BEFORE THE CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

In the Matter of: PUBLIC HEARING AND CONSIDERATION OF THE IMPOSITION OF PENALTIES AGAINST **THE CITY OF RIDGECREST** PURSUANT TO COMPLIANCE ORDER IWMA BR 07-07 (PUBLIC RESOURCES CODE 41850)	FINDINGS AND ORDER

A duly convened public hearing before the California Integrated Waste Management Board ("CIWMB") having been held on March 24, 2009, in Sacramento, California, in which the City of Ridgecrest participated, and based on the testimony and other evidence presented at that hearing and based on the oral and written arguments made by the parties, City of Ridgecrest and Staff of the CIWMB,

THE CIWMB DOES HEREBY MAKE THE FOLLOWING FINDINGS:

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

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

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

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

5. Based on the staff review of the City of Ridgecrest's implementation of programs identified in its SRRE, the CIWMB determined at a public hearing held on September 19, 2007 that the City of Ridgecrest had failed to adequately implement programs listed in its SRRE that target significant portions of the City's waste stream. In addition, the City failed to comply with PRC section 41780 in that its programs were not achieving all reasonable and feasible levels of diversion necessary to meet the requirements of PRC section 41780 and therefore, the City had failed to demonstrate that it had made a good faith effort to implement its SRRE.

6. Pursuant to PRC section 41825, the CIWMB issued Compliance Order IWMA BR07-07 to the City of Ridgecrest. The compliance order included specific requirements

that the City was to meet in order to be considered to have adequately implemented its SRRE. These included developing a new waste generation study in order to establish a new, more accurate base year for calculating the City's waste diversion rate, working with the CIWMB to conduct a needs assessment and determine program gaps, and developing a Local Assistance Plan, with expanded and new programs designed to achieve achieve a 50% diversion rate, that the City would agree to by January 31, 2008.

7. The City of Ridgecrest submitted its Local Assistance Plan, which was received on January 22, 2008, and in the Plan, the City agreed to implement a number of programs by specified dates.

8. The CIWMB has determined that the City of Ridgecrest failed to implement four programs that were included in the Local Assistance Plan and thereby failed to implement the provisions of the compliance order.

9. The Local Assistance Plan required the City to conduct a new waste generation/characterization study and establish a new base year by September 30, 2008. The City did not complete a new waste generation/characterization study. The City noted in a letter dated November 7, 2008, five weeks after the due date for this task, that it had failed to complete this task and now believed that this task was not necessary. The CIWMB determined that this task was still necessary to be completed to ensure diversion data for the City.

10. The Local Assistance Plan required the City to complete a study, by December 31, 2008, to evaluate the cost, feasibility and sustainability of constructing and operating a materials recovery facility within the City. The City submitted what it termed an

"initial study" or an "executive summary" of a feasibility study for a materials recovery facility, on December 31, 2008, concluding that a materials recovery facility was not feasible at this time. However, the CIWMB determined that this submission did not meet the requirements of the Compliance Order as by its own admission it indicated that "[l]ittle analysis of optimal site selection, capacity planning, shipping strategy has been completed."

11. The Local Assistance Plan required the City to complete a citywide launch of a mandatory commercial on-site collection of recyclables and also to implement a mandatory curbside residential recycling program, both by March 31, 2009. The City acknowledged that it had adopted an ordinance for mandatory commercial and residential collection on March 18, 2009, but that the City still needed to complete a number of steps before it could implement the programs called for in the ordinance, including defining what services would be provided and the fees for those services. The City indicated that it would not be able to fully implement the programs until January 1, 2010. The CIWMB determined that implementing these programs nine months late would not meet the requirements of the compliance order.

12. The City indicated that it had a number of other programs that it believed should be included in the Local Assistance Plan so that the City's efforts in those areas would also be acknowledged.

13. Accordingly, the CIWMB determined that the City of Ridgecrest failed to comply with the CIWMB's Compliance Order No. IWMA BR07-07, and failed to show that it had made a good faith effort to implement its SRRE.

BASED UPON THESE FINDINGS, THE CIWMB DETERMINED TO IMPOSE PENALTIES IN THE FOLLOWING AMOUNTS PURSUANT TO PUBLIC RESOURCES CODE SECTION 41850 AND TO DIRECT CIWMB STAFF TO MODIFY THE COMPLIANCE ORDER AND LOCAL ASSISTANCE PLAN AS FOLLOWS:

1. The CIWMB is imposing a one-time penalty amount of $47,580 for failure to meet the terms of the Compliance Order, based upon a fine in the amount of $780 per day, beginning from the date of the original Penalty Hearing Notice (January 23, 2009) through the date of the penalty hearing (March 24, 2009).

2. However, in recognition of the City's efforts in the last month prior to the penalty hearing, only $20,000 of this penalty shall be due immediately.

3. The remaining $27,580 of this fine shall be held in abeyance to ensure compliance with the remainder of the CIWMB's Order.

4. The CIWMB is further directing its staff to work with the City to develop a revised Local Assistance Plan that shall be agreed to by the City and submitted by May 29, 2009, that includes all of the tasks in the existing Local Assistance Plan with revised dates as appropriate, and the new tasks the City indicated they wanted to add, with full implementation of all tasks by January 4, 2010.

5. In addition, the revised Local Assistance Plan shall include a one year monitoring period following the full implementation of the revised Local Assistance Plan.

6. If the City fails to fully implement the revised Local Assistance Plan by January 4, 2010, and maintain full implementation for the duration of the one year monitoring period, the $27,580 held in abeyance shall become due immediately, and the City shall be liable to an additional daily penalty in the amount of $1,950 per day until the

City achieves full implementation.

THIS ORDER SHALL BE EFFECTIVE UPON SERVICE ON THE CITY

SO ORDERED by the California Integrated Waste Management Board, on the 24th day of March , 2009, in Sacramento, California, by the following vote:

AYES: Chair Reid-Brown; Board Members Mule, Laird, Kuehl and Migden
NOES: None
ABSTAIN: None
ABSENT: None

DATED: 4/1/2009

Margo Reid-Brown
Chair