



September 27, 2022

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

Ms. Natalie Sidarous
State Controller's Office
Local Government Programs and
Services Division
3301 C Street, Suite 740
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Decision

Municipal Stormwater and Urban Runoff Discharges, 20-0304-I-12
Los Angeles Regional Quality Control Board Order No. 01-182,
Permit CAS004001, Part 4F5c3

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008,
2008-2009, 2009-2010, 2010-2011, 2011-2012
City of Hawaiian Gardens, Claimant

Dear Ms. Chinn and Ms. Sidarous:

On September 23, 2022, the Commission on State Mandates adopted the Decision on the above-entitled matter.

Sincerely,

Heather Halsey
Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

<p>IN RE INCORRECT REDUCTION CLAIM</p> <p>Los Angeles Regional Water Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3</p> <p>Fiscal Years 2002-2003 through 2011-2012</p> <p>Filed on February 18, 2021</p> <p>City of Hawaiian Gardens, Claimant</p>	<p>Case No.: 20-0304-I-12</p> <p><i>Municipal Stormwater and Urban Runoff Discharges</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted September 23, 2022)</i></p> <p><i>(Served September 27, 2022)</i></p>
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INCORRECT REDUCTION CLAIM

The Commission on State Mandates adopted the attached Decision on September 23, 2022.



Heather Halsey, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

<p>IN RE INCORRECT REDUCTION CLAIM</p> <p>Los Angeles Regional Water Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3</p> <p>Fiscal Years 2002-2003 through 2011-2012</p> <p>Filed on February 18, 2021</p> <p>City of Hawaiian Gardens, Claimant</p>	<p>Case No.: 20-0304-I-12</p> <p><i>Municipal Stormwater and Urban Runoff Discharges</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted September 23, 2022)</i></p> <p><i>(Served September 27, 2022)</i></p>
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DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on September 23, 2022. Lisa Kurokawa appeared on behalf of the State Controller’s Office. The claimant did not appear.

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

The Commission adopted the Proposed Decision, with minor changes at the hearing, to approve the IRC by a vote of 7-0, as follows:

Member	Vote
Lee Adams, County Supervisor	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Sarah Olsen, Public Member	Yes
Renee Nash, School District Board Member	Yes
Shawn Silva, Representative of the State Controller	Yes
Spencer Walker, Representative of the State Treasurer, Vice Chairperson	Yes

Summary of the Findings

This IRC challenges reductions by the State Controller's Office (Controller) to reimbursement claims filed by the City of Hawaiian Gardens (claimant) for fiscal years 2002-2003 through 2011-2012 (audit period) under the *Municipal Stormwater and Urban Runoff Discharges* program. At issue is the Controller's reduction based on its finding that the claimant did not provide contemporaneous source documentation to support its claim under the reasonable reimbursement methodology (RRM) for the number of weekly trash collections claimed during the audit period. The Controller reduced the number of collections claimed from twice weekly (104 annually) to once weekly (52 annually).

The Commission finds that this IRC was timely filed.

The Commission further finds that the Controller's reduction of costs claimed for twice-weekly trash collection, based on the claimant's failure to provide contemporaneous source documents, is incorrect as a matter of law. The Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program do not require the claimant to provide contemporaneous source documentation to support a claim for ongoing maintenance activities, including trash collection, under the RRM. Rather, "[t]he RRM is in lieu of filing detailed documentation of actual costs."¹ Thus, section VII.B. of the Parameters and Guidelines, which pertains to costs claimed using an RRM, simply requires that "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."²

Even if the Parameters and Guidelines could be interpreted to require contemporaneous source documentation to support the ongoing trash collection activities, applying this requirement to the claiming period before the Parameters and Guidelines were adopted (fiscal years 2002-2003 through 2010-2011) would violate due process and be incorrect as a matter of law.³ The claimant was not on notice of a contemporaneous source document requirement when incurring the costs during fiscal years 2002-2003 through 2010-2011 because the Parameters and Guidelines were not adopted until March 2011.⁴

Included with the IRC is a Time Log that lists the number of trash pickups (two per week) per fiscal year from 2002-2003 to 2010-2011, which is signed by Joe Vasquez, Public Works Superintendent, and states that "I hereby certify under the penalty of perjury the [sic] laws of the State of California that the foregoing is true and correct based upon my personal knowledge."

¹ Exhibit A, IRC, filed February 18, 2021, page 279 (Parameters and Guidelines).

² Exhibit A, IRC, filed February 18, 2021, page 280 (Parameters and Guidelines).

³ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802-813; *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527; *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784; *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

⁴ Exhibit A, IRC, filed February 18, 2021, page 274 (Parameters and Guidelines).

The log is dated September 27, 2011.⁵ However, there is no evidence in the record showing that Mr. Vasquez was employed by the claimant as a public works superintendent during the audit period, so it is unclear what his “personal knowledge” is based on. The mandated program began July 1, 2002, up to nine years before the Time Log was signed by Mr. Vasquez in September 2011.

The other two documents included with the IRC are a letter from the claimant’s Finance Director indicating that 24 receptacles were cleaned twice per week in fiscal year 2011-2012, and a reimbursement claims receipt that lists the amounts claimed during the audit period.⁶

The Final Audit Report does not indicate that the auditors received or considered these documents filed with the IRC.

Because the Controller did not apply the correct (RRM) standard to determine whether the documentation provided was sufficient to show twice-weekly trash collection during the audit period, and the claimant provided additional documentation that the Controller may not have reviewed, the Commission approves this IRC and remands the reimbursement claims back to the Controller to further review and verify the costs claimed and reinstate those costs that are eligible for reimbursement in accordance with this decision.

COMMISSION FINDINGS

I. Chronology

- 09/28/2011 The claimant dated its reimbursement claims for fiscal years 2002-2003 through 2010-2011 with this date.⁷
- 01/17/2013 The claimant dated its reimbursement claim for fiscal year 2011-2012 with this date.⁸
- 06/27/2018 The Controller issued the Draft Audit Report.⁹
- 07/09/2018 The claimant filed comments on the Draft Audit Report.¹⁰

⁵ Exhibit A, IRC, filed February 18, 2021, page 29 (Time Log).

⁶ Exhibit A, IRC, filed February 18, 2021, pages 31 and 307 (Nov. 8, 2012 Letter from Claimant to Cost Recovery Systems, Claims Receipt).

⁷ Exhibit A, IRC, filed February 18, 2021, pages 308 (2002-2003 claim), 310 (2003-2004 claim), 312 (2004-2005 claim), 314 (2005-2006 claim), 316 (2006-2007 claim), 318 (2007-2008 claim), 320 (2008-2009 claim), 322 (2009-2010 claim), and 324 (2010-2011 claim). A cover sheet entitled “Reimbursement Claims Receipt,” that lists the claims for fiscal years 2002-2003 through 2010-2011, is dated September 28, 2011 (Exhibit A, IRC, filed February 18, 2021, page 307).

⁸ Exhibit A, IRC, filed February 18, 2021, page 326 (2011-2012 reimbursement claim).

⁹ Exhibit A, IRC, filed February 18, 2021, page 296 (Final Audit Report).

¹⁰ Exhibit A, IRC, filed February 18, 2021, page 296, 303 (Final Audit Report).

- 08/09/2018 The Controller issued the Final Audit Report.¹¹
- 02/18/2021 The claimant filed the IRC.¹²
- 07/12/2022 Commission staff issued the Draft Proposed Decision.¹³
- 08/02/2022 The Controller filed comments on the Draft Proposed Decision.¹⁴
- 08/02/2022 The claimant filed comments on the Draft Proposed Decision.¹⁵

II. Background

This IRC challenges the Controller's reductions of costs claimed for fiscal years 2002-2003 through 2011-2012 under the *Municipal Stormwater and Urban Runoff Discharges* program to install and maintain trash receptacles at public transit stops.¹⁶

A. The Municipal Stormwater and Urban Runoff Discharges Program

The *Municipal Stormwater and Urban Runoff Discharges* program resulted from a Consolidated Test Claim filed by the County of Los Angeles and several cities within the County alleging various activities related to, amongst other things, installation and maintenance of trash receptacles at transit stops to reduce stormwater pollution in compliance with a permit issued by the Los Angeles Regional Water Quality Control Board, a state agency.¹⁷ The purpose of the permit was to protect the beneficial uses of receiving waters in Los Angeles County by reducing the discharge of pollutants into storm water to the maximum extent practicable.¹⁸

On July 31, 2009, the Commission adopted the Test Claim Decision,¹⁹ finding that the following activities in part 4F5c3 of the permit imposed a reimbursable state mandate on those local agencies subject to the permit that are not subject to a trash total maximum daily load:

¹¹ Exhibit A, IRC, filed February 18, 2021, page 292 (Final Audit Report).

¹² Exhibit A, IRC, filed February 18, 2021, page 1.

¹³ Exhibit B, Draft Proposed Decision, issued July 12, 2022.

¹⁴ Exhibit C, Controller's Comments on the Draft Proposed Decision, filed August 2, 2022.

¹⁵ Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed August 2, 2022.

¹⁶ Exhibit A, IRC, filed February 18, 2021, pages 1, 292, 294, 300 (Final Audit Report).

¹⁷ Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 11, (Final Staff Analysis).

¹⁸ Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 11, (Final Staff Analysis).

¹⁹ Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, pages 3, 12, (Final Staff Analysis).

Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.²⁰

The Commission adopted the Parameters and Guidelines for this program on March 24, 2011.²¹ Section IV.A., identifies the following one-time reimbursable activities:

- 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.²²

Section IV.B. lists the following ongoing activities as reimbursable:

- 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.

²⁰ Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 3, 12, (Final Staff Analysis).

²¹ Exhibit A, IRC, filed February 18, 2021, page 274 (Parameters and Guidelines).

²² Exhibit A, IRC, filed February 18, 2021, page 277 (Parameters and Guidelines).

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.²³

Under section IV., only “actual costs” are reimbursed for one-time activities (A.1.-A.5.), whereas ongoing activities (B.1.-B.5.) are reimbursed under the “reasonable reimbursement methodology.”²⁴

“Actual costs” are defined as “those costs actually incurred to implement the mandated activities” and which “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.”²⁵ Under section IV., “contemporaneous source documents” are required to support actual costs: “document[s] created at or near the same time the actual costs were incurred for the event or activity in question” and “may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.”²⁶ Section IV. further provides as follows regarding corroborating evidence:

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.²⁷

Under section VII.A., a reimbursement claim for actual costs requires the claimant to retain “[a]ll documents used to support the reimbursable activities, as described in Section IV.”²⁸

Section VI. describes the RRM for the ongoing costs, including the costs to collect trash “no more than three times per week”:

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 unit cost of

²³ Exhibit A, IRC, filed February 18, 2021, page 277 (Parameters and Guidelines). Emphasis in original.

²⁴ Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

²⁵ Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

²⁶ Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

²⁷ Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

²⁸ Exhibit A, IRC, filed February 18, 2021, page 280 (Parameters and Guidelines).

\$6.74, during the period of July 1, 2002 to June 30, 2009, 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 week. Beginning in fiscal year 2009-2010, the RRM shall be adjusted annually by the implicit price deflator as forecast by the Department of Finance.²⁹

Section VII.B., which pertains to ongoing costs claimed using an RRM, requires as follows:

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.³⁰

B. The Controller’s Audit and Summary of the Issues

In its sole audit finding, the Controller found that of the \$169,503 in total costs claimed, \$84,754 was reimbursable and \$84,749 was not reimbursable because the claimant did not provide contemporaneous source documentation to support its claim under the reasonable reimbursement methodology for the twice-per-week trash collections claimed for the audit period.³¹ As stated in the audit report: “The city claimed two transit-stop trash collections per week, totaling 104 annual collections. We found that one transit-stop trash collection per week, totaling 52 annual collections, is allowable.”³²

The claimant provided the Controller with the following documentation to support its claimed trash collection costs:

- A bus stop list (date generated unknown) indicating that the transit-stop trash receptacles were maintained twice a week by city employees.
- A letter addressed to its consultant, dated December 17, 2014, stating that the transit-stop trash receptacles are maintained twice per week.³³

The Controller found that the documentation provided did not meet the criteria outlined in the Parameters and Guidelines. According to the Final Audit Report:

We requested that the city provide us with source documents maintained during the audit period, such as policy and procedural manuals regarding transit-stop trash collection activities, duty statements of the employees performing weekly trash collections activities, and/or trash collection route maps. The city stated that it does not keep these types of records. As the documentation provided was not contemporaneous and was not created during the audit period, we found that the

²⁹ Exhibit A, IRC, filed February 18, 2021, pages 279-280 (Parameters and Guidelines).

³⁰ Exhibit A, IRC, filed February 18, 2021, page 280 (Parameters and Guidelines).

³¹ Exhibit A, IRC, filed February 18, 2021, pages 292, 294, 300 (Final Audit Report).

³² Exhibit A, IRC, filed February 18, 2021, page 300 (Final Audit Report).

³³ Exhibit A, IRC, filed February 18, 2021, page 300 (Final Audit Report).

city did not provide sufficient source documentation to support two weekly trash collection activities, totaling 104 annual collections.³⁴

To support its position regarding the contemporaneous source document requirement, the Controller cited to the following portions of the Parameters and Guidelines:

Section VII. (Records Retention) of the parameters and guidelines states, in part:

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.³⁵

The Controller said it “physically observed the ongoing maintenance of the transit-stop trash receptacles located throughout the city. Absent source documentation to support two weekly collections,” the Controller “determined that one weekly collection, totaling 52 annual collections, is allowable.”³⁶

III. Positions of the Parties

A. City of Hawaiian Gardens

The claimant maintains that the documentation provided to the auditors was contemporaneous and in compliance with the Claiming Instructions, which it argues require only two pieces of information: the number of eligible receptacles serviced and the maintenance frequency (trash pickups) at these receptacles.³⁷ According to the IRC:

The City was first made aware of this claiming opportunity on May 31, 2011 when the Claiming Instructions were released. To prepare claims for State Reimbursement, then Public Works Superintendent, Joe Vasquez, completed the attached Time Log form in September, 2011 attesting and certifying under the penalty of perjury that eligible transit stops were maintained on a twice weekly schedule during FY 2002-03 through FY 2010-11; a time period during which Mr. Vasquez was employed and would have had first-hand knowledge of as the direct supervisor of this program (See Exhibit C).

The document was “contemporaneous” because in September 2011 the mandate was still active and the eligible activities were being actively performed. In addition, this would have been the earliest any document could have been generated to support mandated costs as it was prepared almost immediately after claiming instructions were released.

³⁴ Exhibit A, IRC, filed February 18, 2021, pages 300-301 (Final Audit Report).

³⁵ Exhibit A, IRC, filed February 18, 2021, page 301 (Final Audit Report).

³⁶ Exhibit A, IRC, filed February 18, 2021, page 301 (Final Audit Report).

³⁷ Exhibit A, IRC, filed February 18, 2021, page 4.

On November 8, 2012 the City’s Finance Director sent Cost Recovery Systems the attached letter (See Exhibit D) for purposes of submitting the FY 11-12 reimbursement claims. This also was a contemporaneous record of activities being actively performed by the city having been generated “at or near the time” that the activities were begin [sic] performed. . . .

[¶] . . . [¶]

The city disputes the SCO’s [Controller’s] positions that 1) “... the documentation provided was not contemporaneous and was not created during the audit period, 2) the documentation the city provided was not adequate to prove maintenance frequency, and 3) that requesting these very specific and non-standard forms of documentation after the fact and without proper notice would be unfair, arbitrary, and capricious and would violate “Due Process”.³⁸

The claimant points out that the Parameters and Guidelines and Claiming Instructions were released on May 2011, and authorized two claiming methods, one for one-time costs and one for on-going maintenance costs. Ongoing activities are reimbursed under a Reasonable Reimbursement Methodology, which the Parameters and Guidelines say is “in lieu of filing detailed documentation of actual costs.” The claimant argues that the Claiming Instructions contain “no requirement to or mention of "policy and procedure manuals regarding trash activities, duty statements of the employees performing weekly trash collection activities, and/or trash collection route maps.”³⁹

The claimant also argues that “the form signed by Public Works Supervisor Vasquez only 4 months after the release of the claiming instructions and the letter from the finance director the following year to support FY 2011-12 costs were actual, contemporaneous forms of documentation.”⁴⁰ According to the claimant:

The mandate was still active at the time the 2011 log and the 2012 letter were prepared and the staff that provided the information would have had first-hand knowledge of the activities. The State Controller could not say that the 2011 and 2012 documents provided by the city were not "created at or near the same time actual costs were incurred" as claims for FY 2010-11 and FY 2011-12 would have been actual and contemporaneous.⁴¹

The claimant “believes that documentation provided satisfied the requirements of the Claiming Instructions, Parameters and Guidelines, and the Federal GAO Audit Guidelines.”⁴² The claimant also argues that the types of records and documentation the Controller requested to

³⁸ Exhibit A, IRC, filed February 18, 2021, pages 3-4.

³⁹ Exhibit A, IRC, filed February 18, 2021, pages 4-5.

⁴⁰ Exhibit A, IRC, filed February 18, 2021, pages 5-6.

⁴¹ Exhibit A, IRC, filed February 18, 2021, page 6.

⁴² Exhibit A, IRC, filed February 18, 2021, page 7.

support maintenance frequency are not the types of records commonly maintained by local agencies.⁴³

The claimant further contends that the Controller's request for new material violates due process, which requires that claimants have reasonable notice of any law that affects their substantive rights and liabilities. The claimant cites *Clovis Unified School Dist. v. Chiang* regarding the court's refusal to apply the contemporaneous source document rule because it was an underground regulation as applied to the time before the rule was incorporated into the parameters and guidelines.⁴⁴

The claimant further notes that the claiming instructions specify that the frequency of trash pickups is limited to no more than three times per week, so the claimant's twice weekly pickups are "well within 'reasonable' standards established under the instructions and supported by actual records and documentation."⁴⁵

In its comments on the Draft Proposed Decision, the claimant concurs with the staff recommendation and states, "We look forward to working with the State Controller's Office to reach an equitable resolution for these costs."⁴⁶

B. State Controller's Office

The Controller did not file comments on the IRC. However, the Controller filed comments concurring with the Draft Proposed Decision.⁴⁷

IV. Discussion

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

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

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

⁴³ Exhibit A, IRC, filed February 18, 2021, page 7.

⁴⁴ Exhibit A, IRC, filed February 18, 2021, page 8. *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794.

⁴⁵ Exhibit A, IRC, filed February 18, 2021, page 9.

⁴⁶ Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed August 2, 2022.

⁴⁷ Exhibit C, Controller's Comments on the Draft Proposed Decision, filed August 2, 2022.

the California Constitution.⁴⁸ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁴⁹

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.⁵⁰ Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support...” [Citations.] When making that inquiry, the “ ‘ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ” [Citation.]’ ”⁵¹

The Commission must review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.⁵² In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.⁵³

A. The Claimant Timely Filed the IRC.

Section 1185.1(c) of the Commission’s regulations requires an IRC to be filed with the Commission no later than three years after the date the claimant first receives from the Controller

⁴⁸ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁴⁹ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁵⁰ *Johnson v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

⁵¹ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

⁵² *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

⁵³ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of Code of Civil Procedure section 1094.5 to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c).⁵⁴ Under Government Code section 17558.5(c), the Controller must notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review.⁵⁵ The notice must specify which claim components were adjusted and in what amount, as well as interest charges on claims adjusted, and the reason for the adjustment.⁵⁶

Here, the Controller issued its Final Audit Report on August 9, 2018.⁵⁷ The Final Audit Report specifies the claim components and amounts adjusted, as well as the reasons for the adjustments.⁵⁸ Thus, the Final Audit Report complies with the notice requirements of section 17558.5(c). The claimant filed the IRC on February 18, 2021, within three years of the date of the Final Audit Report.⁵⁹ Therefore, the Commission finds that the IRC was timely filed.

B. The Controller’s Reduction of Costs Claimed, Based on Its Finding That the Claimant Failed to Provide Contemporaneous Source Documentation to Support Its Claim Under the Reasonable Reimbursement Methodology for the Number of Trash Collections Performed During the Audit Period, Is Incorrect as a Matter of Law.

At issue is the Controller’s reduction of costs claimed, based on its finding that the claimant overstated the annual number of trash collections performed during the audit period. “The city claimed two transit-stop trash collections per week, totaling 104 annual collections. We found that one transit-stop trash collection per week, totaling 52 annual collections, is allowable.”⁶⁰

In finding that the claimant provided insufficient documentation in support of its claim of twice-weekly trash collection for the duration of the audit period, the Controller explained that the claimant failed to provide contemporaneous source documentation.

We requested that the city provide us with source documents maintained during the audit period, such as policy and procedural manuals regarding transit-stop trash collection activities, duty statements of the employees performing weekly trash collections activities, and/or trash collection route maps. The city stated that it does not keep these types of records.

As the documentation provided was not contemporaneous and was not created during the audit period, we found that the city did not provide sufficient source

⁵⁴ California Code of Regulations, title 2, section 1185.1.

⁵⁵ Government Code section 17558.5(c).

⁵⁶ Government Code section 17558.5(c).

⁵⁷ Exhibit A, IRC, filed February 18, 2021, page 292 (Final Audit Report).

⁵⁸ Exhibit A, IRC, filed February 18, 2021, pages 292-301 (Final Audit Report).

⁵⁹ Exhibit A, IRC, filed February 18, 2021, page 1.

⁶⁰ Exhibit A, IRC, filed February 18, 2021, page 300 (Final Audit Report).

documentation to support two weekly trash collection activities, totaling 104 annual collections.⁶¹

The Controller allowed once weekly collections (52 annually) because the Controller “physically observed the ongoing maintenance of the transit-stop trash receptacles located throughout the city” during audit fieldwork.⁶²

The claimant challenges the Controller’s request for highly specific and detailed contemporaneous source documentation as beyond the scope of the Parameters and Guidelines and asserts that the documentation provided was sufficient.⁶³

1. The Parameters and Guidelines do not require the claimant to provide contemporaneous source documentation to support a claim based on the reasonable reimbursement methodology for ongoing maintenance activities, including trash collection.

The Controller asserts in the Final Audit Report that the claimant’s documentation to support twice-weekly trash collection activities was insufficient because it did not include “source documents maintained during the audit period” and “was not contemporaneous and was not created during the audit period.”⁶⁴ The Parameters and Guidelines impose no such requirement. The contemporaneous source document requirement does not apply to the ongoing costs reimbursed under the RRM.

The Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program allow for two categories of reimbursable activities.⁶⁵ In Section IV.A., installation activities are categorized as “one-time” activities and are reimbursed using the actual cost method.⁶⁶ In Section IV.B. are maintenance activities that are categorized as “ongoing” activities, and are reimbursed using an RRM.⁶⁷ Section IV. states:

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. The ongoing activities in section IV.B below are reimbursed under a reasonable reimbursement methodology.⁶⁸

Section IV.B. lists trash collection as an ongoing maintenance activity and states that the activity “is limited to no more than three times per week.”⁶⁹

⁶¹ Exhibit A, IRC, filed February 18, 2021, pages 300-301 (Final Audit Report).

⁶² Exhibit A, IRC, filed February 18, 2021, page 301 (Final Audit Report).

⁶³ Exhibit A, IRC, filed February 18, 2021, pages 4-8.

⁶⁴ Exhibit A, IRC, filed February 18, 2021, pages 300-301 (Final Audit Report).

⁶⁵ Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

⁶⁶ Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

⁶⁷ Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

⁶⁸ Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

⁶⁹ Exhibit A, IRC, filed February 18, 2021, page 277 (Parameters and Guidelines).

Section VI., which addresses claim preparation for the reimbursable ongoing activities identified in section IV.B., reiterates the limited and exclusive use of an RRM for ongoing activities “in lieu of filing detailed documentation of actual costs.”⁷⁰

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.*⁷¹

The records retention requirements in section VII. of the Parameters and Guidelines separately address which records must be retained for a claim for actual costs versus using the RRM.⁷² Section VII.B., which pertains solely to the ongoing costs using the RRM, states that local agencies are required to retain “documentation which supports the reimbursement of maintenance costs” including documentation showing the number of trash collections:

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.⁷³

Section VII.B. does not require that the documentation supporting the number of trash collections under the RRM be contemporaneous. Nor does section VII.B. refer back to the contemporaneous source document requirement in section IV. of the Parameters and Guidelines for “actual costs” claimed. The Parameters and Guidelines instead state that reimbursement for trash collection using the “RRM is in lieu of filing detailed documentation of actual costs.”⁷⁴ This language is consistent with Government Code sections 17518.5 and 17557(f), which provide that the RRM “shall be 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,” and that the reimbursement methodology balance “accuracy with simplicity.”

In contrast, section VII. A., which describes the record retention requirements for the reimbursement of one-time activities using the actual cost method, expressly refers to the documentation requirements in section IV. of the Parameters and Guidelines, which in turn requires that the supporting documentation be contemporaneous. Section VII.A. states in

⁷⁰ Exhibit A, IRC, filed February 18, 2021, page 280 (Parameters and Guidelines).

⁷¹ Exhibit A, IRC, filed February 18, 2021, pages 279-280 (Parameters and Guidelines). Emphasis added.

⁷² Exhibit A, IRC, filed February 18, 2021, page 280 (Parameters and Guidelines).

⁷³ Exhibit A, IRC, filed February 18, 2021, page 280 (Parameters and Guidelines).

⁷⁴ Exhibit A, IRC, filed February 18, 2021, page 280 (Parameters and Guidelines).

relevant part: “All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit.”⁷⁵

And section IV. summarizes the contemporaneous source documents required for “actual costs;” namely, documents created at or near the same time the actual costs were incurred, as follows:

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.⁷⁶

Therefore, based on the plain language of the Parameters and Guidelines, the contemporaneous source document requirement applicable to claims using the actual cost method does not apply to ongoing costs claimed under the RRM.

This conclusion is further supported by the analysis adopted by the Commission on the Parameters and Guidelines on March 24, 2011, for the *Municipal Stormwater and Urban Runoff Discharges* program.⁷⁷ As part of the Parameters and Guidelines drafting process, the claimants initially requested an RRM for the ongoing trash receptacle maintenance activities listed in

⁷⁵ Exhibit A, IRC, filed February 18, 2021, page 280 (Parameters and Guidelines).

⁷⁶ Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

⁷⁷ Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 11, (Final Staff Analysis).

section IV.B. of the Parameters and Guidelines.⁷⁸ The Controller opposed the RRM and instead sought “actual costs incurred, supported by documentation of the costs.”⁷⁹

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.⁸⁰

In discussing how to calculate trash collection frequency under the Parameters and Guidelines, the Commission’s adopted analysis states:

Claimants did not propose how frequently the trash receptacles would be emptied. Survey data submitted with the revised parameters and guidelines 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.”⁸¹

In comments on the Draft Staff Analysis, the claimants proposed adding language to section IV.B. that would allow reimbursement for repetitive trash collection activities under either the actual cost method or the RRM.

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 [reasonable

⁷⁸ Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 21, (Final Staff Analysis).

⁷⁹ Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 21, (Final Staff Analysis).

⁸⁰ Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 21, 40-42, (Final Staff Analysis).

⁸¹ Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 37, (Final Staff Analysis).

reimbursement methodology] rates for repetitive trash collection tasks.”
Claimants further include the option to use time studies for repetitive tasks.⁸²

In rejecting the claimants’ proposed language, the Commission determined that allowing the claimants to choose how to claim costs would frustrate the purpose of using an RRM, which is to balance “accuracy with simplicity.”⁸³

The RRM is intended to balance “accuracy with simplicity.” (Gov. Code, § 17557, subd. (f).) Allowing claimants to elect to claim costs 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.”⁸⁴

The Commission instead added the following record retention language “for any audits conducted by the State Controller’s Office of the costs claimed using the RRM” to section VII.B of the Parameters and Guidelines.

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. 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

⁸² Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 38, (Final Staff Analysis).

⁸³ Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 38, (Final Staff Analysis).

⁸⁴ Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, pages 38-39, (Final Staff Analysis).

period subject to audit, the record retention period is extended until the ultimate resolution of any audit findings.⁸⁵

There is no discussion in the Draft Staff Analysis for the Parameters and Guidelines, the comments filed by the parties thereon, or the Final Staff Analysis adopted by the Commission regarding any objection to or request to change the record retention requirements for costs claimed using the RRM, as stated in section VII.B. of the Parameters and Guidelines.

Accordingly, the Commission finds that the Parameters and Guidelines do not require the claimant to provide contemporaneous source documentation to support a claim based on the RRM for ongoing maintenance activities, including trash collection. Therefore, the Controller's reduction of costs claimed, based on its finding that the claimant failed to provide contemporaneous source documentation to support the number of trash collections claimed during the audit period is incorrect as a matter of law.

2. Assuming the Parameters and Guidelines could be interpreted to require contemporaneous source documentation to support the ongoing trash collection activities, applying that requirement to the claiming period before the Parameters and Guidelines were adopted (fiscal years 2002-2003 through 2010-2011) would violate due process and be incorrect as a matter of law.

The claimant argues that requiring it to maintain the “specific and non-standard types of documentation” the Controller requested as part of the audit, when such documentation is included in neither the Parameters and Guidelines adopted in March 2011 nor the revised Claiming Instructions issued in July 2015, violates due process.⁸⁶ The claimant asserts that any provision in the Parameters and Guidelines that affects the claimant's substantive rights or liabilities and changes the legal consequences of past events is unlawfully retroactive and therefore violates the claimant's due process rights.⁸⁷

Parameters and guidelines are regulatory in nature and are interpreted the same as regulations and statutes.⁸⁸ As such, they cannot be applied retroactively where due process considerations prevent it.⁸⁹ Due process requires reasonable notice of any substantive change affecting the substantive rights and liabilities of the parties.⁹⁰ A change is substantive if it imposes new, additional, or different liabilities on past conduct.⁹¹ “The retroactive application of a statute is

⁸⁵ Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 43. Emphasis added, (Final Staff Analysis).

⁸⁶ Exhibit A, IRC, filed February 18, 2021, page 8.

⁸⁷ Exhibit A, IRC, filed February 18, 2021, page 8 (citing *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912).

⁸⁸ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

⁸⁹ *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527.

⁹⁰ *In. re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784

⁹¹ *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527.

one that affects rights, obligations or conditions that existed before the time of the statute's enactment, giving them an effect different from that which they had under the previously existing law.”⁹² Therefore, if a provision in the parameters and guidelines affects the substantive rights or liabilities of the parties such that it changes the legal effects of past events, it may be considered unlawfully retroactive under principles of due process.⁹³

In *Clovis Unified School Dist. v. Chiang*, the Controller used the contemporaneous source document rule (CSDR) to reduce reimbursement claims for state-mandated school district programs.⁹⁴ The Controller had revised its claiming instructions to include the CSDR, whereas the operative Parameters and Guidelines did not include such a requirement.⁹⁵ The CSDR stated:

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, ‘I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge.’ Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.⁹⁶

The court held that the CSDR was an invalid underground regulation under the Administrative Procedure Act for the audit period at issue and overturned the Controller’s audits. Notably, and of relevance here, the court found substantial evidence showing that prior to the Controller’s use of the CSDR in performing audits, the Controller had approved reimbursement based on (1) declarations and certifications from employees that set forth, after the fact, the time they spent on mandated tasks; or (2) an annual accounting of time based upon the number of mandated

⁹² *In re Cindy B.* (1987) 192 Cal.App.3d 771, 779.

⁹³ *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

⁹⁴ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 797.

⁹⁵ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 801–802.

⁹⁶ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802.

activities and the average duration of each activity.⁹⁷ The court recognized that “it is now physically impossible to comply with the CSDR’s requirement of contemporaneousness”⁹⁸

The Controller, however, requested that the court take judicial notice that the Commission adopted the CSDR by later amending the Parameters and Guidelines. The court denied the request and did not apply the CSDR, since the issue concerned the use of the rule in earlier years, when no notice was provided to the claimant. The court stated:

We deny this request for judicial notice. This is because the central issue in the present appeal concerns the Controller’s policy of using the CSDR during the 1998 to 2003 fiscal years, when the CSDR was an underground regulation. This issue is not resolved by the Commission’s subsequent incorporation of the CSDR into its Intradistrict Attendance and Collective Bargaining Programs’ P & G’s.⁹⁹

The court determined that the Parameters and Guidelines in effect at the time the mandated costs were incurred were the Parameters and Guidelines that governed the audit.¹⁰⁰

Here, the claimant was not on notice of a contemporaneous source document requirement when the costs were incurred in fiscal years 2002-2003 through 2010-2011 because the Parameters and Guidelines were not adopted until March 2011. Thus, requiring the claimant to provide contemporaneous source documentation for costs incurred during the fiscal years preceding adoption of the Parameters and Guidelines (fiscal years 2002-2003 through 2010-2011) would violate due process and be incorrect as a matter of law.

C. Because the Controller Did Not Apply the Correct (RRM) Standard to Determine Whether the Documentation Provided was Sufficient to Show Twice-Weekly Trash Collection, and the Claimant Provided Additional Documentation That the Controller May Not Have Reviewed, This Matter Is Remanded to the Controller for Further Review.

Government Code section 17561(d) authorizes the Controller to conduct an audit in order to verify the application of a reasonable reimbursement methodology and to reduce any claims that are excessive or unreasonable. Government Code section 12410 also provides:

The Controller shall superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment.

The courts have also held that the Controller’s duty to audit includes the duty to ensure that expenditures are authorized by law.¹⁰¹ Thus, even without the Parameters and Guidelines, the Controller is authorized by law to audit a claim for reimbursement and require the claimant to

⁹⁷ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802.

⁹⁸ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805.

⁹⁹ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 809, fn. 5. Emphasis in original.

¹⁰⁰ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812-813.

¹⁰¹ *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335.

provide documentation supporting the claim for twice-weekly trash collection per receptacle in order to verify the costs claimed under the RRM. As indicated above, prior to the Controller's use of the CSDR, the Controller approved reimbursement based on (1) declarations and certifications from employees that set forth, after the fact, the time they spent on mandated tasks; or (2) annual accountings of time.¹⁰²

According to the Final Audit Report, the claimant provided the Controller with the following documentation to support costs incurred for two trash collections per receptacle per week (104 annually) for the period of July 1, 2002 through June 30, 2012:

- A bus stop list (date generated unknown) indicating that the transit-stop trash receptacles were maintained twice a week by city employees.
- A letter addressed to its consultant, dated December 17, 2014, stating that the transit-stop trash receptacles are maintained twice per week.¹⁰³

Neither of the above documents are included in the record for this IRC.

The documentation the claimant provided in the IRC consists of:

- A Time Log for the municipal stormwater mandate. This is a spreadsheet that lists the number of trash pickups (two per week) per fiscal year from 2002-2003 to 2010-2011. The spreadsheet includes a column for "24 receptacles" as well as hourly rate information and the last column for "eligible reimbursement." Above the signature of Joe Vasquez, Public Works Superintendent, it says, "I hereby certify under the penalty of perjury the [sic] laws of the State of California that the foregoing is true and correct based upon my personal knowledge." The log is dated September 27, 2011.¹⁰⁴
- A letter from the claimant (signed by David Sung, Finance Director) to its consultant dated November 8, 2012, stating in pertinent part: "The information for the stormwater data for FY 11-12 is as follows: 24 receptacles, cleaned out twice a week, At an hourly rate of \$23.69, cleaning time 0.5 each, Time Frame for 52 weeks. There have been no changes from last year for the data needed to complete your report."¹⁰⁵
- A 'reimbursement claims receipt' that lists the fiscal years and amounts claimed from 2002-2003 to 2010-2011, and states "The following claims were submitted to and received by the State Controller's Office by Cost Recovery Systems on behalf of the City of Hawaiian Gardens." It is signed by Finance Director David Sung and dated September 28, 2011.¹⁰⁶

¹⁰² *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802.

¹⁰³ Exhibit A, IRC, filed February 18, 2021, page 300 (Final Audit Report).

¹⁰⁴ Exhibit A, IRC, filed February 18, 2021, page 29 (Time Log). According to the narrative in the IRC (page 3), this log was "to prepare claims for reimbursement."

¹⁰⁵ Exhibit A, IRC, filed February 18, 2021, page 31 (Nov. 8, 2012 Letter from Claimant to Cost Recovery Systems).

¹⁰⁶ Exhibit A, IRC, filed February 18, 2021, page 307 (Claims Receipt).

The only indication in the record that the Controller received the documents above during the course of the audit is the IRC narrative that says the first two documents (the time log and letter) were provided to the auditors.¹⁰⁷ Although the Final Audit Report describes other documents that were provided to the auditors, the report does not indicate that the auditors received, reviewed, or considered them.

The Time Log filed with the IRC is signed by the Public Works Superintendent Joe Vasquez under penalty of perjury and states that it is based on his personal knowledge. The IRC narrative contends that Mr. Vasquez was employed during the audit years “and [he] would have had first-hand knowledge of [the number of trash collections per receptacle per week] as the direct supervisor of this program.”¹⁰⁸ However, there is no statement in the declaration or evidence in the record showing that the claimant employed Mr. Vasquez as a public works superintendent during the audit period, so it is not clear on what his “personal knowledge” is based. Thus, more information is needed to determine if his declaration is reliable. The mandate began July 1, 2002, more than nine years before the Time Log was signed by Mr. Vasquez in September 2011.

Similarly, the November 8, 2012 letter from the claimant to Cost Recovery Systems gives information regarding the number of receptacles, frequency of trash collection, hourly rate, cleaning time and time frame (52 weeks), for the mandate. However, the letter does not indicate the source of the author’s knowledge of the alleged facts in the letter. The same is true of the reimbursement claims receipt signed by the claimant’s Finance Director on September 28, 2011. None of the documentation in the record describes what the declarant’s knowledge is based on or how he knows that information (e.g., how long he has been employed by the city or in what capacity).

Accordingly, since the Controller did not correctly apply the documentation requirements to determine the number of trash collections, and the claimant has provided additional documentation that the Controller may not have reviewed, the Commission remands the reimbursement claims back to the Controller to further review and verify the costs claimed under the RRM based on the number of weekly trash collections during the audit period and reinstate those costs that are eligible for reimbursement in accordance with this Decision.

V. Conclusion

For the foregoing reasons, the Commission approves this IRC and concludes that the IRC was timely filed, and that the Controller incorrectly reduced the costs claimed under the RRM pertaining to the number of weekly trash collections during fiscal years 2002-2003 through 2011-2012.

The Commission also remands the reimbursement claims back to the Controller to further review and verify the costs claimed under the RRM based on the number of weekly trash collections during the audit period and reinstate those costs that are eligible for reimbursement in accordance with this Decision.

¹⁰⁷ Exhibit A, IRC, filed February 18, 2021, page 4.

¹⁰⁸ Exhibit A, IRC, filed February 18, 2021, page 3.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 27, 2022, I served the:

- **Decision adopted September 23, 2022**

Municipal Storm Water and Urban Runoff Discharges, 20-0304-I-12

Los Angeles Regional Quality Control Board Order No. 01-182,

Permit CAS004001, Part 4F5c3

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008,
2008-2009, 2009-2010, 2010-2011, 2011-2012

City of Hawaiian Gardens, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 27, 2022 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/19/22

Claim Number: 20-0304-I-12

Matter: Municipal Storm Water and Urban Runoff Discharges

Claimant: City of Hawaiian Gardens

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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