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3
4 BEFORE THE CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
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6 In the Matter of:)
7)
8 PUBLIC HEARING AND CONSIDERATION OF)
9 THE IMPOSITION OF PENALTIES AGAINST) FINDINGS AND ORDER
10)
11 **THE CITY OF CERRITOS**)
12)
13 PURSUANT TO COMPLIANCE ORDER)
14 IWMA BR 07-02)
15)
16 (PUBLIC RESOURCES CODE 41850))

17 A duly convened public hearing before the California Integrated Waste Management Board
18 ("CIWMB") having been held on January 23, 2008, in Sacramento, California, in which the City
19 of Cerritos participated, and based on the testimony and other evidence presented at that hearing
20 and based on the oral and written arguments made by the parties, City of Cerritos and Staff of
21 CIWMB,

22 THE CIWMB DOES HEREBY MAKE THE FOLLOWING FINDINGS:

- 23 1. Public Resources Code (PRC) Section 41780 requires each City or County Source
24 Reduction and Recycling Element (SRRE) to include an implementation schedule
25 that shows how the City or County shall divert 50 percent of all solid waste on and
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1 January 1, 2000, through source reduction, recycling, and composting activities.

2 2. PRC Section 41825 requires the CIWMB to review each City, County, and Regional
3 Agency's Source Reduction and Recycling Element at least every two years.

4 3. PRC Section 41825 provides that if the CIWMB finds that the City, County, or
5 Regional Agency has failed to implement its SRRE, the CIWMB shall issue an order
6 of compliance with a specific schedule for achieving compliance that shall include
7 those conditions which the CIWMB determines to be necessary for the jurisdiction to
8 complete in order to implement its SRRE.

9 4. PRC Section 41850 provides that if after holding a public hearing and issuing an
10 order of compliance pursuant to Section 41825, the CIWMB finds that the City,
11 County, or Regional Agency has failed to make a good faith effort to implement its
12 SRRE, the Board may impose administrative civil penalties upon the jurisdiction of
13 up to ten thousand dollars (\$10,000) per day until the jurisdiction implements the
14 element.

15 5. Based on the staff review of the jurisdiction's implementation of programs identified
16 in its SRRE, the CIWMB determined at a public hearing held on February 13, 2007
17 that the City of Cerritos had not made a good faith effort to implement the programs
18 as identified in their SRRE because it had failed to adequately implement programs
19 listed in its SRRE that target significant portions of the City's waste stream and failed
20 to meet the 50% diversion requirement on and after 2000. Therefore, the CIWMB
21 issued Compliance Order No. IWMA BR07-02.

22 6. The compliance order included specific requirements that the City was to meet,
23 including working with the CIWMB to develop a Local Assistance Plan, with
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1 expanded and new programs designed to achieve achieve a 50% diversion rate, that
2 the City would agree to by July 1, 2007.

3 7. The City agreed in its Local Assistance Plan to implement a number of programs by
4 December 31, 2007. These included implementing a residential curbside recycling
5 and greenwaste program; implementing the City's Construction and Demolition
6 Debris (C & D) ordinance; and improving its waste hauler's commercial recycling
7 program through observations and suggested changes.

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9 8. The City reported, and CIWMB staff confirmed that the residential curbside recycling
10 and greenwaste program had not been implemented by December 31, 2007, and that
11 it might take until March 31, 2008 to do so.

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13 9. CIWMB staff determined, and the City acknowledged, that the C & D ordinance was
14 not being implemented when staff visited the City on January 8, 2008, although the
15 City had previously indicated it was being implemented.

16 10. CIWMB staff determined, and the City acknowledged, that the City had not observed
17 the activities or provided written communications regarding those observations by
18 December 31, 2007.

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20 11. These three programs target significant waste streams for the City, and they
21 represented a significant portion of the City's LAP to be implemented. In addition,
22 the C & D ordinance was a program that the City has previously committed to
23 implementing as part of a 2003 Plan of Correction to obtain a Time Extension for
24 complying with the diversion requirements.

25 12. The City offered several reasons as to why it had not implemented the programs that
26 it had committed to, but the CIWMB found none of these persuasive to show that the
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1 City had made a good faith effort to implement its programs. Literally, hundreds of
2 other jurisdictions around the state, and in the City's region, had been able to
3 implement programs of these types in a timely manner. Seventeen years have elapsed
4 since the inception of the diversion requirements, and it had been seven years since
5 the City should have met the requirement to fully implement its SRRE to meet the
6 50% diversion requirement.
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- 8 13. Accordingly, the CIWMB determined that the City of Cerritos failed to comply with
9 the CIWMB's Compliance Order No. IWMA BR07-02 requiring the implementation
10 of the Local Assistance Plan by December 31, 2007, and failed to show that it had
11 made a good faith effort to implement its SRRE.
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13 BASED UPON THESE FINDINGS, THE CIWMB DETERMINED TO IMPOSE PENALTIES
14 IN THE FOLLOWING AMOUNTS PURSUANT TO PUBLIC RESOURCES CODE
15 SECTION 41850:
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18 1. Impose a one-time penalty amount for failure to meet the terms of the Compliance
19 Order in the amount of \$82,800. This was calculated using the penalty amount of \$ 3,600 per day
20 from the first date after the Compliance Order's deadline for full LAP implementation, January
21 1, 2008 through the date of the hearing.

22 2. Impose an additional potential daily penalty amount of \$ 3,600 per day from the date of
23 the hearing until March 31, 2008, but if the City fully implements all of its LAP tasks by that
24 date, this second amount would be waived.
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1 3. To ensure continued full program implementation, impose an additional potential penalty
2 amount of \$ 3,600 per day after that date if the City fails to fully implement or to continue to
3 implement its LAP tasks through March 31, 2009.
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6 Determinations as to whether the City has fully implemented its LAP tasks for any of
7 these options will be delegated to the Executive Director. If the Executive Director determines
8 that the City has failed to fully or to continue to fully implement its LAP tasks, the Executive
9 Director will notify the City of this determination and collect penalties for non-compliance
10 accruing on or after a date identified by the Board.
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14 THIS ORDER SHALL BE EFFECTIVE UPON SERVICE ON THE CITY
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17 SO ORDERED by the California Integrated Waste Management Board, on the 23rd day of
18 January, 2008, in Sacramento, California, by the following vote:

19 AYES: Chair Reid-Brown; Board Members Chesbro, Danzinger, Peace and Petersen
20 NOES: None
21 ABSTAIN: None
22 ABSENT: Board Member Mule

23 DATED: 2/5/08

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Margo Reid-Brown
Chair