STATE OF CALIFORNIA GRAY DAVIS, *Governor*

COMMISSION ON STATE MANDATES
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July 3, 2000

Mr. Keith Petersen
President
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Mr. Paige Vorhies
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

RE: **Staff Analysis**
Incorrect Reduction Claim
Removal of Chemicals
Education Code Section 49411
Statutes of 1984, Chapter 1107
Panama-Buena Vista Union School District, Claimant
CSM 99-4298-I-02

Dear Mr. Petersen and Mr. Vorhies:

The analysis of this incorrect reduction claim (IRC) is enclosed. The IRC is tentatively set for hearing on August 24, 2000 at the State Capitol, Sacramento, California. Comments on the analysis may be submitted in writing as provided in the Commission's regulations (Cal. Code Regs, tit. 2, § 1182.2.).

Pursuant to your request, a prehearing for this item will be scheduled for Friday, July 28, 2000 (notice to follow). Please call Piper Rodrian at (916) 323-3562 if you have any questions.

Sincerely,

SHIRLEY OPIE
Assistant Executive Director
Commission on State Mandates

c: Ms. Kathryn Harker, SCO

Encl.: Analysis

Hearing Date: July 27, 2000
File Number: f:\mandates\1999\4298-I-02\sa
Document Date: June 30, 2000

ITEM

STAFF ANALYSIS
INCORRECT REDUCTION CLAIM

Statutes of 1984, Chapter 1107

Education Code Section 49411

Removal of Chemicals

Executive Summary

Background

Existing law requires the Commission on State Mandates (Commission) to hear and decide a claim that the State Controller's Office (SCO) has incorrectly reduced payments to local agencies or school districts. If the Commission determines that a reimbursement claim was incorrectly reduced, the Commission's regulations require the Commission to send its Statement of Decision to the SCO and request that the costs in the claim that were incorrectly reduced be reinstated.

On November 29, 1999, the Panama-Buena Vista Union School District filed an Incorrect Reduction Claim (IRC) on the *Removal of Chemicals* program.

The Removal of Chemicals Program

This Incorrect Reduction Claim involves legislation requiring the California Department of Education (CDE), in cooperation with the Division of Occupational Safety and Health within the Department of Industrial Relations, to 1) formulate a listing of chemical compounds used in school programs that includes the potential hazards and estimated shelf life of each compound, and 2) to develop guidelines for school districts for the regular removal and disposal of chemicals.

Pursuant to the CDE Guidelines and the test claim legislation, school districts are required to 1) implement and maintain a program for the regular removal and disposal of chemicals with elapsed shelf-lives as determined by the CDE Guidelines, and 2) certify to the Superintendent of Public Schools whether the district is in compliance with those Guidelines. Education Code section 49411, as added by Statutes of 1984, Chapter 1107, required this certification to take place on or before January 1, 1986. This deadline was later changed to June 30, 1988.[1]

On July 28, 1988, the Commission determined that the test claim legislation constituted a reimbursable state mandated program and that the CDE Guidelines are an "executive order" as defined by Government Code section 17516. The "executive order" required school districts to

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[1] Although the statute required the CDE to develop the guidelines on or before September 1, 1985, the guidelines as contained in the CDE Science Safety Handbook were not issued until October 1987. Therefore, school districts could not certify as to their compliance with the guidelines by the statutory deadline of January 1, 1986. The CDE issued a new certification date of June 30, 1988. Statutes of 1994, Chapter 840, amended section 49411 to remove the reference to the certification requirement. (See Issue 1.)

comply with the Guidelines for the regular removal and disposal of all chemicals whose shelf life had elapsed.

On October 26, 1989, the Commission adopted the Parameters and Guidelines for this mandate. The Parameters and Guidelines allow reimbursement of costs incurred for removal and disposal of non-retrograde and retrograde chemicals after enactment of Statutes of 1984, Chapter 1107, but before the January 30, 1988 certification deadline. They also allow a one-time reimbursement of certification costs incurred before the deadline. After the deadline, only ongoing costs for removal and disposal of non-retrograde chemicals are reimbursable.

Following issuance of the SCO's claiming instructions, the Panama-Buena Vista Union School District (claimant) submitted a reimbursement claim for Fiscal Year 1995-96, which was subsequently reduced by the SCO. The claimant contended that the SCO incorrectly reduced their reimbursement claim and filed an IRC with the Commission on November 29, 1999.

The SCO originally reduced the claim for the following reasons: "costs not mandated" ($1,629) and "late claim penalty" ($57). However, during their review of the IRC, the SCO explained that they discovered the claimant had not met the certification requirement included in the Parameters and Guidelines. Consequently, the SCO entirely disallowed the claim stating that the district was "not an eligible claimant." Therefore, the SCO reduced the $2,384 claimed to $0.

Claimant's Position

The claimant disputed both the original and subsequent SCO reductions, with the exception of the late penalties, and submitted the following:

- The certification requirement in the Parameters and Guidelines does not preclude a non-certified district from being reimbursed for costs incurred after June 30, 1988.
- The SCO does not have the authority to reduce the claim.
- The SCO did not have a legal basis for its actions and their authority properly was not properly exercised.
- Costs for "Shop Inspections and Review of Chemical Inventory" and "Attendance of a Hazardous Materials Instructors Conference" Are Reimbursable Activities Under the Parameters and Guidelines.

SCO Position

The SCO explained that, during their review of the IRC, they discovered that the claimant had not met the certification requirement included in the Parameters and Guidelines for this mandate. The SCO therefore submitted that the district did not appear to be an eligible claimant. They noted that clarification by the Commission of its intention by this requirement (i.e., whether it was met to preclude a non-certified district from being reimbursed for costs after the deadline for certification) would eliminate uncertainty in this regard. If the Commission determined the claimant was eligible, the SCO continued to maintain that their original reductions were appropriate because the costs claimed were not mandated as far as could be determined from the information provided by the claimant.

Conclusion and Staff Recommendation

Staff finds that:

- The certification requirement in the Parameters and Guidelines pertains to the initial clean-up period (the date of enactment of Statutes of 1984, Chapter 1107, through June 30, 1988) and not to ongoing activities. Staff finds that the requirement does not preclude a non-certified district from being reimbursed for costs incurred after June 30, 1988 and therefore the district is an eligible claimant.
- Case law and statute provide the SCO with the authority to audit claims for legality and correctness, and to adjust the claims for reimbursement if they are excessive or unreasonable. The SCO is provided with clear authority to reduce the claim.
- The SCO is required, both under the Constitution and statute to conduct audits of claims prior to paying them. The SCO states that it conducted a desk audit of the claim. There is nothing in this section nor in the Attorney General's Opinion which defines the scope of the SCO's audit or the manner in which the audit may be conducted. Accordingly, staff concludes that the allegations that the SCO did not perform a proper audit are not substantiated.
- The claims involving "Shop Inspections and Review of Chemical Inventory" are reimbursable in accordance with the Parameters and Guidelines. Section V, Reimbursable Costs, Component B, Ongoing Activities, subpart 1 allows reimbursement of duties related to compliance with the mandate. Specifically, subparts 2 and 3 provide for reimbursement of inventory costs.
- The claim involving "Attendance of a Hazardous Materials Instructors Conference," is not reimbursable because the documentation provided by the claimant to the SCO was not sufficient to demonstrate how the course was related to the implementation of the mandate.

Accordingly, staff recommends that the Commission make the following findings:

- The district is an eligible claimant.
- The SCO has the authority to reduce the claim and that their authority was properly exercised.
- The SCO incorrectly reduced the claims involving "Shop Inspections and Review of Chemical Inventory" and direct staff to notify the SCO that these costs should be reinstated.
- The SCO correctly reduced the portion of the IRC regarding the claim for "Attendance of a Hazardous Materials Instructors Conference."

Chronology

10-26-89	Parameters and Guidelines adopted by the Commission
06-22-99	SCO notified claimant of reduction of claim
07-12-99	Claimant requested SCO to explain reduction
11-29-99	Claimant filed Incorrect Reduction Claim
12-08-99	SCO notified claimant of subsequent review and entire reduction of claim
03-01-00	SCO submitted comments on Incorrect Reduction Claim
03-02-01	Claimant filed rebuttal to SCO comments
07-03-00	Draft Staff Analysis issued

Background

Existing law requires the Commission on State Mandates (Commission) to hear and decide a claim that the State Controller's Office (SCO) has incorrectly reduced payments to local agencies or school districts. If the Commission determines that a reimbursement claim was incorrectly reduced, the Commission's regulations require the Commission to send its Statement of Decision to the SCO and request that the costs in the claim that were incorrectly reduced be reinstated.

On November 29, 1999, the Panama-Buena Vista Union School District filed an Incorrect Reduction Claim (IRC) on the *Removal of Chemicals* program.[2]

The Removal of Chemicals Program

This Incorrect Reduction Claim involves legislation requiring the California Department of Education (CDE), in cooperation with the Division of Occupational Safety and Health within the Department of Industrial Relations, to 1) formulate a listing of chemical compounds used in school programs that includes the potential hazards and estimated shelf life of each compound, and 2) to develop guidelines for school districts for the regular removal and disposal of chemicals.

Pursuant to the CDE Guidelines and the test claim legislation, school districts are required to 1) implement and maintain a program for the regular removal and disposal of chemicals with elapsed shelf-lives as determined by the CDE Guidelines, and 2) certify to the Superintendent of Public Schools whether the district is in compliance with those Guidelines. Education Code section 49411, as added by Statutes of 1984, Chapter 1107, required this certification to take place on or before January 1, 1986. This deadline was later changed to June 30, 1988.[3]

On July 28, 1988, the Commission determined that the test claim legislation constituted a reimbursable state-mandated program, and that the CDE Guidelines are an "executive order" as defined by Government Code section 17516. The "executive order" required school districts to

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[2] Exhibit A, IRC.

[3] Although the statute required the CDE to develop the guidelines on or before September 1, 1985, the guidelines as contained in the CDE Science Safety Handbook were not issued until October 1987. Therefore, school districts could not certify as to their compliance with the guidelines by the statutory deadline of January 1, 1986. The CDE issued a new certification date of June 30, 1988. Statutes of 1994, Chapter 840, amended section 49411 to remove the reference to the certification requirement. (See Issue 1.)

comply with the Guidelines for the regular removal and disposal of all chemicals whose shelf life had elapsed.

On October 26, 1989, the Commission adopted the Parameters and Guidelines for this mandate. The Parameters and Guidelines allow reimbursement of costs incurred for removal and disposal of non-retrograde and retrograde chemicals after enactment of Statutes of 1984, Chapter 1107, but before the January 30, 1988 certification deadline. They also allow a one-time reimbursement of certification costs incurred before the deadline. After the deadline, only ongoing costs for removal and disposal of non-retrograde chemicals are reimbursable.

Following issuance of the SCO's claiming instructions, the Panama-Buena Vista Union School District (claimant) submitted a reimbursement claim for Fiscal Year 1995-96, which was subsequently reduced by the SCO. The claimant contended that the SCO incorrectly reduced their reimbursement claim and filed an IRC with the Commission on November 29, 1999.

The SCO originally reduced the claim for the following reasons: "costs not mandated" ($1,629) and "late claim penalty" ($57). However, during their review of the IRC, the SCO explained that they discovered the claimant had not met the certification requirement included in the Parameters and Guidelines. Consequently, the SCO entirely disallowed the claim stating that the district was "not an eligible claimant." Therefore, the SCO reduced the $2,384 claimed to $0.

Staff Analysis

Claimant's Position[4]

The claimant disputed both the original and subsequent SCO reductions, with the exception of the late penalties, and submitted the following:

- The certification requirement in the Parameters and Guidelines does not preclude a non-certified district from being reimbursed for costs incurred after June 30, 1988. The claimant contended that:

  The SCO has fabricated a condition precedent by submitting that certification is required for reimbursement of costs incurred after the June 30, 1988 deadline.

  Education Code section 49411 does not establish initial certification as a prerequisite to future reimbursement. Amendment of the section in 1994, for purposes of code maintenance, removes the certification requirement, which supports the argument that the certification did not pertain to ongoing activities.

  The test claim decision and the Parameters and Guidelines provide for ongoing costs. The Commission addressed this as Issue 3 in the staff analysis at the July 28, 1988 test claim hearing and determined that costs of compliance with the guidelines would be ongoing as long as the guidelines remain in effect. The SCO's interpretation of the Parameters and Guidelines is inconsistent with a full reading of that document and indicates a misunderstanding of the reimbursement period distinction.

- The SCO did not have the authority to reduce the claim. The claimant maintained that:

[4] Exhibit A, Incorrect Reduction Claim, and Exhibit C, Claimant Rebuttal.

The SCO has not stated any statutory authority for the adjustments. The test claim legislation, CDE Guidelines, and Commission regulations do not provide authority for the SCO to eliminate claimed costs.

- The SCO did not have a legal basis for its actions and their authority was not properly exercised. On this issue, claimant asserted that:

  The SCO has the burden of proof to show a legal basis for the adjustments. Because the SCO has enforced and is seeking to enforce their adjustments without benefit of statute or regulation, the burden of proof is now upon the SCO to establish a legal basis for its actions.

  The SCO has the power to audit claims, and their authority was not properly exercised. The SCO has the authority as a matter of law to audit claims pursuant to Government Code section 17561. However, the SCO did not audit the records of the school district, nor did SCO make an additional inquiry or a request for documentation prior to adjusting the claim. Further, the SCO never responded to the claimant's request for an explanation of the adjustments. Therefore, the reduction was arbitrary and has no basis in law or basis in fact.

- Costs for "Shop Inspections and Review of Chemical Inventory" and "Attendance of a Hazardous Materials Instructors Conference" Are Reimbursable Activities Under the Parameters and Guidelines. It is the claimant's position that:

  The claimed cost for inspection and inventory of chemical stocks, and training in hazardous chemical removal is reimbursable, thus, the inspection and inventory costs are explicitly contemplated by the test claim and the Parameters and Guidelines. As for training, the Parameters and Guidelines recognize the complexity of the subject matter by explicitly reimbursing expert consultants and contractors. Therefore, it is not inappropriate for a district, which implements the mandate without a consultant, to obtain training on the subject matter of the mandate.

State Controller's Office Position[5]

The SCO argued that it has constitutional authority to audit all disbursements from the State Treasury, including the reasonableness of such disbursements.[6] In addition, the SCO stated that Government Code section 17561 gives the SCO authority to reduce claims which they find to be excessive or unreasonable.[7] The SCO added that no expenditure of public funds may be made by a public officer unless authorized by law.

The SCO noted that, during their review of the IRC, they discovered that the claimant had not met the certification requirement included in the Parameters and Guidelines for this mandate, which reads:

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[5] Exhibit B, SCO Response.

[6] See 71 Ops.Cal.Atty.Gen. 275.

[7] Government Code section 17561, subdivision (d), subpart (2), reads in pertinent part:

> "…The Controller shall pay these claims from funds appropriated therefore, provided that the Controller (A) may audit the records of any local agency or school district to verify the actual amount of the mandated costs, (B) may reduce any claim that the Controller determines is excessive or unreasonable, and (C) shall adjust the payment to correct for any underpayments or overpayments which occurred in previous fiscal years."

> "No claim for reimbursement for the costs associated with the actual removal and disposal of chemicals to comply with the certification requirements of Chapter 1107/84 shall be reimbursed by the State Controller until verification has been obtained by the State Controller's Office from the Department of Education that the claimant complied with the certification requirements and deadline of June 30, 1988." (Section XII, "Limitation.")

Consequently, the SCO sent notice to the district that their claim was denied in full because they were "not an eligible claimant." They noted that it was unclear whether the SCO may have paid claims of non-certified districts contrary to what was intended by the Commission. In other words, the SCO questioned whether the above provision was intended to preclude such a district from being reimbursed for costs incurred after June 30, 1988. The SCO stated that a ruling by the Commission would eliminate any uncertainty in this regard.

Should the Commission decide the claimant is eligible, the SCO maintained that their original reduction due to "costs not mandated" was accurate. They argued that the reduction for "Shop Inspections and Review of Chemical Inventory" was appropriate because the CDE Guidelines expressly pertain only to the removal of chemicals from school science laboratories.

The SCO further contended that the reduction for costs for an employee to attend a conference on hazardous materials was appropriate because the generalized instruction, without some correlation to the state mandated program, should be disallowed because the Science Safety Handbook identifies the chemicals to be removed and provides information on their disposal. The SCO argued that, without knowing more about the conference, it appeared that the instruction offered was outside the duties of a school district in relation to this mandate as the CDE is responsible for the task of identifying chemicals and devising a plan for their disposal.

For both of these reductions, the SCO asserted that the claimant should reasonably be expected to provide sufficient information in its claim that would evidence the fact that a claimed expenditure comes within the mandate.

These issues are addressed below.

Issue 1:

> Does the certification requirement in the Parameters and Guidelines preclude a non-certified district from being reimbursed for costs incurred after June 30, 1988?

The Parameters and Guidelines include the following limitation:

> "No claim for reimbursement for the costs associated with the actual removal and disposal of chemicals to comply with the certification requirements of Chapter 1107/84 shall be reimbursed by the State Controller until verification has been obtained by the State Controller's Office from the Department of Education that the claimant complied with the certification requirements and deadline of June 30, 1988." (Section XII, "Limitation.")

The Parameters and Guidelines include reimbursement for an initial clean-up period and for ongoing costs. The initial clean-up period was required to occur after enactment of Statutes of 1984, Chapter 1107, but before the June 30, 1988 deadline. During this time period, certified districts were eligible for reimbursement of costs for certification and for the removal and

disposal of retrograde materials as well as for chemicals that had not yet reached a retrograde condition ("non-retrograde").

The Parameters and Guidelines further provide that, prior to enactment of the statute and after the June 30, 1988 deadline, removal and disposal of retrograde materials is a "Non-Reimbursable Activity." However, the Commission recognized in the Parameters and Guidelines that removal of non-retrograde materials after the June 30, 1988 deadline is an ongoing cost.

Staff agrees with the claimant that the certification requirement in the Parameters and Guidelines pertains to this initial clean-up period and not to ongoing activities. Parameters and Guidelines section V. Reimbursable Costs, component C, Certification Costs, expressly links this certification to the costs of removal and disposal of retrograde materials:

> "*For each claimant which certified by June 30, 1988,* to the Department of Education its compliance with the guidelines, *the costs of removal and disposal of "retrograde materials"* prior to June 30, 1988, but subsequent to the enactment of chapter 1107/84, are also reimbursable. The costs of removal and disposal have been previously defined in Item V.B.4.a.-d.above." (Emphasis added).

The requirements for certification and for removal and disposal of chemicals operate independently of one another.[8] The requirement for certification was a statutory requirement, while the requirement for removal and disposal of the chemicals is contained in the CDE Guidelines, which the Commission determined to be an "executive order." In 1994, AB 3562 amended Education Code section 49411 to remove the reference to the certification requirement.[9] The Senate Floor analysis for AB 3562 stated that the intent of the amendment was to eliminate "unnecessary reporting provisions."[10] Removal of the certification requirement lends credence to the argument that the requirement pertained to the initial clean-up.

Staff notes that the CDE Guidelines remain in effect. As determined by the Commission, costs for ongoing compliance with the CDE Guidelines are reimbursable. Parameters and Guidelines section V. Reimbursable Costs, component B, Ongoing Reimbursable Activities, does not contain a certification requirement as required in component C. Furthermore, there is no explicit requirement for certification in the statute or the CDE Guidelines for ongoing activities.

Staff concludes that the certification requirement in the Parameters and Guidelines does not preclude a non-certified district from being reimbursed for costs incurred after June 30, 1988. Therefore, staff concludes that the district is an eligible claimant. It therefore becomes necessary to address the original SCO reduction to determine if it was incorrect.

Issue 2:

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[8] The CDE recognized this distinction. The test claim analysis for Removal of Chemicals noted that "As stated in its recommendation, the [CDE] believes that the mandatory certification of section 49411 is predicated upon the actual removal and disposal undertaken pursuant to the guidelines developed in the Science Safety Project, which is jointly administered by [CDE] and DHS in direct response to the requirements of section 49411."

[9] Statutes of 1994, Chapter 840.

[10] Exhibit D, Education Code section 49411 and Senate Floor analysis, see Item 22.

Does the SCO have the authority to reduce the claim?

Government Code section 12410 requires the SCO to "superintend the fiscal concerns of the state," and authorizes the SCO to audit claims against the state "for correctness, legality, or sufficient provisions of law for payment." Government Code section 17561 (d)(2) authorizes the SCO to reduce any claim that it deems excessive or unreasonable. Therefore, the SCO does have the authority to reduce the claim.

Issue 3:

Did the SCO have a legal basis for its actions, and if so, was the SCO's authority properly exercised?

The claimant asserted that the SCO is required by law to audit claims prior to paying or reducing the claims, and since the SCO did not audit the claimant's claim, its reduction of the claim was improper. The claimant also contends that, because the SCO did not conduct the audit, the SCO must show its legal basis for reducing the claim.

Citing statute and a 1988 Attorney General's Opinion as its legal authority,[11] the SCO argued that the Controller has the constitutional authority to audit all disbursements from the State Treasury, and that it did conduct a "desk audit" prior to reducing the claim. In addition, the SCO stated that Government Code section 17561 gives the SCO authority to reduce claims which they find to be excessive or unreasonable. They added that no expenditure of public funds may be made by a public officer unless authorized by law. The SCO explained that it was during this desk audit that it considered whether payment for the removal of chemicals claimed by the district were authorized pursuant to law or by the Parameters and Guidelines.

Staff agrees that the SCO is required to conduct audits of claims prior to paying them.[12] Existing law defines an audit as the examination of a claim or expenditure to determine whether the claim

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[11] 71 Ops.Cal.Atty.Gen 275

[12] Government Code section 925.6, subdivision (a), provides: "The Controller shall not draw his or her warrant for any claim until it has been audited by him or her in conformity with law and the general rules and regulations adopted by the board, governing the presentation and audit of claims. Whenever the Controller is directed by law to draw his or her warrant for any purpose, the direction is subject to this section."

Government Code section 17558, subdivision (a), provides: ". . . All claims relating to a statute or executive order that are filed after the determination of the test claim pursuant to Section 17557 shall be transferred to the Controller who shall pay and audit the claims from funds made available for that purpose."

Government Code section 17558.5, subdivision (a), provides: "A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. . . ."

Government Code section 17561, subdivision (d)(1) and (2), provides: "The Controller shall pay these claims from the funds appropriated therefor, provided the Controller (A) may audit the records of any local agency or school district to verify the actual amount of the mandated costs, and (B) may reduce any claim which the Controller determines is excessive or unreasonable."

Government Code section 17564, subdivision (c), provides: "The Controller shall pay these estimated claims, and approved reimbursement claims, from funds appropriated expressly therefor, provided the Controller (1) may audit the records of any local agency or school district to verify the actual amount of the mandated costs, (2) may reduce any claim which the Controller determines is excessive or unreasonable, and (3) shall adjust the payment to correct for any underpayments or overpayments which occurred in previous fiscal years."

is correct and proper.[13] The extent of any audit depends upon the individual circumstances as well as legal requirements and applicable professional standards. A full and complete audit by the SCO would ascertain that the claim is numerically correct, actually incurred, and that sufficient funds exist for payment. The SCO stated that it conducted a desk audit of the claim. There is nothing in this section nor in the Attorney General's Opinion which defines the scope of the SCO's audit or the manner in which the audit may be conducted.

Accordingly, staff concludes that the allegations that the SCO did not perform a proper audit are not substantiated. However, this conclusion does not prevent the Commission from considering, pursuant to subdivision (b) of Government Code section 17551, whether the SCO incorrectly reduced the claimant's claim for reimbursement.

Issue 4:

> Are "Shop Inspections and Review of Chemical Inventory" and "Attendance of a Hazardous Materials Instructors Conference" Reimbursable Activities Under the Parameters and Guidelines?

On June 22, 1999, the SCO notified the claimant that they had reduced the district's reimbursement claim for the *Removal of Chemicals* program. The SCO maintained that the activities involving "Shop Inspections and Review of Chemical Inventory" and "Attendance of a Hazardous Materials Instructors Conference" did not fall under the scope of the mandate. The claimant disagreed and filed the subject IRC.

Staff agrees with the claimant that the claims involving "Shop Inspections and Review of Chemical Inventory" are reimbursable in accordance with the Parameters and Guidelines. Section V, Reimbursable Costs, Component B, Ongoing Activities, subpart 1 allows reimbursement of duties related to compliance with the mandate. Specifically, subparts 2 and 3 provide for reimbursement of inventory costs:

1. Reimbursement is available for elementary, secondary and unified school districts. Salaries and benefits of personnel at school sites, district offices and county offices of education, both certificated and classified, *who perform any duties related to compliance with this mandate.* Salaries and benefits of substitute employees who provided coverage for employees performing duties related to said mandate.
2. Consultant fees for *preparation of initial chemical inventories, preparation of technical profile inventories* for chemical disposal purposes, supervision (monitoring) of contractor during on-site related activities.
3. All contractor fees/charges for *review and computer entry of inventories*.

Regarding the reduction for "Attendance of a Hazardous Materials Instructors Conference," staff agrees with the SCO that the documentation provided was not sufficient to demonstrate how the course was related to the implementation of the mandate. The supporting documentation submitted by the claimant included the bulletin advertising the course and the registration sheet for the employee who attended the training. The bulletin explains that the course is "specifically designed for CSTI Certified Hazardous Materials Instructors."

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[13] Government Code section 925.6

The SCO acknowledged that instruction on hazardous materials disposal, depending on curriculum, could have some benefit to the state mandated program. However, they argued that generalized instruction of this nature, without some correlation to the state mandated program, should still be disallowed because the CDE Guidelines identifies the chemicals to be removed and provides information on their disposal. Without knowing more about the conference, the SCO submitted that it appeared the instruction offered would be outside the duties of a school district in relation to this mandate as the CDE is responsible for the task of identifying chemicals and devising a plan for their disposal. Staff agrees. Absent further evidence of how the course contents fell within the reimbursable activities defined in the Parameters and Guidelines, staff finds that the SCO did not incorrectly reduce this item.

Conclusion and Staff Recommendation

Based on the analysis in Issue 1, staff finds that the certification requirement in the Parameters and Guidelines pertains to the initial clean-up period (the date of enactment of Statutes of 1984, Chapter 1107, through June 30, 1988) and not to ongoing activities. Staff finds that the requirement does not preclude a non-certified district from being reimbursed for costs incurred after June 30, 1988 and therefore the district is an eligible claimant.

Based on the analyses included in Issues 2 and 3, staff finds that:

- Case law and statute provide the SCO with the authority to audit claims for legality and correctness, and to adjust the claims for reimbursement if they are excessive or unreasonable. The SCO is provided with clear authority to reduce the claim.
- The SCO is required, both under the Constitution and statute to conduct audits of claims prior to paying them. The SCO states that it conducted a desk audit of the claim. There is nothing in this section nor in the Attorney General's Opinion which defines the scope of the SCO's audit or the manner in which the audit may be conducted. Accordingly, staff concludes that the allegations that the SCO did not perform a proper audit are not substantiated.

Based on the analysis in Issue 4, staff finds that:

- The claims involving "Shop Inspections and Review of Chemical Inventory" are reimbursable in accordance with the Parameters and Guidelines. Section V, Reimbursable Costs, Component B, Ongoing Activities, subpart 1 allows reimbursement of duties related to compliance with the mandate. Specifically, subparts 2 and 3 provide for reimbursement of inventory costs.
- The claim involving "Attendance of a Hazardous Materials Instructors Conference," is not reimbursable because the documentation provided by the claimant to the SCO was not sufficient to demonstrate how the course was related to the implementation of the mandate.

Accordingly, staff recommends that the Commission make the following findings:

- The district is an eligible claimant.
- The SCO has the authority to reduce the claim and that their authority was properly exercised.

- The SCO incorrectly reduced the claims involving "Shop Inspections and Review of Chemical Inventory" and direct staff to notify the SCO that these costs should be reinstated.
- The SCO correctly reduced the portion of the IRC regarding the claim for "Attendance of a Hazardous Materials Instructors Conference."

Back to "For Public Comment"