BEFORE THE CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

In the Matter of: PUBLIC HEARING AND CONSIDERATION OF THE IMPOSITION OF PENALTIES AGAINST **THE CITY OF GARDENA** PURSUANT TO COMPLIANCE ORDER IWMA BR 03-02 (PUBLIC RESOURCES CODE 41850)	)	FINDINGS AND ORDER

A duly convened public hearing before the California Integrated Waste Management Board ("CIWMB") having been held on September 16, 2003, in Sacramento, California, in which the City of Gardena 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 Gardena and Staff of 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 jurisdiction's implementation of programs identified in its SRRE, the CIWMB determined at a public hearing held on January 14, 2003, that the City of Gardena had not made a good faith effort to implement the programs as identified in their SRRE because it had failed to adequately handle diversion of waste from its commercial sector and had achieved a diversion rate of only 13% for the year 2000, and issued Compliance Order No. IWMA BR03-02.

6. The compliance order included specific requirements that the City was to meet, including working with the CIWMB to develop a Local Assistance Plan, with

expanded and new programs designed to achieve achieve a 50% diversion rate, that the City would agree to by June 30, 2003.

7. Due to delays by the City of Gardena in determining an implementation date by which commercial diversion services will be implemented and associated tasks needed to expand commercial diversion programs, the City of Gardena did not submit an acceptable Local Assistance Plan by June 30, 2003, and the City and CIWMB did not agree to the Local Assistance Plan until August 18, 2003.

8. Accordingly, the City of Gardena failed to comply with the CIWMB's Compliance Order No. IWMA BR03-02 requiring the execution of a Local Assistance Plan by June 30, 2003, 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:

1. The sum of $70,000 is immediately due and payable. This Penalty is based upon a fine of $1,460 per day for the period of time from the date that the Local Assistance Plan was due (June 30, 2003) until the date that it was submitted (August 18, 2003) [rounded down].

2. A contingent penalty will be due in the event that the City of Gardena fails to achieve by January 1, 2004 the requirement in the City's "Joint Venture Agreement between the City of Gardena and Waste Resources of Gardena, Inc." ("Joint Venture Agreement"), dated August 28, 2003, that "Diversion services must be fully functioning by January 1, 2004." (Item 1(A)(iv) of

the Coordination Work Plan City of Gardena, Local Assistance Plan for the City of Gardena, incorporated by reference in the Joint Venture Agreement, identifies the diversion services that must be functioning by January 1, 2004.) The Executive Director of the CIWMB shall determine whether the City of Gardena shall have achieved this requirement in a timely manner. In the case of noncompliance with this requirement, the penalty shall accrue as follows: $1,460/day for each day of noncompliance on and after January 1, 2004 for up to 60 days, plus $2,190/day for each day of noncompliance thereafter until compliance is achieved.

THIS ORDER SHALL BE EFFECTIVE 30 DAYS FROM SERVICE UPON THE CITY

SO ORDERED by the California Integrated Waste Management Board, on the 16th day of September, 2003, in Sacramento, California, by the following vote:

AYES: Chair Moulton-Patterson; Boardmembers Medina, Jones, Paparian, and Peace
NOES: Boardmember Washington
ABSTAIN: None
ABSENT: None

DATED: September 24, 2003

Linda Moulton-Patterson

Linda Moulton-Patterson
Chair