

ITEM 4
INCORRECT REDUCTION CLAIM
PROPOSED DECISION

Public Resources Code Sections 40148, 40196.3, 42920-42928; Public Contract Code Sections 12167 and 12167.1; Statutes 1992, Chapter 1116 (AB 3521); Statutes 1999, Chapter 764 (AB 75); State Agency Model Integrated Waste Management Plan (February 2000)

Integrated Waste Management

Fiscal Years 1999-2000, 2000-2001, 2003-2004, 2004-2005, 2005-2006,
2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011

14-0007-I-04

Gavilan Joint Community College District, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) addresses the reductions by the State Controller's Office (Controller) to reimbursement claims of the Gavilan Community College District (claimant) for fiscal years 1999-2000, 2000-2001, and 2003-2004 through 2010-2011, under the *Integrated Waste Management* program, 00-TC-07. The Controller made the audit reductions because the claimant did not identify and deduct from its reimbursement claims offsetting savings resulting from the claimant's diversion of solid waste and the associated reduced or avoided landfill disposal fees.

Staff finds that the Controller timely initiated the audit of the 2000-2001 reimbursement claim, and timely completed the audit of all claims.

Staff further finds, based on the evidence in the record, that the Controller's calculation of offsetting cost savings for fiscal years 1999-2000, 2000-2001, the second half of fiscal year 2003-2004, and fiscal years 2004-2005 through 2010-2011, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

However, the Controller's reduction of costs claimed for the first half of fiscal year 2003-2004 is incorrect as a matter of law. During this period, the claimant achieved an actual diversion rate of 75.43 percent.¹ The Controller used a 50 percent rate to calculate the allocated diversion rate, when the test claim statutes required only 25 percent diversion in calendar year 2003. The requirement to divert 50 percent of solid waste became operative on January 1, 2004.² Applying the Controller's formula for the calculation of cost savings (using 25 percent to calculate the

¹ Exhibit B, Controller's Late Comments on the IRC, page 77.

² Public Resources Code sections 42921; Exhibit A, IRC, page 43 (Parameters and Guidelines, adopted March 30, 2005).

allocated diversion rate) to the first half of fiscal year 2003-2004, results in offsetting costs savings of \$3,822 (25 percent mandated diversion rate divided by 75.43 percent actual diversion rate equals a 33.14 percent allocated rate, multiplied by 313.1 tons diverted, multiplied by the avoided statewide average landfill disposal fee of \$36.83),³ rather than the \$7,644 calculated by the Controller using a 50 percent diversion rate.

Accordingly, staff finds that \$3,822 has been incorrectly reduced and should be reinstated to the claimant.

The Integrated Waste Management Program

The test claim statutes require community college districts⁴ to adopt and implement, in consultation with the California Integrated Waste Management Board (CIWMB, now known as CalRecycle), an integrated waste management (IWM) plan to govern the district's efforts to reduce solid waste, reuse materials, recycle recyclable materials and procure products with recycled content in all agency offices and facilities. To implement their plans, community college districts must divert from landfill disposal at least 25 percent of solid waste by January 1, 2002, and at least 50 percent by January 1, 2004. Public Resources Code section 42925, as added by the test claim statutes, further provides that "[a]ny 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."

On March 24, 2004, the Commission adopted the Test Claim Statement of Decision and found that the test claim statutes impose a reimbursable state mandate on community colleges, and that cost savings under Public Resources Code section 42925 did not result in a denial of the Test Claim because there was no evidence of offsetting savings that would result in no net costs to a community college district. The Parameters and Guidelines were adopted on March 30, 2005, to authorize reimbursement for the activities approved in the Statement of Decision, and did not require claimants to identify and deduct from their reimbursement claims any cost savings. After the Commission adopted the Parameters and Guidelines, the Department of Finance (Finance) and the CIWMB challenged the Statement of Decision and Parameters and Guidelines, arguing 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. On May 29, 2008, the Sacramento County Superior Court partially agreed with the petitioners and directed the Commission to amend the Parameters and Guidelines to:

1. [R]equire 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

³ Exhibit B, Controller's Late Comments on the IRC, page 77.

⁴ The test claim statutes apply to "state agencies" but defines them to include "the California Community Colleges" (Pub. Res. Code, § 40196.3). Community college districts are the only local government to which the test claim statutes apply.

directions for revenue in Public Contract Code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans; and

2. [R]equire 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 all of the revenue generated as a result of implementing their plans, without regard to the limitations or conditions described in sections 12167 and 12167.1 of the Public Contract Code.⁵

In accordance with this court ruling, the Commission amended the Parameters and Guidelines on September 26, 2008.

This program was made optional by statutes of 2010, chapter 724 (AB1610), section 34, effective October 19, 2010, and has remained so since that time.⁶

Procedural History

The claimant filed its 1999-2000, 2000-2001, 2003-2004, and 2004-2005 reimbursement claims on October 6, 2005.⁷ The claimant filed its 2005-2006 reimbursement claim on December 27, 2006,⁸ its 2006-2007 reimbursement claim on January 22, 2008,⁹ its 2007-2008 reimbursement claim on February 17, 2009,¹⁰ its 2008-2009 reimbursement claim on December 18, 2009,¹¹ its 2009-2010 reimbursement claim on February 15, 2011,¹² and its 2010-2011 reimbursement claim on February 14, 2012.¹³ The Controller notified the claimant of the audit on January 17, 2014.¹⁴ The Controller issued the Final Audit Report on April 11, 2014.¹⁵ The claimant filed the IRC on July 14, 2014.¹⁶ The Controller filed late comments on the IRC

⁵ Exhibit B, Controller's Late Comments on the IRC, page 30 (Judgment Granting Petition for Writ of Administrative Mandamus).

⁶ See Government Code section 17581.5.

⁷ Exhibit A, IRC, pages 224, 230, 237, and 244.

⁸ Exhibit A, IRC, page 251.

⁹ Exhibit A, IRC, page 258.

¹⁰ Exhibit A, IRC, page 264.

¹¹ Exhibit A, IRC, page 270.

¹² Exhibit A, IRC, page 277.

¹³ Exhibit A, IRC, page 284.

¹⁴ Exhibit B, Controller's Late Comments on the IRC, pages 12, 34. See also Exhibit A, IRC, page 33 (Final Audit Report).

¹⁵ Exhibit A, IRC, page 24 (Final Audit Report).

¹⁶ Exhibit A, IRC.

on April 18, 2016.¹⁷ Commission staff issued the Draft Proposed Decision on July 14, 2017.¹⁸ The Controller filed comments agreeing with the Draft Proposed Decision on July 28, 2017.¹⁹ The claimant did not file comments on the Draft Proposed Decision.

Commission Responsibilities

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.²⁰ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."²¹

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to

¹⁷ Exhibit B, Controller's Late Comments on the IRC. Note that Government Code section 17553(d) states: "the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission." However, in this instance, due to the backlog of IRCs, these late comments have not delayed consideration of this item and so have been included in the analysis and Proposed Decision.

¹⁸ Exhibit C, Draft Proposed Decision.

¹⁹ Exhibit D, Controller's Comments on the Draft Proposed Decision.

²⁰ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

²¹ *County of Sonoma v. Commission on State Mandates* (2000), 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.²²

The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.²³ In addition, section 1185.1(f)(3) and 1185.2(c) of the Commission's regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.²⁴

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

Issue	Description	Staff Recommendation
Whether the Controller timely initiated the audit of the fiscal year 2000-2001 reimbursement claim, and timely completed the audit.	<p>The claimant alleges that the Controller failed to timely initiate the audit of the fiscal year 2000-2001 reimbursement claim.</p> <p>Government Code section 17558.5 requires an audit to be initiated no later than three years after the date the reimbursement claim is filed or last amended, but <i>if no funds are appropriated or no payment is made</i> "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</p>	<p><i>The audit was timely initiated and completed</i> – The record shows that the Controller first made payment on the 2000-2001 reimbursement claim on either January 18, 2011,²⁵ or January 28, 2011,²⁶ within three years of the date the audit was initiated on January 17, 2014. Thus, the audit was timely initiated. The audit was complete for all reimbursement claims when the final audit report was issued April 11, 2014,²⁷ well before the two-year deadline of January 17, 2016.</p>

²² *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

²³ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

²⁴ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

²⁵ Exhibit A, IRC, page 292.

²⁶ Exhibit B, Controller's Late Comments on the IRC, page 36.

²⁷ Exhibit A, IRC, page 24 (Final Audit Report).

	to run from the date of initial payment of the claim.”	
Whether the Controller’s reductions of costs claimed based on unreported cost savings resulting from implementation of the IWM plan are correct.	<p>Pursuant to the ruling and writ issued in <i>State of California v. Commission on State Mandates</i>, (Super. Ct., Sacramento County, 2008, No. 07CS00355), the amended Parameters and Guidelines require claimants 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 IWM plans, and apply the cost savings to fund plan implementation and administration costs.</p> <p>The test claim statutes presume that by complying with the mandate to divert solid waste through the IWM program, claimants can reduce or avoid landfill fees and realize cost savings. As indicated in the court’s ruling, cost savings may be calculated from the annual solid waste disposal reduction that community colleges are required to annually report to CIWMB. There is a rebuttable statutory presumption of cost savings. To rebut the presumption, the claimant has the burden to show that cost savings were not realized.</p> <p>During the audit period, the claimant diverted more solid waste than required by law. However, the Controller’s cost savings formula “allocated” the diversion percentage by dividing the percentage of solid</p>	<p><i>Partially Incorrect</i> – The Controller correctly presumed, absent any evidence to the contrary, that the percentage of waste required to be diverted resulted in offsetting savings equal to the avoided landfill fee per ton of waste required to be diverted. The avoided landfill disposal fee was based on the statewide average disposal fee provided by CIWMB for each year in the audit period. The claimant has not filed any evidence to rebut the statutory presumption of cost savings. Thus, the Controller’s reduction of costs is correct as a matter of law.</p> <p>However, the Controller applied the wrong mandated diversion rate (i.e., 50% when the mandate was 25% in 2003) when calculating the offsetting savings for the first half of fiscal year 2003-2004 and this is incorrect as a matter of law.</p> <p>Applying the Controller’s formula for the calculation of cost savings (using 25% to calculate the allocated diversion rate of 33.14%) to the first half of fiscal year 2003-2004, results in offsetting costs savings of \$3,822 (25% mandated diversion rate divided by 75.43% actual diversion rate, multiplied by 313.1 tons diverted, multiplied by the avoided statewide average landfill disposal fee of</p>

	<p>waste required to be diverted, either 25% or 50%, by the actual percentage of solid waste diverted as reported by the claimant to CIWMB to avoid penalizing the claimant for diverting more solid waste than the state-mandated amount. The resulting quotient is then multiplied by the tons of solid waste diverted multiplied by the avoided landfill disposal fee (based on the statewide average fee).</p> <p>For the first half of fiscal year 2003-2004, the Controller calculated the allocated diversion rate using a 50% diversion rate, although the required rate at that time was 25%.²⁸ In applying the 50% diversion rate to the first half of 2003-2004, the Controller used an allocated 66.29% of the diversion to calculate offsetting cost savings, resulting in a reduction of \$7,644 (313.1 tons of diverted waste multiplied by the allocated diversion rate of 66.29%, multiplied by the avoided statewide average landfill disposal fee of \$36.83).²⁹</p>	<p>\$36.83),³⁰ rather than the \$7,644 calculated by the Controller. The difference of \$3,822 has been incorrectly reduced and should be reinstated to the claimant.</p> <p>In comments on the Draft Proposed Decision, the Controller agreed to reinstate \$3,822 for the first half of fiscal year 2003-2004.³¹</p>
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²⁸ Exhibit A, IRC, page 43 (Parameters and Guidelines, adopted March 30, 2005). The Controller admits, “there is no state mandate to exceed solid waste diversion for amounts in excess of 25% for calendar years 2000 through 2003 or 50% for calendar year 2004 and later” See Exhibit B, Controller’s Late Comments on the IRC, page 21.

²⁹ Exhibit A, IRC, page 30 (Final Audit Report); Exhibit B, Controller’s Late Comments on the IRC, page 77.

³⁰ Exhibit B, Controller’s Late Comments on the IRC, page 77.

³¹ Exhibit D, Controller’s Comments on the Draft Proposed Decision.

Staff Analysis

A. The Controller Timely Initiated the Audit of the Fiscal Year 2000-2001 Reimbursement Claim, and Timely Completed the Audit of All Claims.

The Controller timely initiated the audit of the fiscal year 2000-2001 reimbursement claim and timely completed the audit for all claims pursuant to Government Code section 17558.5. Government Code section 17558.5(a) tolls the time to initiate the audit to three years from the date of initial payment on the claim, rather three years from the date the claim was filed, “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 record shows that the Controller first made payment on the 2000-2001 reimbursement claim on either January 18, 2011,³² or January 28, 2011,³³ within three years of the date the audit was initiated on January 17, 2014. Thus, the audit was timely initiated. The audit was complete for all reimbursement claims when the final audit report was issued April 11, 2014,³⁴ well before the two-year deadline of January 17, 2016.

B. The Controller’s Reduction of Costs Is Generally Correct as a Matter of Law; However, the Reduction of Costs for the First Half of Fiscal Year 2003-2004 Based on the Incorrect Mandated Diversion Rate, Is Incorrect as a Matter of Law.

The Controller correctly presumed, consistent with the test claim statutes and the court’s interpretation of those statutes, and without evidence to the contrary, that the claimant realized cost savings during the audit period equal to the avoided landfill disposal fee per ton of waste required to be diverted.

Staff finds, based on the evidence in the record, that the Controller’s calculation of offsetting cost savings for fiscal years 1999-2000, 2000-2001, the second half of fiscal year 2003-2004, and fiscal years 2004-2005 through 2010-2011, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support. Because the claimant exceeded the mandate and diverted more solid waste than required by law, the Controller’s cost savings formula “allocated” the diversion percentage by dividing the percentage of solid waste required to be diverted, either 25 or 50 percent, by the actual percentage of solid waste diverted, as reported by the claimant to CIWMB. The resulting quotient was then multiplied by the tons of solid waste diverted, multiplied by the avoided landfill disposal fee (based on the statewide average fee).³⁵ The formula allocates cost savings based on the mandated rates of diversion, and was intended to prevent penalizing the claimant for diverting more solid waste than the amount mandated by law.³⁶ The claimant has not filed any evidence to rebut the statutory presumption of cost savings or to show that the statewide average disposal fee is incorrect or arbitrary. Thus, the Controller’s reduction of costs claimed for these fiscal years is correct as a matter of law.

³² Exhibit A, IRC, page 292.

³³ Exhibit B, Controller’s Late Comments on the IRC, page 36.

³⁴ Exhibit A, IRC, page 24 (Final Audit Report).

³⁵ Exhibit A, IRC, pages 33-35 (Final Audit Report); Exhibit B, Controller’s Late Comments on the IRC, page 21.

³⁶ Exhibit B, Controller’s Late Comments on the IRC, page 21.

However, the Controller's reduction of costs claimed for the first half of fiscal year 2003-2004 is incorrect as a matter of law. During this period, the claimant achieved an actual diversion percentage of 75.43 percent.³⁷ The Controller allocated the diversion rate for the first half of fiscal year 2003-2004, as it had done for the other fiscal years, since the claimant exceeded the mandate. However, the Controller used a 50 percent rate to calculate the allocated diversion rate, when the test claim statutes required only 25 percent diversion in calendar year 2003. The requirement to divert 50 percent of all solid waste became operative on January 1, 2004.³⁸ Therefore, applying the Controller's calculation of cost savings (using 25 percent to calculate the allocated diversion rate) to the first half of fiscal year 2003-2004, results in offsetting costs savings of \$3,822 (25 percent mandated diversion rate divided by 75.43 percent actual diversion rate equals a 33.14 percent allocated rate, multiplied by 313.1 tons diverted, multiplied by the avoided statewide average landfill disposal fee of \$36.83),³⁹ rather than the \$7,644 calculated by the Controller using a 50 percent diversion rate. In comments on the Draft Proposed Decision, the Controller agreed to reinstate \$3,822 for the first half of fiscal year 2003-2004.⁴⁰

Conclusion

Staff finds that the Controller's reduction of costs claimed for fiscal years 1999-2000, 2000-2001, the second half of fiscal year 2003-2004, and fiscal years 2004-2005 through 2010-2011 is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

However, the reduction of costs claimed for the first half of fiscal year 2003, based on the wrong mandated diversion rate, is incorrect as a matter of law. The law and the record support offsetting cost savings for the first half of fiscal year 2003-2004 of \$3,822, rather than \$7,644, and the difference of \$3,822 has been incorrectly reduced and should be reinstated to claimant.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to partially approve the IRC and request, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, that the Controller reinstate \$3,822 to the claimant. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes to Proposed Decision following the hearing.

³⁷ Exhibit B, Controller's Late Comments on the IRC, page 77.

³⁸ Public Resources Code sections 42921; Exhibit A, IRC, page 43 (Parameters and Guidelines, adopted March 30, 2005).

³⁹ Exhibit B, Controller's Late Comments on the IRC, page 77.

⁴⁰ Exhibit D, Controller's Comments on the Draft Proposed Decision.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

**IN RE INCORRECT REDUCTION CLAIM
ON:**

Public Resources Code Sections 40148,
40196.3, 42920-42928; Public Contract Code
Sections 12167 and 12167.1; Statutes 1992,
Chapter 1116 (AB 3251); Statutes 1999,
Chapter 764 (AB 75); State Agency Model
Integrated Waste Management Plan
(February 2000)

Fiscal Years 1999-2000, 2000-2001, 2003-
2004, 2004-2005, 2005-2006, 2006-2007,
2007-2008, 2008-2009, 2009-2010 and 2010-
2011

Gavilan Joint Community College District,
Claimant

Case No.: 14-0007-I-04

Integrated Waste Management

DECISION PURSUANT TO
GOVERNMENT CODE SECTION
17500 ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted September 22, 2017)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on September 22, 2017. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the IRC by a vote of [vote count will be included in the adopted Decision] as follows:

Member	Vote
Lee Adams, County Supervisor	
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller, Vice Chairperson	
Mark Hariri, Representative of the State Treasurer	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	

Summary of the Findings

This IRC addresses reductions made by the State Controller's Office (Controller) to reimbursement claims of the Gavilan Community College District (claimant) for fiscal years 1999-2000, 2000-2001, and 2003-2004 through 2010-2011, under the *Integrated Waste Management* program, 00-TC-07. The Controller made the audit reductions because the claimant did not identify and deduct from its reimbursement claims offsetting cost savings from its diversion of solid waste and the associated reduced or avoided landfill disposal costs.

The Commission finds that the Controller timely initiated the audit of the fiscal year 2000-2001 reimbursement claim and timely completed the audit for all claims pursuant to Government Code section 17558.5. Government Code section 17558.5(a) tolls the time to initiate the audit to three years from the date of initial payment on the claim, rather three years from the date the claim was filed, "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 record shows that payment on the 2000-2001 reimbursement claim was first made by the Controller on either January 18, 2011,⁴¹ or January 28, 2011,⁴² within three years of the date the audit was initiated on January 17, 2014. Thus, the audit was timely initiated. The audit was complete for all reimbursement claims when the final audit report was issued April 11, 2014,⁴³ well before the two-year deadline of January 17, 2016.

On the merits, the Commission finds that the audit reductions are partially correct. The Controller correctly presumed, consistent with the test claim statutes and the court's interpretation of those statutes, and without any evidence to the contrary, that the claimant realized cost savings during the audit period equal to the avoided landfill disposal fee per ton of waste required to be diverted.

The Commission further finds, based on the evidence in the record, that the Controller's calculation of offsetting cost savings for fiscal years 1999-2000, 2000-2001, the second half of fiscal year 2003-2004, and fiscal years 2004-2005 through 2010-2011, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support. Because the claimant exceeded the mandate and diverted more solid waste than required by law, the Controller's cost savings formula "allocated" the diversion percentage by dividing the percentage of solid waste required to be diverted, either 25 or 50 percent, by the actual percentage of solid waste diverted, as reported by the claimant to the California Integrated Waste Management Board (CIWMB). The resulting quotient was then multiplied by the tons of solid waste diverted, as annually reported by the claimant to CIWMB, multiplied by the avoided landfill disposal fee (based on the statewide average fee).⁴⁴ The formula allocates cost savings based on the mandated rates of diversion, and was intended to prevent penalizing the claimant

⁴¹ Exhibit A, IRC, page 292.

⁴² Exhibit B, Controller's Late Comments on the IRC, page 36.

⁴³ Exhibit A, IRC, page 24 (Final Audit Report).

⁴⁴ Exhibit A, IRC, pages 33-35 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, page 21.

for diverting more solid waste than the amount mandated by law.⁴⁵ The claimant has not filed any evidence to rebut the statutory presumption of cost savings or to show that the statewide average disposal fee is incorrect or arbitrary. Thus, the Controller's reduction of costs claimed for these fiscal years is correct.

However, the Controller's reduction of costs claimed for the first half of fiscal year 2003-2004 is incorrect as a matter of law because the Controller calculated offsetting savings using an incorrect required diversion rate. During this period, the claimant achieved an actual diversion percentage of 75.43 percent.⁴⁶ The Controller allocated the diversion rate for the first half of fiscal year 2003-2004, as it had done for the other fiscal years, because the claimant exceeded the mandate. However, the Controller used a 50 percent rate to calculate the allocated diversion rate, although the test claim statutes required only 25 percent diversion in calendar year 2003. The requirement to divert 50 percent of solid waste did not become operative until January 1, 2004.⁴⁷ Applying the Controller's calculation of cost savings (using 25 percent to calculate the allocated diversion rate) to the first half of fiscal year 2003-2004, results in offsetting costs savings of \$3,822 (25 percent mandated diversion rate divided by 75.43 percent actual diversion rate equals a 33.14 percent allocated rate, multiplied by 313.1 tons diverted, multiplied by the avoided statewide average landfill disposal fee of \$36.83),⁴⁸ rather than the \$7,644 calculated by the Controller using a 50 percent diversion rate.

Accordingly, the Commission finds that the law and the record support offsetting cost savings for the first half of fiscal year 2003-2004 of \$3,822, rather than \$7,644, and that the difference of \$3,822 has been incorrectly reduced.

Therefore, the Commission partially approves this IRC, and requests, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, that the Controller reinstate \$3,822 to the claimant.

COMMISSION FINDINGS

I. Chronology

- | | |
|------------|---|
| 10/06/2005 | The claimant filed its 1999-2000, 2000-2001, 2003-2004, and 2004-2005 reimbursement claims. ⁴⁹ |
| 12/27/2006 | The claimant filed its 2005-2006 reimbursement claim. ⁵⁰ |
| 01/22/2008 | The claimant filed its 2006-2007 reimbursement claim. ⁵¹ |

⁴⁵ Exhibit B, Controller's Late Comments on the IRC, page 21.

⁴⁶ Exhibit B, Controller's Late Comments on the IRC, page 77.

⁴⁷ Public Resources Code sections 42921; Exhibit A, IRC, page 43 (Parameters and Guidelines, adopted March 30, 2005).

⁴⁸ Exhibit B, Controller's Late Comments on the IRC, page 77.

⁴⁹ Exhibit A, IRC, pages 224, 230, 237, and 244.

⁵⁰ Exhibit A, IRC, page 251.

⁵¹ Exhibit A, IRC, page 258.

02/17/2009	The claimant filed its 2007-2008 reimbursement claim. ⁵²
12/18/2009	The claimant filed its 2008-2009 reimbursement claim. ⁵³
02/15/2011	The claimant filed its 2009-2010 reimbursement claim. ⁵⁴
01/18/2011	Controller issued a letter to claimant for 2000-2001, indicating that payment was made for 2000-2001 on this date. ⁵⁵
01/28/2011	Payment issue date for 2000-2001, according to Controller's remittance advice and apportionment report. ⁵⁶
02/14/2012	The claimant filed its 2010-2011 reimbursement claim. ⁵⁷
01/17/2014	The claimant was notified of the audit. ⁵⁸
04/11/2014	The Controller issued the Final Audit Report. ⁵⁹
07/14/2014	The claimant filed this IRC. ⁶⁰
04/18/2016	The Controller filed late comments on the IRC. ⁶¹
07/14/2017	Commission staff issued the Draft Proposed Decision. ⁶²
07/28/2017	The Controller filed comments agreeing with the Draft Proposed Decision. ⁶³

⁵² Exhibit A, IRC, page 264.

⁵³ Exhibit A, IRC, page 270.

⁵⁴ Exhibit A, IRC, page 277.

⁵⁵ Exhibit A, IRC, page 292 (Letter from the Controller to the claimant).

⁵⁶ Exhibit B, Controller's Late Comments on the IRC, pages 36 and 38 (Remittance Advice and Apportionment Report).

⁵⁷ Exhibit A, IRC, page 284.

⁵⁸ Exhibit B, Controller's Late Comments on the IRC, pages 12, 34; see also Exhibit A, IRC, page 33 (Final Audit Report).

⁵⁹ Exhibit A, IRC, page 24 (Final Audit Report).

⁶⁰ Exhibit A, IRC.

⁶¹ Exhibit B, Controller's Late Comments on the IRC. Note that Government Code section 17553(d) states: "the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission." However, in this instance, due to the backlog of IRCs, these late comments have not delayed consideration of this item and so have been included in the analysis and Proposed Decision.

⁶² Exhibit C, Draft Proposed Decision.

⁶³ Exhibit D, Controller's Comments on the Draft Proposed Decision.

II. Background

A. The *Integrated Waste Management Program*

The test claim statutes require community college districts⁶⁴ to adopt and implement, in consultation with CIWMB (which is now the California Department of Resources Recycling and Recovery, or CalRecycle), integrated waste management (IWM) plans to reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content in all agency offices and facilities.⁶⁵ To implement their plans, districts must divert from landfill disposal at least 25 percent of generated solid waste by January 1, 2002, and at least 50 percent by January 1, 2004. To divert means to “reduce or eliminate the amount of solid waste from solid waste disposal...”⁶⁶

CIWMB developed and adopted a model IWM plan on February 15, 2000, and the test claim statutes provide that if a district does not adopt an IWM plan, the CIWMB model plan governs the community college.⁶⁷ Each district is also required to report annually to CIWMB on its progress in reducing solid waste; and the reports’ minimum contents are specified in statute.⁶⁸ The test claim statutes also require a community college, when entering into or renewing a lease, to ensure that adequate areas are provided for and adequate personnel are available to oversee collection, storage, and loading of recyclable materials in compliance with CIWMB’s requirements.⁶⁹ Additionally, the test claim statutes added Public Resources Code section 42925(a), which addressed cost savings from IWM plan implementation:

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.

The Public Contract Code sections referenced in section 42925(a) require that revenue received as a result of the community college’s IWM plan be deposited in CIWMB’s Integrated Waste Management Account. After July 1, 1994, CIWMB is authorized to spend the revenue upon appropriation by the Legislature to offset recycling program costs. Annual revenue under \$2,000 is to be continuously appropriated for expenditure by the community colleges, whereas annual revenue over \$2,000 is available for expenditures upon appropriation by the Legislature.⁷⁰

⁶⁴ The test claim statutes apply to “state agencies” and define them to include “the California Community Colleges” (Pub. Res. Code, § 40196.3).

⁶⁵ Public Resources Code section 42920(b).

⁶⁶ Public Resources Code section 40124.

⁶⁷ Public Resources Code section 42920(b)(3).

⁶⁸ Public Resources Code section 42926.

⁶⁹ Public Resources Code section 42924(b).

⁷⁰ Public Contract Code sections 12167 and 12167.1 are part of the State Assistance for Recycling Markets Act, which was originally enacted in 1989 to foster the procurement and use of recycled paper products and other recycled resources in daily state operations (See Pub.

On March 24, 2004, the Commission adopted the *Integrated Waste Management* Statement of Decision and determined that the test claim statutes impose a reimbursable state-mandated program on community college districts. The Commission also found that cost savings under Public Resources Code section 42925(a) did not preclude a reimbursable mandate under Government Code section 17556(e) because there was no evidence that offsetting savings would result in no net costs to a community college implementing an IWM plan, nor was there evidence that revenues received from plan implementation would be "in an amount sufficient to fund" the cost of the state-mandated program. The Commission found that any revenues received would be identified as offsetting revenue in the Parameters and Guidelines.

The Parameters and Guidelines were adopted on March 30, 2005, and authorize reimbursement for the increased costs to perform the following activities:

A. One-Time Activities (*Reimbursable starting January 1, 2000*)

1. Develop the necessary district policies and procedures for the implementation of the integrated waste management plan.
2. Train district staff on the requirements and implementation of the integrated waste management plan (one-time per employee). Training is limited to the staff working directly on the plan.

B. Ongoing Activities (*Reimbursable starting January 1, 2000*)

1. Complete and submit to the [Integrated Waste Management] Board the following as part of the State Agency Model Integrated Waste Management Plan (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.):
 - a. state agency or large state facility information form;
 - b. state agency list of facilities;
 - c. state agency waste reduction and recycling program worksheets that describe program activities, promotional programs, and procurement activities, and other questionnaires; and
 - d. state agency integrated waste management plan questions.

NOTE: Although reporting on promotional programs and procurement activities in the model plan is reimbursable, implementing promotional programs and procurement activities is not.

Contract Code, §§ 12153, 12160; Stats. 1989, ch. 1094). The Act, including sections 12167 and 12167.1, applies to California community colleges only to the limited extent that these sections are referenced in Public Resources Code section 42925. Community colleges are not defined as state agencies or otherwise subject to the Act's provisions for the procurement and use of recycled products in daily state operations. See Exhibit B, Controller's Late Comments on the IRC, page 105 (*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)).

2. Respond to any Board reporting requirements during the approval process. (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.)
 3. Consult with the Board to revise the model plan, if necessary. (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.)
 4. Designate one solid waste reduction and recycling coordinator for each college in the district to perform new duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920 – 42928). The coordinator shall implement the integrated waste management plan. The coordinator shall act as a liaison to other state agencies (as defined by section 40196.3) and coordinators. (Pub. Resources Code, § 42920, subd. (c).)
 5. Divert at least 25 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2002, and at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting activities. Maintain the required level of reduction, as approved by the Board. (Pub. Resources Code, §§ 42921 & 42922, subd. (i).)
- C. Alternative Compliance (*Reimbursable from January 1, 2000 – December 31, 2005*)
1. Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42923 subds. (a) & (c).)
 - a. Notify the Board in writing, detailing the reasons for its inability to comply.
 - b. Request of the Board an alternative to the January 1, 2002 deadline.
 - c. Provide evidence to the Board that the college is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan.
 - d. Provide information that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college.
 - e. Submit a plan of correction that demonstrates that the college will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, including the source reduction, recycling, or composting steps the community college will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, the

existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

2. Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2004 deadline to divert 50 percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42922, subds. (a) & (b).)
 - a. Notify the Board in writing, detailing the reasons for its inability to comply.
 - b. Request of the Board an alternative to the 50-percent requirement.
 - c. Participate in a public hearing on its alternative requirement.
 - d. Provide the Board with information as to:
 - (i) the community college's good faith efforts to implement the source reduction, recycling, and composting measures described in its integrated waste management plan, and demonstration of its progress toward meeting the alternative requirement as described in its annual reports to the Board;
 - (ii) the community college's inability to meet the 50 percent diversion requirement despite implementing the measures in its plan;
 - (iii) how the alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve; and,
 - (iv) the circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed by the community college.⁷¹

D. Accounting System (*Reimbursable starting January 1, 2000*)

Developing, implementing, and maintaining an accounting system to enter and track the college's source reduction, recycling and composting activities, the cost of those activities, the proceeds from the sale of any recycled materials, and such other accounting systems which will allow it to make its annual reports to the state and determine waste reduction. Note: only the pro-rata portion of the costs incurred to implement the reimbursable activities can be claimed.

E. Annual Report (*Reimbursable starting January 1, 2000*)

Annually prepare and submit, by April 1, 2002, and by April 1 each subsequent year, a report to the Board summarizing its progress in reducing

⁷¹ These alternative compliance and time extension provisions in part C were sunset on January 1, 2006, but were included in the adopted Parameters and Guidelines.

solid waste. The information in the report must encompass the previous calendar year and shall contain, at a minimum, the following as outlined in section 42926, subdivision (b): (Pub. Resources Code, §§ 42926, subd. (a) & 42922, subd. (i).)

1. calculations of annual disposal reduction;
2. information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors;
3. a summary of progress made in implementing the integrated waste management plan;
4. the extent to which the community college intends to use programs or facilities established by the local agency for handling, diversion, and disposal of solid waste (If the college does not intend to use those established programs or facilities, it must identify sufficient disposal capacity for solid waste that is not source reduced, recycled or composted.);
5. for a community college that has been granted a time extension by the Board, it shall include a summary of progress made in meeting the integrated waste management plan implementation schedule pursuant to section 42921, subdivision (b), and complying with the college's plan of correction, before the expiration of the time extension;
6. for a community college that has been granted an alternative source reduction, recycling, and composting requirement by the Board pursuant to section 42922, it shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

F. Annual Recycled Material Reports (*Reimbursable starting July 1, 1999*)

Annually report to the Board on quantities of recyclable materials collected for recycling. (Pub. Contract Code, § 12167.1.) (See Section VII. regarding offsetting revenues from recyclable materials.)

The Parameters and Guidelines further require that each claimed reimbursable cost be supported by contemporaneous source documentation.⁷²

And as originally adopted, the Parameters and Guidelines required community college districts to identify and deduct from their reimbursement claims all of the offsetting revenues received from the sale of recyclable materials, limited by the provisions of Public Resources Code section 42925 and Public Contract Code section 12167.1. The original Parameters and Guidelines did not require community colleges to identify and deduct from their claims any offsetting cost savings resulting from the solid waste diversion activities required by the test claim statutes.⁷³

⁷² Exhibit A, IRC, page 41 (Parameters and Guidelines, adopted March 30, 2005).

⁷³ Exhibit A, IRC, page 41-47 (Parameters and Guidelines, adopted March 30, 2005).

B. Superior Court Decision on Cost Savings and Offsets Under the Program

After the Parameters and Guidelines were adopted, the Department of Finance (Finance) and CIWMB filed a petition for a writ of mandate requesting the court to direct the Commission to set aside the Test Claim Statement of Decision and Parameters and Guidelines and to issue a new Decision and Parameters and Guidelines that give full consideration to the cost savings and offsetting revenues community college districts will achieve by complying with the test claim statutes, including all cost savings realized from avoided landfill disposal fees and revenues received from the collection and sale of recyclable materials. The petitioners further argued that Public Contract Code sections 12167 and 12167.1 do not require community college districts to deposit revenues received from the collection and sale of recyclable materials into the Integrated Waste Management Account, as determined by the Commission, but instead allow community college districts to retain all revenues received. The petitioners argued that such revenues must be identified as offsetting revenues and applied to the costs of the program, without the community college district obtaining the approval of the Legislature or CIWMB.

On May 29, 2008, the Sacramento County Superior Court granted the petition for writ of mandate, finding that the Commission's treatment of cost savings and revenues in the Parameters and Guidelines was erroneous and required that the Parameters and Guidelines be amended. The court said:

There is no indication in the administrative record or in the legal authorities provided to the court that, as respondent [Commission] argues, a California Community College might not receive the full reimbursement of its actual increased costs required by section 6 if its claims for reimbursement of IWM plan costs were offset by realized cost savings and all revenues received from the plan activities.⁷⁴

Instead, the court recognized that community colleges are “*likely* to experience costs savings in the form of reduced or avoided costs of landfill disposal” as a result of the mandated activities in Public Resources Code section 42921 because reduced or avoided costs “are a direct result and an integral part of the IWM plan mandated under Public Resources Code section 42920 et seq.: as solid waste diversion occurs, landfill disposal of the solid waste and associated landfill disposal costs are reduced or avoided.”⁷⁵ The court noted that “diversion is defined in terms of landfill disposal for purposes of the IWM plan mandates” and cited the statutory definition of diversion: “activities which reduce or eliminate the amount of solid waste from solid waste disposal for purposes of this division [i.e., division 30, including § 42920 et seq.]” as well as the statutory definition of disposal: “the management of solid waste through landfill disposal or transformation at a permitted solid waste facility.”⁷⁶ The court explained that:

⁷⁴ Exhibit B, Controller's Late Comments on the IRC, page 63 (Ruling on Submitted Matter).

⁷⁵ Exhibit B, Controller's Late Comments on the IRC, page 63 (Ruling on Submitted Matter). Emphasis added.

⁷⁶ Exhibit B, Controller's Late Comments on the IRC, pages 63-64 (Ruling on Submitted Matter).

[R]eduction or avoidance of landfill fees resulting from solid waste diversion activities under § 42920 et seq. represent savings *which must be offset* against the costs of the diversion activities to determine the reimbursable costs of the IWM plan implementation . . . The amount or value of the savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California Community Colleges must annually report to petitioner Integrated Waste Management Board pursuant to subdivision (b)(l) of Public Resources Code section 42926.⁷⁷

The court harmonized section 42925(a) with Public Contract Code sections 12167 and 12167.1:

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.⁷⁸

The court issued a writ of mandate directing the Commission to amend the Parameters and Guidelines to require community college districts claiming reimbursable costs of an integrated waste management plan to:

1. 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; and

⁷⁷ Exhibit B, Controller’s Late Comments on the IRC, page 64 (Ruling on Submitted Matter). Emphasis added.

⁷⁸ Exhibit B, Controller’s Late Comments on the IRC, pages 65-66 (Ruling on Submitted Matter).

2. Identify and offset from their claims all of the revenue generated as a result of implementing their plans, without regard to the limitations or conditions described in sections 12167 and 12167.1 of the Public Contract Code.⁷⁹

C. Parameters and Guidelines Amendment Pursuant to the Writ

In compliance with the writ, the Commission amended the Parameters and Guidelines on September 26, 2008 to add section VIII. Offsetting Cost Savings, which states:

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 be identified and offset from the costs claimed for implementing the Integrated Waste Management Plan.⁸⁰

Section VII. of the Parameters and Guidelines, on Offsetting Revenues, was amended as follows (amendments in strikeout and underline):

Reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds allocated to any service provided under this program, shall be identified and ~~deducted~~ offset from this claim. Offsetting revenue shall include all revenues generated from implementing the Integrated Waste Management Plan. ~~the revenues cited in Public Resources Code section 42925 and Public Contract Code sections 12167 and 12167.1.~~

~~Subject to the approval of the California Integrated Waste Management Board, revenues derived from the sale of recyclable materials 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~~

⁷⁹ Exhibit B, Controller's Late Comments on the IRC, page 31 (Judgment Granting Petition for Writ of Administrative Mandamus).

⁸⁰ Exhibit A, IRC page 59 (Amended Parameters and Guidelines, adopted Sept. 26, 2008).

~~offsetting recycling program costs. Revenues 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 are a reduction to the recycling costs mandated by the state to implement Statutes 1999, chapter 764.~~

In addition, revenue from a building-operating fee imposed pursuant to Education Code section 76375, subdivision (a) if received by a claimant and the revenue is applied to this program, shall be deducted from the costs claimed.⁸¹

All other requirements in the Parameters and Guidelines remained the same.

CIWMB requested additional amendments to the Parameters and Guidelines at this September 2008 hearing, including a request to alter the offsetting savings provision to require community college districts to provide offsetting savings information *whether or not* the offsetting savings generated in a fiscal year exceeded the \$2,000 continuous appropriation required by Public Contract Code sections 12167 and 12167.1. The Commission denied the request because the proposed language went beyond the scope of the court's judgment and writ.⁸² As the court found:

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.⁸³

⁸¹ Exhibit A, IRC, pages 58-59 (Amended Parameters and Guidelines, adopted Sept. 26, 2008).

⁸² Exhibit E, Commission on State Mandates, Excerpt from the Minutes, September 26, 2008 Meeting.

⁸³ Exhibit B, Controller's Late Comments on the IRC, pages 65-66 (Ruling on Submitted Matter).

CIWMB also requested adding a requirement for community college districts to analyze specified categories of potential cost savings when filing their reimbursement claims. The Commission found that the court determined that the amount or value of cost savings is already available from the annual reports the community college districts provide to CIWMB pursuant to Public Resources Code section 42926(b). 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." Thus, the Commission denied CIWMB's request and adopted the staff analysis finding that the request was beyond the scope of the court's writ and judgment. The Commission also noted that the request was the subject of separate pending request filed by CIWMB to amend the Parameters and Guidelines and would therefore be further analyzed for that matter.

D. Subsequent Request by CIWMB to Amend the Parameters and Guidelines to Require Detailed Reports on Cost Savings and Revenues

CIWMB filed a request to amend the Parameters and Guidelines to require community college districts to submit with their reimbursement claims a separate worksheet and report analyzing the costs incurred and avoided and any fees received relating to staffing, overhead, materials, storage, transportation, equipment, the sale of commodities, avoided disposal fees, and any other revenue received relating to the mandated program as specified by CIWMB. At its January 30, 2009 meeting, the Commission denied the request for the following reasons: there is no requirement in statute or regulation that community college districts perform the analysis specified by CIWMB; the Commission has no authority to impose additional requirements on community college districts regarding this program; the offsetting cost savings paragraph in the Parameters and Guidelines already identifies the offsetting savings consistent with the language of Public Resources Code section 42925(a), Public Contract Code sections 12167 and 12167.1, and the court's judgment and writ; and information on cost savings is already available in the community colleges' annual reports submitted to CIWMB, as required by Public Resources Code section 42926(b)(1).⁸⁴

E. The *Integrated Waste Management* Program Made Optional

This program was made optional by statutes of 2010, chapter 724 (AB1610), section 34, effective October 19, 2010 and has remained so since that time.⁸⁵

F. The Controller's Audit

The Controller issued the audit report for reimbursement claims for the fiscal years 1999-2000, 2000-2001, and 2003-2004 through 2010-2011 fiscal years (the audit period) dated April 11, 2014. Of the total of \$658,967 claimed for these fiscal years, the Controller found that \$458,791 is allowable and \$200,176 is unallowable because the claimant did not report offsetting

⁸⁴ Exhibit E, Commission on State Mandates, Item 9, Final Staff Analysis of Proposed Amendments to the Parameters and Guidelines for *Integrated Waste Management*, 05-PGA-16, January 30, 2009, pages 2-3.

⁸⁵ See Government Code section 17581.5.

savings of \$306,596 related to implementation of its IWM plan.⁸⁶ The Controller did not audit the claims for fiscal years 2001-2002 and 2002-2003 because, according to the Controller, the statute of limitations to initiate the audit had expired before the Controller began the review.⁸⁷

The Controller's audit finding is based on the court's ruling, which states that "the amount or value of the savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California Community Colleges must annually report to petitioner Integrated Waste Management Board pursuant to subdivision (b)(1) of Public Resources Code section 42926,"⁸⁸ the resulting amendment to the Parameters and Guidelines, and the claimant's annual reports to CIWMB.⁸⁹

The Controller determined that for every year, the claimant diverted more solid waste than the amount mandated by the test claim statute.⁹⁰ Therefore, the Controller calculated offsetting cost savings by allocating the diversion rate based on the mandated rate:

$$\begin{array}{ccccccc} & & \text{Allocated Diversion \%} & & & & \\ & & \text{Maximum} & & & & \text{Avoided} \\ & & \text{Allowable} & & & & \text{Landfill} \\ \text{Offsetting} & & \text{Diversion \%} & \times & \text{Tonnage} & \times & \text{Disposal Fee} \\ \text{Savings} & = & \frac{\text{Actual}}{\text{Diversion \%}} & & \text{Diverted} & & \text{(per Ton)} \\ \text{Realized} & & & & & & \end{array}$$

This allocated diversion rate is the percentage of solid waste required to be diverted (25 or 50 percent) divided by the actual percentage of solid waste diverted (as reported by the claimant to CIWMB).⁹¹ The resulting quotient is then multiplied by the tons of solid waste diverted (as annually reported by the claimant), multiplied by the avoided landfill disposal fee (based on the statewide average fee).

The Controller provided an example of how this formula works. In calendar year 2007, the claimant reported that it diverted 261.8 tons of solid waste and disposed of 161.8 tons, which totals 423.6 tons of solid waste generated for that year. Diverting 261.8 tons out of the 423.6 tons generated results in a diversion rate of 61.8 percent (more than the 50 percent required).⁹²

⁸⁶ Because the audit adjustment exceeded the amount claimed in two fiscal years (2005-2007) an excess of \$106,420 was subtracted from the offset amount, leaving a net audit adjustment of \$200,176. (Exhibit A, IRC, pages 17, 24, 29 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, page 28.)

⁸⁷ Exhibit A, IRC, page 24 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, page 79 (Email from the Controller to the claimant).

⁸⁸ Exhibit B, Controller's Late Comments on the IRC, page 70 (Ruling on Submitted Matter).

⁸⁹ Exhibit A, IRC, page 35 (Final Audit Report).

⁹⁰ Exhibit B, Controller's Late Comments on the IRC, pages 21, 77.

⁹¹ Exhibit B, Controller's Late Comments on the IRC, page 77.

⁹² Exhibit B, Controller's Late Comments on the IRC, pages 21, 77 (Controller's calculations of offsetting savings for the audit period).

The Controller did not want to penalize the claimant for diverting more solid waste than the amount mandated⁹³ so instead of using 100 percent of the claimant's diversion, the Controller allocated the diversion by dividing the mandated diversion rate (50 percent) by the actual diversion rate (61.8 percent), which equals 80.91 percent. The 80.91 percent allocated diversion rate is then multiplied by the 261.8 tons diverted that year, which equals 211.8 tons of diverted solid waste, instead of the 261.8 tons actually diverted. The allocated 211.8 tons of diverted waste is then multiplied by the statewide average disposal fee per ton, which in calendar year 2007 was \$48, resulting in "offsetting cost savings" for calendar year 2007 of \$10,168.⁹⁴

In 2008, CIWMB stopped requiring community college districts to report the actual amount of tonnage diverted, instead requiring a report based on "per-capita disposal." Consequently, the Controller used the claimant's reported 2007 percentage of tons diverted to calculate the offsetting savings for the last half of fiscal year 2007-2008, as well as for fiscal years 2008-2009, 2009-2010 and 2010-2011. The Controller pointed out in the audit report that the claimant did not provide documentation supporting different diversion rates or disposal fees.⁹⁵

The Controller calculated offsetting savings for the audit period at \$306,596,⁹⁶ but because the adjustment exceeded the amount claimed for two fiscal years (2005-2006 and 2006-2007) an excess of \$106,420 was subtracted from the offset, leaving a net audit adjustment of \$200,176.⁹⁷

⁹³ Exhibit B, Controller's Late Comments on the IRC, page 21.

⁹⁴ Exhibit B, Controller's Late Comments on the IRC, pages 21, 77 (Controller's calculations of offsetting savings for the audit period). Page 21 of the Controller's Late Comments on the IRC describes the calculation differently than the formula identified in the audit report, but the result is the same. The Controller states that cost savings can be calculated by multiplying the total tonnage generated (solid waste diverted + disposed) by the mandated diversion percentage (25 or 50 percent), times the avoided landfill disposal fee:

For example, in calendar year 2007, the district reported to CalRecycle that it diverted 261.8 tons of solid waste and disposed of 161.8 tons, which results in an overall diversion percentage of 61.8% [Tab 6, page 13]. Because the district was required to divert 50% for that year to meet the mandated requirements and comply with the Public Resources Code, it needed to divert only 211.8 tons (423 total tonnage generated x 50%) in order to satisfy the 50% requirements. Therefore, we adjusted our calculation to compute offsetting savings based on 211.8 tons of diverted solid waste rather than a total of 261.8 tons diverted.

Using this formula results in cost savings for calendar year 2007 of \$10,166 (423.6 tons generated x 50 percent required = 211.8 tons x \$48 = 10,166).

⁹⁵ Exhibit A, IRC, pages 35-36 (Final Audit Report).

⁹⁶ Exhibit A, IRC, page 32, 33 (Final Audit Report).

⁹⁷ Exhibit A, IRC, pages 17, 24, 29 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, page 28.

III. Positions of the Parties

A. Gavilan Joint Community College District

The claimant maintains that the audit reductions are incorrect and requests the reinstatement of the full amount reduced.

The claimant first argues that the three-year deadline to initiate the audit had expired for fiscal year 2000-2001 when the Controller commenced the audit. According to claimant, “Pursuant to Chapter 724, Statutes of 2010, an appropriation was made to the District by January 14, 2011, for FY 2000-01 for \$8,404. The exact date of payment is a matter of record not available to the District but that can be produced by the Controller.”⁹⁸ Claimant cites the audit report that states that claimant was first contacted by the Controller on January 17, 2014 regarding the audit, which is more than three years after the January 14, 2011, appropriation for the fiscal year 2000-2001 annual claim, so the Controller did not have jurisdiction to audit fiscal year 2000-2001.⁹⁹

The claimant next alleges that it did not realize any cost savings as a result of the mandate and quotes the Superior Court decision (discussed above) that cost savings will “most likely” occur as a result of reduced or avoided costs of landfill disposal. Claimant argues that:

The court presupposes a previous legal requirement for districts to incur landfill disposal fees to divert solid waste. Thus, potentially relieved of the need to incur new or additional landfill fees for increased waste diversion, a cost savings would occur. There is no finding of fact or law in the court decision or from the Commission Statement of Decision for the test claim for this assumed duty to use landfills.¹⁰⁰

The claimant further argues that the offsetting savings provision in the Parameters and Guidelines does not assume that the cost savings occurred, but instead requires that the cost savings be *realized*. For the savings to be realized, the claimant contends that the following chain of events are required:

The cost savings must exist (avoided landfill costs); be converted to cash; amounts in excess of \$2,000 per year deposited in the state fund; and, these deposits by the districts appropriated by the Legislature to districts for purposes of mitigating the cost of implementing the plan. None of those prerequisite events occurred so no cost savings were "realized" by the District. Regardless, the adjustment cannot be applied to the District since no state appropriation of the cost savings was made to the District.¹⁰¹

The claimant also argues that the Parameters and Guidelines are silent as to how to calculate the avoided costs, but that the court provided two alternative methods, either disposal reduction or diversion reported by districts. The Controller used the diversion percentage, which assumes, without findings of fact, that all diversion tonnage is landfill disposal tonnage reduction. The

⁹⁸ Exhibit A, IRC, pages 9-10.

⁹⁹ Exhibit A, IRC, pages 9-10.

¹⁰⁰ Exhibit A, IRC, page 12.

¹⁰¹ Exhibit A, IRC, pages 13-14. Emphasis in original.

claimant contends that the Controller's calculation of cost savings is wrong because: (1) the formula is a standard of general application that was not adopted pursuant to the Administrative Procedure Act and is therefore an unenforceable underground regulation; (2) the Controller's formula assumes facts not in evidence, such as applying the same percentage of waste diverted in 2007 to all subsequent years without evidence in the record, and assumes that all tonnage diverted would have been disposed in a landfill, although some waste may have been composted or may not apply to the mandate (e.g. paint); and (3) the landfill disposal fee, a statewide average calculated by CIWMB, does not include the data used to generate the average fee amounts, so the average is unknown and unsupported by the audit findings.¹⁰²

Claimant also asserts that application of the formula is incorrect. Since no landfill costs were claimed, none can be offset, so the offsets are not properly matched to relevant costs. Moreover, the Controller's calculation method prevents the claimant from receiving full reimbursement for its actual increased program costs. Claimant contends, using audit results for 23 other claimants under the *Integrated Waste Management* program, the application of the Controller's formula has arbitrary results because the percentages of allowed costs for those claimants ranges from zero to 83.4 percent.¹⁰³

Finally, the claimant argues: (1) the Controller used the wrong standard of review in that the claimed costs were not found to be excessive or unreasonable, as required by Government Code section 17561(d)(2); and (2) the Controller has the burden of proof as to the propriety of its audit findings "because it bears the burden of going forward and because it is the party with the power to create, maintain, and provide evidence regarding its auditing methods and procedures, as well as the specific facts relied upon for its audit findings."¹⁰⁴

The claimant did not file comments on the Draft Proposed Decision.

B. State Controller's Office

The Controller maintains that the audit findings are correct. The Controller first argues that it complied with the three-year audit deadline in Government Code section 17558.5, in that it sent a remittance advice to the claimant for 2000-2001 on January 28, 2011, and initiated the audit on January 17, 2014, so the Controller had jurisdiction to audit the fiscal year 2000-2001 claim.¹⁰⁵

The Controller also notes that the claimant does not indicate how undiverted solid waste would be disposed of if not at a landfill. In addition, the claimant does not state that it disposed of its solid waste at any location other than a landfill or used any other means to dispose of its waste rather than to contract with a commercial waste hauler.¹⁰⁶

The Controller concludes that the claimant's comments relating to alternatives for the disposal of solid waste are irrelevant and cites the claimant's annual reports of tonnage disposed for each year of the audit period, arguing that the claimant "does not indicate in these annual reports that

¹⁰² Exhibit A, IRC, pages 14-16.

¹⁰³ Exhibit A, IRC, pages 16-18.

¹⁰⁴ Exhibit A, IRC, pages 20-21.

¹⁰⁵ Exhibit B, Controller's Late Comments on the IRC, pages 12-13.

¹⁰⁶ Exhibit B, Controller's Late Comments on the IRC, page 18.

it used any other methodology to dispose of solid waste other than in the landfill.”¹⁰⁷ The Controller also cites some of the claimant’s annual reports that indicates that the claimant disposed of waste in a landfill.¹⁰⁸ According to the Controller:

Unless the district had an arrangement with its waste hauler that it did not disclose to us or CalRecycle, the district did not dispose of its solid waste at a landfill for no cost. Gavilan Community College is located in Gilroy, California. An internet search for landfill fees revealed that the Buena Vista Sanitary Landfill in Watsonville, California, currently charges between \$59 and \$71 per ton to dispose of solid waste [citation omitted]. Thus, the higher rate of diversion results in less trash that is disposed at a landfill, which creates cost savings for the district.¹⁰⁹

As to the claimant not remitting cost savings from the implementation of its IWM plan into the Integrated Waste Management Account in compliance with the Public Contract Code, the Controller asserts that the claimant is not precluded from the requirement to do so, as indicated in the Parameters and Guidelines and the court ruling. The Controller says the evidence supports that the claimant realized cost savings that should have been remitted to the state and that must be used to fund IWM plan costs.¹¹⁰

In response to the claimant’s argument that the Controller’s formula is a standard of general application that is an underground regulation, the Controller responds that the calculation is a “court approved methodology” to determine the “required offset.” The Controller also states that the claimant did not amend any of its reimbursement claims after the Parameters and Guidelines were amended in September 2008. According to the Controller: “We believe that this “court-identified” approach provides a reasonable methodology to identify the required offset.”¹¹¹

The Controller also states that it “allocated” the offsetting savings to avoid penalizing the claimant for diverting more than the minimum percentage of diversion required. According to the Controller:

As there is no State mandate to exceed solid waste diversion for amounts in excess of 25% for calendar years 2000 through 2003 or greater than 50% for calendar year 2004 and beyond, there is no basis for calculating offsetting savings realized for actual diversion percentages that exceeded the levels set by statute.¹¹²

The Controller notes that after the passage of Statutes 2008, chapter 343, CIWMB no longer required districts to report their tonnage or percentage diverted, but they are still required to divert 50 percent of their solid waste.¹¹³

¹⁰⁷ Exhibit B, Controller’s Late Comments on the IRC, page 18.

¹⁰⁸ Exhibit B, Controller’s Late Comments on the IRC, page 18.

¹⁰⁹ Exhibit B, Controller’s Late Comments on the IRC, page 18.

¹¹⁰ Exhibit B, Controller’s Late Comments on the IRC, pages 19.

¹¹¹ Exhibit B, Controller’s Late Comments on the IRC, pages 19-20.

¹¹² Exhibit B, Controller’s Late Comments on the IRC, page 21.

¹¹³ Exhibit B, Controller’s Late Comments on the IRC, page 21.

Defending its use of the claimant's 2007 reported diversion to calculate offsetting savings for 2007-2008 through 2010-2011, the Controller calls the 2007 report a "fair representation" of 2008 -2010 "because the district's recycling processes have already been established and committed to."¹¹⁴ The Controller notes that the claimant's reported per-capita disposal rate is well below the target rate for 2008, 2009, and 2010, so "the district is meeting its requirement to divert 50% of its solid waste."¹¹⁵ The Controller also cites the claimant's 2009 report that states: "The science club and the athletic association have been recycling aluminum and plastic bottles on campus. We have added 12 ea. new containers throughout the campus." In its 2010 report, the claimant states: "More recycling containers were placed on campus."¹¹⁶ Based on these statements, the Controller states that its savings calculations for 2007-2008 through 2010-2011 may be understated.¹¹⁷

The Controller also responded to claimant's argument against the assumption that all tonnage diverted would have been disposed in a landfill, even though some waste may have been composted or may not apply to the mandate (e.g. paint). Noting that nearly \$100,000 was claimed for salaries and benefits for groundskeepers for diversion via composting, "it seems reasonable that the correlated landfill fees that the district did not incur for the composted materials translate into savings realized by the district . . . [that] should be recognized and appropriately offset against composting costs that the district claimed as part of implementing its IWM plan."¹¹⁸ The Controller also states that claimant's reference to paint disposal is irrelevant because hazardous waste is not included in the diversion amounts that claimant reported, and therefore, are not included in the Controller's offsetting savings calculation.¹¹⁹

Regarding the data for the statewide disposal fee, the Controller states the information was provided by CIWMB, is included in the record, and is based on private surveys of a large percentage of landfills across California. In addition, the claimant "did not provide any information, such as its contract with or invoices received from its commercial waste hauler to support either the landfill fees actually incurred by the district or to confirm that the statewide average landfill fee was greater than the actual landfill fees incurred by the district."¹²⁰

In response to the claimant's argument that it "did not claim landfill costs, so there are none to be offset," the Controller answers that the mandated program does not reimburse claimants for landfill costs incurred to dispose of solid waste, so none would be claimable. Rather, the program reimburses claimant's costs to divert solid waste from disposal, which according to the Controller, results in both a reduction of solid waste going to a landfill and the associated costs

¹¹⁴ Exhibit B, Controller's Late Comments on the IRC, page 22.

¹¹⁵ Exhibit B, Controller's Late Comments on the IRC, page 21.

¹¹⁶ Exhibit B, Controller's Late Comments on the IRC, page 22.

¹¹⁷ Exhibit B, Controller's Late Comments on the IRC, page 22.

¹¹⁸ Exhibit B, Controller's Late Comments on the IRC, page 22.

¹¹⁹ Exhibit B, Controller's Late Comments on the IRC, page 22.

¹²⁰ Exhibit B, Controller's Late Comments on the IRC, page 23.

of having the waste hauled there, which creates offsetting savings that claimant is required to identify in its reimbursement claims.¹²¹

In response to the claimant's argument that "the adjustment method does not match or limit the landfill costs avoided to landfill costs, if any, actually claimed," the Controller quotes Public Resources Code section 42925 which provides that "cost savings realized as a result of the IWM plan are to "fund plan *implementation and administration costs*." The Controller argues that offsetting savings applies to the whole program and is not limited to solid waste diversion activities. The Controller also cites the reimbursable activities in the Parameters and Guidelines that refer to "implementation of the IWM plan," concluding that it is reasonable that offsetting savings from implementing the plan be offset against direct costs to implement the plan. The Controller also asserts that the claimant's reference to other IWM audits is irrelevant to the current issue.¹²²

The Controller also disagrees with claimant's assertion that the Controller used the wrong standard of review because it did not conclude that the claims were excessive. The Controller cites the statute that authorizes it to audit the claimant's records to verify actual mandate-related costs *and* reduce any claim that is excessive or unreasonable. In this case, the claims were excessive because the amount claimed did not account for the cost savings required by the test claim statutes. As to the burden of proof, the Controller states that it used data from the claimant's annual reports to CIWMB from implementing its IWM program.¹²³

On July 28, 2017, the Controller filed comments on the Draft Proposed Decision, agreeing with the conclusion and recommendation to support the audit reductions for fiscal years 1999-2000, 2000-2001, the second half of 2003-2004, and 2004-2005 through 2010-2011. The Controller also agreed to reinstate \$3,822 to the claimant for the first half of fiscal year 2003-2004.¹²⁴

IV. Discussion

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of

¹²¹ Exhibit B, Controller's Late Comments on the IRC, page 23.

¹²² Exhibit B, Controller's Late Comments on the IRC, page 24.

¹²³ Exhibit B, Controller's Late Comments on the IRC, pages 26-27.

¹²⁴ Exhibit D, Controller's Comments on the Draft Proposed Decision.

the California Constitution.¹²⁵ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹²⁶

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.¹²⁷ Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’” [Citation.]’ ”¹²⁸

The Commission must review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.¹²⁹ In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.¹³⁰

¹²⁵ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹²⁶ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹²⁷ *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

¹²⁸ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

¹²⁹ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹³⁰ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

A. The Controller Timely Initiated the Audit of the Fiscal Year 2000-2001 Reimbursement Claim, and Timely Completed the Audit of All Claims.

Government Code section 17558.5 requires an audit to be initiated no later than three years after the date the reimbursement claim is filed or last amended. However, section 17558.5 also provides that *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.”¹³¹ “In any case,” section 17558.5 requires the audit to be completed no later than two years after it is commenced.¹³²

The claimant argues that the Controller did not timely initiate the audit of the 2000-2001 reimbursement claim. For the reasons below, the Commission finds that the Controller timely initiated and completed the audit.

1. The audit of the 2000-2001 reimbursement claim was timely initiated.

The claimant filed the 2000-2001 reimbursement claim on October 6, 2005.¹³³ However, payment was not made at that time. The claimant alleges that payment on the 2000-2001 claim was made on January 14, 2011, and that the Controller initiated the audit more than three years later on January 17, 2014, according to information in the final audit report. Therefore, the claimant asserts that the Controller did not timely initiate the audit.¹³⁴

Government Code section 17558.5(a) tolls the time to initiate the audit to three years from the date of initial payment on the claim, rather three years from the date the claim was filed, “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,” as follows:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever 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.¹³⁵

Although the parties agree that payment was first made on the 2000-2001 claim in January 2011, the parties dispute the date of payment. The claimant alleges:

Pursuant to Chapter 724, Statutes of 2010, an appropriation was made to the District by January 14, 2011, for FY 2000-01 for \$8,404. The exact date of

¹³¹ Government Code section 17558.5 (as amended, Stats. 2002, ch. 1128 (AB 2834)).

¹³² Government Code section 17558.5 (as amended, Stats. 2004, ch. 890 (AB 2856)).

¹³³ Exhibit A, IRC, page 230.

¹³⁴ Exhibit A, IRC, page 9.

¹³⁵ Emphasis added.

payment is a matter of record not available to the District but that can be produced by the Controller.¹³⁶

There is no evidence in the record, however, to support the claimant's assertion that the Controller made payment on January 14, 2011. Rather, the record supports a finding that payment was first made on the 2000-2001 reimbursement claim on either January 18, 2011, or January 28, 2011.

The claimant filed, as part of its IRC, a copy of a notice from the Controller to the claimant dated April 18, 2014 (following the audit), showing the audit adjustments and identifying an \$8,406 payment on the 2000-2001 reimbursement claim on *January 18, 2011* by "Schedule No. AP00122A," that states:

WE HAVE REVIEWED YOUR 2000/2001 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED	69,207.00
ADJUSTMENT TO CLAIM:	
FIELD AUDIT FINDINGS	- 2,739.00
TOTAL ADJUSTMENTS	2,739.00
LESS PRIOR PAYMENT: SCHEDULE NO. AP00122A PAID 01-18-2011	<u>8,406.00</u>
AMOUNT DUE CLAIMANT	\$ 58,062.00 ¹³⁷

The Controller asserts that payment was first made on the 2000-2001 reimbursement claim on *January 28, 2011*, pursuant to Statutes of 2010, chapter 724 (AB 1610, eff. October 19, 2010).¹³⁸ That statute appropriated funds to offset the outstanding balance of the state's minimum funding obligation under Proposition 98 to school districts and community college districts, and required that funds first be paid in satisfaction of any outstanding claims for reimbursement of state-mandated costs. The Controller filed a copy of a remittance advice showing payments to the claimant under AB 1610 for several state-mandated programs, including a payment of \$8,406 for the *Integrated Waste Management* program for fiscal year 2000-2001 by "Claim Schedule Number: 1000149A, Payment Issue Date: 01/28/2011."¹³⁹

¹³⁶ Exhibit A, IRC, page 9.

¹³⁷ Exhibit A, IRC, page 292. Emphasis added.

¹³⁸ Exhibit A, IRC, page 24 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, page 12 ("The SCO sent a remittance advice to the district dated January 28, 2011, notifying the district of payment made on that date pursuant to Chapter 724, Statutes 2010 (Assembly Bill No. 1610) totaling \$8,406 [Tab 5].").

¹³⁹ Exhibit B, Controller's Late Comments on the IRC, page 36.

The Controller has not explained the discrepancy between the notice indicating payment of \$8,406 for the 2000-2001 reimbursement claim on January 18, 2011 by “Schedule No. AP00122A,” and the remittance advice indicating payment of \$8,406 for the 2000-2001 reimbursement claim on January 28, 2011 by “Schedule Number: 1000149A.” Nevertheless, the Controller issued both documents that support a finding that payment was first made on the 2000-2001 reimbursement claim on either January 18, 2011, or January 28, 2011.

As indicated above, Government Codes section 17558.5(a) tolls the time to initiate the audit of a claim “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,” to three years from the date of initial payment on the claim. Therefore, using the earlier of the two dates showing payment on the 2000-2001 reimbursement claim on January 18, 2011, the Controller had until January 18, 2014 to initiate the audit of the 2000-2001 claim.

The Legislature has not specifically defined the event that initiates the audit and, unlike other auditing agencies,¹⁴⁰ the Controller has not adopted formal regulations (which can be viewed as the controlling interpretation of a statute) to clarify when an audit of a mandate reimbursement claim begins. Therefore, the Commission cannot, as a matter of law, state the event that initiates an audit in all cases, but must determine when the audit was initiated based on evidence in the record. Initiating an audit requires a unilateral act of the Controller. In this respect, Government Code section 17558.5(a) can be characterized as a statute of repose because it provides a period during which an audit has been commenced, and after which claimants may enjoy repose, dispose of evidence to support their claims, and assert a defense that the audit is not timely and therefore void.¹⁴¹ Since the Controller’s authority to audit must be exercised within a specified time, it must be within the Controller’s exclusive control to meet or fail to meet the deadline imposed. The Controller has the burden of proof on this issue and must show with evidence in the record that the claimant was notified that an audit was being initiated by the statutory deadline to ensure that the claimant not dispose of any evidence or documentation to support its claim for reimbursement.

The Controller asserts that the audit began on January 17, 2014, the day before the January 18, 2014 deadline. In support, the Controller filed a declaration by Jim Spano (Chief, Mandated Cost Audits Bureau, Division of Audits), stating under penalty of perjury that “a review of the claims . . . commenced on January 17, 2014 (initial contact date).”¹⁴² The Controller also filed a copy of an email dated January 17, 2014, from an audit manager at the Controller’s Office to the claimant, to evidence the Controller’s initial contact with the claimant about the audit. The email states in relevant part:

I am contacting you because the State Controller’s Office will be adjusting the district’s Integrated Waste Management claims for FY 2000-02, . . . because the

¹⁴⁰ See, e.g., regulations adopted by the California Board of Equalization (title 18, section 1698.5, stating that an “audit engagement letter” is a letter “used by Board staff to confirm the start of an audit or establish contact with the taxpayer”).

¹⁴¹ *Giest v. Sequoia Ventures, Inc.* (2000) 83 Cal.App.4th 300, 305.

¹⁴² Exhibit B, Controller’s Late Comments on the IRC, page 5.

district did not offset any savings (e.g. avoided landfill disposal fees) received as a result of implementing the districts' IWM Plan.

I will notify you, via email, of the exact adjustment amount later this week. Also, included in this email, will be documentation to support the adjustment.¹⁴³

The claimant concurs that the audit was initiated by the Controller's initial contact on January 17, 2014.¹⁴⁴

Accordingly, the Commission finds that the Controller timely initiated the audit, pursuant to Government Code section 17558.5(a), on January 17, 2014.

2. The audit was timely completed.

Government Code section 17558.5 also prescribes the time in which an audit must be completed: "In any case, an audit shall be completed not later than two years after the date that the audit is commenced."¹⁴⁵ As indicated above, the audit was initiated on January 17, 2014, the date of initial contact with the claimant about the audit and thus, had to be completed no later than January 17, 2016. An audit is completed when the Controller issues the final audit report to the claimant. The final audit report constitutes the Controller's final determination on the subject claims and provides the claimant with written notice of the claim components adjusted, the amounts adjusted, and the reasons for the adjustment.¹⁴⁶ This notice enables the claimant to file an IRC. Here, the final audit report was issued April 11, 2014, well before the January 17, 2016 deadline.¹⁴⁷

Based on the foregoing, the Commission finds that the Controller's audit was timely completed in accordance with Government Code section 17558.5.

B. The Controller's Reduction of Costs Is Generally Correct as a Matter of Law; However, the Reduction of Costs for the First Half of Fiscal Year 2003-2004 Based on the Incorrect Mandated Diversion Rate, Is Incorrect as a Matter of Law.

1. The test claim statutes presume that by complying with the mandate to divert solid waste through the IWM program, landfill fees are reduced or avoided and cost savings are realized.

The test claim statute added Public Resources Code section 42925(a), which provides that "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."

¹⁴³ Exhibit B, Controller's Late Comments on the IRC, page 34 (emphasis in original).

¹⁴⁴ Exhibit A, IRC, pages 9-10.

¹⁴⁵ Government Code section 17558.5 (Stats. 2004, ch. 890).

¹⁴⁶ Government Code section 17558.5(c).

¹⁴⁷ Exhibit A, IRC, page 24.

The court's Ruling on Submitted Matter states that community colleges are "likely to experience costs savings in the form of reduced or avoided costs of landfill disposal" as a result of the mandated activities in Public Resources Code section 42921 because reduced or avoided costs "are a direct result and an integral part of the IWM plan mandated under Public Resources Code section 42920 et seq.: as solid waste diversion occurs, landfill disposal of the solid waste and associated landfill disposal costs are reduced or avoided." The court noted that "diversion is defined in terms of landfill disposal for purposes of the IWM plan mandates." The statutory definition of diversion provides that "activities which reduce or eliminate the amount of solid waste from solid waste disposal for purposes of this division." And the statutory definition of disposal is "the management of solid waste through landfill disposal or transformation at a permitted solid waste facility."¹⁴⁸ The court explained that:

[R]eduction or avoidance of landfill fees resulting from solid waste diversion activities under § 42920 et seq. represent savings *which must be offset* against the costs of the diversion activities to determine the reimbursable costs of the IWM plan implementation . . . The amount or value of the savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California Community Colleges must annually report to petitioner Integrated Waste Management Board pursuant to subdivision (b)(1) of Public Resources Code section 42926.¹⁴⁹

As noted in the background, the court harmonized section 42925(a) with Public Contract Code sections 12167 and 12167.1:

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

¹⁴⁸ Exhibit B, Controller's Late Comments on the IRC, page 69 (Ruling on Submitted Matter).

¹⁴⁹ Exhibit B, Controller's Late Comments on the IRC, page 70 (Ruling on Submitted Matter). Emphasis added.

in excess of \$2000 annually are available for such expenditure by the agencies and colleges when appropriated by the Legislature.¹⁵⁰

Thus, the court found that offsetting savings are, by statutory definition, likely to occur as a result of implementing the mandated activities. Reduced or avoided costs “are a direct result and an integral part of the IWM plan mandated under Public Resources Code section 42920 et seq.: as solid waste diversion occurs, landfill disposal of the solid waste and associated landfill disposal costs are reduced or avoided.”¹⁵¹ As the court held, “landfill fees resulting from solid waste diversion activities under § 42920 et seq. represent savings *which must be offset* against the costs of the diversion activities to determine the reimbursable costs. . . .”¹⁵²

The statutes, therefore, presume that by complying with the mandate to divert solid waste through the IWM program, landfill fees are reduced or avoided and cost savings are realized. As indicated in the court’s ruling, the amount or value of the cost savings may be determined from the calculations of annual solid waste disposal reduction or diversion, which community colleges are required to annually report to CIWMB. The amount of cost savings realized must be identified by the claimant and used to offset the costs incurred to comply with IWM plan implementation and administration activities approved for reimbursement in the Parameters and Guidelines. Accordingly, the court’s ruling requires claimants to report in their reimbursement claims the costs incurred to comply with the reimbursable activities (which includes the activities and costs to divert at least 25 or 50 percent of all solid waste from landfill disposal) and the cost savings from the avoided landfill disposal fees, for a bottom line request for reimbursement of the net increased costs.

The Parameters and Guidelines are consistent with the court’s ruling and require in Section IV. that “[t]he 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.”¹⁵³ Section VIII. requires 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.”¹⁵⁴ The court’s decision and the amended Parameters and Guidelines are binding.¹⁵⁵

¹⁵⁰ Exhibit B, Controller’s Late Comments on the IRC, pages 71-72 (Ruling on Submitted Matter).

¹⁵¹ Exhibit B, Controller’s Late Comments on the IRC, page 69 (Ruling on Submitted Matter).

¹⁵² Exhibit B, Controller’s Late Comments on the IRC, page 70 (Ruling on Submitted Matter). Emphasis added.

¹⁵³ Exhibit A, IRC, page 55 (Parameters and Guidelines).

¹⁵⁴ Exhibit A, IRC, page 60 (Parameters and Guidelines).

¹⁵⁵ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

2. During the audit period, the claimant exceeded the mandated diversion rate for solid waste, but has filed no evidence to rebut the presumption that cost savings were realized.

In this case, the claimant reported no cost savings in its reimbursement claims and asserts that no cost savings were realized, but does not explain why.¹⁵⁶

The record shows that during the audit period the claimant complied with the mandate and diverted more solid waste than the state-mandated amount. The mandate requires community colleges to divert at least 25 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2002, through source reduction, recycling, and composting activities, and at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004.¹⁵⁷ The claimant's annual reports to CIWMB for calendar years 2000, 2001, and 2003 report diversion percentages from 36.21 percent to 75.43 percent of the total tonnage of waste generated, which exceeds the mandated diversion requirement of 25 percent.¹⁵⁸ The claimant's annual reports to CIWMB for calendar years 2004 through 2007 also report diversion percentages that exceed the mandated diversion requirement of 50 percent, and range from 61.8 percent to 98.23 percent of the total tonnage of waste generated.¹⁵⁹

In 2008, CIWMB stopped requiring community college districts to report the amount and percentage of tonnage diverted, and instead required them to report the "per-capita disposal" of waste.¹⁶⁰ As amended, each community college now has a disposal target that is the equivalent to a 50 percent diversion, and is expressed on a per capita basis. So if the district's per-capita disposal rate is less than the target, it means that the district is meeting the requirement to divert 50 percent of its solid waste.¹⁶¹

In this case, the reports for 2008, 2009, and 2010 show that the claimant's annual per capita disposal rate for both the employee and student populations to be at or below the target rate, thereby satisfying the requirement to divert 50 percent of its solid waste during these years.¹⁶² In

¹⁵⁶ Exhibit A, IRC, page 10.

¹⁵⁷ Public Resources Code sections 42921; Exhibit A, IRC, pages 52 and 56 (Parameters and Guidelines, section IV.(B)(5)).

¹⁵⁸ Exhibit B, Controller's Late Comments on the IRC, pages 40-45 and 77.

¹⁵⁹ Exhibit B, Controller's Late Comments on the IRC, pages 46-53 and 77.

¹⁶⁰ The new requirement was a result of Statutes 2008, chapter 343 (SB 1016).

¹⁶¹ Exhibit B, Controller's Late Comments on the IRC, pages 84-92 ["Understanding SB 1016 Solid Waste Per Capita Disposal Measurement Act", <http://www.calrecycle.ca.gov/lgcentral/goalmeasure/Tools/SimplePresen.pdf>].

¹⁶² Exhibit B, Controller's Late Comments on the IRC, pages 54 (2008 report, showing an employee population target of 127.4, and 1.1 was achieved; and a student population target of 4.3, and 0.09 was achieved); 56 (2009 report, showing an employee population target of 127.4, and 1.3 was achieved; and a student population target of 4.3, and 0.1 was achieved); and 58 (2010 report, showing an employee population target of 127.4, and 1.0 was achieved; and a student population target of 4.3, and 0.09 was achieved).

addition, the claimant's 2008, 2009, and 2010 reports continue to show that the claimant had solid waste reduction programs in place. In its 2008 report, the claimant listed the following programs: "Business Source Reduction, Material Exchange, Beverage Containers, Cardboard, Office Paper (mixed), Xeriscaping, grasscycling, On-site composting/mulching, Tires, Scrap Metal, Concrete/asphalt/rubble (C&D), Rendering."¹⁶³ Also in its 2008 report, the claimant stated: "No changes were implemented in our Mission Statement. We are operating under our current Waste Management/Recycling program. ... We still have recycle containers next to our general trash receptacles."¹⁶⁴ In its 2009 report, the claimant stated: "The science club and the athletic association have been recycling aluminum and plastic bottles on campus. We have added 12 ea new containers throughout the campus."¹⁶⁵ And in its 2010 report, the claimant stated: "Campus club from the sciences entitled 'Science Alliance' has propagated a massive push for recyclables as a fundraising method. More recycling containers were placed on campus."¹⁶⁶

The record also shows that the tonnage of solid waste that was not diverted was disposed at a landfill. The annual reports filed by the claimant with CIWMB during the audit period identify the total tonnage of waste disposed and the use of a waste hauler.¹⁶⁷ Moreover, there are statements in the claimant's 2003, 2004, 2005, and 2006 annual reports pertaining to decreased landfill disposal, indicating that the claimant used a landfill to some extent.¹⁶⁸ The avoided landfill disposal fee was based on the statewide average disposal fee provided by CIWMB for each fiscal year in the audit period, since the claimant did not provide any information to the Controller regarding the landfill fees it was charged.¹⁶⁹

Based on this documentation, the Controller correctly presumed, consistent with the presumption in the test claim statutes and the court's interpretation of those statutes and with no evidence to

¹⁶³ Exhibit B, Controller's Late Comments on the IRC, page 55 (2008 report to CIWMB).

¹⁶⁴ Exhibit B, Controller's Late Comments on the IRC, page 55 (2008 report to CIWMB).

¹⁶⁵ Exhibit B, Controller's Late Comments on the IRC, page 57 (2009 report to CIWMB).

¹⁶⁶ Exhibit B, Controller's Late Comments on the IRC, page 58 (2010 report to CIWMB).

¹⁶⁷ For example, the 2001 report to CIWMB states: "On-site waste assessments and hauler/processor records review were conducted to obtain actual material weights, volumes, areas, and quantities wherever possible. . . . Hired a technical consultant to . . . research and analyze hauler and processor waste management records;" See Exhibit B, Controller's Late Comments on the IRC, page 43. The 2003 report states: "Actual hauler tonnages were obtained for disposal debris boxes. . . . Recycling Coordinator . . . Liaison to garbage and recycling hauling company." Similar statements were made in the 2003 report (p. 45) the 2004 report (p. 47). Statements that the recycling coordinator "Worked with garbage and recycling haulers to execute collection programs" is in the 2004 report (p. 47), the 2005 report (p. 49) and the 2006 report (p. 51). The 2008 report indicated that the claimant used "South Valley Disposal and Recycling" to haul its materials (p. 55). The 2009 report indicated that the claimant used "Recology Waste and Recycling Company" (p. 57).

¹⁶⁸ Exhibit B, Controller's Late Comments on the IRC, pages 45, 47, 49, 51.

¹⁶⁹ Exhibit B, Controller's Late Comments on the IRC, pages 23, 101-130.

the contrary, that the percentage of waste diverted results in offsetting savings in an amount equal to the avoided landfill fee per ton of waste required to be diverted.

The statutory presumption of cost savings controls unless the claimant files evidence to rebut the presumption and shows that cost savings were not realized.¹⁷⁰ The claimant has the burden of proof on this issue. Under the mandates statutes and regulations, the claimant is required to show that it has incurred increased costs mandated by the state when submitting a reimbursement claim to the Controller's Office, and the burden to show that any reduction made by the Controller is incorrect.¹⁷¹ The Parameters and Guidelines, as amended pursuant to the court's writ, also require claimants to show the costs incurred to divert solid waste and to perform the administrative activities, and *to report and identify* the costs saved or avoided by diverting solid waste: "Reduced or avoided costs realized from implementation of the community college

¹⁷⁰ Government Code section 17559, which requires that the Commission's decisions be supported by substantial evidence in the record. See also, *Coffy v. Shiimoto* (2015) 60 Cal.4th 1198, 1209, a case interpreting the rebuttable presumption in Vehicle Code section 23152 that if a person had 0.08 percent or more, by weight, of alcohol in the blood at the time of testing, then it is presumed by law that he or she had 0.08 percent or more, by weight, of alcohol in the blood at the time of driving, unless he or she files evidence to rebut the presumption. The court states that unless and until evidence is introduced that would support a finding that the presumption does not exist, the statutory presumption that the person was driving over the legal limit remains the finding of fact.

¹⁷¹ Evidence Code section 500, which states: "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." See also, *Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 24, where the court recognized that "the general principle of Evidence Code 500 is that a party who seeks a court's action in his favor bears the burden of persuasion thereon." This burden of proof is recognized throughout the architecture of the mandates statutes and regulations. Government Code section 17551(a) requires the Commission to hear and decide a claim filed by a local agency or school district that it is entitled to reimbursement under article XIII B, section 6. Section 17551(d) requires the Commission to hear and decide a claim by a local agency or school district that the Controller has incorrectly reduced payments to the local agency or school district. In these claims, the claimant must show that it has incurred increased costs mandated by the state. (Gov. Code, §§ 17514 [defining "costs mandated by the state"], 17560(a) ["A local agency or school district may . . . file an annual reimbursement claim that details the costs actually incurred for that fiscal year."]; 17561 [providing that the issuance of the Controller's claiming instructions constitutes a notice of the right of local agencies and school districts to file reimbursement claims based upon the parameters and guidelines, and authorizing the Controller to audit the records of any local agency or school district to "verify the actual amount of the mandated costs."]; 17558.7(a) ["If the Controller reduces a claim approved by the commission, the claimant may file with the commission an incorrect reduction claim pursuant to regulations adopted by the commission."]). By statute, only the local agency or school district may bring these claims, and the local entity must present and prove its claim that it is entitled to reimbursement. (See also, Cal. Code Regs., tit. 2, §§ 1185.1, et seq., which requires that the IRC contain a narrative that describes the alleged incorrect reductions, and be signed under penalty of perjury.)

districts' Integrated Waste Management plans *shall be* identified and offset from this claim as cost savings.”¹⁷² Thus, the claimant has the burden to rebut the statutory presumption and to show, with substantial evidence in the record, that the costs of complying with the mandate exceed any cost savings realized by diverting solid waste.

Accordingly, the Commission finds that the claimant has not filed any evidence to rebut the statutory presumption of cost savings. Therefore, the Controller’s finding of cost savings is correct as a matter of law.

3. For fiscal years 1999-2000, 2000-2001, the second half of fiscal year 2003-2004, and 2004-2005 through 2010-2011, the Controller’s calculation of cost savings is correct as a matter of law, and is not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller correctly determined that for every year during the audit period, the claimant diverted more solid waste than the amount mandated by the test claim statute. Therefore, the Controller allocated the actual diversion rate based on the mandated diversion rate to calculate offsetting savings. Instead of using 100 percent of the diverted amount, the Controller divided the percentage of solid waste required to be diverted (either 25 percent or 50 percent) by the actual percentage of solid waste diverted (as reported by the claimant to CIWMB). The resulting quotient is then multiplied by the tons of solid waste diverted (as annually reported to CIWMB), multiplied by the avoided landfill disposal fee (based on the statewide average fee).¹⁷³

$$\begin{array}{ccccccc} & & \text{Allocated Diversion \%} & & & & \\ & & \text{Maximum} & & & & \text{Avoided} \\ & & \text{Allowable} & & & & \text{Landfill} \\ \text{Offsetting} & = & \frac{\text{Diversion \%}}{\text{Actual}} & \times & \text{Tonnage} & \times & \text{Disposal Fee} \\ \text{Savings} & & \text{Diversion \%} & & \text{Diverted} & & \text{(per Ton)} \\ \text{Realized} & & & & & & \end{array}$$

The formula allocates or reduces cost savings based on the mandated rate, and is intended to prevent penalizing the claimant for diverting more solid waste than the amount mandated by law.¹⁷⁴

The claimant raises several arguments to assert that the Controller’s calculation of cost savings is incorrect. These arguments are not supported by the law or evidence in the record.

The claimant first alleges that cost savings cannot be realized because the chain of events required by Public Contract Code sections 12167 and 12167.1 did not occur: that savings have to be converted to cash, and amounts in excess of \$2000 per year must be deposited in the state fund and appropriated back by the Legislature to mitigate the costs.¹⁷⁵ It is undisputed that the claimant did not remit to the state any savings realized from the implementation of the IWM

¹⁷² Exhibit A, IRC, page 96 (Parameters and Guidelines). Emphasis added.

¹⁷³ Exhibit A, IRC, pages 33-35; Exhibit B, Controller’s Late Comments on the IRC, page 21.

¹⁷⁴ Exhibit B, Controller’s Late Comments on the IRC, page 21.

¹⁷⁵ Exhibit A, IRC, page 13.

plan.¹⁷⁶ However, as indicated above, cost savings are presumed by the statutes and the claimant has not filed evidence to rebut that presumption. Thus the claimant should have deposited the cost savings into the state's account as required by the test claim statutes, and the claimant's failure to comply with the law does not make the Controller's calculations of cost savings incorrect as a matter of law, or arbitrary or capricious. Since cost savings are presumed by the statutes, the claimant has the burden to show increased costs mandated by the state. As the court stated: "[r]eimbursement is not available under section 6 and section 17514 to the extent that a local government or school district is able to provide the mandated program or increased level of service without actually incurring increased costs."¹⁷⁷

The claimant next asserts that the Controller's formula is an underground regulation.¹⁷⁸ The Commission disagrees. Government Code section 11340.5 provides that no state agency shall enforce or attempt to enforce a rule or criterion which is a regulation, as defined in section 11342.600, unless it has been adopted pursuant to the Administrative Procedures Act. As indicated above, however, the formula is consistent with the statutory presumption of cost savings, as interpreted by the court for this program. Interpretations that arise in the course of case-specific adjudication are not regulations.¹⁷⁹

The claimant also argues that using landfill fees in the calculation of offsetting savings is not relevant because "[t]he District did not claim landfill costs, so there are none to be offset."¹⁸⁰ The claimant's interpretation of the cost savings requirement is not correct. The cost of disposing waste at a landfill is not eligible for reimbursement. Reimbursement is authorized to *divert* solid waste from the landfill through source reduction, recycling, and composting activities.¹⁸¹ As explained by the court:

In complying with the mandated solid waste diversion requirements of Public Resources Code section 42921, California Community Colleges are likely to experience cost savings in the form of reduced or avoided costs of landfill disposal. The reduced or avoided costs are a direct result and an integral part of the mandated IWM plan

Such reduction or avoidance of landfill fees and costs resulting from solid waste diversion activities under § 42920 et seq. represent savings which must be offset against the costs of the diversion activities to determine the reimbursable costs of IWM plan implementation -- i.e., the actual increased costs of diversion -- under section 6 and section 17514.¹⁸²

¹⁷⁶ Exhibit B, Controller's Late Comments on the IRC, page 19.

¹⁷⁷ Exhibit B, Controller's Late Comments on the IRC, page 69 (Ruling on Submitted Matter).

¹⁷⁸ Exhibit A, IRC, page 14.

¹⁷⁹ *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571.

¹⁸⁰ Exhibit A, IRC, page 17.

¹⁸¹ Exhibit A, IRC, page 56 (Parameters and Guidelines).

¹⁸² Public Resources Code section 40124. Exhibit B, Controller's Late Comments on the IRC, pages 69-70 (Ruling on Submitted Matter).

The court also noted that diversion is defined as “activities which reduce or eliminate the amount of solid waste from solid waste disposal.”¹⁸³

In addition, the claimant argues that the formula assumes facts without evidence in the record. For example, the claimant questions the Controller’s assumption that the diversion percentage achieved in 2007 applies equally to subsequent years, that all diverted waste would have been disposed in a landfill, and that the statewide average cost to dispose of waste at a landfill actually applied to the claimant.¹⁸⁴

The Controller’s assumptions, however, are supported by evidence in the record and the claimant has filed no evidence to rebut them. The Controller applied the diversion percentage achieved in 2007 to subsequent years because the CIWMB stopped requiring community college districts to report the actual amount and percent of tonnage diverted in 2008. As the Controller notes, the claimant’s diversion program was well-established by 2007, and the claimant’s reports of subsequent years reflect continued diversion. In its 2008 report, the claimant stated: “We are operating under the current Waste Management/Recycling program. . . . We still have recycle containers next to our general trash receptacles”¹⁸⁵ In its 2009 report, the claimant stated: “The science club and the athletic association have been recycling aluminum and plastic bottles on campus. We have added 12 ea new containers throughout the campus.”¹⁸⁶ And in its 2010 report, the claimant stated: “Campus club from the sciences entitled ‘Science Alliance’ has propagated a massive push for recyclables as a fundraising method. More recycling containers were placed on campus”¹⁸⁷ Moreover, the claimant’s reported per-capita disposal rate is well below the target rate for 2008, 2009, and 2010, so the 50-percent target diversion rate is being met.¹⁸⁸

Thus, there is evidence in the record that for 2008 through 2010, the claimant met or exceeded the diversion rates recorded in 2007.

The Controller obtained the statewide average cost for landfill disposal fees from the CIWMB, which was based on private surveys of a large percentage of landfills across California.¹⁸⁹ The

¹⁸³ Exhibit B, Controller’s Late Comments on the IRC, page 69 (Ruling on Submitted Matter).

¹⁸⁴ Exhibit A, IRC, pages 15-16.

¹⁸⁵ Exhibit B, Controller’s Late Comments on the IRC, page 55 (2008 Annual Report).

¹⁸⁶ Exhibit B, Controller’s Late Comments on the IRC, page 57 (claimant’s 2009 report to CIWMB).

¹⁸⁷ Exhibit B, Controller’s Late Comments on the IRC, page 58 (claimant’s 2010 report to CIWMB).

¹⁸⁸ Exhibit B, Controller’s Late Comments on the IRC, page 21, and pages 54 (2008 report, showing an employee population target of 127.4, and 1.1 was achieved; and a student population target of 4.3, and 0.09 was achieved); 56 (2009 report, showing an employee population target of 127.4, and 1.3 was achieved; and a student population target of 4.3, and 0.1 was achieved); and 58 (2010 report, showing an employee population target of 127.4, and 1.0 was achieved; and a student population target of 4.3, and 0.09 was achieved).

¹⁸⁹ Exhibit B, Controller’s Late Comments on the IRC, page 23.

Controller's audit report indicates that the claimant did not provide documentation to support a different disposal fee.¹⁹⁰ In addition, the Controller states:

The district did not provide any information, such as its contract with or invoices received from its commercial waste hauler to support either the landfill fees actually incurred by the district or to confirm that the statewide average landfill fee was greater than the actual landfill fees incurred by the district.¹⁹¹

On these audit issues, the Commission may not reweigh the evidence or substitute its judgment for that of the Controller. The Commission must only ensure that the Controller's decision is not arbitrary, capricious, or entirely lacking in evidentiary support, and that it adequately considered all relevant factors.¹⁹² There is no evidence that the Controller's assumptions are wrong or arbitrary or capricious with regard to the statewide average landfill fee.

The claimant also points to the Controller's audits of other community college districts, arguing that the costs allowed by the Controller in those cases vary and are arbitrary.¹⁹³ The Controller's audits of other community college district reimbursement claims are not relevant to the Controller's audit here. Each audit depends on the documentation and evidence provided by the claimant to show increased costs mandated by the state.

Accordingly, the Controller's calculations of cost savings for fiscal years 1999-2000, 2000-2001, the second half of fiscal year 2003-2004, and fiscal years 2004-2005 through 2010-2011, are correct as a matter of law, and are not arbitrary, capricious, or entirely lacking in evidentiary support.

4. The Controller's calculation of the allocated diversion rate for the first half of fiscal year 2003-2004 using 50 percent required diversion rate, rather than the 25 percent rate actually required, is incorrect as a matter of law.

For the first half of fiscal year 2003-2004, the claimant achieved an actual diversion percentage of 75.43 percent.¹⁹⁴ The Controller allocated the diversion rate for the first half of fiscal year 2003-2004, as it had done for the other fiscal years, because the claimant exceeded the mandate. However, the Controller used a 50 percent rate to calculate the allocated diversion rate, when the test claim statutes required only 25 percent diversion in calendar year 2003. The requirement to divert 50 percent of all solid waste did not become operative until January 1, 2004.¹⁹⁵ Therefore, using the 50 percent rate, the Controller's allocated diversion rate was calculated at 66.29 percent, which resulted in a reduction of \$7,644 for this time period (313.1 tons of diverted waste

¹⁹⁰ Exhibit A, IRC, page 36.

¹⁹¹ Exhibit B, Controller's Late Comments on the IRC, page 23.

¹⁹² *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

¹⁹³ Exhibit A, IRC, pages 18-19.

¹⁹⁴ Exhibit B, Controller's Late Comments on the IRC, page 77.

¹⁹⁵ Public Resources Code sections 42921; Exhibit A, IRC, page 43 (Parameters and Guidelines, adopted March 30, 2005).

multiplied by the allocated diversion rate of 66.29 percent -50 percent divided by 75.43 percent - multiplied by the avoided statewide average landfill disposal fee of \$36.83).¹⁹⁶

As indicated in the Parameters and Guidelines, the mandate is to divert at least 25 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2002, and at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting activities.¹⁹⁷ Thus, from July 1, 2003, through December 31, 2003, community college districts were mandated to achieve only 25 percent diversion. The Controller admits that: “as there is no state mandate to exceed solid waste diversion for amounts in excess of 25% for calendar years 2000 through 2003 or 50% for calendar year 2004 and later, there is no basis for calculating offsetting savings realized for actual diversion percentages that exceed the levels set by statute.”¹⁹⁸

However, the Controller’s calculation of cost savings incorrectly applied a 50 percent diversion rate to calculate the allocated diversion rate for the period of July 1, 2003, through December 31, 2003, instead of the mandated 25 percent diversion rate.¹⁹⁹ Because the Controller used the incorrect percentage to calculate the allocated rate, the calculation of offsetting savings for this time period is incorrect as a matter of law.

As indicated above, the Controller’s formula for offsetting cost savings for years when the claimant exceeded the diversion mandate, which allocates the diversion percentage achieved based on the mandated diversion percentage, is consistent with the test claim statutes and the court’s decision on this program. That allocated rate is the percentage of solid waste required to be diverted (either 25 percent or 50 percent) divided by the actual percentage of solid waste diverted (as reported by the claimant to CIWMB). The resulting quotient is then multiplied by the tons of solid waste diverted (as annually reported by the claimant to the CIWMB), multiplied by the avoided landfill disposal fee (based on the statewide average fee).²⁰⁰

Applying the formula to the first half of fiscal year 2003-2004, using the 25 percent diversion requirement, results in a finding of offsetting costs savings of \$3,822 (25 percent mandated diversion rate divided by the 75.43 percent diversion actually achieved equals an allocated diversion rate of 33.14 percent, multiplied by 313.1 tons diverted, multiplied by the avoided

¹⁹⁶ Exhibit A, IRC, page 30 (Final Audit Report); Exhibit B, Controller’s Late Comments on the IRC, page 77.

¹⁹⁷ Public Resources Code sections 42921; Exhibit A, IRC, page 92 (Parameters and Guidelines).

¹⁹⁸ Exhibit B, Controller’s Late Comments on the IRC, page 21; see also the Final Audit Report, which states: “Public Resource Code 42921 requires districts to achieve a solid waste diversion percentage of 25% beginning January 1, 2002, and a 50% diversion percentage by January 1, 2004.” (Exhibit A, IRC, page 35).

¹⁹⁹ Exhibit B, Controller’s Late Comments on the IRC, page 77.

²⁰⁰ Exhibit A, IRC, pages 34 - 35 (Final Audit Report). Exhibit B, Controller’s Late Comments on the IRC, page 77.

statewide average landfill disposal fee of \$36.83), rather than the \$7,644 the Controller calculated.²⁰¹

In comments on the Draft Proposed Decision, the Controller agreed to reinstate \$3,822 for the first half of fiscal year 2003-2004.²⁰²

Accordingly, the Commission finds that the reduction of \$7,644 in the first half of fiscal year 2004-2004, based on the incorrect diversion rate used to calculate offsetting cost savings, is incorrect as a matter of law. The law and the record support offsetting cost savings for the first half of fiscal year 2003-2004 of \$3,822, rather than \$7,644, and that the difference of \$3,822 has been incorrectly reduced.

V. Conclusion

Based on the foregoing, the Commission concludes that the Controller's reduction of costs claimed for fiscal years 1999-2000, 2000-2001, the second half of fiscal year 2003-2004, and fiscal years 2004-2005 through 2010-2011 is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

However, the reduction of costs claimed for the first half of fiscal year 2003-2004 is incorrect as a matter of law.

Accordingly, the Commission partially approves this IRC and requests that the Controller reinstate \$3,822 to the claimant pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations.

²⁰¹ Exhibit B, Controller's Late Comments on the IRC, pages 37 and 71.

²⁰² Exhibit D, Controller's Comments on the Draft Proposed Decision.