



August 26, 2022

Number 2022-15

Unfunded Mandates Proposed Decision – Staff of the [Commission on State Mandates](#) released the [Draft Proposed Decision](#) on the unfunded mandate test claim filed by permittees regarding Santa Ana Regional Water Quality Control Board Order No. R8-2009-0030. The Commission staff recommended denial of the claim.

The test claim was filed in 2010, following the adoption of [Order R8-2009-0030](#). In the intervening 12 years various extensions were granted to the Regional Water Board and claimants to provide requested information, comments, and rebuttals leading to the August 17, 2022, Draft Proposed Decision. The [full record of the claim](#) and submitted information on the matter are available on the Commission's website.

As specified in [Article XIII B of the California Constitution](#) the state must reimburse local governments for state mandated new programs or higher levels of service for the costs of the program or increased level of service. Exceptions to this rule include programs mandated by the federal government or when the local government can levy fees to pay for the mandated program or service. Twelve other stormwater permit test claims are [pending](#) before the Commission.

The test claim identified several provisions of Order R8-2009-0030 as requiring implementation of programs that impose state mandated programs or higher levels of service. Cited provisions included: complying with waste load allocations for metals, organochlorine compounds, selenium, fecal coliform, and pesticides in five watersheds and developing a Cooperative Watershed Plan; implementation of low impact development and hydromodification requirements for public priority projects; development of a program to reduce pollutant discharges from residential areas; implementation of various aspects of the public outreach program; and implementation of aspects of the commercial/industrial control program.

The Draft Proposed Decision provides a detailed assessment of each provision and program (and includes an eleven-page summary table describing the each of the claims, issues raised, and the staff recommendations). The staff recommendations largely conclude that the permit requirements either do not impose new requirements, do not impose a state mandate for a program or higher level of service, or where a new program or higher level of service is mandated, that costs (or increased cost) are not mandated by the requirement. In particular, the Draft Proposed Decision notes that "[t]he claimants have constitutional and statutory authority to charge property-related fees for the new requirement[s]" and that the inability to pass fees requiring voter approval are not sufficient grounds for an unfunded mandate. Additionally, the staff noted that where the Regional Water Board exercised discretion, that "flexibility in terms of how to achieve that compliance, constitutes at most incidental and de minimis requirements that are part and parcel of the federal mandate."

Comments on the Draft Proposed Decision are due by September 7, 2022, and a hearing has been scheduled for December 2, 2022, via Zoom.

EPA Releases Construction Inspector Training – Effective February 2023, [EPA's 2022 Construction General Permit](#) (CGP) requires that persons conducting inspections under the EPA permit complete an EPA-training course and exam or hold a credential from an equivalent program (see NewsFlash [2022-03](#)). EPA released its online [Construction Inspection Training Course](#) that includes five modules consisting of seven hours of training.

- | | |
|---|--|
| 1. General Overview and Introduction (30 minutes) | 4. Pollution Prevention Controls (35 minutes) |
| 2. EPA's CGP Overview (60 minutes) | 5. Conducting CGP Site Inspections (150 minutes) |
| 3. Erosion and Sediment Controls (95 minutes) | |

EPA plans to release a Spanish language version later this year. The EPA CGP, including this training requirement, does not apply in California, except on tribal lands. The California CGP training standards exceed the federal requirements.