

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE FILING ON:

Municipal Regional Stormwater Permit Number CAS612008, issued by the Regional Water Quality Control Board, San Francisco Region as Order No. R2-2009-0074, October 14, 2009

Filed on November 30, 2010

By City of San Jose, Claimant.

No. 10-TC-05

*Municipal Regional Stormwater Permit – Municipal Operations (C.2)*

NOTICE OF COMPLETE TEST CLAIM FILING AND SCHEDULE FOR COMMENTS (Gov. Code, § 17500 et seq.; Cal. Code Regs., Tit. 2, §§ 1183, subd.(g), & 1183.02)

**TO: City of San Jose  
Regional Water Quality Control Board, San Francisco Region  
State Water Resources Control Board  
Department of Finance  
State Controller's Office  
Interested Parties**

On November 30, 2010, the City of San Jose, claimant, filed on the above-described executive order alleging a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. The City of San Jose cited permit provisions C.2, C.8, C.10, C.11.f and C.12.f of the executive order.

A “test claim” is “the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state, and includes a claim filed pursuant to Section 17574.”

On October 14, 2010, the County of Santa Clara filed a test claim, *Municipal Regional Stormwater Permit – Santa Clara County*, 10-TC-03, on the same executive order and cited permit provisions C.8, C.10, C.11.f and C.12.f.

Since the County of Santa Clara filed the first claim on permit provisions C.8, C.10, C.11.f and C.12.f, the Commission may not accept another filing on those sections.

However, the City of San Jose’s test claim is complete for permit provision C.2 because it is the first claim filed alleging that permit provision C.2 is a reimbursable state-mandated program. Therefore, this test claim will be referred to as 10-TC-05, *Municipal Regional Stormwater Permit – Municipal Operations (C.2)*.

The Commission regulations provide that test claims may be prepared as a joint effort between two or more claimants and filed with the commission if the claimants attest to all of the following in the test claim filing:

- the claimants allege state-mandated costs result from the same statute or executive order;
- the claimants agree on all issues of the test claim; and,
- the claimants have designated one contact person to act as the resource for information regarding the claim. (Cal.Code Regs, tit. 2, § 1183, subd. (h).)

This procedure would allow the City of San Jose to join the County of Santa Clara on 10-TC-03 as a co-claimant for permit provisions C.8, C.10 and C.11.f and C.12.f, if the City of San Jose attests to the regulation provisions cited above. The addition of co-claimants to the County of Santa Clara test claim must be filed by the county.

A pdf file of San Jose's test claim will be posted on the Commission's website at [http://www.csm.ca.gov/regional\\_water.shtml](http://www.csm.ca.gov/regional_water.shtml). The test claim will be heard and determined by the Commission on State Mandates pursuant to article XIII B, section 6, Government Code section 17500 et seq., and case law. The procedures for hearing and determining this claim are prescribed in the Commission's regulations, California Code of Regulations, title 2, chapter 2.5, section 1181. The Commission's regulations are at <http://www.csm.ca.gov/regulations.shtml>.

### **COMMENT PERIOD**

The key issues before the Commission are:

- Do the provisions listed above impose a new program or higher level of service within an existing program upon local entities within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state pursuant to Government Code section 17514 of the Government Code?
- Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the state?<sup>1</sup>
- Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?

State Agency Review of Test Claim - State agencies are requested to analyze the test claim merits and to file written comments within 30 days, or no later than **January 13, 2011**. Requests for extensions of time may be filed in accordance with sections 1183.01, subdivision (c), and 1181.1, subdivision (g) of the regulations.

Claimant Rebuttal - The claimant and interested parties may file rebuttals to state agencies' comments under section 1183.03 of the regulations. The rebuttal is due 30 days from the actual service date of written comments from any state agencies.

Mailing Lists - Under section 1181.2 of the regulations, the Commission will promulgate a mailing list of parties, interested parties, and interested persons for each test claim and provide the list to those included on the list, and to anyone who requests a copy.

Filing Written Material on the Test Claim and Posting for Public Comment - When filing written material on this test claim, an original and one copy, or an original and a PDF file, shall be submitted to the Commission. PDF files should be e-mailed to: [csminfo@csm.ca.gov](mailto:csminfo@csm.ca.gov). The comments will be posted on the Commission's website and the mailing list will be notified by electronic mail of the posting and the comment period. This procedure will satisfy all the service requirements under California Code of Regulations, title 2, section 1181.2, subdivision (c).

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<sup>1</sup> Government Code section 17556 was amended by Statutes 2010, chapter 719 (SB 856, urgency), effective October 19, 2010.

Consolidating Test Claims - Pursuant to Commission regulations, the executive director may consolidate part or all of any test claim with another test claim. See sections 1183.05 and 1183.06 of the regulations.

### **INFORMAL/PREHEARING CONFERENCE**

An informal conference or prehearing conference may be scheduled if requested by any party. See sections 1183.04 and 1187.4 of the regulations.

### **HEARING AND STAFF ANALYSIS**

A tentative hearing date for the test claim will be set when the draft staff analysis of the claim is being prepared. At least eight weeks before a hearing is conducted, the draft staff analysis will be issued to parties, interested parties, and interested persons for comment. Comments are due at least five weeks prior to the hearing or on the date set by the Executive Director, pursuant to section 1183.07 of the regulations. Before the hearing, a final staff analysis will be issued.

Dismissal of Test Claims - Under section 1183.09 of the regulations, test claims may be dismissed when postponed or placed on inactive status by the claimant for more than one year. Before dismissing a test claim, the Commission will provide 60 days notice and opportunity for other parties to take over the claim.

Parameters and Guidelines - If the Commission determines that a reimbursable state mandate exists, the claimant is responsible for submitting proposed parameters and guidelines for reimbursing all eligible local entities. See section 1183.1 of the regulations. All interested parties and affected state agencies will be given an opportunity to comment on the claimant's proposal before consideration and adoption by the Commission.

Reasonable Reimbursement Methodology - Government Code section 17557 requires the Commission, when adopting parameters and guidelines, to consult with claimants, Department of Finance, the State Controller, and the Legislature to consider a reasonable reimbursement methodology. Government Code section 17518.5 authorizes the claimant or any affected state agency or interested party to propose a reasonable reimbursement methodology.

Statewide Cost Estimate - The Commission is required to adopt a statewide cost estimate of the reimbursable state-mandated program within 12 months of receipt of a test claim. This deadline may be extended for up to six months upon the request of either the claimant or the Commission.

Alternative Process - Within 30 days of the Commission's adoption of a Statement of Decision on a test claim, the test claimant and the Department of Finance may notify the executive director in writing of their intent to follow the process described in Government Code section 17557.1 to develop a reasonable reimbursement methodology and statewide estimate of costs for the initial claiming period and budget year for reimbursement of costs mandated by the state. The letter of intent shall include the date on which the test claimant and the Department of Finance will submit a plan to ensure that costs from a representative sample of eligible claimants are considered in the development of a reasonable reimbursement methodology. If this letter of intent is submitted, the Commission will provide further information for all parties and interested parties to the test claim.

  
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PAULA HIGASHI  
Executive Director

Dated: December 14, 2010

## Commission on State Mandates

Original List Date: 12/10/2010  
Last Updated: 12/15/2010  
List Print Date: 12/15/2010  
Claim Number: 10-TC-05  
Issue: Municipal Regional Stormwater Permit - Municipal Operations (C.2)

### 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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