps & Gs to provide a "reasonable reimbursement methodology" ("RRM") unit cost reimbursement rate option. This RRM option would meet pertinent requirements of Government Code section 17518.5.

Claimants' proposed Ps & Gs are presented on the following pages:

PARAMETERS AND GUIDELINES

California Regional Water Quality Control Board,
Los Angeles Region, Executive Order Number 01-182,
December 13, 2001, Permit Number CAS004001,
Part 4, Section F.5.c. 3.

Transit Trash Receptacles

I. Summary of the Mandate

The consolidated test claim, filed by the County of Los Angeles and several cities, alleged various activities related to the placement and maintenance of trash receptacles and inspection of various facilities to reduce stormwater pollution in compliance with a permit issued by the Los Angeles Regional Water Quality Control Board ("LARWQCB"). The Commission found on July 31, 2009 that the activity called for in Part 4F5c3 of the permit was a reimbursable state mandate on local agencies subject to the permit that are not subject to a trash total maximum daily load ("TMDL"): "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary." The Commission found that this requirement was not a federal mandate under the Clean Water Act and that it was a state mandate requiring a new program or higher level of service that could not

be funded through fee authority within the meaning of Government Code section 17556, subdivision (d).

The Commission also found that the other issues raised by the consolidated test claim, relating to Parts 4C2a, 4C2b and 4E of the permit and requiring inspections of various facilities, while not federal mandates under the Clean Water Act, were not reimbursable state mandates because the claimants had fee authority within the meaning of Government Code section 17556, subdivision (d), sufficient to pay for the inspections.

The Commission approved the consolidated test claim, pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514, for the *increased costs* in performing the following activities only:

1. Planning (including identifying transit stops, evaluating and selecting trash receptacle type, evaluation of placement of trash receptacles and specification and drawing preparation); preliminary engineering work (construction contract preparation and specification review, bid advertising and award process); construction and installation of trash receptacles (including fabrication and installation of receptacles and foundations and construction management); and
2. Trash collection and receptacle maintenance (including repair and replacement of receptacles as required).

II. Eligible Claimants

The County of Los Angeles, Los Angeles County Flood Control District and all cities covered under the municipal storm water permit issued by the LARWQCB in Order No. 01-182, Permit No. CAS0040001 ("Permit"), to the extent that the same are not or were not subject to coverage under a trash TMDL.

III. Period of Reimbursement

The test claim executive order took effect on December 13, 2001, the same date as the Permit. The requirement to install trash receptacles commenced with the effective date of the Permit and continued until February 3, 2003 for all trash receptacles. The requirement to maintain the trash receptacles is continuing.

Government Code section 17557, as amended by Statutes of 1998, Chapter 681 (which became effective on September 22, 1998), states that a test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. On September 30, 2003, the County of Los Angeles and the Cities of Arcadia, Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena and West Covina filed test claims for this mandated program,

establishing eligibility for reimbursement. The Commission originally refused jurisdiction of the test claims pursuant to Government Code section 17516. After litigation, the California Court of Appeal for the Second District held that the provisions of Section 17516 were unconstitutional and issued a writ directing the Commission to fully consider the test claims. The test claims were re-filed in October and November 2007 and were considered by the Commission to be filed as of September 30, 2003. Thus, the reimbursement period is considered to have begun on July 1, 2002.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If the total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. Reimbursable Activities

For each eligible claimant, all direct and indirect costs of labor, materials, supplies, fixed assets, contracted services, training and travel for the performance of the activities listed below are eligible for reimbursement.

Reimbursement claims for the performance listed below shall be based on actual or estimated costs as provided in Government Code section 17560.

A. Installation of Trash Receptacles

1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
2. Select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and/or drawings.
3. Contract preparation, specification review process, bid advertising, and review and award of bid.
4. Purchase receptacles/pads and/or construct receptacles/pads and install receptacles/pads.

B. Maintenance of Trash Receptacles

1. Collection of trash on routine basis, including trash collection and disposal at disposal/recycling facility.

2. Inspection of receptacles for wear, cleaning, emptying, and other maintenance needs.
3. Maintenance of receptacles and pads, including painting, cleaning and repair of receptacles and pads, replacement of liners, and cost of paints, cleaning supplies and liners.
4. Replacement of individual damaged or missing receptacles or pads, including costs of purchase and installation of replacement receptacles or pads and disposal/recycling of replaced receptacles or pads.
5. Movement (including replacement if required) of receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.
6. General replacement of receptacles, including the steps identified in A(2-4) above.

Methods for Claiming Costs

Eligible claimants must use the actual cost method to claim costs for the initial installation of trash receptacles. Under this method, claimants will submit documentation for the actual reimbursable direct and indirect costs incurred for the mandate reflected in Section A(1-4) above.

Eligible claimants may use either the actual cost method and/or the time study method to claim costs for the maintenance of trash receptacles.

Actual Cost Method: Claimants will provide suitable documentation to reflect the actual reimbursable direct and indirect costs incurred for the mandated reflected in Section A and B above.

Time Study Method: A claimant may use the time study method to support labor (salary, benefit and associated indirect) costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office. The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein.

The time study protocol proposed here requires that all reimbursable time for an employee on contracted staff be totaled and then multiplied by their productive hourly rate, as that term is defined in the State Controller's Office Annual Claiming

Instruction Manual, found at www.sco.ca.gov. If a time study sample is used to claim for four through nine staff, at least two staff should be time surveyed. If 10 or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken. If a claimant uses the time study method, a representative sample of the hours devoted to the maintenance of trash receptacles over at least a two-month period shall be taken.

Time records used to support the time study shall:

- i. Reflect an after-the-fact distribution of each employee's actual activity;
- ii. Account for the total activity for which each employee is compensated;
- iii. Account for the total labor hours of the month;
- iv. Be signed and dated by the employee not later than the end of the pay period that follows the pay period covered by the report; and
- v. Document, by signature or initials and date, supervisor approval.

V. Claim Preparation and Submission

Each claim for reimbursement must be timely filed and must identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of these Parameters and Guidelines.

A. Direct Costs

Direct costs are defined as costs that can be traced to specific goods, services, programs, activities or functions and shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s) and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed, specify the actual time devoted to each activity by each employee, the productive hourly rate, and related fringe benefits.

Reimbursement for personnel services includes compensation paid for salaries, wages, and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and workers' compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

Only expenditures that can be identified as direct costs of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Show the inclusive dates when services were performed and itemize all costs for these services. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Travel

Travel for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination point(s) and travel costs. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

5. Training

The cost of training an employee to perform the mandated activities, as specified in Section IV of these Parameters and Guidelines, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

6. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

B. Indirect Costs

Compensation for indirect costs is eligible for reimbursement. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other incurred for the same purpose, in like circumstances, has been claimed as a direct costs.

Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out the mandated program and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) pursuant to the Office of Management and Budget (OMB) Circular A-87.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. Supporting Data and Record Retention

For auditing purposes, all costs claimed shall be traceable to source documents (e.g. employee time records, cost allocation reports, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, time studies, etc.) that show evidence of the validity of such costs and their relationship to this mandate. All documentation in support of claimed costs shall be made available to the State Controller's Office, as may be requested. Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim was filed or last amended, which is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller

during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. Offsetting Savings and Other Reimbursements

Any reimbursement for this mandated received from any source, including state or federal reimbursement, shall be identified and deducted from a claim.

VIII. State Controller's Claiming Instructions

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted Parameters and Guidelines from the Commission, to assist local agencies in claiming costs to be reimbursed. The claiming instructions shall be derived from the Statement of Decision and the Parameters and Guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute notice of the right of the local agencies to file reimbursement claims, based upon the Parameters and Guidelines adopted by the Commission.

IX. Remedies Before the Commission

Upon request of a local agency, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the Parameters and Guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the Parameters and Guidelines as directed by the Commission.

X. State Controller's Office Required Certification

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's office claiming instructions, for those costs mandated by the executive order contained herein.

XI. Parameters and Guidelines Amendments

Requests may be made to amend the Parameters and Guidelines pursuant to Government Code section 17557, subdivision (d) and California Code of Regulations, title 2, section 1183.2.

Pursuant to title 2, California Code of Regulations, section 1183.2, Parameters and Guidelines amendments filed before the deadline for initial claims as

specified in the claiming instructions shall apply to all years eligible for reimbursement as defined in the original Parameters and Guidelines. A Parameters and Guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for the fiscal year.

XII. Legal and Factual Basis for Parameters and Guidelines

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the Parameters and Guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.