Hearing Date: March 24, 2011
J:mandates/2003/tc/03tc04/psgs/fsa

ITEM 8

FINAL STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES
AND STATEMENT OF DECISION

Los Angeles Regional Quality Control Board Order No. 01-182
Permit CAS004001
Part 4F5c3

Municipal Storm Water and Urban Runoff Discharges

03-TC-04, 03-TC-20, 03-TC-21

County of Los Angeles, Claimant (03-TC-04)
Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Claimants (03-TC-20)
Bellflower, Covina, Downey, Monterey Park, Signal Hill, Claimants (03-TC-21)

EXECUTIVE SUMMARY

Overview

The consolidated test claim was filed by the County of Los Angeles and several cities in the County of Los Angeles, alleging that various sections of the 2001 storm water permit (Permit CAS004001) adopted by the Los Angeles Regional Water Quality Control Board ("LA Regional Water Board") constitute a reimbursable state-mandated program. Of the activities in the test claim, the Commission approved only Part 4F5c3 of the permit, which states:

> Permittees not subject to a trash TMDL [total maximum daily load[1]] shall [¶]…[¶] Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

The purpose of the permit is to reduce the discharge of pollutants into storm water to the maximum extent practicable."[2] The permit complies with the Federal Clean Water Act (CWA), which was

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[1] "Under section 303(d) of the Clean Water Act, states, territories, and authorized tribes are required to develop lists of impaired waters. These are waters that are too polluted or otherwise degraded to meet the water quality standards set by states, territories, or authorized tribes. The law requires that these jurisdictions establish priority rankings for waters on the lists and develop TMDLs for these waters. A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards." See < http://water.epa.gov /lawsregs/lawsguidance/cwa/tmdl/index.cfm> as of March 8, 2011.

[2] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), pages 7 and 13.

amended in 1972 to implement a permitting system for all discharges of pollutants[3] from point sources[4] to waters of the United States. The permits, issued under the National Pollutant Discharge Elimination System, are called NPDES permits. Under the CWA, each state is free to enforce its own water quality laws so long as its effluent limitations[5] are not "less stringent" than those set out in the CWA (33 USCA 1370). The California Supreme Court described NPDES permits as follows:

> Part of the federal Clean Water Act is the National Pollutant Discharge Elimination System (NPDES), "[t]he primary means" for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma, supra*, 503 U.S. at p. 101, 112 S.Ct. 1046.) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)[6]

Procedural History

The test claims were filed in September 2003 (fiscal year 2003-2004) and, thus, the period of reimbursement for this claim begins July 1, 2002 (six months after the operative and effective date of the permit). The Commission adopted the Statement of Decision on July 31, 2009, and issued it on September 3, 2009. The county and cities submitted proposed parameters and guidelines in August 2009. Comments by the LA Regional Water Board and the Department of Finance (Finance) were submitted in October 2009, and the claimants submitted rebuttal comments in November 2009.

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[3] According to the federal regulations, "Discharge of a pollutant" means: (a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or (b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger." (40 C.F.R. § 122.2.)

[4] A point source is "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

[5] *Effluent limitation* means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean. (40 C.F.R. § 122.2.)

[6] *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 621. State and regional board permits allowing discharges into state waters are called "waste discharge requirements" (Wat. Code, § 13263).

In January 2010, the Commission requested and received clarification from the LA Regional Water Board regarding local agencies that may be subject to a trash TMDL, and city claimants also responded in February 2010. An informal conference was held on March 25, 2010, regarding the parameters and guidelines and a proposed reasonable reimbursement methodology (RRM). The county and city claimants submitted proposed revised parameters and guidelines and an RRM in June 2010. In July, the State Controller's Office and Finance submitted comments on the revised proposed parameters and guidelines and RRM, to which the county and city claimants submitted rebuttal comments in August 2010.

Commission staff issued a draft staff analysis in February 2011. The State Controller's Office, Department of Finance, LA County and the city claimants all submitted comments in response to it.

Positions of Parties and Interested Parties

The Department of Finance, the State Water Resources Control Board, the LA Regional Water Board, and the State Controller's Office contend that many of the activities identified by the claimants in their proposed parameters and guidelines go beyond the scope of the mandate and should not be reimbursable. In addition, the state agencies oppose the adoption of an RRM and instead request that the parameters and guidelines require eligible claimants to claim actual costs incurred, supported by documentation of the costs. The state agencies also seek to clarify the eligible claimants under this mandate and the eligible period of reimbursement.

In comments on the draft staff analysis, claimants propose reimbursement for some of the ongoing activities under either an RRM or actual costs. Claimant LA County also proposes graffiti removal as a reimbursable activity.

Commission Responsibilities

The Commission is required by Government Code section 17557 to adopt parameters and guidelines for the reimbursement of any test claim it approves. The successful test claimant is required to submit proposed parameters and guidelines to the Commission for review. The parameters and guidelines include a summary of the mandate, a description of the eligible claimants, a description of the period of reimbursement, a description of the specific costs and types of costs that are reimbursable, including activities that are not specified in the test claim statute or executive order, but are determined to be reasonably necessary for the performance of the state-mandated program. The parameters and guidelines also include instructions on claim preparation, including instructions for the direct or indirect reporting of the actual costs of the program or the application of an RRM, and any offsetting revenue or savings that may apply.

The Commission may adopt an RRM for inclusion in the parameters and guidelines. An RRM is defined as "a formula for reimbursing local agencies and school districts for costs mandated by the state" and is based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. If local agencies are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of an RRM may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years. RRMs shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies, or other projections of local costs. In addition, the RRM considers the variation in costs among local agencies to implement the mandate in a cost-efficient manner.

As of January 1, 2011, the Commission is required to hold a hearing on the adoption of proposed parameters and guidelines under Article 7 of the Commission's regulations. Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is based on substantial evidence in the record, and oral or written testimony that is offered under oath or affirmation. Each party has the right to present witnesses, introduce exhibits, and submit declarations. (Gov. Code, § 17559, subd. (b), Cal.Code Regs., tit. 2, § 1187.5.)

Should the Commission adopt this analysis and the proposed parameters and guidelines as modified by staff, a cover sheet would be attached indicating that the Commission adopted the analysis as its decision. The decision and adopted parameters and guidelines are then submitted to the State Controller's Office to issue claiming instructions to local governments, and to pay and audit reimbursement claims. Issuance of the claiming instructions constitutes the notice of the right of local government to file reimbursement claims with the State Controller's Office based on the parameters and guidelines.

Summary Chart

The following provides a brief summary of the eligible claimants, period of reimbursement, reimbursable activities, and the proposed RRM.

Subject	Issues	Staff Recommendation
Eligible Claimants	Finance requests that the eligible claimants not subject to a trash TMDL be listed. City claimants assert that listing the claimants is not necessary.	List the local agency permittees eligible to claim reimbursement for placing and maintaining trash receptacles to the extent they have transit stops located in areas within their jurisdictions that are *not* subject to an operative and effective trash TMDL.
Period of Reimbursement	Finance requests that the reimbursement period for the costs of placing trash receptacles at transit stops with shelters be until August 1, 2002, and at remaining transit stops until February 3, 2003. City claimants do not want specified deadlines because costs may have been incurred after the dates in the permit, e.g., due to new transit stops.	The test claims were filed in September 2003 so reimbursement begins July 1, 2002 (six months after the effective date of the permit). Reimbursement is allowed for receptacles installed at transit stops after the deadlines in the permit. Reimbursement for installation activities is limited to one time per transit stop. Reimbursement under the permit continues until the effective date of a new NPDES storm water permit that supersedes the permit in the test claim
Reimbursable Activities	Claimants propose activities related to installation and maintenance of trash receptacles at transit stops.	Reimbursement is for most installation and maintenance as proposed by claimants except: (1) removing graffiti is not reimbursable; (2) installing a

	Finance and the LA Regional Water Board request that identifying transit stops and installation be omitted. The State Controller proposes minor changes to boilerplate language and deleting reference to activities beyond installation and maintenance.	receptacle and pad is limited to one-time per transit stop; and (3) picking up trash is limited to not more than three times per week per receptacle.
Reasonable Reimbursement Methodology	Claimants propose an RRM of $6.74 per trash receptacle per pickup for the ongoing activities listed in Part B of the proposed parameters and guidelines to maintain the trash receptacles. In support of the proposed RRM, the claimants submitted survey data from seven municipalities. Finance states the RRM does not accurately reflect the actual costs to implement the mandate. The State Controller's Office requests that actual costs be reimbursed.	Adopt the proposed RRM because it is based on cost information from a representative sample of eligible claimants and considers the variation of costs among local agencies to implement the mandate in a cost-efficient manner. (Gov. Code, § 17518.5.)

Analysis

Eligible Claimants

The mandated activity (placing and maintaining trash receptacles at all transit stops within a local agency's jurisdiction) applies only to local agency permittees that are *not subject to a Trash TMDL*. Therefore, staff finds that local agency permittees identified in the Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, that are *not* subject to a trash TMDL, are eligible to claim reimbursement for the mandated activities.

Identifying eligible claimants for local agencies that are subject to a trash TMDL is difficult due to events leading up to and following the adoption of the permit, which resulted in separate TMDL requirements for the Los Angeles River and Ballona Creek watersheds that have impaired water bodies within the jurisdictions of some of the eligible claimants. In addition, the TMDL requirements for the Los Angeles River watershed area was not operative and effective during the period from July 1, 2002 (when the period of reimbursement for the mandated activities begins) until late September 2008 due to legal challenges. Staff finds, however, that all local agency permittees are eligible to claim reimbursement for placing and maintaining trash receptacles to the extent they have transit stops located in areas within their jurisdictions that are *not* covered by an operative and effective trash TMDL.

Ballona Creek Trash TMDL: The state's trash TMDL for the Ballona Creek area has been in effect since March 2002. Thus, the permittees identified as responsible jurisdictions in the Ballona Creek trash TMDL were "subject to a trash TMDL" in March 2002 for the water bodies in the area, before the

beginning of the reimbursement period for the mandate in question (July 1, 2002). The local agencies identified in the Ballona Creek trash TMDL are:

> Beverly Hills, Culver City, Inglewood, Los Angeles, Los Angeles County, Santa Monica, and West Hollywood.

Thus, local agency permittees identified in the Ballona Creek trash TMDLs are eligible for reimbursement only to the extent they have transit stops located in areas not subject to a trash TMDL.

Los Angeles River Trash TMDL: This trash TMDL was not effective from August 28, 2002, until September 22, 2008 due to legal challenges. Thus, from August 28, 2002, until September 22, 2008, the following local agency permittees that are subject to the Los Angeles River trash TMDL are eligible to claim reimbursement for the mandated activities:

> Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy, Downey, Duarte, El Monte, Glendale, Hidden Hills, Huntington Park, Irwindale, La Canada Flintridge, Los Angeles (City), Los Angeles County, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, and Vernon.

Beginning September 23, 2008, the local agencies listed above that are subject to the Los Angeles River trash TMDL are eligible to claim reimbursement for the mandated activities only to the extent they have transit stops located in areas not covered by the Los Angeles River trash TMDL.

Period of Reimbursement

Government Code section 17557, subdivision (e), establishes eligibility to claim reimbursement for a reimbursable state-mandated program beginning in the fiscal year prior to the fiscal year the test claim was filed. In this case, the test claims were filed in September 2003, so the period of reimbursement for this claim begins July 1, 2002 (six months after the operative and effective date of the permit).

Finance requests that the reimbursement period for placement of the trash receptacles be up to August 1, 2002 for transit stops with shelters, and up to February 3, 2003 for the remaining transit stops. The cities object to limiting reimbursement to activities performed before these deadlines because costs may be incurred to place receptacles at new transit stops due to changing transit routes.

Staff finds that the "Period of Reimbursement" section of the parameters and guidelines should not limit reimbursement to the costs of placing trash receptacles at transit stops to only those costs incurred before the permit deadlines because the permit does not excuse municipalities who fail to meet the placement deadline from performing the mandated activity. In addition, transit stops may be added after the deadlines in the permit. Staff also finds, however, that the reimbursement for installation activities is limited to one-time per transit stop. Reimbursement under the permit continues until the effective date of a new NPDES storm water permit that supersedes the permit in the test claim. (Permit CAS004001, California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182.)

Reimbursable Activities

Based on the evidence in the record, staff finds that for each eligible local agency, the following activities should be reimbursable:

A. Install Trash Receptacles (one-time per transit stop, reimbursed using actual costs):

1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
2. Select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.
3. Prepare contracts, conduct specification review process, advertise bids, and review and award bids.
4. Purchase or construct receptacles and pads and install receptacles and pads.
5. Move (including replacement if required) receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.

B. Maintain Trash Receptacles and Pads (on-going, reimbursed using the reasonable reimbursement methodology):

1. Collect and dispose of trash at a disposal/recycling facility. *This activity is limited to no more than three times per week.*
2. Inspect receptacles and pads for wear, cleaning, emptying, and other maintenance needs.
3. Maintain receptacles and pads. This activity includes painting, cleaning, and repairing receptacles; and replacing liners. The cost of paint, cleaning supplies and liners is reimbursable. *Graffiti removal is not reimbursable.*
4. Replace individual damaged or missing receptacles and pads. The costs to purchase and install replacement receptacles and pads and dispose of or recycle replaced receptacles and pads are reimbursable.

<u>Reasonable Reimbursement Methodology</u>

Staff finds that actual costs should be reimbursed for the one-time activities listed in section A above.

Staff finds that an RRM should be adopted to reimburse eligible local agencies for all direct and indirect costs for all of the on-going activities identified in section B above to maintain trash receptacles. (Gov. Code, §§ 17557, subd. (b) & 17518.) The RRM is in lieu of filing a detailed documentation of actual costs. Under the RRM, the annual unit cost of $6.74 for each trash collection or "pickup" is multiplied by the annual number of trash collections (number of receptacles times pickup events for each receptacle), subject to the limitation of no more than three pickups per receptacle per week. Beginning in fiscal year 2009-2010, the RRM shall be adjusted by the implicit price deflator as forecast by the Department of Finance.

Staff finds that the proposed RRM is "based on cost information from a representative sample of eligible claimants" (Gov. Code, § 17518.5, subd. (b)) and implements "the mandate in a cost-efficient manner." (Gov. Code, § 17518.5, subd. (c).)

Conclusion & Recommendation

Staff recommends that the Commission adopt this analysis as its decision along with the attached proposed parameters and guidelines, as modified by staff.

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

Claimants

County of Los Angeles (03-TC-04); Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, and Vernon, Claimants (03-TC-20); Bellflower, Covina, Downey, Monterey Park, and Signal Hill, Claimants (03-TC-21)

Chronology

09/02/03	Test claim 03-TC-04 (*Transit Trash Receptacles*) filed by County of Los Angeles
09/26/03	Test claim 03-TC-19 (*Inspection of Industrial/Commercial Facilities*) filed by County of Los Angeles[7]
09/30/03	Test Claim 03-TC-20 (*Waste Discharge Requirements*) filed by the Cities of Artesia, Beverly Hills, Carson, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, and Westlake Village[8]
09/30/03	Test Claim 03-TC-21 (*Storm Water Pollution Requirements*) filed by the Cities of Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina[9]
07/31/09	Commission adopts Statement of Decision
08/04/09	Commission staff notifies parties and interested parties that issuance of the Statement of Decision would be delayed
08/26/09	County claimant submits proposed parameters and guidelines
08/28/09	Cities submit proposed parameters and guidelines
09/03/09	Commission issues Statement of Decision
10/19/09	LA Regional Water Board submits comments on the draft parameters and guidelines
10/23/09	Department of Finance submits comments on the draft parameters and guidelines
11/13/09	County claimant submits rebuttal comments to the state agency comments
11/18/09	City claimants submit rebuttal comments to the state agency comments
01/07/10	Commission staff requests further information on the proposed parameters and guidelines
01/27/10	LA Regional Water Board submits requested information on the proposed parameters and guidelines

[7] In adopting the Statement of Decision, the Commission found that the sections of the permit and activities pled in 03-TC-19 (*Inspection of Industrial/Commercial Facilities*) do not constitute a reimbursable state-mandated program.

[8] When the test claim was resubmitted in November 2007, the cities of La Mirada, Monrovia and San Marino were not included, and Azusa, Commerce and Vernon were added.

[9] When the test claim was resubmitted in July 2008, the cities of Baldwin Park, Cerritos, Pico Rivera, South Pasadena, and West Covina were not included.

02/12/10	City claimants submit comments on the information from the LA Regional Water Board
03/25/10	Commission staff participates in an informal conference on the proposed parameters and guidelines
05/13/10	County claimant requests extension of time to submit revised parameters and guidelines that includes a reasonable reimbursement methodology (RRM)
05/20/10	Commission staff grants County claimants extension of time to submit revised parameters and guidelines and RRM
06/01/10	County claimant submits proposed revised parameters and guidelines and RRM, with attached letter (dated 5/24/10) from the League of California Cities and California State Association of Counties supporting the RRM
06/04/10	City claimants submit proposed revised parameters and guidelines and RRM
06/09/10	Commission staff deems proposed revised parameters and guidelines to be complete
07/09/10	Department of Finance requests an extension to respond to the proposed revised parameters and guidelines
07/26/10	State Controller's Office submits comments on the revised parameters and guidelines and RRM
07/27/10	Department of Finance submits comments on the revised parameters and guidelines and RRM
08/24/10	County claimant submits rebuttal comments to Controller's and Finance's comments
08/26/10	City claimants submit rebuttal comments to Controller's and Finance's comments
02/08/11	Commission staff issues draft staff analysis and proposed parameters and guidelines
02/18/11	State Controller's Office submits comments on the proposed parameters and guidelines
02/24/11	County claimant submits comments on the proposed parameters and guidelines
02/25/11	City claimants submit comments on the proposed parameters and guidelines
03/01/11	Department of Finance submits comments on the proposed parameters and guidelines
03/03/11	County claimant submits comments on the proposed parameters and guidelines (graffiti removal)

I. Background

The consolidated test claim was filed by the County of Los Angeles and several cities in the County of Los Angeles, alleging that various sections of the 2001 storm water permit (Permit CAS004001) adopted by the Los Angeles Regional Water Quality Control Board constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. The permit covers the Los Angeles County Flood Control District, Los Angeles County, and 84 cities in Los Angeles County (all cities except Long Beach). On July 31, 2009, the Commission adopted a Statement of Decision, finding that part 4F5c3 of the permit imposes a reimbursable state-mandated program on specified local agencies. Part 4F5c3 states the following:

> Permittees not subject to a trash TMDL [total maximum daily load] shall [¶]…[¶] Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.[10]

The Commission found that each local agency subject to the permit and not subject to a trash total maximum daily load (TMDL) is entitled to reimbursement to: "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary." All other activities pled in the test claim were denied by the Commission. The Statement of Decision was issued in September 2009.

In August 2009, the County of Los Angeles and the city claimants submitted separate proposed parameters and guidelines in accordance with Government Code section 17557. The claimants' proposals request reimbursement for placing and maintaining trash receptacles as mandated by the permit. The claimants also request reimbursement pursuant to Government Code section 17557 and section 1183.1, subdivision (a)(4), of the Commission's regulations for activities the claimants assert to be "the most reasonable methods of complying with the mandate." The claimants have proposed that a reasonable reimbursement methodology (RRM) for reimbursing local agencies be included within the parameters and guidelines.

The revised proposed parameters and guidelines and proposed RRMs were submitted by the County of Los Angeles on June 1, 2010, and by the cities on June 4, 2010.

As indicated in the discussion below, the Department of Finance, the State Water Resources Control Board, the State Controller's Office, and the Los Angeles Regional Water Control Board contend that many of the activities identified by the claimants go beyond the scope of the mandate and should not be reimbursable. In addition, Finance and the State Controller's Office oppose the adoption of an RRM and, instead, request that the parameters and guidelines require eligible claimants to claim actual costs incurred, supported by documentation of the costs. The state agencies also seek to clarify the eligible claimants under this mandate and the eligible period of reimbursement.

II. Commission's Responsibility for Adopting Parameters and Guidelines

If the Commission approves a test claim, the Commission is required by Government Code section 17557 to adopt parameters and guidelines for the reimbursement of any claims. The successful test claimant is required to submit proposed parameters and guidelines to the Commission for review. The parameters and guidelines shall include the following information: a summary of the mandate; a description of the eligible claimants; a description of the period of reimbursement; a description of the specific costs and types of costs that are reimbursable, including activities that are not specified in the test claim statute or executive order, but are determined to be reasonably necessary for the performance of the state-mandated program; instructions on claim preparation, including instructions for the direct or

[10] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), part 4F5c3, page 49.

indirect reporting of the actual costs of the program or the application of an RRM; and any offsetting revenue or savings that may apply.[11]

The Commission may adopt an RRM for inclusion in the parameters and guidelines.[12] An RRM may be proposed by the claimant, an interested party, the Department of Finance, the Controller's Office, or another affected state agency. An RRM is defined as "a formula for reimbursing local agencies and school districts for costs mandated by the state" and is based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs.

In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of an RRM may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years. An RRM shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs. In addition, the RRM shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.[13]

As of January 1, 2011, the hearing on the adoption of proposed parameters and guidelines is conducted under Article 7 of the Commission's regulations.[14] Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is based on substantial evidence in the record, and oral or written testimony is offered under oath or affirmation.[15] Each party has the right to present witnesses, introduce exhibits, and submit declarations. However, the hearing is not conducted according to the technical rules of evidence. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used to supplement or explain, but is not sufficient in itself to support a finding unless the hearsay evidence would be admissible in civil actions.[16]

Should the Commission adopt this analysis and proposed parameters and guidelines, a cover sheet would be attached indicating that the Commission adopted the analysis as its decision. The decision and adopted parameters and guidelines are then submitted to the State Controller's Office to issue claiming instructions to local governments, and to pay and audit reimbursement claims. Issuance of the claiming instructions constitutes the notice of the right of local governments to file reimbursement claims with the State Controller's Office based on the parameters and guidelines.

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[11] Government Code section 17557; California Code of Regulations, Title 2, section 1183.1.

[12] Government Code section 17557, subdivision (b); California Code of Regulations, Title 2, section 1183.131.

[13] Government Code section 17518.5.

[14] California Code of Regulations, Title 2, section 1187.

[15] Government Code section17559, subdivision (b); California Code of Regulations, Title 2, section 1187.5.

[16] California Code of Regulations, Title 2, section 1187.5.

III. Discussion

The analysis of the proposals and comments submitted by the parties, and a description of the proposed parameters and guidelines and RRM are explained below.

A. Summary of the Mandate

City claimants submitted the following language for the "Summary of the Mandate" in their proposed parameters and guidelines:

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

The Department of Finance requests that the "Summary of the Mandate" section simply identify what the Commission approved in the Statement of Decision and not contain other language or proposed reimbursable activities.[17]

Staff agrees with Department of Finance's comments. The "Summary of the Mandate" section of the parameters and guidelines is intended to summarize only the activities approved in the Statement of Decision that are mandated from the language of the permit. The summary does not include the detailed list of proposed activities that are reasonably necessary to comply with the mandate.

Thus, staff finds that the "Summary of the Mandate" section of the parameters and guidelines should state:

> This consolidated test claim was filed by the County of Los Angeles and several cities in the Los Angeles region, alleging that various sections of the 2001 storm water permit (Permit CAS004001) adopted by the Los Angeles Regional Water Quality Control Board constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. On July 31, 2009, the Commission adopted a Statement of Decision, finding that part 4F5c3 of the permit imposes a reimbursable state-mandated program on specified local agencies. (California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), part 4F5c3, page 49.) Part 4F5c3 states the following:
>
>> Permittees not subject to a trash TMDL [total maximum daily load] shall [¶]…[¶] Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.[18]

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[17] Department of Finance comments dated October 23, 2009.

[18] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), part 4F5c3, page 49.

> The Commission found that each local agency subject to the permit and not subject to a trash total maximum daily load (TMDL), is entitled to reimbursement to: "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary." All other activities pled in the test claim were denied by the Commission. The Statement of Decision was issued in September 2009.

B. Eligible Claimants

The mandated activity (placing and maintaining trash receptacles at all transit stops within a local agency's jurisdiction) applies only to local agency permittees[19] that are *not subject to a Trash TMDL* as stated in Part 4F5c3 as quoted above.

Section II of the proposed parameters and guidelines submitted by the County of Los Angeles identifies the eligible claimants as follows:

> The County of Los Angeles, Los Angeles County Flood Control District and all cities covered under the municipal storm water permit issued by the Los Angeles Regional Water Quality Control Board in Order No. 01182, Permit No. CAS0040001, in Part 4F5c3, to the extent that these local agencies are not or were not subject to coverage under a trash "Total Maximum Daily Load," or TMDL requirement.[20]

The city claimants propose similar language as follows:

> The County of Los Angeles, Los Angeles County Flood Control District, and all cities covered under the Permit, to the extent that the same are not or were not subject to coverage under a trash TMDL requirement.[21]

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[19] All of the local agencies subject to the permit are listed in the permit as follows: Los Angeles County, Los Angeles Flood Control District, Cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bell, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Cañada-Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier. California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), pages 15-16.

[20] County of Los Angeles' revised parameters and guidelines, filed June 1, 2010.

[21] Revised parameters and guidelines filed June 4, 2010, by Burhenn & Gest, LLP, on behalf of the Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Norwalk, Rancho Palos Verdes, and Signal Hill.

The Department of Finance requests that Section II of the proposed parameters and guidelines be amended to list the eligible claimants that are not subject to a TMDL requirement.[22]

As described below, the analysis of this issue is complicated by the various events leading up to and following the adoption of the permit at issue in this case that resulted in separate TMDL requirements for those watershed areas identified as having impaired water bodies within the jurisdictions of some of the eligible claimants. In addition, the TMDL requirements for the watershed area along the Los Angeles River were not operative and effective during the entire period from July 1, 2002 (when the period of reimbursement for the mandated activities begins) until late September 2008 due to legal challenges. Staff finds, however, that all local agency permittees are eligible to claim reimbursement for placing and maintaining trash receptacles to the extent they have transit stops located in areas within their jurisdictions that are *not* covered by an operative and effective trash TMDL.

1. Trash TMDLs

The plain language of part 4F5c3 of the permit states that the mandate to place and maintain trash receptacles at transit stops within the permittees' jurisdictions applies only to permittees that are "not subject to a trash TMDL." "TMDL" stands for "total maximum daily load" and stems from federal law. Under the federal Clean Water Act, the states are required to identify polluted waters that have failed to meet the water quality standards under the National Pollution Discharge Elimination System (NPDES) permit system. These identified waters are classified as "impaired." [23] Once impaired waters are identified, the states are required to rank them in order of priority, and based on the ranking, calculate levels of permissible pollution called "total maximum daily loads" or TMDLs, that can be discharged into the water bodies at issue.[24] The State Water Resources Control Board (hereafter "State Board") defines a TMDL as "a written plan that describes how an impaired water body will meet water quality standards, it [sic] contains a measurable feature to describe attainment of the water quality standard(s), a description of required actions to remove the impairment, an allocation of responsibility among dischargers to act in the form of actions or water quality conditions for which each discharger is responsible."[25]

TMDLs are developed in draft form by the staff of the regional water boards and then adopted as amendments to each regional board's water quality control plan, or Basin Plan. The Basin Plan amendments are then submitted to the State Board, and then subsequently to the Office of Administrative Law (OAL) for approval. After approval by the State Board and OAL, the amended Basin Plan that includes the TMDL is submitted for approval to the U.S. Environmental Protection

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[22] Department of Finance comments filed October 23, 2009.

[23] Section 303(d) of the Clean Water Act (codified as 33 U.S.C. § 1313).

[24] See summaries of the Clean Water Act and the TMDLs in *City of Arcadia v. U.S. Environmental Protection Agency* (2003) 265 F.Supp.2d 1142, 1143-1146, and *City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392, 1403-1407.

[25] State Water Resources Control Board, "Total Maximum Daily Loads (TMDL), Questions & Answers," April 2001.

Agency (EPA).[26] The TMDL is not effective until the U.S. EPA approves the TMDL. If the U.S. EPA disapproves the state's TMDL, it must establish its own TMDL within 30 days of the disapproval.[27]

Thus, a trash TMDL imposes separate requirements and goals on a local entity for reducing pollution specific to the area that is subject to the TMDL. A trash TMDL was not pled in the test claim and there has been no finding that requirements imposed by a trash TMDL are state-mandated within the meaning of article XIII B, section 6. The mandated program here only applies to those permittees that have trash receptacles in areas that are not subject to a trash TMDL.

a) Trash TMDLs adopted for the Los Angeles River and Ballona Creek Watershed Areas

With respect to the local agency permittees in this case, the LA Regional Board adopted two TMDLs for trash for the water bodies in the Los Angeles River and Ballona Creek watershed areas on September 19, 2001, three months before the adoption of the permit and mandate at issue here. The trash TMDLs require annual reductions in trash from an established baseline for each permittee identified as a responsible jurisdiction in the TMDL, until the final target of zero trash discharge is attained over a period of several years.[28] On February 19, 2002, the State Board approved and adopted the two trash TMDLs. On July 16, 2002, OAL approved the TMDLs, and on August 1, 2002, U.S. EPA sent a letter to the State Board approving the TMDLs.[29] The LA Regional Board reports that these TMDLs became effective on August 28, 2002.[30]

Prior to the approval of the two TMDLs, however, U.S. EPA issued its own interim TMDLs for trash for the water bodies in the Los Angeles and Ballona Creek watershed areas pursuant to a consent decree signed in the *Heal the Bay, et al. v. Browner* lawsuit (No. C 98-4825). The *Heal the Bay* lawsuit challenged EPA's alleged failure to either approve or disapprove TMDLs for the State of California. Pursuant to the consent decree, EPA was required to either have approved a state-submitted TMDL for trash in the Los Angeles region or to have established the TMDL itself by a March 24, 2002 deadline.[31] The State did not adopt and submit a final TMDL by the consent decree deadline so in March 2002 EPA adopted a trash TMDL for the water bodies in the Los Angeles River and Ballona Creek watershed areas.

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[26] State Water Resources Control Board, "Total Maximum Daily Loads (TMDL), Questions & Answers," April 2001. See also, *City of Arcadia, supra,* 265 F.Supp.2d 1142, 1147.

[27] 33 U.S.C. section 1313(d)(2); see also, California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), page 10.

[28] 2001 TMDLs for trash adopted for Ballona Creek and Los Angeles River watershed areas.

[29] U.S. EPA, August 1, 2002 letter to the State Water Resources Control Board approving the LA River and Ballona Creek trash TMDLs. See also, *City of Arcadia, supra,* 265 F.Supp.2d 1142, 1147.

[30] California Regional Water Quality Control Board, Los Angeles Region, "Basin Plan Amendments – TMDLs." <www.waterboards.ca.gov/losangeles/water_issues/ programs/tmdl/tmdl_list.shtml> as of March 8, 2010

[31] *City of Arcadia, supra,* 265 F.Supp.2d 1142, 1146, fn. 5, where the court found the TMDL deadline date under the consent decree to be March 24, 2002, rather than March 22, 2002 as contended by the parties (and published by the Regional Board).

EPA's TMDLs were based largely on the TMDLs for trash adopted by the LA Regional Board, but did not contain implementation measures.[32] When EPA approved the State's trash TMDLs on August 1, 2002, its letter announced that the State's TMDLs "supersede" the EPA trash TMDLs as follows: "The approved State TMDLs for trash for Los Angeles River Watershed and Ballona Creek and Wetland now supersede the TMDLs established by EPA in March; therefore, the State's TMDLs are now the applicable TMDLs for Clean Water Act purposes."[33] No further federal trash TMDLs have been issued by the EPA for the water bodies in the Ballona Creek and Los Angeles River watershed areas.[34]

b) The Ballona Creek Trash TMDL has been in effect since March 2002

The State's trash TMDL for the Ballona Creek area has been in effect since March 2002.[35] Thus, the permittees identified as responsible jurisdictions in the Ballona Creek trash TMDL were "subject to a trash TMDL" in March 2002 for the water bodies in the area, before the beginning of the reimbursement period for the mandate in question here (July 1, 2002). The local agencies identified in the Ballona Creek trash TMDL are:

> Beverly Hills, Culver City, Inglewood, Los Angeles, Los Angeles County, Santa Monica, and West Hollywood.[36]

c) The Los Angeles River Trash TMDL was not effective or operative from August 28, 2002, until September 22, 2008 due to legal challenges

The State's trash TMDL for the water bodies in the Los Angeles River watershed area was challenged by 22 cities. The Court of Appeal in *City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392, found that the state did not adequately comply with CEQA when adopting the TMDL and in 2006, declared the trash TMDL for the Los Angeles River watershed area void. The court

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[32] State Water Resources Control Board, Staff Reports supporting approval of the Trash TMDLs for the Los Angeles River and Ballona Creek watershed areas, July 30, 2002; and letter dated August 1, 2002, from the U.S. EPA approving the TMDLs.

[33] *Ibid*.

[34] U.S. EPA, Region 9, "Monitoring, Assessment and TMDLs: EPA-established TMDLs" which lists the March 2002 trash TMDLs for the Los Angeles River and Ballona Creek watersheds adopted by EPA and indicates they were superseded by State trash TMDLs in August 2002. No further EPA TMDLs are listed.

[35] In 2003, the county and City of Los Angeles filed a lawsuit to challenge the Ballona Creek TMDL. The county, city, and the state entered into a settlement agreement that resulted in an amendment to the Ballona Creek TMDL. The amendment was adopted by the Regional and State Water Boards in 2004, approved by OAL in February 2005, and became effective on August 11, 2005. (See BPA Detail published by the Los Angeles Regional Water Quality Control Board for the Basin Plan amendment, Resolution No. 2004-023.)

[36] Regional Water Quality Control Board, Los Angeles Region, letter dated January 26, 2010, Appendix I to Regional Board's TMDL for the Ballona Creek and Wetland, dated September 19, 2001.

issued a writ of mandate directing the State and Regional Water Boards to set aside the TMDL until it was brought into compliance with CEQA.[37]

In accordance with the court's order, the LA Regional Board set aside the 2001 action incorporating the TMDL into the Basin Plan (Resolution R06-013) on June 8, 2006. The trash TMDL was subsequently approved by the State Board, OAL, and EPA, and became effective on September 23, 2008.[38]

Thus, the permittees identified as responsible jurisdictions in the Los Angeles River trash TMDL were subject to the federal trash TMDL from March 2002 (before the period of reimbursement began in this case on July 1, 2002) until August 27, 2002. On August 28, 2002, the state's trash TMDL initially became effective, but was later determined void by the court and set aside. As noted above, there is no evidence that the federal trash TMDL took effect or became operative during the period the state's TMDL was set aside. Thus, the permittees listed in the Los Angeles River trash TMDL were not subject to a trash TMDL and were required to comply with the mandate to place and maintain trash receptacles at all transit stops in their jurisdictions from August 28, 2002, until September 22, 2008, the day before the trash TMDL was finally approved. The following day, these permittees became subject to the State's trash TMDL for the Los Angeles River watershed area and, therefore, were no longer required to adhere to the permit's transit stop trash receptacle requirements that are the subject of these parameters and guidelines. According to the LA Regional Board, the following local agencies are subject to the Los Angeles River trash TMDL:

> Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy, Downey, Duarte, El Monte, Glendale, Hidden Hills, Huntington Park, Irwindale, La Canada Flintridge, Los Angeles, Los Angeles County, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, and Vernon.[39]

2. Local agency permittees that are listed in the Los Angeles River or Ballona Creek trash TMDLs are eligible to claim reimbursement for the mandated program to the extent they have transit stops located in areas not subject to the trash TMDL

In comments submitted February 12, 2010, city claimants argue that only portions of the local agency jurisdictions listed in the TMDLs are subject to the trash TMDLs. Thus, the city claimants argue that if a portion of a local agency lies in an area *without* a trash TMDL, it still is entitled to reimbursement. The cities state the following:

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[37] *City of Arcadia, supra,* 135 Cal.App.4th at page 1436; see also the summary of the TMDL in the Regional Board's Fact Sheet supporting 2009 amendments to the Los Angeles River trash TMDL, pages 2-4.

[38] Regional Water Quality Control Board, Los Angeles Region, letter dated January 26, 2010, Fact Sheet supporting 2009 amendments to the Los Angeles River trash TMDL, pages 4.

[39] Regional Water Quality Control Board, Los Angeles Region, letter dated January 26, 2010; Regional Board Order No. R4-2009-0130, Appendix 7-1.

> [O]nly *portions* of the Cities of Carson and Downey are located within the Los Angeles River Watershed and thus subject to the trash TMDL for the Los Angeles River watershed. For example, all but a very small portion of the City of Carson is located within the Dominguez Channel Watershed, which is not subject to a trash TMDL. More than half of the City of Downey is located within the San Gabriel River and Los Cerritos Channel Watersheds, which are also not subject to a trash TMDL.… If a city lies in part within a watershed without a trash TMDL, it still is entitled, under the Commission's decision, for a subvention of funds. (Emphasis in original.)

The cities' position is supported by the LA Regional Board staff reports for the trash TMDLs. Page 3 of the staff report for the Ballona Creek trash TMDL states that "Cities on this small coastal watershed are Culver City, Beverly Hills, West Hollywood, *parts* of Santa Monica, *parts* of Ingelwood, *parts* of Los Angeles, and *some unincorporated areas* of Los Angeles County." (Emphasis added.) Page 23 of the Los Angeles River TMDL (revised draft: July 27, 2007) describes "cities that are only partially located in the watershed" under the description for the refined baseline waste load allocations.[40]

Thus, even when the TMDLs are valid and in effect, the local agency permittees that are listed in the Los Angeles River or Ballona Creek trash TMDLs are eligible to claim reimbursement for the mandated program to the extent these local agency permittees have transit stops located in areas not covered by the trash TMDL requirements.

3. Costs of carrying out the transit trash receptacle mandate until the trash TMDLs are in their implementation phase under Part 4F5b of the permit are beyond the scope of the mandate and are not reimbursable

Finally, the claimants have suggested that permittees subject to a trash TMDL are eligible for reimbursement to place and maintain trash receptacles at all transit stops in their jurisdiction pursuant to Part 4F5c3 of the permit until the trash TMDL is "implemented." Part 4F5b of the permit states that "if the implementation phase for the Los Angeles River and Ballona Creek Trash TMDLs has not begun by October 2003, subject Permittees shall implement the requirements described below in subsection 5(c), until such time programs in conformance with the subject Trash TMDLs are being implemented." However, part 4F5b of the permit was not pled in this test claim and the Commission has made no mandate findings on that part of the permit. Any reimbursement stemming from Part 4F5b goes beyond the scope of the mandated program in Part 4F5c3.

4. Staff Finding on "Eligible Claimants"

Staff finds that Section II of the parameters and guidelines that describe the "Eligible Claimants" should state the following:

> The following local agencies that incur increased costs as a result of this mandate are eligible to claim reimbursement:
>
> - Local agency permittees identified in the Los Angeles Regional Water Quality Control Board Order No. 01-182, Permit CAS004001, that are *not* subject to a trash TMDL are eligible to claim reimbursement for the mandated activities.

[40] California Regional Water Quality Control Board, Los Angeles Region, "Trash Total Maximum Daily Loads for the Los Angeles River Watershed." Revised draft: July 27, 2007, page 23.

- The following local agency permittees that are subject to the Ballona Creek trash TMDL are eligible to claim reimbursement for the mandated activities only to the extent they have transit stops located in areas not covered by the Ballona Creek trash TMDL requirements:

  Beverly Hills, Culver City, Inglewood, Los Angeles (City), Los Angeles County Santa Monica, and West Hollywood

- From August 28, 2002, until September 22, 2008, the following local agency permittees that are subject to the Los Angeles River trash TMDL are eligible to claim reimbursement for the mandated activities:

  Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy, Downey, Duarte, El Monte, Glendale, Hidden Hills, Huntington Park, Irwindale, La Canada Flintridge, Los Angeles (City), Los Angeles County, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, and Vernon

- Beginning September 23, 2008, the following local agency permittees that are subject to the Los Angeles River trash TMDL are eligible to claim reimbursement for the mandated activities only to the extent they have transit stops located in areas not covered by the Los Angeles River trash TMDL requirements:

  Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy, Downey, Duarte, El Monte, Glendale, Hidden Hills, Huntington Park, Irwindale, La Canada Flintridge, Los Angeles (City), Los Angeles County, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, and Vernon

C. Period of Reimbursement

Government Code section 17557, subdivision (e), establishes eligibility to claim reimbursement for a reimbursable state-mandated program beginning in the fiscal year prior to the fiscal year the test claim was filed.[41] In this case, the test claims were filed in September 2003 (fiscal year 2003-2004) and, thus, the period of reimbursement for this claim begins July 1, 2002 (six months after the operative and effective date of the permit: December 13, 2001).[42]

Part 4F5c3 of the permit establishes deadlines to perform the mandated activity to place trash receptacles at transit stops. The plain language requires local agency permittees to place trash

[41] Government Code section 17557, subdivision (e), states that "A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year."

[42] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), page 70, as well as the footer on each page of the permit.

receptacles at all transit stops within their jurisdictions that have shelters no later than August 1, 2002, and at all other transit stops no later than February 3, 2003. The Department of Finance requests that the language in the "Period of Reimbursement" section of the parameters and guidelines include these deadlines. In its October 23, 2009 comments, Finance recommends that the Commission:

> Identify the reimbursement period, effective July 1, 2002, for the costs associated with placing trash receptacles at transit stops with shelters until August 1, 2002, and at remaining transit stops until February 3, 2003. The reimbursement period, however, for the ongoing maintenance of those trash receptacles continues until the test claim permit is no longer valid.

The cities, in comments filed November 13, 2009, do not want the deadlines to be identified in the parameters and guidelines because "costs may have been incurred after those dates. For example, after those dates, municipalities may be required to place trash receptacles at new transit stops as the result of changes in transit routes."

Staff finds that the "Period of Reimbursement" section of the parameters and guidelines should not limit reimbursement to the costs of placing trash receptacles at transit stops to only those costs incurred before the deadlines. There is no indication in the permit, or in any document issued by the LA Regional Water Board, that local agencies that fail to meet the deadlines are then not required to perform the mandated activity to place the trash receptacles at all transit stops. In fact, limiting the mandate to activities performed only before the deadlines would defeat the purpose of the mandate to "reduce the discharge of pollutants into storm water to the maximum extent practicable."[43] Moreover, local agencies are required to install trash receptacles at "all transit stops," including those transit stops that are added by a transit agency after the deadlines in the permit have passed. Therefore, although staff finds that the claimants should be reimbursed for receptacles installed at transit stops after the dates in the permit, staff also finds that the reimbursement for installation activities (as discussed further below) should be limited to one-time per transit stop.

As to the ending date for reimbursement, even though the permit at issue expires by its own terms on December 12, 2006, [44] staff finds that the mandate continues past that date until a new permit is approved and issued by the Regional Water Board.

The federal regulation on expired permits states:

> States authorized to administer the NPDES program may continue either EPA or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit.[45]

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[43] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), pages 7 and 13.

[44] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), page 70.

[45] 40 Code of Federal Regulations, section 122.6 (d).

California's regulations provide for automatically continuing expired permits.

> The terms and conditions of an expired permit are automatically continued pending issuance of a new permit if all requirements of the federal NPDES regulations on continuation of expired permits have been complied with.[46]

In short, the law provides for automatic continuation of the permit until a new one is approved. There is no evidence in the record that a new NPDES storm water permit has been issued for Los Angeles County. Therefore, staff finds that reimbursement under the permit continues until the effective date of a new NPDES storm water permit that supersedes the permit in the test claim. (Permit CAS004001, California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182.)

Accordingly, staff finds that the following language in Section III of the parameters and guidelines addressing the "Period of Reimbursement" should be adopted:

> Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year.
>
> The County of Los Angeles filed a test claim on *Transit Trash Receptacles* (03-TC-04) on September 2, 2003. The Cities of Artesia, Beverly Hills, Carson, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, and Westlake Village filed a test claim on *Waste Discharge Requirements* (03-TC-20) on September 30, 2003. The Cities of Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina filed a test claim on *Storm Water Pollution Requirements* (03-TC-21) on September 30, 2003. Each test claim alleged that Part 4F5C3 of the Los Angeles Regional Water Quality Control Board Order No. 01-182, Permit CAS004001 was a reimbursable state-mandated program. The filing dates of these test claims establish eligibility for reimbursement beginning July 1, 2002, pursuant to Government Code section 17557, subdivision (e), and continues until a new NPDES permit issued by the Regional Water Quality Control Board for Los Angeles is adopted.
>
> Reimbursement for state-mandated costs may be claimed as follows:
>
> 1. Costs for one fiscal year shall be included in each claim.
> 2. All claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions. (Gov. Code, § 17561, subd. (b)(1)(A).)
> 3. A local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year. (Gov. Code, § 17560, subd. (a).)
> 4. In the event revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the

[46] California Code of Regulations, title 23, section 2235.4.

issuance date of the revised claiming instructions to file a claim. (Gov. Code, § 17560, subd. (b).)

5. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564, subdivision (a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

D. Reimbursable Activities

City and county claimants submitted the following activities in their proposed parameters and guidelines, along with the proposed reasonable reimbursement methodology in June 2010:

A. Installation of Trash Receptacles:

1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
2. Evaluate and select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and/or drawings.
3. Contract preparation, specification review process, bid advertising, and review and award of bid.
4. Purchase receptacles/pads and/or construct receptacles/pads and install receptacles.[47]
5. Repeat steps 3-4 above when necessary for replacement of receptacles/pads.[48]

B. Maintenance of Trash Receptacles

1. Collection of trash on routine basis, including trash collection and disposal at disposal/recycling facility.
2. Inspection of receptacles and pads for wear, cleaning, emptying and other maintenance needs.
3. Maintenance of receptacles and pads, including painting, cleaning and repair of receptacles and replacement of liners, and cost of paints, cleaning supplies and liners.
4. Replacement of individual damaged or missing receptacles, including costs of purchase and installation of replacement receptacles and disposal/recycling of replaced receptacles or pads.
5. Movement (including replacement if required) of receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.

The Department of Finance, in comments submitted October 23, 2009, states that the installation activities in A.1 to A.4 above should be deleted because they go beyond the scope of the mandate. Finance "believes activities such as construction contract preparation, specification review, or fabrication and installation of pads are not necessary to implement the approved mandate." In its

[47] City claimants: "purchase and/or construct and install pads."

[48] City claimants: "repeat steps 3-4 above when necessary for replacement of receptacles/pads on a non-individual basis."

comments submitted March 1, 2011, Finance reiterates these comments in response to the draft staff analysis and proposed parameters and guidelines.

The LA Regional Water Board, in comments submitted October 19, 2009, asserts that the claimants overstate the scope of the trash receptacle requirement. The Board argues that the purpose of the provision is to effectively control litter from transit stops through the simple placement of trash cans:

> Claimants may fairly and adequately comply with the mandates of the order through the placement of any type of receptacle capable of containing the garbage that waiting passengers might throw into the gutter. Likewise, given the water quality context, the obligation to maintain the receptacles is simply to ensure the receptacles are emptied when they are full, and not damaged to a point where they can no longer retain garbage.

According to the LA Regional Water Board, the order does not require any construction or installation. "Nor can the order fairly be viewed as requiring the expenditure of $20,000 to identify the location of transit stops that are well known by transit authorities and published on transit authority maps for the benefit of their riders."

The State Controller's Office, in its February 18, 2011 comments on the draft staff analysis, proposes deleting all activities other than "Installation of Trash Receptacles (one-time per transit stop)" and "Maintenance of Trash Receptacles (on-going as needed)."

City claimants, in their November 2009 rebuttal comments, state that "for the requirement to be effective in an urban environment, the receptacles must be durable and theft proof." Further, proper design requires a permanent installation, often including a concrete pad to which a receptacle is bolted, that will resist thieves and vandals. Missing receptacles receive no trash, defeating the purpose of the mandate. Claimants call construction and installation "intrinsic to the mandate." Claimants also responded to the LA Regional Board's assertion that the mandate to maintain "is simply to ensure the receptacles are emptied when they are full, and not damaged to a point where they can no longer retain garbage." According to the city claimants, it is less expensive and more appropriate to achieve the goal of less trash in gutters if the receptacles are routinely emptied, inspected and maintained. As to spending $20,000 for the location of transit stops, city claimants assert that these stops are not on transit maps, and that stops must be identified and updated as routes change over time.

The County of Los Angeles, in its November 2009 rebuttal comments, states that the proposed parameters and guidelines include "only the types of installation activities that are reasonably necessary in complying with the mandates found to be reimbursable by the Commission" and also cites the declaration of Aras Ahmed, an Associate Civil Engineer in the Department of Public Works, in the test claim. County claimants also assert the necessity of bolting down receptacles to prevent vandalism, theft, and accidental losses, to a concrete pad, including the pad's design and fabrication, as well as "identifying the topological nature of specific site receptacle placements." Claimants further assert that scheduled collections and inspections of receptacles are necessary to prevent guessing as to when receptacles should be emptied.

Both city and county claimants point to declarations in the test-claim record. Two declarations were submitted with test claim (03-TC-04) submitted by Los Angeles County. The first is by Frank Kuo, Facilities Program Manager II in the Watershed Management Division of Los Angeles County Department of Public Works; and another by Aras Ahmed, an Associate Civil Engineer in the Programs Development Division of Los Angeles County's Department of Public Works. Both Mr. Kuo and

Mr. Ahmed state they are responsible for implementing the permit, and both declarations state their information and belief that the following duties are reasonably necessary to comply with the permit:

1. Identifying all transit stops within its jurisdiction except for the Los Angeles River and Ballona Creek Watershed Management areas.
2. Selecting proper trash receptacle design and evaluating placement of trash receptacles.
3. Designing receptacle pad improvement, if needed.
4. Constructing and installing trash receptacle units.
5. Collecting trash and maintaining receptacles.

Los Angeles County and city claimants included a similar declaration from William Yan, Associate Civil Engineer in the Programs Development Division of the County Public Works Department with their submissions of a reasonable reimbursement methodology and revised parameters and guidelines received June 1, 2010 (Los Angeles County) and June 4, 2010 (for cities). In the declaration, Mr. Yan stated the following reasons for the installation activities:

- To prevent frequent loss of trash receptacles in many types of locations, the receptacle must be bolted down and, in order to be bolted down, unimproved bus stops must be constructed with a concrete pad;
- Proper selection of receptacle and pad types, evaluation of appropriate placement of receptacles and preparation of engineering specifications and/or drawings necessary for installation of trash receptacles;
- Securing transit trash receptacles reduces vandalism, theft, and accidental losses and the costs of replacing the missing or damaged receptacles;
- Securing transit trash receptacles would reduce the time the receptacles would be out of service and not available to collect trash;
- Concrete pads would provide adequate bolting surface and for large-capacity transit trash receptacles which require less collection frequency;
- Transit trash receptacles made of wrought iron would be more durable against vandalism and damage, thereby reducing replacement cost;
- Dome covers and the solid trash receptacle liners prevent rain water from going into the receptacles, thereby causing trash to spill out and flow into the storm drains;
- The use of dome covers and solid trash receptacle liners meets the intent of the … [permit] by preventing pollutants from entering the storm drains.

None of the activities proposed by claimants, beyond installing and maintaining trash receptacles, are in the permit. The Commission has discretion, however, to determine "the most reasonable methods of complying with the mandate."[49] This is defined as "those methods not specified in statute or executive

[49] Government Code section 17557; California Code of Regulations, title 5, section 1183.1, subdivision (a)(4).

order that are necessary to carry out the mandated program."[50] Using this standard, each proposed activity is analyzed below.

The first activity, A.1, is "Identification of locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit." Evidence in the record supports the finding that this activity is a reasonable method to comply with the mandate. The declaration in Los Angeles County's test claim by Mr. Kuo and Mr. Ahmed state their information and belief that "identifying all transit stops within its jurisdiction except for the Los Angeles River and Ballona Creek Watershed Management areas" is reasonably necessary to comply with the permit. There is no evidence in the record for the Department of Finance's assertion that all transit stops are on transit maps, or even if they were, that the maps would be up to date. And, claimants are only eligible to the extent they are not subject to a trash TMDL, so transit stops in a jurisdiction partially subject to a trash TMDL would need to be identified to the extent they are outside the area subject to the trash TMDL. There is no evidence that this information (or any other watershed information) would be on a transit map.

There is also evidence in the record to find that the second activity, A.2, "Selection of receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and /or drawings" is a reasonable method of complying with the mandate. Mr. Yan of Los Angeles County submitted a declaration supporting this activity, as cited above. Moreover, a receptacle and pad that is not easily vulnerable to theft or vandalism is reasonable to effect the purpose of the mandate: "to reduce the discharge of pollutants into storm water to the maximum extent practicable."[51] Missing or vandalized receptacles would not effectively capture trash and therefore not attain this goal.

Staff also finds that, A.3, "contract preparation, specification review process, bid advertising, and review and award of bids" is a reasonable method of complying with the mandate. There is no requirement in the permit for city or county employees to personally perform the activities at issue, and the Commission's boilerplate language for reimbursable activities includes contract costs. Moreover, Public Contract Code section 20120 et seq. contains the county bidding and contract requirements, and Public Contract Code section 20160 et seq. contains the city bidding and contract requirements, both of which require competitive bidding for public works contracts.

As for A.4, "Purchase of receptacles [cities include "pads"] and/or construct receptacles [pads] and install receptacles [pads]" staff finds that this is a reasonable method of complying with the mandate, as the receptacles are required by the plain language of the permit, and are not effective without installation, including affixing the receptacles to prevent theft and vandalism. The declarations of Mr. Kuo and Mr. Ahmed cited above indicate that these activities were performed in compliance with the mandate.

Staff finds that A.5, replacement of receptacles and pads, is a reimbursable activity as discussed below under B.4.

Staff also finds that all activities in A should be limited to one time per transit stop. As discussed above under "period of reimbursement," the permit contains deadlines for placement of the trash receptacles: for stops with shelters no later than August 1, 2002, and at all other transit stops no later than

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[50] *Ibid.*

[51] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), pages 7 and 13.

February 3, 2003. Because the shelters are required to be in place by these deadlines, staff finds that installation activities in A.1 through A.5 are eligible for reimbursement only one time per transit stop, which allows for relocation of transit stops.

In A.5, city claimants requested reimbursement for replacement on a "non-individual" basis. Staff finds that this is not a reasonable method to comply with the mandate. Individual replacements are discussed below under B.4 for missing or damaged receptacles, and are found to be a reasonable method to comply with the mandate. There is nothing in the record to support non-individual replacement (by group or lot, for example) of trash receptacles. Thus, staff finds that "non-individual" replacement is not a reasonable method to comply with the mandate.

Staff finds that B.1, "collection and disposal of trash," falls within the plain language of the mandate that requires "all trash receptacles shall be maintained as necessary." Collection and disposal is the most reasonable method to comply with the mandate because the purpose of the mandate is to keep pollutants out of storm water. Disposal at designated facilities is reasonable to comply with the mandate, since it is unlawful to dispose of trash outside of designated areas without a landowner's permission. (Pen. Code, § 374.3.)

Claimants did not propose how frequently the trash receptacles would be emptied. Survey data submitted with the revised parameters and guidelines[52] indicates that frequency of collection varies from weekly for some local agencies (e.g., Bellflower, Covina, Signal Hill), to 2.57 times per week for Carson. (The pickup frequency data is unclear for Los Angeles County, as the survey appears to state 156 pickups per year, or three times per week, but an August 2010 declaration from William Yan states that pickup frequency is 48-52 times per year). Trash will accumulate at different rates at different transit stops. However, based on the survey data and accompanying declaration, staff finds that the most reasonable method of complying with the mandate is to reimburse collection frequency no more than three times per week.

Staff also finds that inspections and maintenance of receptacles and pads under B.2 and B.3 fall within the scope of the plain language of the mandate to "maintain" the receptacles "as necessary." These activities are also reasonably necessary to comply with the mandate. Any problems with receptacles and pads should be noted and reported to effect the purpose of the mandate: "to reduce the discharge of pollutants into storm water to the maximum extent practicable."[53]

The declaration submitted by Los Angeles County, dated August 16, 2010, by Mr. William Yan, Associate Civil Engineer, states that "trash receptacles and the 10-foot area around each trash receptacle must be thoroughly cleaned of any graffiti, stickers, posters, litter, dust, dirt, weeds and any reside in order to prevent the flow of any waste to enter the storm drain and/or street gutters." The record is insufficient, however, as to how graffiti removal effects the permit's purpose of keeping pollutants out of storm water. Therefore, staff finds that graffiti removal is beyond the scope of the mandate and not reimbursable.

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[52] County of Los Angeles' letter and proposed revised parameter and guidelines dated May 27, 2010; city claimants' letter and proposed revised parameters and guidelines dated June 1, 2010.

[53] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), pages 7 and 13.

In its February 23, 2011 comments on the draft staff analysis, Los Angeles County concurs that graffiti removal should not be reimbursable, and submits declarations from contractors that costs for graffiti removal were not included in the contractors' rates for trash removal and receptacle cleaning. These declarations are further discussed below under "Proposed Reasonable Reimbursement Methodology."

In comments received on March 3, 2011, Los Angeles County submits an engineer's declaration that graffiti removal should be reimbursable, citing maintenance procedures from the California Stormwater Best Management Practices Municipal Handbook. The recommended procedures include using the least toxic materials available for graffiti removal, scheduling graffiti removal for dry weather, and similar activities. The procedures also call for protecting "nearby storm drain inlets prior to removing graffiti from walls, signs, sidewalks, or other structures needing graffiti abatement" and include a declaration of information and belief that the "other structures needing graffiti abatement" includes trash receptacles at bus stops.

There is nothing in the record to support a finding that removing graffiti furthers the purpose of the permit, which is to "reduce the discharge of pollutants into storm water to the maximum extent practicable."[54] Because graffiti removal is carried out for purposes other than complying with the permit, graffiti removal is beyond the scope of the mandate. Thus, staff finds that graffiti removal is not reimbursable.

In its July 2010 comments, Finance states that cleaning receptacles "may not be reasonably necessary to carry out the mandate." In August 2010 rebuttal comments, the County points to language in the permit that states "all trash receptacles shall be maintained as necessary" and includes a declaration from a civil engineer in the County's Dept. of Public Works that cleaning is necessary to comply with the mandate "in order to prevent the flow of any waste to enter the storm drain and/or street gutters." Based on this evidence in the record, staff finds that the maintenance activity, B.3, includes cleaning receptacles and pads.

Staff further finds that B.4, "replacement of receptacles" falls within the scope of the mandate to maintain receptacles as necessary and is reasonably necessary to comply with the mandate. Damaged or missing receptacles will not keep pollutants out of storm water, thereby defeating the purpose of the mandate. The survey data that the claimants provided in support of the RRM includes receptacle replacement costs. Staff also finds that disposal of replaced receptacles is also eligible for reimbursement.

Although moving receptacles in B.5 is a reasonably necessary activity for transit stops that need to be relocated, because this activity is one-time per transit stop it is listed in A.5.

In its February 25, 2011 comments on the draft staff analysis, city claimants propose adding the following: "Claimants may elect to use either actual costs, including costs based on time studies (as set forth below) or RRM rates for repetitive trash collection tasks." Claimants further include the option to use time studies for repetitive tasks.

Staff disagrees with the language proposed by the city claimants. The RRM is intended to balance "accuracy with simplicity." (Gov. Code, § 17557, subd. (f).) Allowing claimants to elect to claim costs

[54] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), pages 7 and 13.

by using either an RRM, a time study, or actual costs does not conform to this standard. Instead, it would allow claimants to maximize their reimbursement depending on whether or not their costs are higher than the RRM. This is not the purpose of an RRM. For this reason, staff finds that the language allowing claimants to claim costs by electing either the RRM, time studies, or actual costs should not be included under section IV.B.

In its February 18, 2011 comments, the State Controller's Office proposes adding "time sheets and calendars" to the list of evidence that may corroborate the source documents. Claimants have no objection to this proposal. Because time sheets and calendars may serve as evidence to corroborate source documents, staff has included this language in the proposed parameters and guidelines.

The State Controller' Office also proposes deleting "training packets" from the list of evidence that corroborates the source documents. City claimants, in their February 25, 2011 comments, object to this deletion because "training packets can serve as corroborative evidence" and point to "training packets" being listed in prior parameters and guidelines. Staff agrees with the State Controller's Office that training packets should be deleted because training is not a reimbursable activity in this test claim.

In sum, staff finds that the following language for section IV of the parameters and guidelines addressing "Reimbursable Activities" should be adopted:

> To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed for the one-time activities in section IV.A below. For the ongoing tasks in section IV.B below, claimants are reimbursed under a reasonable reimbursement methodology.
>
> 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 costs were 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, and receipts.
>
> Evidence corroborating the source documents may include, but is not limited to, timesheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, 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 reported 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 local agency, the following activities are reimbursable:

A. Install Trash Receptacles (one-time per transit stop, reimbursed using actual costs):

1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
2. Select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.
3. Prepare contracts, conduct specification review process, advertise bids, and review and award bids.
4. Purchase or construct receptacles and pads and install receptacles and pads.
5. Move (including replacement if required) receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.

B. Maintain Trash Receptacles and Pads (on-going, reimbursed using the reasonable reimbursement methodology):

1. Collect and dispose of trash at a disposal/recycling facility. *This activity is limited to no more than three times per week.*
2. Inspect receptacles and pads for wear, cleaning, emptying, and other maintenance needs.
3. Maintain receptacles and pads. This activity includes painting, cleaning, and repairing receptacles; and replacing liners. The cost of paint, cleaning supplies and liners is reimbursable. *Graffiti removal is not reimbursable.*
4. Replace individual damaged or missing receptacles and pads. The costs to purchase and install replacement receptacles and pads and dispose of or recycle replaced receptacles and pads are reimbursable.

E. Proposed Reasonable Reimbursement Methodology

A reasonable reimbursement methodology (RRM) is to be based on "cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs" and is to "consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner." (Gov. Code, § 17518.5, subds. (b) & (c).)

Claimants propose an RRM for the four reimbursable activities listed in Section IV.B to maintain trash receptacles at $6.74 per trash receptacle times the annual number of trash collections for that receptacle. The claimants propose the following RRM language:

> Under this [RRM] methodology, the annual standard or unit cost for each trash collection or "pickup" is multiplied by the annual number of trash collections (number of receptacles times pickup events for each receptacle) to compute the annual reimbursement for trash collection activities, subject to the limitation of no more than three pickups per week.

> The standard unit RRM rate per trash collection is $6.74 and applies to the entire initial reimbursement period (2002-03 through 2008-09) without a cost of living adjustment. The RRM rate will be increased in 2009-2010 and subsequent years by the implicit price deflator for that respective year.

To support the proposed RRM, city and county claimants submitted surveys of 11 local agencies. The surveys of seven local agencies were used to calculate the proposed RRM (surveys from Beverley Hills and Commerce were excluded because those cities are subject to a trash TMDL, and Norwalk's survey was excluded because it included additional costs). Attached to the February 5, 2011 comments on the draft staff analysis was data that further excluded the city of Covina's survey based on contractor billing practices.

Of about 85 eligible claimants (minus some that may be wholly covered a trash TMDL), the seven that are reflected in the survey data used to formulate the RRM comprise at least 8.2% of the eligible claimants. The seven permittees that make up the survey data (with numbers of receptacles that in some cities fluctuate by year) are: Los Angeles County (324-470 receptacles), Downey (151-239 receptacles), Carson (210-198 receptacles), Bellflower (189 receptacles), Azusa (13 receptacles), Artesia (9 receptacles), and Signal Hill (50 receptacles). The variation in the number of receptacles per permittee indicates that both large and small local agency claimants were surveyed. Therefore, staff finds that the proposed RRM is based on a "representative" sample of eligible claimants. (Gov. Code, § 17518.5, subd. (b).)

In its July 23, 2010 comments, the Department of Finance objects to the proposed RRM because "the survey responses do not clearly explain the costs associated with maintenance of the trash receptacles, e.g., cleaning." Finance points to Los Angeles County data that show cleaning costs increased $7,275 from 05-06 to 06-07, and states: "the concern is that the ratio of increased cleaning costs to increased number of receptacles is not proportionate or consistent between fiscal years." Additionally, Finance states that some "other" costs should be excluded, such as Signal Hill's cost for review of the collection contract by the City Attorney.

In its July 26, 2010 comments, the State Controller proposes to delete reference to the RRM and proposes language for reimbursement to be based on actual costs "for uniformity and consistency."

Los Angeles County submitted rebuttal comments in August 2010 with a declaration from William Yan from LA County Department of Public Works regarding the cleaning costs. Mr. Yan states that three variables contribute to the variation in cleaning costs: the average number of trash receptacles, the unit cleaning cost per visit (including living wage adjustments), and the frequency of cleanings per month. The declaration also states that "associated cleaning costs are reasonable, proper, and fairly stated."

The city claimants also submitted rebuttal comments in August 2010 and cite Mr. Yan's declaration regarding cleaning costs. City claimants also state that Signal Hill's contract review is a proper administrative cost, and do not object to deleting a cost of living adjustment.

In the draft staff analysis, staff found that the proposed RRM appeared to be complete except for two essential pieces of data. First, the data submitted include surveyed costs for "cleaning," which is eligible for reimbursement. Graffiti removal, however, is not a separate survey category and is not eligible for

reimbursement. Assuming that a portion of the "cleaning" costs include graffiti removal,[55] the costs would be inflated because they reflect activities beyond the scope of the mandate. Second, Bellflower's survey included unidentified costs for "other" making it impossible to tell whether the surveyed costs go beyond the scope of the mandate.

In the February 2011 city and county responses to the draft staff analysis, claimants submitted declarations from the contractors used to clean the transit receptacles. In a declaration, the General Manager of ShelterClean, Inc., stated that the "very infrequent task of removing graffiti from trash receptacles result in little or no costs to ShelterClean, Inc. Consequently, I declare that the negligible costs of graffiti removal are not used by ShelterClean, Inc. in developing the rate for cleaning trash receptacles charged the County." A second declaration from the General Operations Manager of Sureteck Industrial & Commercial Services, Inc., also stated that the costs of graffiti removal are not used in developing the rate for cleaning trash receptacles.

Regarding the data submitted from the City of Bellflower for "other" unidentified costs, the claimants state that these costs were for the one-time purchase of trash receptacles and should not be included in the costs used to calculate the RRM. After recalculating the RRM, the claimants now propose $6.74 per transit stop for the on-going maintenance activities. Because this calculation is based on surveys of actual costs, staff finds that the RRM implements the mandate in a cost efficient manner. (Gov. Code, § 17518.5, subd. (c).)

Given the new evidence submitted by the claimants, staff finds that the evidence in the record now supports a finding that the requirements of Government Code section 17518.5 have been satisfied and recommends that the Commission adopt the proposed RRM.

The claimants, in comments submitted February 25, 2011, propose a cost of living adjustment to their RRM for costs incurred beginning July 1, 2009.

Finance, in its comments submitted July 23, 2010, states that the RRM should be constant from 2002-2009 because "the proposed RRM rate provides a uniform cost allowance that is based on local costs incurred over a seven year period."

Staff finds that the implicit price deflator, as forecast by the Department of Finance, should be applied to the RRM beginning in fiscal year 2009-2010 because the cost survey on which the RRM is based covers the period from 2002-2009.

Staff finds that the following language should be in the parameters and guidelines:

> The Commission is adopting a reasonable reimbursement methodology to reimburse eligible local agencies for all direct and indirect costs for the on-going activities identified in section IV.B of these parameters and guidelines to maintain trash receptacles. (Gov. Code, §§ 17557, subd. (b) & 17518.) The RRM is in lieu of filing detailed documentation of actual costs. Under the RRM, the annual unit cost of $6.74 for

[55] This assumption is based on the declaration submitted by Los Angeles County, dated August 16, 2010, by Mr. William Yan, Associate Civil Engineer, who states that "trash receptacles and the 10-foot area around each trash receptacle must be thoroughly cleaned of any graffiti, stickers, posters, litter, dust, dirt, weeds and any reside in order to prevent the flow of any waste to enter the storm drain and/or street gutters."

> each trash collection or "pickup" is multiplied by the annual number of trash collections (number of receptacles times pickup events for each receptacle), subject to the limitation of no more than three pickups per week. Beginning in fiscal year 2009-2010, the RRM shall be adjusted by the implicit price deflator as forecast by the Department of Finance.

In addition, staff finds that the following record retention language should be included in the parameters and guidelines for any audits conducted by the State Controller's Office of the costs claimed using the RRM:

> Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district pursuant to this chapter[56] 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. Pursuant to Government Code section 17561, subdivision (d)(2), the Controller has the authority to audit the application of a reasonable reimbursement methodology.
>
> Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups. If an audit has been initiated by the Controller during the period subject to audit, the record retention period is extended until the ultimate resolution of any audit findings.

F. Conclusion & Recommendation

Staff recommends that the Commission adopt this analysis as its decision along with the attached proposed parameters and guidelines, as modified by staff.

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

[56] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.