

Board Meeting
March 13, 2007

Agenda Item 1
Attachment 2

**STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
CALIFORNIA WASTE MANAGEMENT BOARD**

INTEGRATED

In the Matter of:)	Tracking No: IWMA BR07-03
)	
)	
City of Downey)	COMPLIANCE ORDER
County of Los Angeles)	
)	
)	Public Resources Code
Jurisdiction)	Section 41825

INTRODUCTION

- 1.1 Parties: The California Integrated Waste Management Board (Board) issues this Compliance Order (Order) to the City of Downey (City), County of Los Angeles.

- 1.2 Authority: Section 41825 of the Public Resources Code (PRC) requires the Board to review implementation of each Jurisdiction's Source Reduction and Recycling Element (SRRE) and Household Hazardous Waste Element (HHWE), at least once every two years; this Biennial Review is the Board's independent evaluation of a Jurisdiction's progress in implementing the SRRE and HHWE selected programs and reaching the diversion requirements of PRC Section 41780. If a Jurisdiction is not meeting the mandates of the Integrated Waste Management Act (IWMA), the Board may issue a compliance order and schedule (PRC Section 41825). Fines of up to \$10,000 per day may be levied if the provisions of the compliance order and schedule are not met (PRC Section 41850).

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DETERMINATION OF COMPLIANCE DEFICIENCIES

- 2.1 Board staff conducted a Biennial Review of the City's SRRE. After considering the results of this review and the adoption of this Order at a public hearing commencing on February 5, 2007 the full Board on February 13, 2007 determined:

- 2.2 The Jurisdiction failed to comply with PRC Section 41825 in that it failed to adequately implement programs listed in its SRRE that target significant portions of the City's waste stream. In addition, the Jurisdiction failed to comply with PRC Section 41780 in that it did not meet the solid waste diversion requirement of 50 percent by 2000 and programs are not achieving all reasonable and feasible levels of diversion that are necessary to meet the requirements of PRC section 41780. The Jurisdiction's 2003 and 2004 rates were 43 percent and 44 percent, respectively.

- 2.3 The Jurisdiction failed to demonstrate that it made a good faith effort in implementing its SRRE in accordance with PRC Section 41850. The Jurisdiction did not provide information to indicate that it had made all reasonable and feasible efforts to implement its SRRE or alternative programs that achieve the same or similar results.

- 2.4 Board staff notified the City by mail on November 3, 2006 of the initiation of the conferring process and Board consideration of issuance of a compliance order based on Board staff's 2003/2004 Biennial Review indicated that the City's diversion rate is less than 50 percent and programs are not achieving all reasonable and feasible levels of diversion that are necessary to meet the requirement of PRC Section 41780.. A 30-Day Notice letter was mailed to the City's

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mayor on January 29, 2007 informing the City of the date, time and location that the Board will consider issuing a compliance order.

SCHEDULE FOR COMPLIANCE

- 3.1 Based on the foregoing determination of compliance deficiencies, it is hereby ordered that the City shall:
- a. Work with the Office of Local Assistance (OLA) staff to determine gaps in program areas and make recommendations in improving, expanding, or implementing new diversion programs. OLA staff will conduct a needs assessment meeting with the City and outline the scope of a Local Assistance Plan (LAP). The City will agree to the LAP by July 1, 2007.
 - b. The LAP will determine programs that the City will fully implement by December 31, 2007.
- 3.2 Penalties: At the end of the compliance order, the Board shall hold a public hearing to determine whether or not the Jurisdiction has complied with Section 3.1 of this Order. Failure to comply with any part of the Compliance Order at any time may result in fines of up to (\$10,000) per day in accordance with PRC Section 41850(a). A public hearing may be scheduled earlier if the Board determines that the Jurisdiction has complied with the conditions of the Order ahead of schedule.
- 3.3 Submittals: All documents required to be submitted by the Jurisdiction as noted above shall be sent to:

**Steve Uselton, Supervisor
Local Assistance-Los Angeles Section
California Integrated Waste Management Board
2929 E. Willow Street
Long Beach, CA 90806**

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- 3.4 Communications: the Board or its designee will communicate all approvals and decisions of the Board made regarding the adequacy of submittals to the Jurisdiction in writing. No informal advice, guidance, suggestions, or comments by the Board staff regarding reports, plans, schedules, or any other documents submitted by the Jurisdiction shall be considered to be Board approvals.
- 3.5 Board Review and Approval: If the Board determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to achieve successful implementation of the SRRE, the Board or its designee may:
- a. Serve a notice that the Board will hold a public hearing to consider the imposition of penalties in accordance with PRC Section 41850, or
 - b. Order the Jurisdiction to change the document (if there are major changes) as deemed necessary and approve the document as changed, or
 - c. Return the document to the Jurisdiction with recommended changes (if there are minor changes) and a date by which the Jurisdiction must submit to the Board the document incorporating the recommended changes.
- 3.6 Compliance with Applicable Laws: The Jurisdiction shall carry out this Order in compliance with all Local, State, and Federal requirements, including but not limited to requirements to obtain necessary permits.
- 3.7 Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of the Jurisdiction.
- 3.8 Government Liabilities: The State of California and the Board shall not be liable for injuries or damages to persons or property resulting from acts or omissions in carrying out activities

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pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by the Jurisdiction or its agents in carrying out activities pursuant to the Order. The Jurisdiction shall indemnify, defend and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting in connection with the performance of this Order.

- 3.9 Extension Request: If the Jurisdiction is unable to perform any activity or submit any document within the time required under this Order, the Jurisdiction may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.
- 3.10 Extension Approvals: If the Board or its designee determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.
- 3.11 Parties Bound: This Order shall apply to and be binding upon the Jurisdiction and upon the Board and any successor agency (regional agency etc.) that may have responsibility for, and the Jurisdiction over, the subject matter of this Order.

EFFECTIVE DATE

- 4.1. This Order is final and effective from the date of issuance.

Date of Issuance _____

Margo Reid Brown, Chair
California Integrated Waste Management Board