

## ITEM 18

### FINAL STAFF ANALYSIS PROPOSED STATEWIDE COST ESTIMATE

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

Statutes 1999, Chapter 764 (AB 75)  
Statutes 1992, Chapter 1116 (AB 3521)

State Agency Model Integrated Waste Management Plan (February 2000)

*Integrated Waste Management (00-TC-07)*

Santa Monica and Lake Tahoe Community College Districts, Claimants

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## EXECUTIVE SUMMARY

### Summary of the Mandate

On March 25, 2004, the Commission on State Mandates (Commission) adopted its Statement of Decision finding that Public Resources Code sections 40148, 40196.3, 42920-42928; Public Contract Code sections 12167 and 12167.1; and the State Agency Model Integrated Waste Management Plan (February 2000) require new activities, as specified below, which constitute new programs or higher levels of service for community college districts within the meaning of article XIII B, section 6, of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514.

The claimant filed the test claim on March 9, 2001. The Commission adopted the Statement of Decision on March 25, 2004, and the parameters and guidelines on March 30, 2005. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by October 4, 2005.

### Statewide Cost Estimate

Staff reviewed the claims data submitted by the claimants and compiled by the SCO. The actual claims data showed that 27 community college districts filed 142 claims between fiscal years 1999-2000 and 2004-2005, for a total of over \$6 million.

A draft staff analysis was issued on January 9, 2006, in which staff requested additional information regarding the costs associated with diversion of solid waste and complying with the *Integrated Waste Management Plan* program that may assist in the development of a more accurate statewide cost estimate. The California Integrated Waste Management Board (Board) submitted comments on March 30, 2006, and the Department of Finance (DOF) submitted comments on April 4, 2006. Commission staff conducted a prehearing conference on July 27, 2006, so the parties could assist in identifying offsets and, again, to assist in developing

a more accurate estimate. Staff notes that the additional comments did not provide enough evidence to help staff reduce the proposed estimate by deducting offsets that should have been realized, but were not reported in claims.

Staff reviewed a sample of claims filed by eight community college districts. Based on the data and comments received, staff made the following assumptions:

1. The actual claiming data is unaudited and may be inaccurate. The 142 actual claims filed by 27 community college districts for fiscal years 1999-2000 through 2004-2005 are unaudited and may be inaccurate for the following reasons:
  - a. three out of the eight community college districts reviewed did not report any offsetting revenues, and
  - b. five out of the eight community college districts reviewed claimed one-time activities over multiple fiscal years.
2. The actual amount claimed will increase when late or amended claims are filed. Only 27 of the 72 community college districts have filed reimbursement claims for this program. Thus, if reimbursement claims are filed by any of the remaining districts, the amount of reimbursement claims may exceed the statewide cost estimate.
3. The SCO may reduce any reimbursement claim for this program if it deems any reimbursement claim to be excessive or unreasonable.

The proposed statewide cost estimate includes nine fiscal years for a total of \$10,785,532. This averages to \$1,198,392 annually in costs for the state.

Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
1999-2000	21	\$ 478,106
2000-2001	25	788,658
2001-2002	23	1,003,710
2002-2003	25	1,109,250
2003-2004	25	1,203,354
2004-2005	24	1,463,719
2005-2006 (estimated)	N/A	1,514,949
2006-2007 (estimated)	N/A	1,561,912
2007-2008 (estimated)	N/A	1,661,874
<b>TOTAL</b>	<b>143</b>	<b>\$ 10,785,532</b>

### Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$10,785,532** for costs incurred in complying with the *Integrated Waste Management* program. If the statewide cost estimate is adopted, staff will report the estimate to the Legislature.

## STAFF ANALYSIS

### Summary of the Mandate

On March 25, 2004, the Commission on State Mandates (Commission) adopted its Statement of Decision finding that Public Resources Code sections 40148, 40196.3, 42920-42928; Public Contract Code sections 12167 and 12167.1; and the State Agency Model Integrated Waste Management Plan (February 2000) require new activities, as specified below, which constitute new programs or higher levels of service for community college districts within the meaning of article XIII B, section 6, of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514.

The claimant filed the test claim on March 9, 2001. The Commission adopted the Statement of Decision on March 25, 2004, and the parameters and guidelines on March 30, 2005. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by October 4, 2005.

### Reimbursable Activities

The Commission approved the following reimbursable activities for this program:

#### 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 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.

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 ("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.

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 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. of parameters and guidelines regarding offsetting revenues from recyclable materials.)

**Statewide Cost Estimate**

Staff reviewed the claims data submitted by the claimants and compiled by the SCO. The actual claims data showed that 27 community college districts filed 142 claims between fiscal years 1999-2000 and 2004-2005, for a total of over \$6 million. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

A draft staff analysis was issued on January 9, 2006, in which staff requested additional information regarding the costs associated with diversion of solid waste and complying with the *Integrated Waste Management Plan* program that may assist in the development of a more accurate statewide cost estimate. The California Integrated Waste Management Board (Board) submitted comments on March 30, 2006, and the Department of Finance (DOF) submitted comments on April 4, 2006. Commission staff conducted a prehearing conference on July 27, 2006, so the parties could assist in identifying offsets and, again, to assist in developing a more accurate estimate. The comments will be addressed below; however, staff notes that the additional comments did not provide enough evidence to help staff reduce the proposed estimate by deducting offsets that should have been realized, but not claimed.

If the Commission adopts this proposed statewide cost estimate, it will be reported to the Legislature along with staff's assumptions and methodology.

Assumptions

Staff made the following assumptions:

1. *The actual claiming data is unaudited and may be inaccurate.* The 142 actual claims filed by 27 community college districts for fiscal years 1999-2000 through 2004-2005 are unaudited and may be inaccurate.<sup>1</sup>

Staff reviewed a sample of claims filed by eight community college districts: Chabot-Las Positas, Coast, Rancho Santiago, Grossmont-Cuyamaca, Santa Monica, Palomar, Gavilan

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<sup>1</sup> Claims data reported as of August 8, 2006.

Joint, and Los Rios. These districts are among the top claiming districts, as shown in Table 1 below.

**TABLE 1. CLAIMS FILED FOR FISCAL YEAR 1999-2000 THROUGH 2004-2005**

District	Total Claimed
Lassen	6,256
Santa Clarita	6,292
College of the Sequoias	14,412
Foothill-Deanza	16,839
Yuba	30,070
Marin	49,759
Yosemite	53,449
Contra Costa	78,762
San Jose	90,570
Citrus	102,400
Solano Co	128,120
Mt. San Antonio	136,684
Los Rios	149,598
Sierra Joint	163,294
San Mateo Co	189,773
Merced	193,811
Hartnell	198,387
State Center	228,701
El Camino	258,557
Redwoods	300,373
Gavilan Joint	368,229
Grossmont-Cuyamaca	432,930
Santa Monica	436,149
Rancho Santiago	494,944
Palomar	552,868
Coast	592,398
Chabot-Las Positas	773,172
<b>TOTAL</b>	<b>\$ 6,046,797</b>

Staff notes the following:

- a. *Three out of the eight community college districts did not report any offsetting revenues.* Section VII. of the parameters and guidelines state the following:

Reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds allocated to any service provided under this program, shall be identified and deducted from this claim. Offsetting revenue shall include 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 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.

The districts that did not offset revenues or other reimbursements include Coast Community College District, Gavilan Joint Community College District, and Rancho Santiago Community College District. Coast claimed a total of \$592,398 for six fiscal years; Gavilan Joint claimed a total of \$368,229 for six fiscal years; and Rancho Santiago claimed a total of \$494,944 for six fiscal years.

On March 30, 2005, the Commission adopted the staff analysis on the proposed parameters and guidelines, which found that there was insufficient legal authority to support a requirement to track cost savings that may result from avoiding disposal costs as a result of this program. Staff explained that Public Resources Code section 42925's reference to "cost savings" actually means "revenues" received and redirected via Public Contract Code sections 12167 and 12167.1 Further, the Board would have claimants reduce disposal costs from the claims submitted. As explained in the staff analysis:

The problem with this approach is that the test claim statutes enacted a new waste diversion program in 2000 that was not previously reimbursed. "Disposal" costs were not previously reimbursed by the state, nor are they required to be reimbursed under the test claim statutes. Rather, it is "diversion" costs that are reimbursed under this program. Because there was no prior state-mandated program for diversion or disposal upon which to calculate savings, there can be no offsetting savings for these costs.

In addition, Public Resources Code section 42925, subdivision (a), states that the cost savings must be redirected to fund the integrated waste plan only, "to the extent feasible." Thus, the Legislature's direction to redirect cost savings is not mandated. Section 42925 allows any savings to be redirected to other campus programs if the community college finds that it is not "feasible" to use those savings to implement the waste management plan.<sup>2</sup>

Usually, under section VII. Offsetting Revenues and Reimbursements of the parameters and guidelines, there is a standard provision that states, "Any offsetting savings the

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<sup>2</sup> Exhibit D, page 151.

claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed.” Staff notes that all the cost savings identified by the Board during the parameters and guidelines phase (e.g., reduced disposal) were not rooted in the costs that are mandated by the test claim legislation, so they are not “in the same program as a result of the same statutes or executive orders found to contain the mandate.” Therefore, the Board’s request for additional information on offsetting savings was not included because the Commission found that it was inconsistent with the test claim’s statutory scheme and the analysis of offsetting savings. As shown above, staff added to the standard provision in section VII. of the parameters and guidelines by identifying specific offsetting revenues.

In its comments dated March 30, 2006, the Board argued that its request for additional information on offsetting savings in the parameters and guidelines was deemed unnecessary, and that a “stronger reference” to ensure that cost savings were properly identified were not included in the parameters and guidelines. Thus, the Board requested a parameters and guidelines amendment to include “additional information as a method to accurately capture offsetting savings.” The Board provided a summary of the additional expenses and offsetting savings, stating that:

the failure to provide either a stronger explanation of offsetting savings that must be included or a format/table to fill out to help determine offsetting savings, has resulted in the inaccurate claims that have been presented and which inevitably led to an inaccurate Statewide Cost Estimate. The only reasonable and efficient way to remedy this situation is to amend...the Parameters and Guidelines to ensure that the necessary information is provided.<sup>3</sup>

The DOF concurred with the Board’s summary of additional expenses and offsetting savings.<sup>4</sup>

Staff notes that in general, the Board’s comments focused on its request to amend the parameters and guidelines. However, because the reimbursement claims for fiscal years 1999-2000 through 2004-2005 have already been submitted, the Board’s suggestion to add additional information to the parameters and guidelines regarding offsetting savings will not affect these claims.<sup>5</sup> Thus, staff was unable to improve the proposed statewide cost estimate for the initial years based on the Board’s comments.

The Board’s request to amend the parameters and guidelines was sent to affected state agencies and interested parties on April 10, 2006, for review and comment. As of September 2006, no comments have been received. This matter will be heard and determined at a later hearing, and if adopted, would be effective on July 1, 2005.

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<sup>3</sup> Exhibit B, page 119.

<sup>4</sup> Exhibit C.

<sup>5</sup> Government Code section 17557, subdivision (c), states that “[a] parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims...and on or before January 15 following a fiscal year, shall establish eligibility for that fiscal year.”

b. *Five out of the eight community college districts claimed one-time activities over multiple fiscal years.* The parameters and guidelines provided one-time reimbursement for the development of necessary district policies and procedures for the implementation of the integrated waste management plan, and for training of district staff on the requirements and implementation of the integrated waste management plan (one-time per employee). Training was limited to the staff working directly on the plan. However, Table 2 below shows the “one-time” costs claimed by five of the eight community college districts reviewed.

**TABLE 2. ONE-TIME ACTIVITIES CLAIMED  
OVER MULTIPLE FISCAL YEARS**

District	Activity	1999- 2000	2000- 2001	2001- 2002	2002- 2003	2003- 2004	2004- 2005
Gavilan Joint	<i>Policies</i>	\$ 185	\$ 1,987	\$ 2,499	\$ 1,531	\$ 1,876	\$ 1,938
	<i>Training</i>	\$ 189	\$ 410	\$ 431	\$ 474	\$ 516	\$ 476
Grossmont	<i>Policies</i>	-	\$ 620	-	-	-	-
	<i>Training</i>	\$ 693	\$ 561	\$ 1,731	\$ 863	\$ 793	\$ 1,374
Los Rios	<i>Policies</i>	-	\$ 1,337	-	\$ 1,300	-	-
	<i>Training</i>	-	\$ 152	\$ 308	-	-	-
Palomar	<i>Policies</i>	-	-	-	-	-	-
	<i>Training</i>	\$ 7,087	\$ 18,872	\$ 20,368	\$ 22,471	\$ 23,115	\$ 25,499
Santa Monica	<i>Policies</i>	-	-	-	\$ 1,538	\$ 1,346	\$ 10,461
	<i>Training</i>	-	-	\$ 6,190	\$ 9,051	\$ 10,646	\$ 1,130

The claims did not include enough information as to whether the costs claimed for training were in fact for new employees only. A representative of the Palomar Community College District indicated that “groundskeepers and maintenance technicians [reported] 20 to 50 hours of training each year” and guessed that the time related to “operation of equipment relevant to source reduction....” The representative also indicated that one recycling coordinator reported 400 hours of training, “which might cover organized training events for district employee[s].” Overall, the representative believed that the district’s training time was unique and quantitatively above average.

The Board commented that the costs associated with the reimbursable one-time activities should be relatively small because:

the Board has already developed and provided access to many model policies and procedures that can be easily and with little or no time or cost be adapted for and utilized by Community College Districts. Likewise, the Board provides free training and support to recycling coordinators. In a recent training session, conducted by the Community Colleges, which Board staff was invited to, more than 15 college campuses and District offices were able to completely prepare and finalize for submittal, the regional annual report within a total of 5 hours.<sup>6</sup>

<sup>6</sup> Exhibit B, page 121.

Staff notes that other districts may have also claimed one-time activities over multiple fiscal years.

Therefore, based on the foregoing observations, staff finds that the 142 actual claims filed by 27 community college districts only represent an estimated cost of the program for fiscal years 1999-2000 through 2004-2005.

2. *The actual amount claimed will increase when late or amended claims are filed.* Only 27 of the 72 community college districts in California have filed reimbursement claims for this program. Many of the largest community college districts, including the Los Angeles Community College District, have not filed reimbursement claims. Thus, if reimbursement claims are filed by any of the remaining districts, the amount of reimbursement claims may exceed the statewide cost estimate. For this program, late claims may be filed until October 2006.
3. *The SCO may reduce any reimbursement claim for this program.* If the SCO audits this program and deems any reimbursement claim to be excessive or unreasonable, it may be reduced. Therefore, the total amount of reimbursement for this program may be lower than the statewide cost estimate.

### Methodology

#### *Fiscal Years 1999-2000 through 2004-2005*

The proposed statewide cost estimate for fiscal years 1999-2000 through 2004-2005 is based on the 142 actual reimbursement claims filed with the SCO for these years. However, staff notes that the claims are unaudited and may be inaccurate for the reasons stated above.

#### *Fiscal Years 2005-2006 and 2006-2007*

Staff estimated fiscal year 2005-2006 costs by multiplying the 2004-2005 estimate by the implicit price deflator for 2004-2005 (3.5%), as forecast by the Department of Finance. Staff estimated fiscal year 2006-2007 costs by multiplying the 2005-2006 estimate by the implicit price deflator for 2005-2006 (3.1%). Staff estimated fiscal year 2007-2008 costs by multiplying the 2006-2007 estimate by the implicit price deflator for 2006-2007 (6.4%).

The proposed statewide cost estimate includes nine fiscal years for a total of \$10,785,532. This averages to \$1,198,392 annually in costs for the state.

Following is a breakdown of estimated total costs per fiscal year:

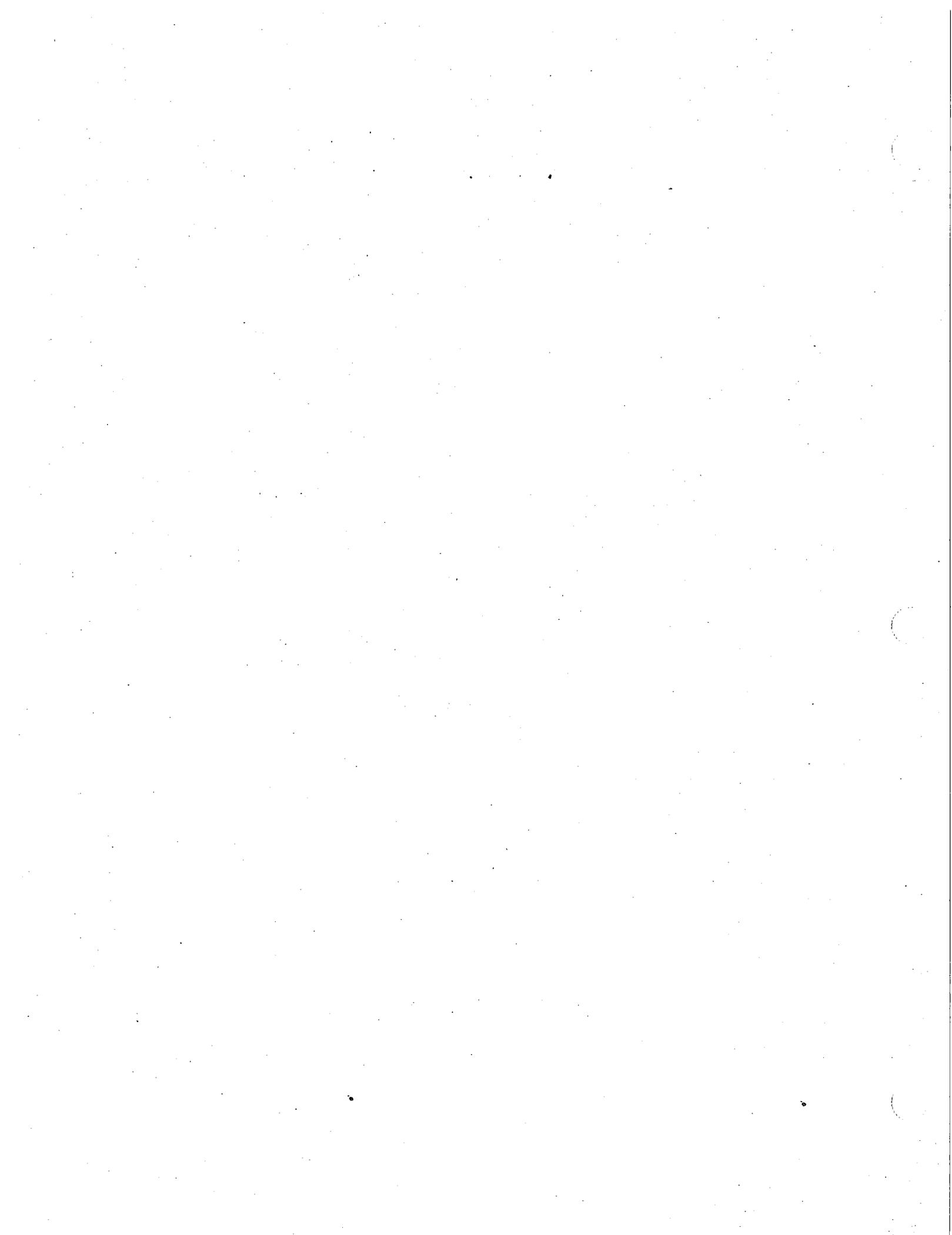
**TABLE 3. BREAKDOWN OF ESTIMATED  
TOTAL COSTS PER FISCAL YEAR**

<b>Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
1999-2000	21	\$ 478,106
2000-2001	25	788,658
2001-2002	23	1,003,710
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2007-2008 (estimated)	N/A	1,661,874
<b>TOTAL</b>	<b>143</b>	<b>\$ 10,785,532</b>

**Staff Recommendation**

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$10,785,532** for costs incurred in complying with the *Integrated Waste Management* program. If the statewide cost estimate is adopted, staff will report the estimate to the Legislature.

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**COMMISSION ON STATE MANDATES**

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January 9, 2006

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

*And Representatives from the Department of Finance, the State Controller's Office, the California Community Colleges Chancellor's Office, the California Integrated Waste Management Board, and Interested Parties (see enclosed mailing list)*

**RE: Proposed Statewide Cost Estimate and Request for Additional Comments**  
*Integrated Waste Management, 00-TC-07*  
 Santa Monica and South Lake Tahoe Community College Districts, Co-Claimants  
 Public Resources Code Sections 40148, 40196.3, 42920-42928  
 Public Contract Code Sections 12167 and 12167.1  
 Statutes 1999, Chapter 764; Statutes 1992, Chapter 1116  
 State Agency Model Integrated Waste Management Plan (February 2000)

Dear Mr. Petersen, State Agency Representatives, and Interested Parties:

Staff's draft analysis on statewide estimated costs for the above-named program is enclosed for your review and comment. Staff has no recommendation on the estimated costs at this time.

The statewide costs claimed for fiscal years 1999-2000 through 2004-2005 are derived from the 142 actual reimbursement claims filed with the Controller for these years, a total of over \$5.9 million. However, staff notes that the claims are unaudited and may be inaccurate for the reasons stated in the draft staff analysis.

Much of the costs claimed fall under the activity 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. Maintain the required level of reduction, as approved by the Board.

Although the costs claimed seem excessive and no correlation exists between district size and the costs claimed, staff finds that there is no factual evidence in the record to support the reduction of any claimed costs.

Therefore, staff requests any additional information regarding the costs associated with diversion of solid waste and complying with the *Integrated Waste Management Plan* program that may assist in the development of a more accurate statewide cost estimate from all parties and interested persons, and specifically from the California Integrated Waste Management Board.

MAILED: Mail List  
FAXED: \_\_\_\_\_  
DATE: 1/9/00  
INITIAL: JD  
FILE: ✓  
WORKING BINDER: \_\_\_\_\_

### Written Comments

Any party or interested party may file written comments on the draft staff analysis and proposed statewide cost estimate by **January 30, 2006**. Comments filed with the Commission are required to be simultaneously served on the parties on the mailing list, and to be accompanied by a proof of service (Cal. Code Regs., tit. 2, § 1181.2). To request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

### Hearing

This matter is tentatively set for hearing on **March 30, 2006**, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. This item will be scheduled for the consent calendar unless any party objects. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

### Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Cathy Cruz at (916) 323-8218 with questions.

Sincerely,



NANCY PATTON  
Assistant Executive Director

Enclosures



Hearing: March 30, 2006  
J:/mandates/2000/00tc07/sce/dsa

**ITEM \_**

**DRAFT STAFF ANALYSIS  
PROPOSED STATEWIDE COST ESTIMATE**

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*Integrated Waste Management (00-TC-07)*

Santa Monica and Lake Tahoe Community College Districts, Co-claimants

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**EXECUTIVE SUMMARY**

The Executive Summary will be included in the Final Staff Analysis.

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## STAFF ANALYSIS

### Summary of the Mandate

On March 25, 2004, the Commission on State Mandates (Commission) adopted its Statement of Decision finding that Public Resources Code sections 40148, 40196.3, 42920-42928; Public Contract Code sections 12167 and 12167.1; and the State Agency Model Integrated Waste Management Plan (February 2000) require new activities, as specified below, which constitute new programs or higher levels of service for community college districts within the meaning of article XIII B, section 6, of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514.

The claimant filed the test claim on March 9, 2001. The Commission adopted the Statement of Decision on March 25, 2004, and the parameters and guidelines on March 30, 2005. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by October 4, 2005.

### Reimbursable Activities

The Commission approved the following reimbursable activities for this program:

#### 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 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.

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.<sup>1</sup> (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 ("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. (l).)

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).)

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<sup>1</sup> Attachment 1, California Integrated Waste Management Board, State Agency Model Integrated Waste Management Plan (February 2000).

- 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.

**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 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. of parameters and guidelines regarding offsetting revenues from recyclable materials.)

**Statewide Cost Estimate**

Staff reviewed the claims data submitted by the claimants and compiled by the SCO. The actual claims data showed that community college districts filed 142 claims between fiscal years 1999-2000 and 2004-2005, for a total of \$5.9 million. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program. If the Commission adopts this proposed statewide cost estimate, it will be reported to the Legislature along with staff's assumptions and methodology.

**Assumptions**

Staff made the following assumptions:

1. *The actual claiming data is inaccurate.* The 142 actual claims filed by community college districts for fiscal years 1999-2000 through 2004-2005 are unaudited and may be inaccurate.<sup>2</sup>

California has 72 community college districts. Of the 72 districts, 20 of them consist of only 1 college, 11 consist of 2 colleges, 5 consist of 3 colleges, 3 consist of 4 colleges, and 1 consists of 9 colleges. Staff closely reviewed the claims of the following eight community college districts: 1) Chabot-Las Positas, 2) Coast, 3) Rancho Santiago, 4) Grossmont-Cuyamaca, 5) Santa Monica, 6) Palomar, 7) Gavilan Joint, and 8) Los Rios. As shown in Table 1 below, these districts are representative of the state:

**TABLE 1. DISTRICTS EXAMINED ARE REPRESENTATIVE OF THE STATE**

District	Regional Location	No. of Colleges in District
Chabot-Las Positas	Bay Area	2
Coast	Southern	3
Rancho Santiago	Southern	2
Grossmont-Cuyamaca	Southern	2
Santa Monica	Southern	1
Palomar	Southern	1
Gavilan Joint	Central	1
Los Rios	Northern	4

<sup>2</sup> Claims data reported as of November 3, 2005.

Chabot-Las Positas, Coast, Rancho Santiago, Grossmont-Cuyamaca, Santa Monica, Palomar, and Gavilan Joint are among the top claiming districts. However, staff found that there is no correlation between a district's student enrollment and the amounts claimed (see Table 2).

**TABLE 2. STUDENT ENROLLMENT HAS NO CORRELATION TO AMOUNTS CLAIMED (FY 2004-2005)**

District	Student Enrollment <sup>3</sup>	Amount Claimed
Gavilan Joint	5,532	\$ 68,494
Chabot-Las Positas	22,259	184,939
Grossmont-Cuyamaca	28,796	107,251
Palomar	29,641	110,710
Santa Monica	29,805	107,698
Coast	46,630	187,284
Rancho Santiago	63,715	102,873
Los Rios	70,389	73,423

Accordingly, staff determined that the claims may be inaccurate because some districts did not claim offsetting savings and some claimed costs for one-time activities over multiple fiscal years.

a. Three out of the eight community college districts did not report any offsetting savings.

Section VII, of the parameters and guidelines state the following:

Reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds allocated to any service provided under this program, shall be identified and deducted from this claim. Offsetting revenue shall include 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 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.

<sup>3</sup> The enrollment numbers were taken from the California Community Colleges Chancellor's Office website ([http://misweb.cccco.edu/mis/onlinestat/studdemo\\_dist\\_cube.cfm](http://misweb.cccco.edu/mis/onlinestat/studdemo_dist_cube.cfm), accessed December 22, 2005), and are averaged for the 2004 Fall term and the 2005 Spring term.

The districts that did not offset savings or other reimbursements include Coast Community College District, Gavilan Joint Community College District, and Rancho Santiago Community College District. Coast claimed a total of \$592,398 for six fiscal years; Gavilan Joint claimed a total of \$368,229 for six fiscal years; and Rancho Santiago claimed a total of \$494,944 for six fiscal years.

- b. *Five out of the eight community college districts claimed one-time activities over multiple fiscal years.* The parameters and guidelines provided one-time reimbursement for the development of necessary district policies and procedures for the implementation of the integrated waste management plan, and for training of district staff on the requirements and implementation of the integrated waste management plan (one-time per employee). Training was limited to the staff working directly on the plan. However, Table 3 below shows the "one-time" costs claimed by five of the community college districts.

**TABLE 3. ONE-TIME ACTIVITIES CLAIMED OVER MULTIPLE FISCAL YEARS**

District	Activity	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005
Gavilan	Policies	\$ 1,232	\$ 1,237	\$ 2,195	\$ 1,876	\$ 1,923	\$ 1,923
	Training	\$ 132	\$ 110	\$ 231	\$ 172	\$ 116	\$ 174
Grossmont	Policies	-	\$ 620	-	-	-	-
	Training	\$ 693	\$ 561	\$ 1,731	\$ 863	\$ 793	\$ 1,374
Los Rios	Policies	-	-	-	\$ 100	-	-
	Training	-	\$ 152	\$ 303	-	-	-
Palomar	Policies	-	-	-	-	-	-
	Training	\$ 17,087	\$ 18,872	\$ 20,368	\$ 22,471	\$ 23,115	\$ 25,499
San Joaquin	Policies	-	-	-	\$ 1,146	\$ 1,461	\$ 1,461
	Training	-	-	\$ 6,197	\$ 910	\$ 1,646	\$ 1,300

The claims did not include enough information as to whether the costs claimed for training were in fact for new employees only. Staff notes that other districts may have also claimed one-time activities over multiple fiscal years.

- The actual amount claimed will increase when late or amended claims are filed.* Twenty-seven of the 72 community college districts in California have filed reimbursement claims for this program. Nine of the 20 community college districts with two or more colleges have not filed claims, including the Los Angeles Community College District, which has nine colleges. Thus, if reimbursement claims are filed by any of the remaining districts, the amount of reimbursement claims may exceed the statewide cost estimate. For this program, late claims may be filed until October 2006.
- The SCO may reduce any reimbursement claim for this program.* If the SCO audits this program and deems any reimbursement claim to be excessive or unreasonable, it may be reduced. Therefore, the total amount of reimbursement for this program may be lower than the statewide cost estimate.

## Methodology

### *Fiscal Years 1999-2000 through 2004-2005*

The proposed statewide cost estimate for fiscal years 1999-2000 through 2004-2005 is based on the 142 actual reimbursement claims filed with the SCO for these years. However, staff notes that the claims are unaudited and may be inaccurate for the reasons stated above.

### *Fiscal Years 2005-2006 and 2006-2007*

Staff estimated fiscal year 2005-2006 costs by multiplying the 2004-2005 estimate by the implicit price deflator for 2004-2005 (3.5%), as forecast by the Department of Finance. Staff estimated fiscal year 2006-2007 costs by multiplying the 2005-2006 estimate by the implicit price deflator for 2005-2006 (3.1%).

The proposed statewide cost estimate includes eight fiscal years for a total of \$8,952,852. This averages to \$1,119,107 annually in costs for the state.

Following is a breakdown of estimated total costs per fiscal year:

**TABLE 4. BREAKDOWN OF ESTIMATED  
TOTAL COSTS PER FISCAL YEAR**

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
1999-2000	21	\$ 478,106
2000-2001	25	788,658
2001-2002	23	1,003,710
2002-2003	25	1,109,250
2003-2004	25	1,203,354
2004-2005	23	1,408,657
2005-2006 (estimated)	N/A	1,457,960
2006-2007 (estimated)	N/A	1,503,157
<b>TOTAL</b>	<b>142</b>	<b>\$ 8,952,852</b>

### **Staff Recommendation**

Staff has no recommendation on the estimated costs at this time.

Commission on State Mandates

Original List Date: 3/20/2001  
Last Updated: 3/22/2005  
List Print Date: 01/09/2006  
Claim Number: 00-TC-07  
Issue: Integrated Waste Management

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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

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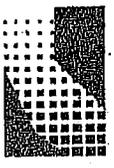
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California Integrated Waste Management Board



Secretary for Environmental Protection

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Arnold Schwarzenegger
Governor

March 30, 2006

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
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And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

Re: Proposed Statewide Cost Estimate and Request for Additional Comments
And Written Request To Amend, Modify, or Supplement Parameters and
Guidelines
Integrated Waste Management Board 00-TC-07
Public Resources Code Sections 40148, 40196.3, 42920-42928
Public Contract Code Sections 12167 and 12167.1
Statutes 1999, Chapter 764; Statutes 1992, Chapter 1116
State Agency Model Integrated Waste Management Plan (February 2000)
Santa Monica and South Lake Tahoe Community College Districts; Co-Claimants

Dear Ms. Higashi:

This letter is intended to serve as comments on the proposed Statewide Cost Estimate, and also, pursuant to Government Code Section 17557, the California Integrated Waste Management Board ("Board") hereby makes a written request to amend, modify, or supplement the Parameters and Guidelines for the claims that have been used to prepare this estimate. As further discussed below, the Board believes that the proposed cost estimate is based upon flawed information, and the Board believes that its inherent inaccuracies can best be remedied through amending, modifying, or otherwise supplementing the Parameters and Guidelines.

Request to Remove From Consent Calendar

Prior to discussing the substance of the Board's comments and request, there is one procedural issue to address. The transmittal letter for the analysis indicates that this matter is scheduled to be on the Commission's Consent Agenda. The Board hereby expressly requests that this matter not be considered as a consent item as we do plan on attending and testifying at the hearing.

California Environmental Protection Agency

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## Summary of the Board's Comments and Request

The Board's comments and request can be summarized as follows. The relevant statutes and regulations allow for input on proposed Parameters and Guidelines to ensure reasonable claims and estimates and allow for offsetting savings. The Commission agreed that offsetting savings should be subtracted from claims. Unfortunately, the Board's request for additional information on offsetting savings to be included in the Parameters and Guidelines was deemed unnecessary. The failure to include additional information on offsetting savings in the Parameters and Guidelines resulted in inaccurate cost claims and an inaccurate Cost Estimate. The Commission's staff agrees that the Estimate is inaccurate and has requested Board assistance. However, the Board can not assist without more information. The Commission staff analysis also highlights the need for more information. A limited review of The Commission staff analysis indicates the inaccuracy of the claims provided and the Estimate based thereon. The excessive cost claims should be addressed now, not later. The Board requests adding to the Parameters and Guidelines additional information as a method to accurately capture offsetting savings.

## Relevant Statutes and Regulations Allow For Input To Ensure Reasonable Claims and Estimates and Allow for Offsetting Savings

The Statewide Cost Estimate is to be developed based upon claims filed, application of a reasonable reimbursement methodology, or use a different methodology based on recommendations from the test claimant, the Department of Finance, or other interested parties (2 CCR 1183.3(b)). The portion of the cost estimate that is based upon filed claims is shaped by the Parameters and Guidelines which may include a **reasonable reimbursement methodology**. Statute expressly provides that in adopting Parameters and Guidelines, the Commission shall consult with ... the affected state agency ... to consider a reasonable reimbursement methodology that **balances accuracy with simplicity** (Government Code section 17557(f)). A "reasonable reimbursement methodology" should **identify the costs to implement the mandate in a cost-efficient manner** and it may be developed by an affected state agency....(Government Code section 17518.5) Finally, Parameters and Guidelines **must allow for any offsetting savings** to the same program experienced as a result of the same statutes found to contain a mandate (2 CCR 1183.1(a) (9)). [emphasis added]

## The Commission Agreed That Offsetting Savings Should Be Subtracted From Claims

The Board recognizes that the claims in question are very different from the typical claims that the Commission reviews and that they do not easily fit within some of its usual formats and procedures. The Board raised this issue early on in this process and the Commission and its staff recognized the need to account for the atypical complexity of analysis and amount of cost savings that are involved with the State Agency Model Integrated Waste Management Plan.

Thus, at the Commission's discussion of the Test Claim decision at its March 25, 2004 meeting, "Chairperson Tilton asked if a stronger reference for identifying savings would be included. [Chief Counsel] Feller responded that offsetting savings would be identified in the parameters and guidelines." Unfortunately, somewhere along the line, the "stronger reference" did not find its way into the proposed parameters and guidelines.

## **Board Request for Additional Information on Offsetting Savings In Parameters and Guidelines was Deemed Unnecessary**

At the Commission's discussion of the proposed Parameters and Guidelines at its March 30, 2005 meeting, the Board suggested a way for making this "stronger reference" to ensure that cost savings were properly identified.

"[Ms. Borzelleri] argued that while the Commission regulations [(2 CCR 1183.1(a) (9))] provide that all proposed parameters and guidelines must allow for any offsetting savings realized in the same program, she felt that staff summarily dismissed the information that the Board brought forward. ... the Board submitted a proposed cost savings worksheet that claimants could use as a tool to identify costs and the commensurate savings realized as a result of implementing diversion programs ... that could be adopted as part of the parameters and guidelines."

The claimants representative argued that this additional reference was unnecessary.

"[Mr. Petersen] explained that only increased costs are reimbursed, and therefore, doing what you used to do is not an increased cost. ... Mr. Petersen noted that claimants do not claim costs that are not incurred."

The Commission did not include any additional explanation or requirements in the parameters and guidelines. Instead, it relied on the State Controller's Claiming Instructions (incorporated through Section VIII of the Parameters and Guidelines) which in Program 256 Form IWM-1, line item (08) simply provides a space to fill in "Offsetting Savings." The sole instructions on the form provide the following:

"If applicable, enter the total savings experienced by the claimant as a direct result of this mandate. Submit a detailed schedule of savings with the claim."

## **The Failure to Include Additional Information on Offsetting Savings In Parameters and Guidelines Resulted in Inaccurate Cost Claims and an Inaccurate Cost Estimate**

From the point of view of an entity using this form, it is easy to imagine why one would not provide any information that would reduce its claim and require it to document that reduction, without further explanation that it is required and that at some point in the process (when the State Controller reviews and/or audits their claim) the entity will have to provide it anyway.

The Board believes that the failure to provide either a stronger explanation of offsetting savings that must be included or a format/table to fill out to help determine offsetting savings, has resulted in the inaccurate claims that have been presented and which inevitably led to an inaccurate Statewide Cost Estimate. The only reasonable and efficient way to remedy this situation is to amend, modify or supplement the Parameters and Guidelines to ensure that the necessary information is provided.

### **Commission Staff Agrees That The Estimate Is Inaccurate And Requested Board Assistance**

The transmittal letter for the proposed cost estimate from the Commission staff states that the cost estimates seem "excessive" but since the Commission has no factual evidence to reduce those costs, its staff requests additional information that may assist in development of a more accurate statewide cost estimate "specifically from the California Integrated Waste Management Board (emphasis in the original)."

### **The Board Can Not Assist Without More Information**

It is not clear how the Board could provide any assistance within the context of this comment letter since the Board has not been provided with the details of the claims (at this point we do not even know the names of all claimants). Even if the Board were provided with copies of all of the claims filed, it does not appear that there is sufficient information to allow for a review that would provide an accurate estimate because the Parameters and Guidelines do not spell out the offsetting savings information that has to be included.

### **Commission Staff Analysis Also Highlights The Need For More Information**

The transmittal letter for the draft estimate indicates that "staff notes that the claims are unaudited and may be inaccurate ... the costs claimed seem excessive and no correlation exists between district size and the costs claimed. [but] staff finds there is no factual evidence in the record to support the reduction of any claimed costs."

It seems apparent to the Board that there is no evidence to reduce the claims because the Parameters and Guidelines did not specify what information had to be provided. The Board provided in its comments on the proposed Parameters and Guidelines a model form that could be used voluntarily that indicated the type of information that would be needed to evaluate the accuracy of any claims. We still believe that this type of information should be provided and would not require any additional costly efforts on the part of claimants. Proposed additional language will be provided below.

This is information that they should have readily available since part of the "mandate" includes developing an accounting system and filing an annual report. In addition, these questions will have to be answered when the actual claims are reviewed by the State Controller's Office. Furthermore, Community College Districts are already required to have an accounting system in place to meet their obligations for sound fiscal management (Education Code section 84030, et seq.; Title 5 California Code of Regulations 59010).

### **A Limited Review of The Commission Staff Analysis Indicates The Inaccuracy of the Claims Provided and the Estimate Based Thereon**

The Board does not have access to any details of the particular claims that have been filed and therefore can not comment on the accuracy of any particular claims. However, the Board can offer some general comments on the information provided in the Commission Staff Analysis and

can provide information that it is aware of through the implementation of this program which underscore the fact that these claims appear to be incorrect and excessive.

### Reimbursable Activities

The draft staff analysis of the statewide cost estimate identifies the items that are to be considered reimbursable activities. On their surface, it appears clear that many of these items should have little, if any, cost claim associated with them.

#### A. One-time activities

1. Develop district policies and procedures
2. Train district staff

As indicated in the draft staff analysis (p. 8), the dollar amounts associated with these two items above is relatively small (with the exception of Palomar which is an order of magnitude higher than the others and thus appears suspect). This is because the Board has already developed and provided access to many model policies and procedures that can be easily and with little or no time or cost be adapted for and utilized by Community College Districts. Likewise, the Board provides free training and support to recycling coordinators. In a recent training session, conducted by the Community Colleges, which Board staff was invited to, more than 15 college campuses and District offices were able to completely prepare and finalize for submittal, the regional annual report within a total of 5 hours. In addition, the fact that a number of claims included claims for multiple years for these items, even though they were expressly identified as one-time cost items, also calls into question the accuracy of the claims in general – hence the need for more information to properly evaluate them.

#### B. On-going activities

1. Complete and submit plan
2. Respond to Board reporting requirements
3. Consult with Board if necessary
4. Designate recycling coordinator
5. **Divert 25% by 2002 and 50% by 2004**

Again for the above items, the costs associated with them should be minimal, if any. The Board provided a model plan on computer disc that could be filled out electronically that simply involved filling in the blanks for many districts. Every Community College District used the Model Plan.

The Board is not aware of any significant amount of time that districts had to spend responding to or consulting with the Board regarding reports or revisions. As for designating a recycling coordinator and diverting waste, the Board does recognize that there may be a cost involved (because there is certainly initial spending necessary for those Districts that weren't already providing recycling programs). However, as the Board has previously indicated, and the Commission has previously acknowledged, for the most part, these activities pay for themselves through avoided costs (like reduced disposal costs and increased resource efficiency). In fact, the fifth item in this section is the main purpose of the "mandate" and it is also main way in

which cost savings are realized. If necessary, the Board could provide published reports on the typical cost savings associated with recycling programs.

#### C. Alternative Compliance

No District requested alternative compliance, so there should be no claims for this item. Additionally, after 12/31/05, no further requests for alternative compliance may be filed (this provision "sunsetting").

#### D. Develop accounting system

As noted above, Community College Districts are already required to have an accounting system in place due to their already existing fiduciary duties. At best, the "mandate" might require some minor alterations to the existing accounting system, and as noted in the draft staff analysis: "only the pro-rata portion of the costs incurred to implement the reimbursable activities can be claimed." The Board does not believe that this could have resulted in significant claimable costs.

#### E. Annual Report

The Board has developed an electronic filing system for Annual Reports and filing one of these out should take less than a few hours, once a year (see the "training" example described above). In addition, the system allows filers to use previous year's reports for the majority of information needed and just show changes, so unless much has changed from year to year for a District, there should be even less cost after the first year.

(The Annual Report format automatically fills out about half of the fields on the form (Parts I and II) and all that is needed is validation. Part IV of the form allows for cut and paste from previously submitted documents. Part III should only require the transfer of the records ("numbers") from the accounting system.)

#### F. Annual Recycled Material Reports

This would be submitted electronically in Part III of the Annual Report described above.

#### Draft Statewide Cost Estimate Assumptions

The "assumptions" included in the draft Statewide Cost Estimate also indicate that the Parameters and Guidelines should be reconsidered and revised before any accurate cost estimate can be made.

Commission Staff notes that "the actual claiming data is inaccurate." At this stage, the basis for this assumption is that some districts didn't include offsetting savings and that a number of them submitted "one-time activities over multiple years." Elsewhere in the analysis, staff also indicates that it believes the claims may be excessive since they don't appear to be related to the size of the district. This is especially suspect given that the entire reporting process has been standardized through the Board's model.

Commission Staff also note that the amount claimed will increase when late or amended claims are filed. The Board believes just the opposite is true and the fact that so many of the districts have not filed claims is just as likely to be an indication that the "mandate" hasn't resulted in increased overall costs for many of the districts. Furthermore, based upon the Commission Staff's analysis, amended claims, to correct some of the inaccurate claims noted above, should result in a lower cost claim. (As a side note, since, the deadline for filing late claims is October 2006, it does not seem appropriate to finalize this estimate until all of those claims are filed.)

In addition, in its February 28, 2005 Comments on Draft Staff Analysis, Proposed Parameters and Guidelines, the Board included Attachment 1 which identified actual diversion realized for 117 Community Colleges and District Offices as reported for 2003 at more than 66,000 tons. Translated into dollar amounts, the reporting entities in the aggregate could realize nearly \$2 million in avoided disposal costs for 2003 alone, i.e. offsetting savings, when diversion programs are implemented. This would more than offset the claimed costs indicated on page 9 of the Draft Staff Analysis showing estimated costs of \$1.1 million for Fiscal Year 2002-2003 and \$1.2 million for Fiscal Year 2003-2004.

#### **The Excessive Cost Claims Should Be Addressed Now, Not Later**

Finally, the Commission Staff notes in its analysis that "The SCO may reduce any reimbursement claim for this program." While that is true, given all of the inaccuracies on the face of these claims, and given the impact that an excessive cost estimate could have on the Board's activities, the Board believes it would be a more efficient use of resources by all parties involved if the Commission reconsidered and revised the Parameters and Guidelines to require more accurate information in advance of claims and estimates, rather than require more resources to audit, review and revise the claims after the fact. The Board has already been contacted by the Department of Finance to talk about where the estimated \$5.9 million will come from in our next budget, hence the cost estimate will actually start affecting the Board's operating budget now.

For the reasons discussed above, we believe that there is enough factual evidence to indicate that the claims should be reduced in some amount and that the Parameters and Guidelines should be amended, modified, or supplemented to require more information from the claimants regarding actual costs (with offsetting savings factored in). This would also make the Parameters and Guidelines consistent with the statutes and regulations cited above. These are not hypothetical issues and should be dealt with accurately as the process moves along – not be left for someone to "clean-up" later. The Board has significant and strong concerns about the proposed Statewide Cost Estimate that has been prepared and, in fact, as has been expressed previously, strong concerns about the entire claims process that gave rise to this estimate.

#### **Board Requests Adding To the Parameters and Guidelines Additional Information as a Method To Accurately Capture Offsetting Savings**

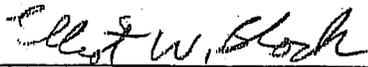
Title 2 CCR 1183.3 requires that the request to amend, modify or supplement Parameters and Guidelines shall include the proposed language for specific sections of the existing Parameters

and Guidelines that are to be changed, and include a narrative explaining why the amendment is required.

The amendment is required for the reasons noted above. The Board believes that the attached proposed amendments (shown in strikeout/underline format) should be made to the identified sections of the Parameters and Guidelines to more accurately capture the information necessary to provide accurate claims and a Statewide Cost Estimates.

I certify, under penalty of perjury, that I am an authorized representative of the California Integrated Waste Management Board and that the statements made in this document are true and correct to the best of my personal knowledge and belief.

Executed this 30<sup>th</sup> day of March, 2006 in Sacramento, California, by:



---

Elliot Block  
Acting Chief Counsel  
California Integrated Waste Management Board  
1001 I Street  
Sacramento, CA 95812

## Attachment – Proposed Amendments to Parameters and Guidelines

### VIIA. OFFSETTING REVENUES AND REIMBURSEMENTS

...[no proposed change to body of section]

### VII B. ADDITIONAL EXPENSES AND OFFSETTING SAVINGS

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

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

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

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

## **VIII. STATE CONTROLLERS CLAIMING INSTRUCTIONS**

... [no proposed change to existing text, proposed addition at the end of section:]

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

PROOF OF SERVICE

**Proposed Statewide Cost Estimate and Request for Additional Comments  
And Written Request To Amend, Modify, or Supplement Parameters and  
Guidelines**

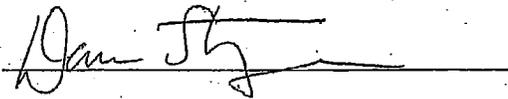
Integrated Waste Management Board 00-TC-07

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within-entitled cause; my business address is 1001 I Street, 23<sup>rd</sup> floor, Sacramento, California, 95814.

On March 30, 2006, I served the attached request for extension of time by hand delivery to the Commission on State Mandates and by placing a true copy thereof to all of those listed on the attached mailing list enclosed in a sealed envelope with postage thereon fully prepaid in the U. S. Mail at Sacramento, California, in the normal pickup location at 1001 I Street, 23<sup>rd</sup> floor, for Interagency Mail Service, addressed as follows:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 30, 2006 at Sacramento, California.

A handwritten signature in black ink, appearing to read "Dan Stj", is written over a horizontal line.



Jon Stephens  
Lake Tahoe Community College District  
One College Drive  
South Lake Tahoe, CA 96150

Jesse McGuinn (A-15)  
Department of Finance  
915 L Street, 8<sup>th</sup> Floor  
Sacramento, CA 95814

Gerald Shelton  
California Department of Education (E-08)  
Fiscal and Administrative Services Division  
1430 N Street, Suite 2213  
Sacramento, CA 95814

Annette Chinn  
Cost Recovery Systems, Inc.  
705-2 East Bidwell Street, #294  
Folsom, CA 95630

Steve Shields  
Shields Consulting Group, Inc.  
1536 36<sup>th</sup> Street  
Sacramento, CA 95816

Robert Miyashiro  
Education Mandated Cost Network  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Harmeet Barkschat  
Mandate Resource Services  
5325 Elkhorn Blvd., #307  
Sacramento, CA 95842

Susan Geanacou  
Department of Finance (A-15)  
915 L Street, Suite 1190  
Sacramento, CA 95814

Allan Burdick  
MAXIMUS  
4320 Auburn Blvd., Suite 2000  
Sacramento, CA 95841

Louis R. Mauro  
Attorney General's Office  
1300 I Street, 17<sup>th</sup> Floor  
P.O. Box 944255  
Sacramento, CA 95814

Steve Smith  
Steve Smith Enterprises, Inc.  
4833 Whitney Avenue, Suite A  
Sacramento, CA 95821

Keith B. Petersen  
SixTen & Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

Beth Hunter  
Centration, Inc.  
8316 Red Oak Street, Suite 101  
Rancho Cucamonga, CA 91730

Jim Spano  
State Controller's Office (B-08)  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814

Jim Jagers  
Axiom, Inc.  
2440 Gold River Road, Suite 200  
Gold River, CA 95670

Frederick E. Harris  
California Community Colleges  
Chancellor's Office (G-01)  
1102 Q Street, Suite 300  
Sacramento, CA 95814-6549

Joe Rombold  
School Innovations & Advocacy  
11130 Sun Center Drive, Suite 100  
Rancho Cordova, CA 95670

Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Sandy Reynolds  
Reynolds Consulting Group  
P.O. Box 894059  
Temecula, CA 92589

Arthur Palkowitz  
San Diego Unified School District  
4100 Normal Street, Room 3159  
San Diego, CA 92103-8363

Jeannie Oropeza  
Department of Finance  
Education Systems Unit  
915 L Street, 7<sup>th</sup> Floor  
Sacramento, CA 95814

J. Bradley Burgess  
Public Resource Management Group  
1380 Lead Hill Boulevard, Suite #106  
Roseville, CA 95661







APR-04-2006 14:59



DEPARTMENT OF FINANCE

EXHIBIT C

ARNOLD SCHWARZENEGGER  
915 L STREET ■ SACRAMENTO CA ■ 95814-3708 ■ WWW.DOF.CA.GOV

April 5, 2006

RECEIVED  
APR 04 2006  
COMMISSION ON  
STATE MANDATES

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

Dear Ms. Higashi:

The Department of Finance has completed its review of the Integrated Waste Management Board's (Board) proposed modifications to the statewide cost estimate and parameters and guidelines for Test Claim No. 00-TC-07. These comments were filed by the Board in response to a letter issued by the Commission on January 9, 2006, that requested all interested parties to provide additional information to better inform an accurate estimate of costs and savings associated with this test claim. Based on our review of the Board's comments, we concur with their summary of additional expenses and offsetting savings, and would further urge the Commission to provide the Board with all relevant test claim materials to allow for their full participation in formulating a more accurate statewide cost estimate, as well as more appropriate parameters and guidelines.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included in previous correspondence on this test claim have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Thomas Todd, Principal Program Budget Analyst, at (916) 445-0328, or Jesse McGulinn, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Jeannie Oropeza  
Program Budget Manager

Attachment

Attachment A

DECLARATION OF THOMAS TODD  
DEPARTMENT OF FINANCE  
CLAIM NO. CSM-03-TC-05

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the various statutes sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

April 5, 2006  
at Sacramento, CA

  
Thomas Todd

**PROOF OF SERVICE**

Test Claim Name: Integrated Waste Management  
 Test Claim Number: CSM-00-TC-07

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7<sup>th</sup> Floor, Sacramento, CA 95814.

On April 5, 2006, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7<sup>th</sup> Floor, for Interagency Mail Service, addressed as follows:

A-16  
 Ms. Paula Higashi, Executive Director  
 Commission on State Mandates  
 980 Ninth Street, Suite 300  
 Sacramento, CA 95814

B-8  
 State Controller's Office  
 Division of Accounting & Reporting  
 Attention: Ginny Brummels  
 3301 C Street, Room 500  
 Sacramento, CA 95816

California Community Colleges  
 Attention: Frederick Harris  
 1102 Q Street, Suite 300  
 Sacramento, CA 95814

Mr. Allan Burdick  
 MAXIMUS  
 4320 Auburn Blvd., Suite 2000  
 Sacramento, CA 95841

Lake Tahoe Community College District  
 Attention: Mr. Jon Stephens  
 One College Drive  
 South Lake Tahoe, CA 96160

Shields Consulting Group, Inc.  
 Attention: Steve Shields  
 1536 36<sup>th</sup> Street  
 Sacramento, CA 95816

Education Mandated Cost Network  
 Attention: Carol Berg, Ph.D.  
 1121 L Street, Suite 1060  
 Sacramento, CA 95814

Mandated Cost Systems  
 Attention: Joe Rombold  
 11130 Sun Center Drive, Suite 100  
 Rancho Cordova, CA 95670

SixTen & Associates  
 Attention: Keith B. Petersen  
 5252 Balboa Avenue, Suite 807  
 San Diego, CA 92117

Mr. Steve Smith  
 Steve Smith Enterprises, Inc.  
 4633 Whitney Avenue, Suite A  
 Sacramento, CA 95821

Mandate Resource Services  
 Attention: Harmeet Barkschat  
 5325 Elkhorn Blvd. #307  
 Sacramento, CA 95842

Reynolds Consulting Group, Inc.  
 Attention: Sandy Reynolds  
 P.O. Box 987  
 Sun City, CA 92586

Centration, Inc.  
Attention: Beth Hunter  
8316 Red Oak Street, Suite 101  
Rancho Cucamonga, CA 91730

Mr. Jim Jagers  
Centration, Inc.  
12150 Tributary Point Dr., Suite 140  
Gold River, CA 95670

Ms. Deborah Borzelleri  
California Integrated Waste Management  
Board, Legal Office  
1001 I Street, 23<sup>rd</sup> Floor  
P.O. Box 4025  
Sacramento, CA 95812-4025

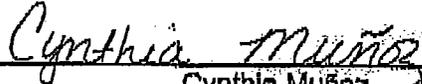
Mr. Jim Spano  
State Controller's Office (B-08)  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814

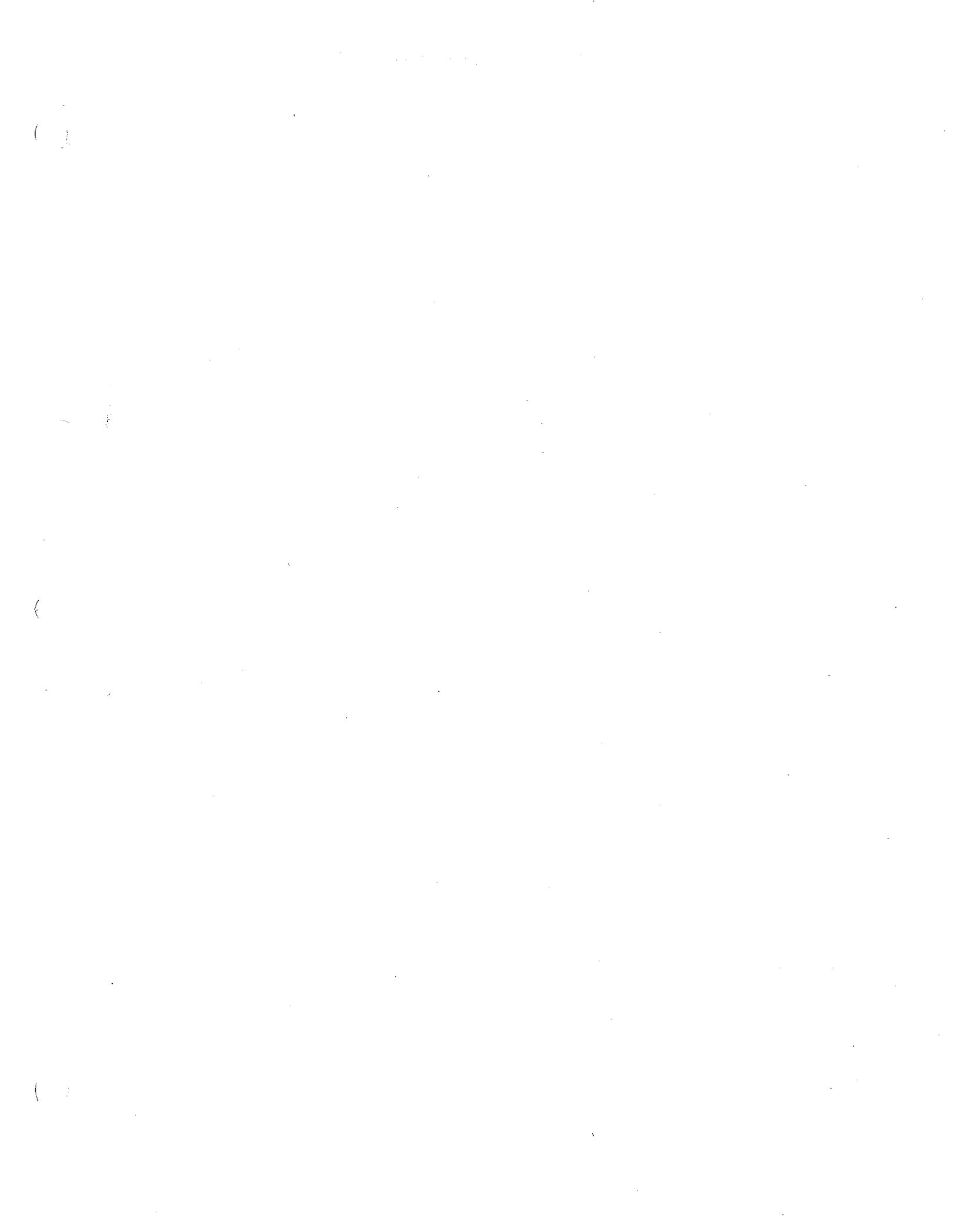
Mr. Gerald Shelton  
California Department of Education (E-08)  
Fiscal and Administrative Services Division  
1430 N Street, Suite 2213  
Sacramento, CA 95814

Ms. Annette Chinn  
Cost Recovery Systems  
705-2 East Bidwell Street, #294  
Folsom, CA 95630

Mr. Louis R. Mauro  
Attorney General's Office  
1300 I Street, 17<sup>th</sup> Floor  
P.O. Box 944255  
Sacramento, CA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 5, 2006, at Sacramento, California.

  
\_\_\_\_\_  
Cynthia Muñoz





**COMMISSION ON STATE MANDATES**

980 NINTH STREET, SUITE 800  
SACRAMENTO, CA 95814  
PHONE: (916) 323-3662  
FAX: (916) 445-0278  
E-mail: csminfo@csm.ca.gov



March 16, 2005

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

*And Affected State Agencies and Interested Parties (see enclosed mailing list)*

RE: **Final Staff Analysis and Proposed Parameters and Guidelines**  
*Integrated Waste Management, 00-TC-07*  
Santa Monica and Lake Tahoe Community College Districts, Co-Claimants  
Public Resources Code Sections 40148, 40196.3, 42920-42928  
Public Contract Code Sections 12167 and 12167.1  
Statutes 1999, Chapter 764 (AB 75)  
Statutes 1992, Chapter 1116 (AB 3521)  
State Agency Model Integrated Waste Management Plan (February 1999)

Dear Mr. Petersen:

Staff's analysis and proposed parameters and guidelines are complete and enclosed for your review.

**Commission Hearing**

The proposed parameters and guidelines are tentatively set for hearing on **March 30, 2005** at 9:30 a.m. at the **Department of Social Services Auditorium, 744 P Street, First Floor, Sacramento, California**. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear.

**Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions, please contact Eric Feller at (916) 323-8221.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI  
Executive Director

Enclosures



**ITEM 10**

**FINAL STAFF ANALYSIS  
PROPOSED PARAMETERS AND GUIDELINES  
AS MODIFIED BY STAFF**

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

Statutes 1999, Chapter 764 (AB 75)  
Statutes 1992, Chapter 1116 (AB 3521)

State Agency Model Integrated Waste Management Plan (February 2000)

*Integrated Waste Management (00-TC-07)*

Santa Monica and Lake Tahoe Community College Districts, Co-claimants

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**EXECUTIVE SUMMARY**

The test claim statutes added chapter 18.5 to the Public Resources Code (in addition to Pub. Res. Code, §§ 40148 & 40196.3) to require state agencies (defined to include community college districts) to develop and adopt an integrated waste management plan, divert at least 25 percent of generated solid waste by January 1, 2002 and at least 50 percent by January 1, 2004, request extensions of time and alternative goals, and perform other specified activities. The test claim statutes also require the Integrated Waste Management Board to adopt a Model Integrated Waste Management Plan. The model plan was found by the Commission to be an executive order that constitutes a mandate. The test claim statutes also include Public Contract Code provisions regarding the allocation of revenues from the sale of recyclable materials.

Staff reviewed the claimants' proposal and the comments received. Substantive changes were made according to the comments received from state agencies and claimants; and to conform to recently adopted parameters and guidelines. Non-substantive, technical changes were made for purposes of clarification and conformity to the Statement of Decision and statutory language.

The Integrated Waste Management Board submitted comments on the draft staff analysis regarding the definition of "actual costs" and recommends (1) that the parameters and guidelines require information on cost savings in any claim submitted, and (2) that claimants be required to deduct offsetting savings resulting from avoided disposal costs resulting from implementation of diversion programs. For reasons stated in the analysis, staff rejects these recommendations.

**Staff Recommendation**

Staff recommends that the Commission adopt the claimants' proposed parameters and guidelines, as modified by Commission staff, beginning on page 15.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.



## STAFF ANALYSIS

### Co-Claimants

Santa Monica and Lake Tahoe Community College Districts<sup>1</sup>

### Chronology

03/25/04 Commission on State Mandates ("Commission") adopted Statement of Decision  
04/23/04 Claimants submitted proposed parameters and guidelines  
06/17/04 The California Integrated Waste Management Board ("Board") submitted comments  
07/12/04 The State Controller's Office ("SCO") submitted comments  
09/30/04 Commission conducted a pre-hearing conference  
10/13/04 The Board submitted additional comments  
10/18/04 Claimants submitted a rebuttal to state agency comments  
02/14/05 Commission issued draft staff analysis  
02/28/05 The Board submitted comments on the draft staff analysis  
03/16/05 Commission issued final staff analysis and parameters and guidelines

### Summary of the Mandate

On March 25, 2004, the Commission adopted its Statement of Decision<sup>2</sup> finding that Public Resources Code sections 40148, 40196.3, 42920-42928; Public Contract Code sections 12167 and 12167.1; and the State Agency Model Integrated Waste Management Plan (February 2000) ("model plan") require specific new activities, which constitute new programs or higher levels of service for community college districts within the meaning of article XIII B, section 6, of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514.

### Discussion

Staff reviewed the claimants' proposal<sup>3</sup> and the comments received.<sup>4</sup> At the request of the Board, the Commission conducted a pre-hearing conference on September 30, 2004. On October 13, 2004, the Board submitted additional comments.<sup>5</sup> The claimants submitted a rebuttal to state agency comments on October 18, 2004.<sup>6</sup> Staff made non-substantive, technical changes

---

<sup>1</sup> Claimants' original filing and the Commission's Statement of Decision referred to the claimant as the "South" Lake Tahoe Community College District. Staff is now informed that the claimant is the Lake Tahoe Community College District.

<sup>2</sup> Exhibit A.

<sup>3</sup> Exhibit B.

<sup>4</sup> Exhibits C, D, E, and F.

<sup>5</sup> Exhibit E.

<sup>6</sup> Exhibit F.

for purposes of clarification, consistency with language in parameters and guidelines adopted since January 2003, and conformity to the Statement of Decision and statutory language. Substantive changes are discussed below.

### *III. Period of Reimbursement*

The claimants proposed that the reimbursement period for this program begins on July 1, 1999. This is true for the activity to submit recycled material reports to the board, pursuant to Public Contract Code section 12167.1 (Stats. 1992, ch. 1116); and for the one-time activities of developing policies and procedures and training.

The other activities, however, were codified by Statutes 1999, chapter 764. This statute has an operative date of January 1, 2000. Accordingly, those activities required by the Public Resources Code are reimbursable beginning January 1, 2000. Additionally, seeking an alternative diversion goal or time extension (Pub. Resources Code, §§ 42922, 42923, and 42927) is reimbursable until December 31, 2005, as the law sunsets January 1, 2006. Staff revised the language to reflect the correct reimbursement periods.

### *IV. Reimbursable Activities*

#### Boilerplate definition of Actual Costs

In its February 28, 2005 comments on the draft staff analysis, the Board recommends altering the definition of "actual costs" by adding italicized language as follows: Actual costs are those costs actually incurred to implement the mandated activities *after the test claim statute was enacted, and that would not otherwise occur if the mandate was not in place.*

#### *Staff Findings*

Staff disagrees with the Board's change to the definition of "actual costs" because it would be a violation of Government Code section 17565, which states: "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

Staff finds that the Board's additional phrase, "that would not otherwise occur if the mandate was not in place" is too broad, and could apply to activities a community college engaged in before the test claim statute was enacted, which would contravene Government Code section 17565. Even though the Board attempts to qualify the phrase by adding, "after the test claim statute was enacted," it is still too broad. Also, the "after enactment" phrase is unnecessary, since the existing definition in the parameters and guidelines: "those costs actually incurred to implement the *mandated* activities" (emphasis added), means those activities "mandated" by the test claim statute. Those activities could not be "mandated" before the statute's enactment. In sum, the Board has not demonstrated a sufficient reason to change the boilerplate definition of "actual costs" in the parameters and guidelines. Therefore, staff finds that the definition should be left as it is.

#### One-Time Activities

The claimants proposed that preparing and updating policies and procedures and training district staff as ongoing reimbursable activities.

In a letter received on July 12, 2004, the SCO argued that "the model plan contains procedures for implementing the integrated waste management plan under the discretion of an approved solid waste and recycling coordinator."<sup>7</sup> Therefore, the SCO suggests that costs incurred for additional policies and procedures are discretionary and are not reimbursable. Regarding training, the SCO asserts that it should be limited to a one-time activity for staff directly involved in implementing the plan, and that the scope of the training be limited to the Board's model plan.

The claimants asserted in their rebuttal submitted on October 18, 2004, that policies and procedures and training were implicit costs of implementing a new program.<sup>8</sup> Moreover, they argue that limiting training to a one-time event is inappropriate because of possible staff turnover and changes in the waste management plan.

### *Staff Findings*

Staff finds that developing the necessary policies and procedures for the implementation of the integrated waste management plan and training district staff on the requirements and implementation of the district's integrated waste management plan are reasonably necessary to comply with the mandated program.<sup>9</sup> Staff disagrees with SCO that the scope of training should be limited to the Board's model plan because the Commission's Statement of Decision was not limited to compliance with the model plan. The Commission found a mandate to divert waste by at least 25 percent by January 1, 2002, and at least 50 percent by January 1, 2004. In fact, the instructions for completing the model plan indicates that "workshops [were] conducted in March and April 2000 to help State agencies<sup>[10]</sup> determine diversion rates and complete [a plan]."<sup>11</sup> As to the claimants' argument that training should not be limited to one-time due to staff turnover and changes in the waste management plan, staff disagrees. If adequate policies and procedures are in place, no further training should be necessary. Moreover, staff turnover and changes to the waste management plan are not mandated by the test claim statutes.

Therefore, staff included as reimbursable the one-time development of policies and procedures, and one-time training per employee working directly on the community college's integrated waste management plan.

### Ongoing Activities

The claimants identified six other activities related to the integrated waste management plan: plan development and approval, program coordinator, waste diversion, alternative compliance, accounting system, and annual report.

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<sup>7</sup> Exhibit D.

<sup>8</sup> Exhibit F.

<sup>9</sup> California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

<sup>10</sup> As stated in footnote 2 of the Statement of Decision (Exhibit A): "State agency" is "every state office, department, division, board, commission, or other agency of the state, including the California Community Colleges and the California State University. ... (Pub. Resources Code, § 40196.3).

<sup>11</sup> California Integrated Waste Management Board, State Agency Model Integrated Waste Management Plan, February 2000. See Attachment 1 to the parameters and guidelines.

The SCO recommends<sup>12</sup> revising these activities to correlate with the activities approved in the Commission's Statement of Decision.

The Board noted several issues in a letter submitted on June 17, 2004.<sup>13</sup> Regarding the proposed reimbursable activities, the Board asserted that none of the activities listed under "Promotional Programs" or "Procurement Activities" are required as part of the mandate. The Board maintains that only the time spent in answering the questions in the report may be claimed, not time spent implementing the activities. Further, the Board states that it made a legal determination that procurement activities do not apply to community colleges.

The claimants argued in a letter submitted on October 18, 2004,<sup>14</sup> that the Commission's Statement of Decision includes the entire scope of the model plan, of which implementing promotional programs and procurement activities is a part. The claimants assert that the mandate is not limited to disposal reduction. Regarding the Board's legal determination that procurement activities do not apply to community colleges, the claimants request evidence of the determination.

#### *Staff Findings*

**Maintain reduction:** The claimants' proposal under "Waste Diversion" included the activity to maintain the required level of reduction according to the model plan, and identified methods such as source reduction, recycling, composting, and special waste.

The law requires that each state agency and each large state facility shall divert at least 50 percent of all solid waste from landfill disposal or transformation facilities through source reduction, recycling, and composting activities on and after January 1, 2004. The Commission's Statement of Decision specifically states:

Subdivision (i) of section 42922 states that a community college that is granted an alternative requirement "shall continue to implement source reduction, recycling, and composting programs, and shall report the status of those programs in the report required pursuant to Section 42926." This provision merely reaffirms the requirements of section 42921 and the more specific requirements in section 42926.<sup>15</sup>

Therefore, staff finds that maintaining the required level of reduction, as approved by the Board, is reasonably necessary to comply with the waste diversion requirement.<sup>16</sup>

Moreover, the claimants listed each of the methods identified in the model plan in the proposed parameters and guidelines. Staff finds that it is more efficient to simply reference the model plan in the proposed parameters and guidelines. Therefore, staff deleted the model plan methods, and instead referenced the model plan and attached it to the proposed parameters and guidelines.

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<sup>12</sup> Exhibit D.

<sup>13</sup> Exhibit C.

<sup>14</sup> Exhibit F.

<sup>15</sup> Exhibit A, (p. 26 of Statement of Decision).

<sup>16</sup> California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

**Promotional & procurement activities:** Staff further finds that implementing promotional programs or procurement activities is not reimbursable, although reporting on them is.

Promotional programs and procurement activities were listed in claimants' parameters and guidelines. However, the Board stated that none of the activities listed under "Promotional Programs" or "Procurement Activities" are required as part of the mandate, and that only the time spent in answering the questions in the report is reimbursable. The Board also stated that it made a legal determination that procurement activities do not apply to community colleges. However, the legal determination was not submitted as part of the record, so staff does not rely on it.

Reimbursement for procurement and promotional activities is based on the model plan. The plain language of the model plan only requires community colleges to report on procurement and promotional activities. As stated on page 37 of the Statement of Decision,

A community college must comply with the Board's model integrated waste management plan, which includes ... completing and submitting to the Board the following: ... (3) state agency waste reduction and recycling program worksheet, including the sections on program activities, promotional programs, and procurement activities ...

In its June 2004 comments, the Board represented that procurement activities and promotional programs do not apply to community colleges. The Board's interpretation of the model plan is entitled to deference by the Commission. The model plan was adopted at a public meeting of the Board in January 2000,<sup>17</sup> so it is tantamount to a Board regulation. Therefore, the Board's interpretation that community colleges do not need to implement the procurement and promotional programs in the model plan is entitled to deference. The Commission, like a court, accords great weight to the agency's interpretation of its statutes and regulations. (*Yamaha Corp. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12).

Staff finds, therefore, that reporting on promotional programs and procurement activities when submitting the model plan and preparing the required annual reports is reimbursable because these reporting activities were found to be reimbursable in the Statement of Decision. Language was added to the proposed parameters and guidelines to make this clear.

**Responding to the Board:** Staff added, "Respond to any Board reporting requirements during the approval process" to be consistent with the Commission's Statement of Decision. Staff finds that responding to any Board reporting requirements during the approval process is an activity that is reasonably necessary to comply the model plan.<sup>18</sup> Therefore, this activity was retained in the proposed parameters and guidelines, as proposed by the claimants.

**Accounting System:** The claimants also proposed that developing, implementing, and maintaining an accounting system is reimbursable to enter and track the college's source reduction, recycling, and composting activities, as well as costs and revenues.

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<sup>17</sup> <<http://www.ciwmb.ca.gov/Agendas/agenda.asp?RecID=235#AG2425>> as of February 1, 2005.

<sup>18</sup> California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

Given the requirements to track revenues (Pub. Res. Code; § 42925), and to include information in the annual reports on tonnage diverted (Pub. Res. Code; § 42926), staff finds that the accounting system is a reasonable method of complying with the test claim statute,<sup>19</sup> and retained the system as proposed by claimants. Staff notes that only the pro-rata portion of the costs incurred to implement the reimbursable activities can be claimed.

### *VII. Offsetting Savings (Revenues) and Reimbursements*

The parameters and guidelines contain a boilerplate provision that states, "Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed."

In its comments submitted on June 17, 2004, the Board argued that the claimants did not identify offsetting savings, which "may be so great that there will be an overage to be allocated to other activities being claimed for reimbursement." The Board also argued that an allocation formula or uniform allowance was neither reasonable nor possible as the basis for reimbursement "because each campus operates in significantly different ways, and the programs chosen to comply will vary significantly...." Moreover, the Board asserts that this program is "particularly cumbersome because the subject matter requires a comprehensive analysis of economic life cycles for the waste streams chosen by the potential claimants, which could only be based on the specific operation in place at the particular Community College."<sup>20</sup> Therefore, the Board suggests that the parameters and guidelines provide appropriate tools to assure that all costs and cost savings are identified.

The Board submitted additional comments on October 13, 2004,<sup>21</sup> reiterating its position that "any programs implemented as a result of the test claim statute will inevitably result in cost savings to claimants" and again recommending that the parameters and guidelines and SCO require information on cost savings in any claim submitted. The Board proposes a costs/savings worksheet be attached to the parameters and guidelines to be used as guidance for collecting relevant information.<sup>22</sup> The Board also states that claimants should be required to report direct and indirect cost savings when claiming direct and indirect costs for reimbursement.

The Board's proposed worksheet provides a list of expense and revenue items. Columns are provided for "pre AB 75 program," "current program," and "net difference." The expense items, as defined by the Board, are listed below:

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

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<sup>19</sup> California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

<sup>20</sup> Exhibit C.

<sup>21</sup> Exhibit E.

<sup>22</sup> Exhibit E.

- *Overhead.* Costs incurred for overhead, such as benefits, for the PNYs identified under "staffing."
- *Materials.* Through the implementation of the program being claimed a reduction or elimination of supplies and materials may have been achieved. This could include, and is not limited to: white office paper, mixed office paper, cardboard, printed catalogs, postage, envelopes, and other office supplies.
- *Storage.* Through the implementation of the program being claimed a reduction or elimination of storage of supplies and materials may have been achieved. The elimination of storage is a cost savings that must be allocated to offset any costs associated to the implementation of the identified program(s) being claimed by the claimants.
- *Transportation costs:* The transportation of supplies and waste materials has a cost. The claimants should determine how many trips staff was making to purchase, pick-up and deliver supplies needed for the program being claimed and the current level of the activity. It should be calculated based on a conversion of the previous programs' activities being converted to the dollar values for the particular year for which a claim is being submitted.  
Claimants should also consider the cost incurred for the collection of waste materials associated with the activity being claimed.
- *Equipment.* Any costs associated with new/replacement equipment, including any costs avoided for maintenance of obsolete equipment.
- *Disposal fees.* Costs associated to the disposal of materials prior to the implementation of the specific program being implemented. Since the intent and impact of the legislation is to divert materials from the landfill, a direct savings is seen.
- *Other expenses related to program.* The claimants should take into consideration the specific program being claimed for reimbursement and identify all areas that have been impacted.

The Board also defined the following revenue items:

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

factors can and will generate a cost savings. It is suggested that the claimants be required to identify all savings associated to the particular program or activity as per the findings of the Commission.

In the claimants' rebuttal comments submitted on October 18, 2004, they argued that there was nothing in the record to substantiate the Board's assertions that offsetting savings would exceed new costs. Further, the claimants note that the Commission did not find cost savings in an amount sufficient to preclude mandate reimbursement; but acknowledged that it was appropriate to identify at the parameters and guidelines stage sources of other government funding and local income that may reduce the mandate's cost. Regarding the Board's proposed worksheet to measure program cost savings, the claimants maintain that it is in violation of Government Code section 17565, as discussed below.<sup>23</sup>

The Board, in its February 28, 2005 comments on the draft staff analysis,<sup>24</sup> states:

In the interest of clarifying our previously submitted comments, the IWMB hereby submits relevant statutory provisions and evidence to support its position of cost savings. As defined in statute, all waste that is generated by an entity is then either disposed of or diverted. Public Resources Code (PRC) section 40124 defines "diversion" as "activities which reduce or eliminate the amount of solid waste from solid waste disposal ..." PRC section 40192 (b) defines "solid waste disposal" as "the management of solid waste through landfill disposal or transformation at a permitted solid waste facility." Pursuant to PRC sections 42780 et seq. and 42921, diversion is expressed as disposal reduction. Thus, increased "diversion" directly results in less "disposal."

The estimated average cost per ton of solid waste disposal is \$30. For purposes of this test claim statute, the most obvious and significant savings will be avoided disposal costs. [Actual diversion data for 117 Community Colleges and District Offices in 2003 reported more than 66 thousand tons.] Translated into dollar amounts, the reporting entities in the aggregate could realize nearly \$2 million in avoided disposal costs for 2003, i.e., cost savings, when diversion programs are implemented.<sup>25</sup>

Thus, the Board proposes adding to the parameters and guidelines the following phrase:

Claimants shall, at a minimum, deduct offsetting savings resulting from avoided disposal costs. Where applicable, claimant shall deduct offsetting savings resulting from other avoided or reduced costs resulting from implementation of diversion programs.

#### *Staff Findings*

**Identifying cost savings:** The issue is whether community colleges are required to identify in their reimbursement claims the cost savings that may result from avoiding disposal costs as a result of this program or otherwise submit a program worksheet.

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<sup>23</sup> Exhibit F.

<sup>24</sup> Exhibit H.

<sup>25</sup> The Board does not indicate the amount of the diversion costs that could offset the alleged savings.

As stated above, the Board argues that tracking cost savings should be required of community college claimants, and should be subtracted from the claims submitted. The cost savings the Board urges tracking are reduced disposal costs, in addition to revenue received pursuant to the Public Contract Code section 12167 and 12167.1. The claimants argue that requiring claimants to prepare and submit the Board's proposed worksheet to measure program cost savings would violate Government Code section 17565.

For the reasons indicated below, staff finds that in this case, there is insufficient legal authority to support a requirement to track cost savings that may result from avoiding disposal costs as a result of this program.

Subdivision (a) of Public Resources Code section 42925, enacted as a test claim statute, states:

Any cost savings realized as a result of the state agency [community college's] integrated waste management plan shall, to the extent feasible, be redirected to the agency's [college's] integrated waste management plan to fund plan implementation and administration costs, in accordance with Sections 12167<sup>26</sup> and 12167.1<sup>27</sup> of the Public Contract Code.

Public Contract Code sections 12167 and 12167.1 address revenue received by the agency (or Community College) that was intended by the Legislature to offset the recycling program costs. Section 12167 requires revenue to be deposited into the Integrated Waste Management Account

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<sup>26</sup> Public Contract Code section 12167 states:

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

<sup>27</sup> Public Contract Code section 12167.1 states:

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

in the Integrated Waste Management Fund that may be spent by the Board, only on appropriation by the Legislature, to offset recycling program costs. According to section 12167.1, revenue from selling recyclable materials that does not exceed \$2,000 annually is continuously appropriated to community colleges to offset recycling program costs. Revenue that exceeds \$2,000 annually is available for expenditure when appropriated by the Legislature. The Public Contract Code provisions direct "revenues received from ... any other activity involving the collection and sale of recyclable materials ...." [Emphasis added.] The Public Contract Code provisions do not address "cost savings," or money saved as a result of this program.<sup>28</sup> But according to Public Resources Code section 42925, subdivision (a), the redirection of "cost savings" is to be "in accordance with" the sections 12167 and 12167.1 of the Public Contract Code.

In interpreting these statutes together (Public Resources Code section 42925, subdivision (a) and the Public Contract Code provisions), the Commission, like a court, follows rules of statutory construction. First, the plain and commonsense meaning of a statute governs its construction.<sup>29</sup> Second, every word and phrase of a statute is given effect and significance, and every statute is construed "in the context of the entire scheme of law of which it is a part so that the whole may be harmonized and retain effectiveness."<sup>30</sup>

Here, the plain meaning of "cost savings" in subdivision (a) of section 42925 is ambiguous because it states that the "cost savings" must be redirected, "in accordance with Public Contract Code sections 12167 and 12167.1" both of which mention only "revenue," not "cost savings." Thus, the meaning of "cost savings" in Public Resources Code section 42925, subdivision (a) is made ambiguous by requiring the "cost savings" be redirected "in accordance with" the Public Contract Code sections.

A rule of statutory construction helpful in this case is the "last antecedent rule," which is that "qualifying words, phrases and clauses are to be applied to the words or phrases immediately preceding and not to be construed as extending to or including others more remote."<sup>31</sup> More on point, however, is the comma that precedes the phrase, "in accordance with." "Evidence that a qualifying phrase ["in accordance with"] is supposed to apply to all antecedents instead of only to the immediately preceding one may be found in the fact that it is separated from the antecedents by a comma."<sup>32</sup> Applied here, Public Resources Code section 42925's phrase "in accordance with" is not limited to redirection of funds. Rather, all of section 42925 must be "in accordance with" Public Contract Code section 12167 and 12167.1, including, "Any cost savings realized as a result of the ... integrated waste management plan."<sup>33</sup> Thus, sections 12167 and 12167.1 modify and define the requirement in Public Resources Code section 42925.

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<sup>28</sup> The Public Contract Code provisions were enacted by Statutes 1992, chapter 1116, eight years before the program that is the subject of the test claim statutes.

<sup>29</sup> *El Dorado Palm Springs, Ltd. v. City of Palm Springs* (2002) 96 Cal.App.4th 1153, 1160.

<sup>30</sup> *Ibid.*

<sup>31</sup> *White v. County of Sacramento* (1982) 31 Cal.3d 676, 680.

<sup>32</sup> *Ibid.*

<sup>33</sup> Public Resources Code section 42925, subdivision (a).

Therefore, staff finds that Public Resources Code section 42925's reference to "cost savings" actually means "revenues" received and redirected via Public Contract Code sections 12167 and 12167.1.

As stated above, the Board would have claimants reduce disposal costs from the claims submitted. The problem with this approach is that the test claim statutes enacted a new waste diversion program in 2000 that was not previously reimbursed. "Disposal" costs were not previously reimbursed by the state, nor are they required to be reimbursed under the test claim statutes. Rather, it is "diversion" costs that are reimbursed under this program. Because there was no prior state-mandated program for diversion or disposal upon which to calculate savings, there can be no offsetting savings for these costs.

In addition, Public Resources Code section 42925, subdivision (a), states that the cost savings must be redirected to fund the integrated waste plan only, "to the extent feasible." Thus, the Legislature's direction to redirect cost savings is not mandated. Section 42925 allows any savings to be redirected to other campus programs if the community college finds that it is not "feasible" to use those savings to implement the waste management plan.

As to the AB 75 program worksheet recommended by the Board, there is no reason to require claimants to submit this program worksheet. It is not required by the test claim statutes, nor is it the "most reasonable method of complying with the mandate."<sup>34</sup> The worksheet would have claimants track "disposal" costs incurred before and after the test claim statute. As discussed above, since "disposal" costs were not previously reimbursed by the state, any reduced "disposal" costs cannot be considered an offsetting savings. Accordingly, staff finds that claimants cannot be required to submit the Board's AB 75 program worksheet.

Under section VII of the parameters and guidelines, there is a boilerplate provision that states, "Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed." But all the cost savings identified by the Board (e.g., reduced disposal) are not rooted in the costs that are mandated by this test claim legislation, so they are not "in the same program as a result of the same statutes or executive orders found to contain the mandate." Thus, staff recommends this "offsetting savings" language be deleted from the text and section title because it is inconsistent with the test claim's statutory scheme and the analysis of offsetting savings above.

In sum, for the reasons stated above, staff rejects the Board's proposed language regarding offsetting savings, and its imposition of a program worksheet.

**Student center fee:** Education Code section 76375 authorizes community colleges to charge an annual building and operating fee for "financing, constructing, enlarging, remodeling, refurbishing, and operating a student body center..." The fee must be authorized after a favorable vote of two-thirds of the students voting, and cannot exceed \$1 per credit hour to a maximum of \$10 per student per fiscal year, and students on specified forms of public assistance are exempt. As stated in the Commission's Statement of Decision, staff finds that this fee is also

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<sup>34</sup> California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

an offset to the extent the revenues from it are applied to the program enacted by the test claim statutes or executive order.<sup>35</sup>

Based on Public Contract Code sections 12167 and 12167.1, and Education Code section 76375, subdivision (a), staff finds that the revenues for this program may include the following:

1. Subject to the approval of the Board, revenues derived from the sale of recyclable materials by community colleges that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community colleges for the purpose of offsetting recycling program costs. Revenues exceeding two thousand dollars (\$2,000) annually may be available for expenditure by the community colleges only when appropriated by the legislature.
2. Revenues from a student center fee imposed pursuant to Education Code section 76375.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed parameters and guidelines, as modified by staff, beginning on page 15.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

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<sup>35</sup> Exhibit A (Statement of Decision, pp. 36-37).

## PROPOSED PARAMETERS AND GUIDELINES

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

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

State Agency Model Integrated Waste Management Plan (February 2000)

*Integrated Waste Management (00-TC-07)*

Santa Monica and Lake Tahoe Community College Districts, Co-claimants

### I. SUMMARY OF THE MANDATE

Per Statement of Decision

On March 25, 2004, the Commission on State Mandates (Commission) adopted its Statement of Decision finding that Public Resources Code sections 40148, 40196.3, 42920-42928; Public Contract Code sections 12167 and 12167.1; and the State Agency Model Integrated Waste Management Plan (February 2000) require new activities, as specified below, which constitute new programs or higher levels of service for community college districts within the meaning of article XIII B, section 6, of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514.

Specifically, the Commission approved this test claim for the increased costs of performing the following specific new activities:

- Comply with the model plan (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000): A community college must comply with the California Integrated Waste Management Board's (Board) model integrated waste management plan, which includes consulting with the Board to revise the model plan, as well as completing and submitting to the Board the following: (1) state agency or large state facility information form; (2) state agency list of facilities; (3) state agency waste reduction and recycling program worksheet, including the sections on program activities, promotional programs, and procurement activities; and (4) state agency integrated waste management plan questions.
- Designate a solid waste reduction and recycling coordinator (Pub. Resources Code, § 42920, subd. (c)): A community college must designate one solid waste reduction and recycling coordinator to perform new duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920 - 42928), including implementing the community college's integrated waste management plan, and acting as a liaison to other state agencies (as defined by section 40196.3) and coordinators.

- Divert solid waste (Pub. Resources Code, §§ 42921 & 42922, subd. (i)): A community college must divert at least 25 percent of all its solid waste from landfill disposal or transformation facilities by January 1, 2002, through source reduction, recycling, and composting activities, and divert at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting.

A community college unable to comply with this diversion requirement may instead seek, until December 31, 2005, either an alternative requirement or time extension (but not both) as specified below:

- Seek an alternative requirement (Pub. Resources Code, §§ 42927 & 42922, subds. (a) & (b)): A community college that is unable to comply with the 50-percent diversion requirement must: (1) notify the Board in writing, detailing the reasons for its inability to comply; (2) request of the Board an alternative to the 50-percent requirement; (3) participate in a public hearing on its alternative requirement; (4) provide the Board with information as to (a) the community college's good faith efforts to effectively 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; (b) the community college's inability to meet the 50-percent diversion requirement despite implementing the measures in its plan; (c) the alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve; and (d) relate to the Board circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed by the community college.
- Seek a time extension (Pub. Resources Code, §§ 42927 & 42923 subds. (a) & (c)): A community college that is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, must do the following pursuant to section 42923, subdivisions (a) and (c): (1) notify the Board in writing, detailing the reasons for its inability to comply; (2) request of the Board an alternative to the January 1, 2002 deadline; (3) provide evidence to the Board that it is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan; and (4) provide information to the Board 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. (5) The community college must also submit a plan of correction that demonstrates that it 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.

- Report to the Board (Pub. Resources Code, §§ 42926, subd. (a) & 42922, subd. (i)): A community college must annually submit, by April 1, 2002 and by April 1 each subsequent year, a report to the Board summarizing its progress in reducing solid waste. The information in the report is to encompass the previous calendar year and shall contain, at a minimum, the following as outlined in section 42926, subdivision (b): (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 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.

- Submit recycled material reports (Pub. Contract Code, § 12167.1): A community college must annually report to the Board on quantities of recyclable materials collected for recycling.

## II. ELIGIBLE CLAIMANTS

Community college districts ~~which that~~ incur increased costs as a result of this mandate are eligible to claim reimbursement.

## III. PERIOD OF REIMBURSEMENT

~~Per Statement of Decision and Commission boilerplate. The test claim was filed on March 9, 2001, so reimbursement begins July 1999.~~

Government Code section 17557 states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed on March 9, 2001. Therefore, costs incurred for compliance with Public Contract Code sections 12167 and 12167.1 (Stats. 1992, ch. 1116) are eligible for reimbursement on or after July 1, 1999. However, because of the statute's operative date, all other costs incurred pursuant to Statutes 1999, chapter 764 are eligible for reimbursement on or after January 1, 2000.

Seeking an alternative diversion goal or time extension (Pub. Resources Code, §§ 42922, 42923, and 42927) is reimbursable until December 31, 2005.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d), all claims for reimbursement of initial years' costs shall be

submitted within 120 days of the issuance of the claiming instructions by the State Controller.

If the total costs for a given fiscal year do not exceed \$1000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

#### IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, receipts, and the community college plan approved by the Board.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

For each eligible claimant, the following activities are eligible for reimbursement reimbursable:

##### A. One-Time Activities (reimbursable starting January 1, 2000)

###### 1. Policies and Procedures

~~Prepare and update as~~ Develop the necessary district policies and procedures for the implementation of the integrated waste management plan.

###### 2. Staff Training

Training district staff on the requirements and implementation of the district-integrated waste management plan (one-time per employee). Training is limited to the staff working directly on the plan.

##### B. Ongoing Activities (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000) (reimbursable starting January 1, 2000)

###### 3. Plan Development and Approval

1. Completing and submitting to the Integrated Waste Management Board for each college in the district 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 which describe program activities, promotional programs, and procurement activities, and other questionnaires. Responding to any Board reporting requirements during the approval process; 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.

- 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.<sup>1</sup> (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.)

4. Program Coordinator

Designate one solid waste reduction and recycling coordinator ("coordinator") Appointing an employee for each college in the district as the waste reduction and recycling coordinator to perform new duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920 - 42928), and for the coordinator to administer and The coordinator shall implement the integrated waste management program plan, and to The coordinator shall act as a liaison to the other state agencies (as defined by section 40196.3) and other coordinators. (Pub. Resources Code, § 42920, subd. (c).)

5. Waste Diversion

Diverting 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, and maintaining Maintain the required level of reduction, as approved by the Board. (Pub. Resources Code, §§ 42921 & 42922, subd. (i).) according to the state model plan which includes, but is not limited to the following methods:

PART 1. PROGRAM ACTIVITIES

A. Source Reduction

- 1. Use of reusable cups
- 2. Use of electronic forms
- 3. Use of electronic media

<sup>1</sup> Attachment 1, California Integrated Waste Management Board, State Agency Model Integrated Waste Management Plan (February 2000).

4. ~~Double-sided copying~~
5. ~~Property re-utilization~~
6. ~~Utilizing CalMAX~~
7. ~~Utilizing a food exchange~~
8. ~~Salvage yards~~
9. ~~Xeriscaping/grass-cycling~~
10. ~~Other programs~~

~~B. Recycling~~

1. ~~Beverage containers~~
2. ~~Cardboard~~
3. ~~Glass~~
4. ~~Newspaper~~
5. ~~Office paper~~
6. ~~Plastics~~
7. ~~Scrap Metal~~
8. ~~Other material~~
9. ~~Special collection programs~~
10. ~~Clean-up events~~

~~C. Composting~~

1. ~~Commercial pick-up of green waste~~
2. ~~Commercial self-haul of green waste~~
3. ~~Food waste composting~~
4. ~~Other composting programs~~

~~D. Special Waste~~

1. ~~Construction/demolition recycling~~
2. ~~Concrete/rubble reuse~~
3. ~~Concrete/asphalt recycling~~
4. ~~Rendering/grease recycling~~
5. ~~Tires~~
  - a. ~~Use of retreads~~
  - b. ~~Tire Reuse~~
  - c. ~~Tire Recycling~~

- ~~(1) Use of rubberized asphalt~~
- ~~(2) Use of tire derived products~~
- ~~(3) Collection Program~~
- ~~6. Drop off at landfills~~
- ~~7. Used Oil/antifreeze~~
- ~~8. White and brown goods recycling~~
- ~~9. Wood waste~~
  - ~~a. Chipping for mulch or compost~~
  - ~~b. Brush/wood waste chipping~~
- ~~10. Other special waste:~~
  - ~~a. Batteries~~
  - ~~b. Paint~~
  - ~~c. Scrap metal~~

PART 2: PROMOTIONAL PROGRAMS

- ~~A. Web Page~~
- ~~B. Newspaper articles/ads~~
- ~~C. Brochures, Newsletters, Publications~~
  - ~~1. Fliers~~
  - ~~2. Office Paper Recycling Guide~~
  - ~~3. Fact Sheets~~
  - ~~4. New Employee Package~~
- ~~D. Outreach~~
  - ~~1. Seminars~~
  - ~~2. Workshops~~
  - ~~3. Waste information exchange~~
  - ~~4. Recycled goods procurement training~~
  - ~~5. Awards program/public awareness~~
  - ~~6. Speakers~~
  - ~~7. Technical Assistance~~
  - ~~8. College Curriculum~~
- ~~E. Waste audits~~
- ~~F. Waste evaluations/survey~~

G. ~~Other promotional programs~~

PART 3: PROCUREMENT ACTIVITIES

A. ~~SABRC State Agency Buy Recycled Campaign~~

B. ~~College/district recycled content procurement policy~~

C. ~~Exceeding SABRC goals~~

D. ~~College/district automated procurement tracking system~~

E. ~~Requiring recycled content product certification for all purchases~~

F. ~~Annual SABRC report~~

G. ~~Staff training~~

H. ~~Participating in the General Services task force~~

I. ~~Pro-actively working with recycled product supplies~~

J. ~~Sharing success stories with SABRC~~

K. ~~Joint purchase pools~~

L. ~~Other procurement activities~~

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).) (Reimbursement period ends December 31, 2005.)

A. 25% Diversion Requirement

For those colleges unable to timely comply with the 25% diversion requirements, to:

1a. Notify the Board in writing, detailing the reasons for its inability to comply.

2b. Request of the Board an alternative to the January 1, 2002 deadline.

3c. 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, waste reduction program

4d. 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.

5e. Submit a plan of correction that demonstrates that if 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.

B2. 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, subs. (a) & (b).) (Reimbursement period ends December 31, 2005.) 50% Diversion Requirement

For those colleges unable to comply with the 50% diversion requirements, to:

- 1a. Notify the Board in writing, detailing the reasons for its inability to comply.
- 2b. Request of the Board an alternative to the ~~50% compliance~~ 50-percent requirement.
- 3c. Participate in a public hearing on its alternative requirement.
- 4d. Provide the Board with information as to:
  - (ai) the community college's good faith efforts to implement the waste reduction and 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;
  - (bii) the community college's inability to meet the 50% percent diversion requirement despite implementing the measures in its plan;
  - (eiii) how the alternative methods source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve; and,
  - (diiv) relate to the Board 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.

6D. 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.

7E. Annual Report (reimbursable starting January 1, 2000)

Annually preparing and submitting, by April 1, 2002, and by April 1 each subsequent year, a report to the Board summarizing its progress in reducing solid waste, which includes: 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).)

- a. 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. the amounts of materials collected for recycling, a summary of progress made in implementing the integrated waste management plan;
4. (The extent to which the community college intends to utilize use programs or facilities established by the local agency for handling, diversion, and the 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. a summary of progress made in meeting the integrated waste management plan of correction, and other relevant compliance information. 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)

9. 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.)

*Note on recycling income: Subject to the approval of the California Integrated Waste Management Board, revenues derived from the sale of recyclable materials by community colleges that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community college for the purpose of 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 colleges, these amounts would be a reduction to the recycling costs mandated by the state to implement Chapter 764, Statutes of 1999.*

**V. CLAIM PREPARATION AND SUBMISSION**

~~Commission boilerplate for the rest of the document. Claimant will respond to current boilerplate when it is drafted into the document by the Commission staff.~~

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

## A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

### 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

### 4. Fixed Assets and Equipment

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

### 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

### 6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1.

Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

#### B. Indirect Cost Rates

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

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

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

#### VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), 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. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

#### VII. OFFSETTING SAVINGS REVENUES AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, 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 from this claim. Offsetting revenue shall include 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 community colleges that do not exceed two thousand dollars (\$2,000) annually are continuously appropriated for expenditure by the community college for the purpose of 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 colleges, 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.

#### **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

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

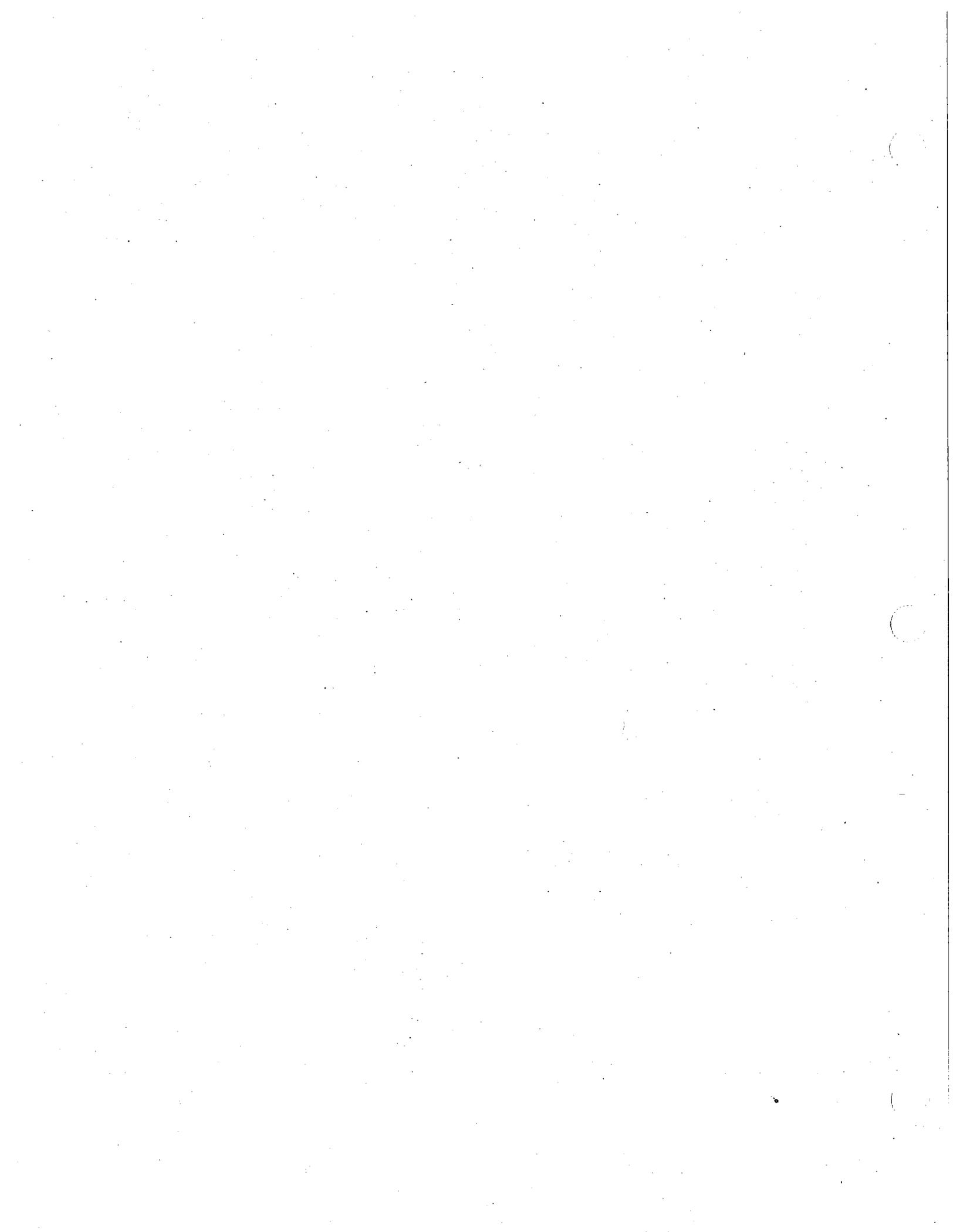
#### **IX. REMEDIES BEFORE THE COMMISSION**

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

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

#### **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

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



LATE FILING



ARNOLD SCHWARZENEGGER  
GOVERNOR



LINDA S. ADAMS  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

# CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

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October 26, 2006

Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95864

Re: **Final Staff Analysis and Proposed Statewide Cost Estimate**  
Integrated Waste Management Board 00-TC-07  
Public Resources Code Sections 40148, 40196.3, 42920-42928  
Public Contract Code Sections 12167 and 12167.1  
Statutes 1999, Chapter 764; Statutes 1992, Chapter 1116  
State Agency Model Integrated Waste Management Plan (February 2000)  
Santa Monica and South Lake Tahoe Community College Districts, Co-  
Claimants

Dear Ms. Higashi:

This letter is intended to provide comments on, and request changes to, the Proposed Statewide Cost Estimate entitled above. The California Integrated Waste Management Board (CIWMB) agrees with Commission staff that this estimate is inaccurate and for that reason the CIWMB believes that it should not be forwarded to the Legislature as currently proposed. This letter provides evidence that should be used to revise the statewide cost estimate to make it more accurate.

## CONTEXT OF PREVIOUS CIWMB COMMENTS

As noted in the Staff's analysis, the CIWMB provided comments and participated in a pre-hearing conference on the draft estimate. Those comments were based upon Commission staff's request in the January 9, 2006 draft analysis that

“the costs seem excessive and no correlation exists between district size and the costs claimed ... staff requests any additional information regarding the costs associated with diversion ... that may assist in the

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INTEGRATED  
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development of a more accurate statewide cost estimate ... specifically from the [CIWMB].”

The CIWMB's comments were thus directed at providing information that it believed would enable the Commission staff to evaluate the costs claimed and come up with a more accurate estimate of what the claimed costs should be. Unfortunately, the information provided was not the kind of information that Commission staff felt that they could use. The final staff analysis states that “the additional comments did not provide enough evidence to help staff reduce the proposed estimate by deducting offsets that should have been realized.”

For the record, it should be noted that at no time did the Commission staff request any specific information about specific claims, nor provide any indication as to the type of “evidence” that it could use for reducing the claims. Furthermore, the CIWMB was not provided with any information on most of the claimants (only portions of information from 8 were included in the draft estimate) until it received the “final” analysis ten days ago. To date, the only information about the claims that the CIWMB has received is in these two documents. With all due respect, it is disingenuous at best to expect that the CIWMB could even deduce what would be necessary to provide as “evidence” to reduce the claims when it had not been provided with specific information about the claims, nor with specific questions from the Commission staff as to what type of information the Commission staff was seeking. (Interestingly enough, Commission staff did not use the information about inaccurate claims that it identified on its own to reduce the claims – multiple claims for one-time costs).

The CIWMB still believes that its comments on the draft statewide estimate are germane (Exhibit B of the Commission's materials), and believes that the evidence could have been used to reduce the estimate. Nevertheless, at this time, based upon the additional information provided in the Final Analysis, the CIWMB would like to offer additional evidence that it believes should be used to reduce the statewide cost estimate and make it more accurate.

#### **SUBMISSION OF EVIDENCE OF OFFSETTING REVENUES TO REDUCE THE STATEWIDE ESTIMATE**

As noted in the Final Analysis, revenues generated from recyclable materials can be used to offset the claimed costs. These revenues are expressly included in the Parameters and Guidelines (see page 6 of the Final Staff Analysis). This is based upon Public Contract Code section 12167.1 which provides that those entities can sell the recyclable materials they collect and retain the revenues generated.

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Based upon the reports submitted to the CIWMB, a statewide estimate of revenue generation by placing the collected materials into the recycle markets can be derived. This estimate is based on the following:

Official District and College reported diversion of listed commodities; and, the market prices of the listed commodities and published in the industry's informational sheet know as the "yellow sheet." (See attachments)

Based upon these two factors it can be estimated that the total value of the collected recyclables, as sold through the commodity markets could generate total revenues from 2001-2005 of \$22,676,296.01. (See attachments)

The proposed statewide cost estimate on page 12, Table 3, of the Final Analysis notes that the estimated total cost claimed from 1999-2008 to be \$10,785,532. Thus, the estimated revenue generated from the sale of recyclables would more than wipe out the estimated potential costs. Therefore, based upon this evidence, the CIWMB believes that the statewide cost estimate should be zero (in fact, as these estimate numbers show, there would be a net gain).

#### **ALTERNATIVELY, OFFSETTING SAVINGS SHOULD ALSO BE USED TO REDUCE THE STATEWIDE ESTIMATE**

Previously, the Commission staff rejected the CIWMB's request to offset claimed costs by subtracting savings that resulted from implementing the program. Specifically, avoided disposal costs as a result of implementing diversion programs were rejected. (Avoided disposal costs occur when material is recycled instead of being sent to the landfill thereby reducing disposal costs which are typically charged based upon the tons disposed). The Commission staff has explained that since disposal costs were not part of a previous mandate, they can not be credited now that those costs are avoided (page 8 of final analysis).

However, the CIWMB believes that the Commission Staff's recommendation not to include avoided disposal costs in the statewide estimate is a result of a hyper-literal reading of the CIWMB's statute and a selective reading of the Commission's own regulations. As noted in the Final Analysis, Public Resources Code section 42925(a) provides that cost savings must be directed to fund the integrated waste management plan, only "to the extent feasible." Based upon this phrase, the Commission Staff concludes that this offset should not be included. This interpretation of the CIWMB's statute is inappropriate in a situation such as this where the cost savings must occur automatically as a result of implementing the mandated program.

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Standard rules of statutory construction provide that a statute should not be interpreted in a way that would lead to an absurd result. It is true that in a typical situation the phrase "to the extent feasible" would allow an entity to opt out of doing something where there is a barrier of some kind – be it financial, staffing or other resources. However, in a case where the action occurs automatically (i.e. there is no exercise of discretion necessary) as in avoided disposal costs, there would be no barriers to the accrual of savings, nor even any decision to make on applying those cost savings to the program. In fact, through the day to day operation of a District of College campus there exists a method of recording and tracking the savings. This is directly linked to the monthly billings obtained for waste services that are charged and processed by the accounting offices of every District and campus. Therefore, the direction of these savings to the program are by definition feasible.

The Legislature's direction in this regard is further evidenced by other portions of the relevant statute that expressly recognize reduced disposal as part of the implementation of the diversion plan:

"42920. (b) (1) ...shall develop ... an integrated waste management plan ...that will reduce solid waste..."

"42926. ... shall submit a report to the board summarizing its progress in reducing solid waste as required by Section 42921. ... (b) ...annual report to the board shall, at a minimum, include all of the following:  
(1) Calculations of annual disposal reduction...."

In addition to the Legislature recognizing the need to include the avoided disposal costs within the off-setting costs of implementing a program, the Solid Waste Industry has recognized through numerous newspaper and magazine articles over the past ten years that the use of avoided disposal costs are a necessary component of calculating the cost of implementing diversion programs.

The CIWMB's interpretation of its statute is further bolstered by the Commission's own regulations which states that "**any offsetting savings to the same program experienced as a result of the same statutes** found to contain a mandate **shall be deducted** from the costs claimed." (2 CCR 1183.1(a) (9) [emphasis added]). In this case, avoided disposal costs are by definition **a result of the same statutes** that require the diversion program to be implemented. Furthermore, the Commission's statutes provide that the "reasonable reimbursement methodology" used should identify the costs to implement the mandate in a **cost-efficient manner**." (Government Code section 17518.5 [emphasis added]). This statute would seem to require that the costs claimed must take account of savings that result directly and automatically from the implementation of the mandate

October 26, 2006

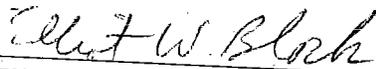
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For the years 2001-2005, Community College Districts collectively reported the diversion of waste in the tonnage amount noted in the attached table. While disposal fees vary around the state, the statewide average for 2001-2004 has ranged between \$36 and \$39 per ton. The reported figures of diversion amount to an estimated cost savings of \$21,979,208.92 for the years 2001-2005. The estimated avoided disposal costs would more than wipe out the potential costs estimated. Therefore, the CIWMB submits that the statewide cost estimate should be set at zero using this evidence of avoided disposal costs. (See attachments).

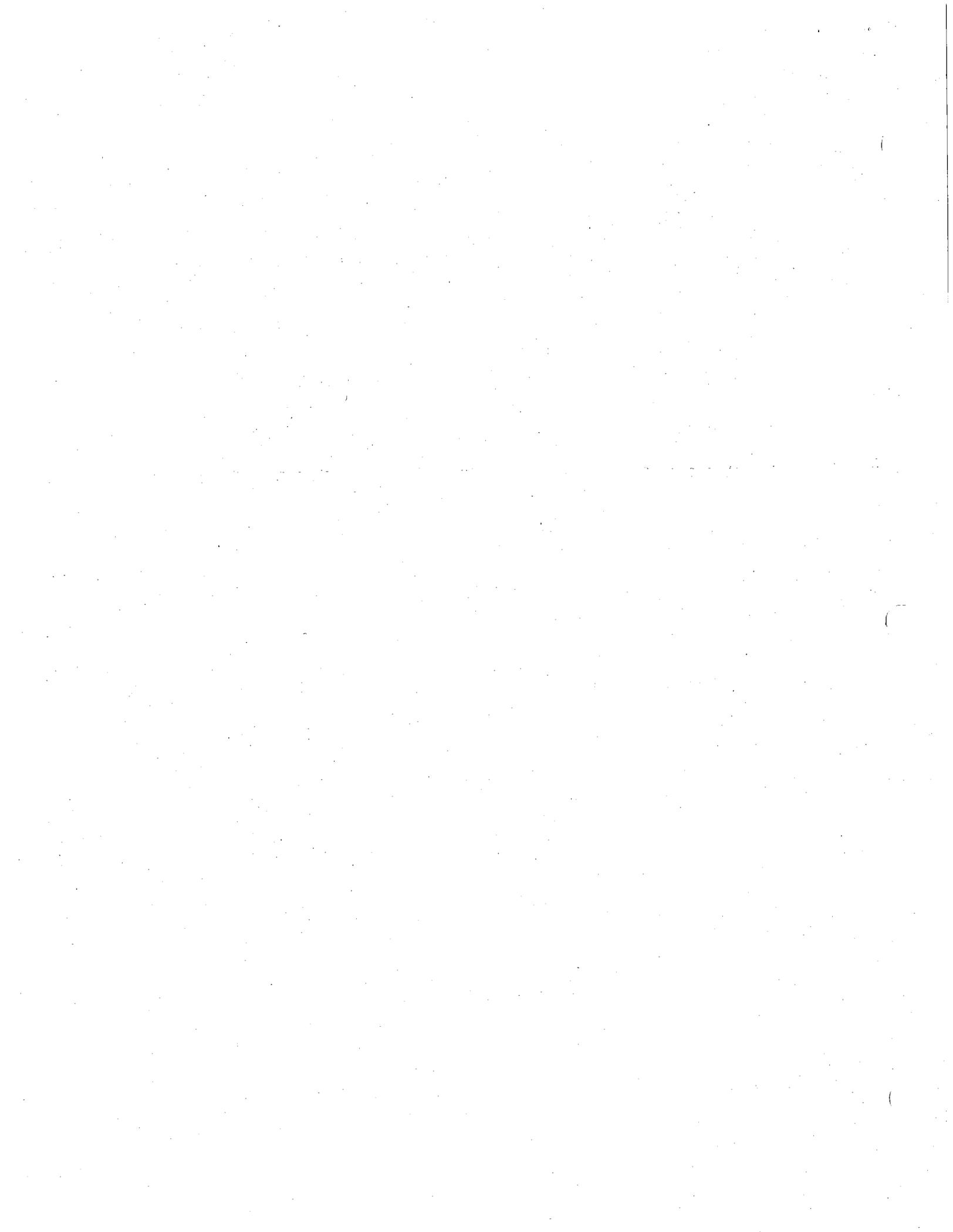
I certify, under penalty of perjury, that I am an authorized representative of the California Integrated Waste Management Board and that the statements made in this document are true and correct to the best of my personal knowledge and belief.

Executed this 26<sup>th</sup> day of October, 2006 in Sacramento, California, by:



\_\_\_\_\_  
Elliot Block  
Acting Chief Counsel  
California Integrated Waste Management Board  
1001 I Street  
Sacramento, CA 95812

Enclosures



## Statewide Cost Estimate of Generated Revenues by Community College Districts based on Actual Reported Tonnage

Year	Recycling Program	Reported and Approved Tonnage	Average Commodity Value Per Ton	Total Statewide Estimate of Available Revenue
2001	Beverage Containers*	1407.72	\$500.00	\$703,860.00
2001	Cardboard	14017.968	n/a	
2001	Newspaper	1704.603	n/a	
2001	Office Paper (white) **	6322.819	n/a	
2001	Office Paper (mixed)	16751.705	n/a	
2001	Scrap Metal	8479.25	\$74.90	
2001	Plastics	885.819	n/a	
2001	Glass	697.309	n/a	
2002	Beverage Containers*	4582.456	\$500.00	
2002	Cardboard	16284.691	\$85.55	
2002	Newspaper	2028.279	\$62.50	
2002	Office Paper (white) **	9607.937	\$107.50	
2002	Office Paper (mixed)	16844.351	\$50.28	
2002	Scrap Metal	7648.094	\$92.56	
2002	Plastics	1041.92	n/a	
2002	Glass	869.518	n/a	
2003	Beverage Containers*	2172.063	\$500.00	\$1,086,031.50
2003	Cardboard	17240.114	\$65.00	
2003	Newspaper	2137.022	\$53.75	
2003	Office Paper (white) **	6693.81	\$65.00	
2003	Office Paper (mixed)	18481.867	\$53.33	
2003	Scrap Metal	7606.819	n/a	
2003	Plastics	1149.974	n/a	
2003	Glass	840.337	n/a	
2004	Beverage Containers*	2609.807	\$500.00	
2004	Cardboard	16543.721	\$85.63	
2004	Newspaper	2461.519	\$62.50	
2004	Office Paper (white) **	7185.629	\$133.34	
2004	Office Paper (mixed)	20771.529	\$65.43	
2004	Scrap Metal	7527.441	n/a	
2004	Plastics	1631.838	n/a	
2004	Glass	1027.378	n/a	
2005	Beverage Containers*	2781.245	\$500.00	\$1,390,622.50
2005	Cardboard	16593.197	\$82.50	
2005	Newspaper	2522.955	\$58.33	
2005	Office Paper (white) **	6289.428	\$116.67	
2005	Office Paper (mixed)	19980.812	\$63.33	
2005	Scrap Metal	12914.793	\$85.00	
2005	Plastics	1382.334	n/a	
2005	Glass	1058.378	n/a	

**Estimated Grand Total of Available Revenues**

\$22,676,296.01

# Statewide Cost Estimate of Generated Revenues by Community College Districts Based on Actual Reported Avoided Disposal Tonnage

Avoided Disposal by Year	Total Tons Reported Diverted	Price Index ***	Total Avoided Disposal Costs
2001	80,211.40	\$36.39	\$2,918,892.85
2002	61,209.60	\$36.17	\$2,213,951.23
2003	66,620.20	\$36.83	\$2,453,621.97
2004	193,435.30	\$38.42	\$7,431,784.23
2005	181,180.60	\$39.12	\$6,960,958.65
Estimated Grand Total of Avoided Disposal			\$21,979,208.92

## Total Estimated Revenues Generated Through Implementation of Public Resource Code (PRC) Section 42920 et. sec.:

**\$44,655,504.93**

**Foot notes:**

\* Beverage Containers based on average commingled value per lbs (Division of Recycling)

\*\* Value for Office Paper based on SOP (Standard Office Pack). If paper were graded to White Ledger values would be:

Year	Value per ton
2001	n/a
2002	\$166.94
2003	\$190.00
2004	\$214.58
2005	\$200.93

\*\*\* Solid Waste Price Index based on 2004 study conducted by Solid Waste Digest

\*\*\*\* 2005 Index not available at time this report was prepared. Have used 2004 to establish estimate.

# Average Recycle Paper Prices\*

Year	Mixed	News (6)	News (8)	OCC	SOP	White Ledger
<b>2002</b>						
April-June	45.83	52.50	64.17	90.83	87.50	147.50
July-Sept	54.17	67.50	92.50	100.00	108.33	170.00
Oct-Dec	50.83	67.50	84.17	65.83	126.67	183.33
<b>Yearly Avg</b>	<b>\$50.28</b>	<b>\$62.50</b>	<b>\$80.28</b>	<b>\$85.55</b>	<b>\$107.50</b>	<b>\$166.94</b>
<b>2003</b>						
Jan-March	50.83	57.50	67.50	59.17	133.33	190.00
April-June	57.50	57.50	77.50	69.17	115.00	190.00
July-Sept	52.50	50.00	69.16	65.83	101.67	190.00
Oct-Dec	52.50	50.00	69.19	65.83	101.67	190.00
<b>Yearly Avg</b>	<b>\$53.33</b>	<b>\$53.75</b>	<b>\$70.84</b>	<b>\$65.00</b>	<b>\$112.92</b>	<b>\$190.00</b>
<b>2004</b>						
Jan-March	59.17	59.17	87.50	75.83	115.00	210.00
April-June	67.50	65.83	90.83	89.17	121.67	210.00
July-Sept	67.50	62.50	87.50	90.00	150.00	225.00
Oct-Dec	67.50	62.50	90.00	87.50	146.67	213.33
<b>Yearly Avg</b>	<b>\$65.42</b>	<b>\$62.50</b>	<b>\$88.96</b>	<b>\$85.63</b>	<b>\$133.34</b>	<b>\$214.58</b>
<b>2005</b>						
Jan	67.50	62.50	92.50	87.50	145.00	220.00
Feb	67.50	62.50	92.50	92.50	145.00	220.00
March	67.50	62.50	92.50	92.50	140.00	220.00
April	67.50	62.50	92.50	92.50	130.00	220.00
May	67.50	62.50	92.50	92.50	105.00	200.00
June	67.50	62.50	87.50	87.50	105.00	190.00
July	67.50	62.50	80.50	77.50	105.00	190.00
Aug	57.50	52.50	82.50	72.50	105.00	190.00
Sept	57.50	52.50	82.50	72.50	105.00	190.00
Oct	57.50	52.50	82.50	67.50	105.00	190.00
Nov	57.50	52.50	82.50	67.50	105.00	190.00
Dec	57.50	52.50	82.50	67.50	105.00	190.00
<b>Yearly Avg</b>	<b>\$63.33</b>	<b>\$58.33</b>	<b>\$87.75</b>	<b>\$82.50</b>	<b>\$116.67</b>	<b>\$200.83</b>

\* Information obtained from the Yellow Sheet Official Board Markets Transacted Paper Stock Prices. Prices represent board and paper mill purchase prices, bailed, F.O.B. seller's dock, San Francisco port.

# Average California Landfill Prices\*

2001	Price per ton	2002	Price per ton	2003	Price per ton
Jan	36.15	Jan	36.20	Jan	36.51
Feb	36.15	Feb	36.20	Feb	36.51
March	36.15	March		March	36.80
April		April		April	
May	36.17	May	36.15	May	36.76
June	36.61	June	36.15	June	
July	36.58	July		July	
Aug	36.58	Aug	35.97	Aug	
Sept	36.58	Sept		Sept	36.65
Oct	36.58	Oct		Oct	36.89
Nov	36.58	Nov	35.98	Nov	
Dec	36.13	Dec	36.51	Dec	37.71
<b>Yearly Avg.</b>	<b>\$36.39</b>	<b>Yearly Avg.</b>	<b>\$36.17</b>	<b>Yearly Avg.</b>	<b>\$36.83</b>

2004	Price per ton	2005	Price per ton
Jan	37.71	Jan	
Feb		Feb	
March		March	
April		April	
May		May	
June	39.12	June	
July		July	
Aug		Aug	
Sept		Sept	
Oct		Oct	
Nov		Nov	
Dec		Dec	
<b>Yearly Avg.</b>	<b>\$38.42</b>	<b>Yearly Avg.</b>	

\* Information obtained from the Solid Waste Digest - Solid Waste Price Index.