REQUEST FOR APPROVAL

To:	Caroll Mortensen Director
From:	Howard Levenson Deputy Director, Materials Management and Local Assistance Division
Request Date:	August 12, 2013
Decision Subject:	Consideration of Approval of California Carpet Stewardship Plan
Action By:	August 20, 2013

Summary of Request:
Staff requests approval of the recommendation to disapprove the California Carpet Stewardship Plan, submitted by the Carpet America Recovery Effort (CARE) and dated May 31, 2013 (see attachment 1), pursuant to the carpet stewardship law (Public Resources Code (PRC) section 42970-42983). Staff is required to evaluate the newly revised Plan dated May 31, 2013 (hereafter referred to as the "newly revised Plan") based on its contents alone. Staff reviewed the newly revised Plan, compared it to the requirements in statute and regulations, and found that it does not conform to the requirements for multiple reasons. These include lack of sufficient demonstration that continuous and meaningful improvement in carpet diversion and recycling is likely to occur, and failure to address in the Plan itself other issues that staff have previously raised to CARE's attention, as explained in detail below. At the same time, staff acknowledges that CARE has made considerable progress, after the newly revised Plan was submitted, in addressing some of the issues discussed below. However, this progress has been reported to CalRecycle in other subsequently submitted documents including the Annual Report dated July 2, 2013, rather than in the newly revised Plan itself. Statute identifies the Plan as the document that governs the program (PRC section 42972). Since CalRecycle must consider approval or disapproval of the carpet stewardship program on the basis of the newly revised Plan, these additional activities and other issues need to be addressed in the newly revised Plan. A revised Plan should be submitted, with all of the issues addressed in sufficient detail, which CalRecycle can then evaluate for approval.

Recommendation:
Staff recommends disapproval of the California Carpet Stewardship Plan dated May 31, 2013, with respect to meeting the statutory requirement of PRC section 42972. Staff acknowledges that, since submittal of the newly revised Plan in May 2013, CARE submitted an Annual Report that indicates new activities that could greatly improve the newly revised Plan. However, this information, along with basic details needed to evaluate the likelihood of success of these activities, is not in the newly revised Plan. Consequently, this new information and other issues discussed below must be addressed in the newly revised Plan, with sufficient details including a budget for key activities. Staff recommends that CARE revise and resubmit the newly revised Plan within 60 days to address the conditions outlined in this document. During the interim, staff

recommends that the program continue to operate under the existing Plan, conditionally approved on January 17, 2012.

Action:
On the basis of information, analysis, and findings in this Request for Approval, I hereby disapprove the California Carpet Stewardship Plan, submitted by CARE dated May 31, 2013, having found that the conditions for full approval are unmet in the newly revised Plan. CARE has 60 days to revise and resubmit the newly revised Plan to meet conditions outlined in this document. During the interim, the program will continue to operate under the existing Plan, conditionally approved on January 17, 2012.

Dated: 08/28/13

Caroll Mortensen, Director

Attachments:

1. California Carpet Stewardship Plan (updated and resubmitted May 31, 2013); available at: http://www.calrecycle.ca.gov/Actions/Documents/77/20132013/898/California%20Carpet%20Stewardship%20Plan.pdf
2. California Carpet Stewardship Plan, (conditionally approved January 17, 2012); available at: http://www.calrecycle.ca.gov/Carpet/Plans/CARE.pdf
3. Annual Report to CalRecycle, July 2011 – June 2013; available at: http://www.calrecycle.ca.gov/Carpet/AnnualRpts/2012/201213AB2398.pdf
4. July 2011--March 2013: CARE Sustainable Funding Oversight Committee: Q1 2013 AB2398 Summary & Recommendations for Approval; available at: CARE Presentation: CalRecycle Update, Q1 2013 AB2398
5. Baseline Formula for Calculating Carpet Discards

Background Information:
Assembly Bill 2398 (Chapter 681, Statutes of 2010) established the first mandatory carpet stewardship program in the country. The Department has responsibility to approve or disapprove carpet stewardship plans submitted by manufacturers or their designated product stewardship organization (PRC section 42973); review annual reports to verify that the objectives of the plan are being met (PRC section 42975); and provide oversight and enforcement to ensure a level playing field among carpet manufacturers (PRC section 42974 and 42978). For manufacturers to be in compliance, they must have an approved plan (PRC section 42973 (b)) (or be part of a stewardship organization with an approved plan) and demonstrate achievement of continuous and meaningful improvement in the rates of recycling and other goals included in an approved stewardship plan (PRC section 42975(a)). Progressive enforcement is addressed through a combination of field inspections and civil penalties for non-compliance. The Office of Administrative Law approved regulations on January 26, 2012, to add clarity to statute and outline administrative procedures.

Plan Submittal and Review Timeline:
Carpet America Recovery Effort (CARE), the carpet stewardship organization designated as the sole stewardship organization until 2015 (PRC section 42971 (e)(2), developed and submitted the Carpet Stewardship Plan to the Department for approval on September 25, 2011 and submitted a revised version on December 12, 2011. On January 17, 2012, CalRecycle conditionally approved the December 12, 2011 Plan (Plan) (see Attachment 2), whereby full approval was contingent on the following items:

1. Revisit the baseline, measurement methodology (formula), and goals; and update sections of the Plan related to these topics.
2. Fully implement the rural pilots.
3. Add language to ensure that, regardless of which organization performs the audit, all audits are performed in accordance with generally accepted government auditing standards (GAGAS), it is clear which organization performs accounting functions and which organization performs audits, and that the financial audit is specific to the California Carpet Stewardship Program.
4. Resubmit the Plan by December 31, 2012. (CARE requested and received an extension to May 31, 2013.)

On January 3, 2013 and May 13, 2013, CalRecycle sent letters to CARE with additional items to address in the Plan, some of which were highlighted by problems arising from the shutdown of two processing facilities in California in the months prior. Additional items to be addressed in the Plan included:

1. Establishing incentives, differential fees, or other mechanisms to address the complexities and market dynamics and recycling consequences associated with the growing use of polyester or non-nylon face fibers in carpet.
2. Providing technical assistance to existing and potential California carpet recyclers about better business practices, including but not limited to accounting procedures, equipment purchasing and start-up/maintenance, regulatory compliance, understanding needs of end-use markets, etc.

3. Establishing plans to further implement the program in rural counties in order to provide convenient access to all consumers who have paid a fee.
4. Improving communications with processors about reporting protocols
5. Improving procedures to tighten verification to ensure processors are complying with CARE's requirements.
6. Establishing an inclusive consultation process with a broad range of California stakeholders.
7. Considering whether recycling operators should have financial assurance mechanisms in place before being allowed to receive incentive funding, or that CARE itself have a financial assurance contingency to address potential cleanups if a facility closes.

CARE conducted a conference call on May 20, 2013, to solicit stakeholder input and submitted a new version of the Carpet Stewardship Plan on May 31, 2013 (see Attachment 1). On June 25, 2013, CalRecycle conducted a public workshop to receive comments on the newly revised Carpet Stewardship Plan. In general, stakeholders were dissatisfied with the newly revised Plan and offered many suggestions. Many of the suggestions are consistent with the issues described below; however, it should be noted that some comments, although credible, are outside the scope of the program or authority of CalRecycle. Comments received on the newly revised Plan are available at: http://www.calrecycle.ca.gov/Carpet/Plans/Comments/2013May31/default.htm

CARE has subsequently submitted additional documents. On July 2, 2013, CARE submitted the Carpet Stewardship Program's first Annual Report, as required by PRC section 42976 (see Attachment 3). In addition to reporting on the results of the program, the Annual Report includes some information about future activities and programmatic direction, which needs to be incorporated into the newly revised Plan since statute identifies the Plan as the governing document. On July 8, 2013, CARE submitted supplementary information entitled "CARE Sustainable Funding Oversight Committee: Q1 2013 AB2398 Summary & Recommendations for Approval" (Attachment 4), that includes fund expenditures approved by CARE's Sustainable Funding Oversight Committee. Pertinent information from this presentation on fund expenditures related to program implementation should also be incorporated into the newly revised Plan.

Analysis:
The newly revised Plan, as submitted, does not address many of the issues previously raised by CalRecycle and stakeholders, lacks basic details that are critical for understanding the potential for program success, and does not demonstrate the potential for continuous and meaningful improvement in carpet diversion and recycling. While CARE has recently included or indicated some details of activities to address issues (e.g., hiring staff in California, incentives for manufacturers making new products for recycling markets that are underdeveloped, etc.) in other documents such as the Annual Report and First Quarter Update, these issues and supporting details need to be explicitly included in the newly revised Plan in order for CalRecycle to approve the newly revised Plan. In other areas, the newly revised Plan needs to provide additional clarification or details that have not been addressed. Staff acknowledges that the newly revised Plan needs to strike a balance of providing enough detail to determine the level of effort for described activities, yet not be overly detailed so Plan updates are constantly needed. Before being approved, staff recommends that the following major issues be addressed.

Issue 1: Goals and Baseline. *The newly revised Plan needs to demonstrate continuous and meaningful progress with a greater commitment to recycling. The newly revised Plan needs to provide more transparency in the baseline formula and continued efforts to improve data unknowns.*

- **Goals:**
  The newly revised Plan documents very slight increases in actual recycled output, and projects only a small increase of 2% from current recycled output to the 2016 goal. CalRecycle does not consider these increases and goals to be "continuous and meaningful improvement" particularly with respect to recycling.
  - Recycled output changed from 7% in 2011 to 14% in 2012 (12% in 2012 if data on purported road-base recycling is excluded). The goal for 2016 is 16%. (There is no longer-term goal in the Plan because it only covers 2011- 2016).
  - Diversion was 27% in 2011 and is projected to remain constant at 33% through 2016.

  For the following reasons, CalRecycle believes higher goals can be achieved:
  1. With a projection of $8 million in unused funds by 2016, these funds should be used to support activities that could allow the achievement of higher recycling goals.
  2. New program activities can promote increased recycled output, such as additional incentive payments for recycling non-nylon materials and continuation of incentives including bonus payments for growth. [Note: These activities are identified in the Annual Report, but need to be included in the Plan, along with additional details including budgets.]
  3. The recycling goal in the Plan submitted in December 2011 was achieved in Q2 2012, suggesting incentives can be effective.
  4. Greater education to installers and consumers about carpet recycling can result in diversion increases.

  Staff Recommendation: Request CARE to establish higher goals that would demonstrate more meaningful improvement, with unused funds being utilized to implement program activities that would advance achievement of said goals. The newly revised Plan needs to identify the range of potential diversion and recycling percentages that can be attributed to associated proposed activities described in the newly revised Plan. This approach can provide an understanding of what activities contribute to a meaningful goal and what that goal should be.

- **Baseline:**
  The newly revised Plan needs to provide greater transparency for variables included in the sales-based formula. While the focus should remain on increasing the amount of carpet collected and processed for recycling and reuse, a baseline formula with clear explanation on how data is derived is important in measuring continuous and meaningful progress (PRC section 42975(a)).

  Establishing a clear baseline continues to be a challenging task. As part of a national memorandum of understanding for carpet, CARE went through a consensus process that derived a method for estimating the amount of carpet discards based on sales data which are reliable and available on an annual basis. Subsequent meetings with CalRecycle staff discussed the discrepancy between the sales-based formula and carpet waste generation

numbers based on past CalRecycle waste characterization studies which estimate much higher disposal of carpet. There was agreement to proceed with the sales-based formula as the best current "informed estimate" with the condition that CARE would implement ongoing efforts to improve data in the formula, specifically:

1. Modify the formula in the newly revised Plan to account for all flows of carpet to landfills, with acknowledgment of what data are currently not available. This estimate for the first year will form the baseline for the newly revised Plan.
2. Include a footnote that explains why the sales-based formula is used (e.g., annual data, high confidence in some key numbers in the formula, provides a means of determining continual improvements as required in statute), the carpet waste generation number (or range) based on waste characterization studies, and the discrepancy that exists between the two approaches.
3. Seek better data for variables in the formula that currently lack accurate information and incorporate in future versions of the Plan. Meanwhile, calculations for the newly revised Plan and subsequent annual reports will be made using data that are known or can be estimated with reasonable confidence.

Certain variables are missing from the baseline formula, e.g., conversions such as when wood floors covered with carpet are refinished as wood floors and imports from other states. In addition, greater transparency and explanation of existing data used to calculate the formula needs to be included in the Plan, e.g., details associated with the 1.3% demolition factor.

Staff Recommendation: The newly revised Plan should be revised with a baseline formula that describes each flow of carpet material that contributes to total carpet discards (see Attachment 5. If data are unknown and the flow cannot be estimated for a particular variable, that should be identified and over time this information should be sought to improve total discard estimates. The formula must be explained and transparent enough that a person can use sales data and other information provided to calculate the amount of carpet discards. Specific assumptions and details should be made available as new data is introduced such as the demolition factor.

Issue 2: Market Incentives. *The newly revised Plan needs to incorporate more details about market incentives and how they are anticipated to work.*

Incentives, as presented in the newly revised Plan, are insufficient and are not described in enough detail to assure "meaningful and continuous improvement" with respect to:

i. Market growth of secondary products, e.g., especially utilizing polyester or PET that is a growing portion of residential carpets;
ii. Increasing the recyclability of carpet; and
iii. Growth of recycling and diversion.

While the Annual Report describes a bonus for Type I recycled output (the more preferable type of recycling) and includes a non-nylon incentive to enhance growth and address PET along with other non-nylon materials, this information needs to be incorporated into the newly revised Plan. Additional financial incentive details recently approved by CARE's Sustainable Finance Oversight Committee (SFOC) include consideration of a manufacturer's incentive to

utilize non-nylon materials at 12 cents per pound. Applying this type of incentive specifically to materials that have the weakest markets can help promote recycling. This should also be incorporated into the newly revised Plan. CARE may want to consider including a range for the incentive and a process for adjusting it so that the newly revised Plan offers flexibility and needs fewer updates. Also, additional details are needed in the newly revised Plan on how the incentives will be implemented along with education and outreach to determine potential impacts of the incentive.

Staff Recommendation: CARE needs to incorporate more details in the newly revised Plan about the incentives and how they are anticipated to work (including identifying anticipated impacts of the activities such as associated increases in diversion and recycling goals). To maintain some flexibility, CARE should consider including a range of incentive payments so that it will be able to make adjustments without having to update the Plan. CARE should explain the outreach and education that will accompany these efforts.

Issue 3: Amount of Funds in Reserve. *The newly revised Plan needs to describe how the unused funds in reserve will be used to advance recycling and diversion.*

Unused funds (aka "reserves") are projected to grow each year and are forecasted to be $8 million by 2016, which is double the annual assessment collected to run the entire program. CalRecycle recognizes that some reserves are needed to have healthy fiscal management of an organization, but the amounts proposed go beyond that and need to be used to further the goals of the program. While the Annual Report addresses activities that will draw down the unused funds, this information needs to be incorporated into the newly revised Plan. These activities include: higher incentive payments for Type 1 recycled output and non-nylon materials, hiring a CARE staff person in California, and hiring a person to work nationally on PET and assigning a portion (20%) of those costs to the implementation of CARE's California program.

Staff Recommendation: CARE needs to modify the newly revised Plan to substantially reduce the amount of projected unused funds and show how those funds will be used to support new activities and incentives. (). CARE should include a budget (a range may be provided to maintain some flexibility) for the set of program activities and incentives. CalRecycle recommends that the projected reserve be no greater than about 35% of the annual program costs. When CARE funds are contributed to national efforts addressing carpet recycling issues, the amount should be commensurate with the portion of carpet generated in California.

Issue 4: Financial Assurance. *The newly revised Plan needs to address options, such as financial assurance mechanisms, that help prevent adverse environmental impacts in the event a processing facility closes prior to removing all material at the site.*

Problems arising from the recent shutdown of two processing facilities in California highlighted the need to provide a strategy to avoid adverse environmental and public health impacts when a carpet processing facility shuts down.

Staff Recommendation: CARE needs to include in the newly revised Plan a proposal that considers whether recycling operators should show proof of financial assurance before being allowed to receive incentive funding, or whether CARE itself should have a financial assurance contingency in place to address potential cleanups if a facility closes prior to removing all material at the site, or other options that would provide a similar assurances that the environment and public health would not be adversely impacted by the permanent cessation of recycling operations. The assurance should be adequate to address the cost estimate for removal and final disposition of the remaining material by a third party. A plan with proscribed elements could be required to be prepared by the operator in developing a "clean up" cost estimate to determine the appropriate level of financial assurance required.

Issue 5: Consumer Convenience in Rural Counties. *The newly revised Plan needs to describe what model is being used to provide carpet recycling services in rural counties.*

Rural counties expressed concern during the regulation process about the Plan providing sufficient coverage throughout the state. CARE and its partners proposed conducting rural pilots to explore methods for providing carpet recycling services in each county and six counties agreed to participate. The initial plans for the pilot faced several challenges and implementation initially planned to start in November 2011 was delayed until March 2012. Part of the conditional approval mandated that the rural pilot is fully implemented and the program has statewide coverage.

Staff finds that CARE and the six rural counties were successful in identifying a successful model that can be phased into other counties that lack carpet recycling services and seek this service. A roll-out is described in the newly revised Plan.

Staff Recommendation: This condition of Plan approval will be met with the implementation of efforts described in the newly revised Plan, with some modification. The newly revised Plan needs to describe what model is being used, which is presumably the model used in the pilot program whereby CARE covers the cost of transportation from a collection facility such as a transfer station or landfill to a processor.

Issue 6: California Staff. *The newly revised Plan needs to provide sufficient California expertise to facilitate program implementation and reflect a systematic approach to obtaining California stakeholder input and to conducting outreach and education.*

To be successful, a California recycling program should have staff with expertise on California environmental health and safety regulations, provide for greater California stakeholder involvement, and provide more outreach and education, all of which can be achieved by CARE hiring California-based staff.

Statute requires stakeholder input and a successful recycling program needs outreach and education that reaches all key stakeholders. Most consumers are not aware of carpet recycling. They do not know to ask for carpet recycling from their vendors, retailers and installers, nor to ask about purchasing carpet that is reusable or more readily recyclable. It appears that essentially no additional outreach has occurred since the program started, with the exception of brochures and signs for the six rural counties who participated in the pilot for

rural counties and for activities that are part of CARE's national program (e.g., national conferences). Many of the CARE national events are not in California, making it difficult for many stakeholders to attend. In the newly revised Plan, there is description of past activities but very little about future education and outreach activities and to what level activities are going to be implemented. The newly revised Plan needs to include a budget for education and outreach along with more specifics on outreach in California.

In July, CARE began taking steps to hire California staff; these plans for additional California-based staff need to be described in the newly revised Plan.

Staff Recommendation: The newly revised Plan needs to indicate that CARE will hire staff in California. The amount budgeted, a timeline, and description of tasks are needed to allow consideration of whether this is likely sufficient to ensure program success. The newly revised Plan needs to define a systematic process to engage stakeholders and the section on outreach and education needs to better describe future activities, including elements such as: target audiences, messages for different audiences, media or methods to reach target audiences, timing, budget, and who will implement or serve as the lead for various activities.

Issue 7: Accounting and Audits Standards. *The newly revised Plan needs to revise the section title to "Audits".*

Part of the conditional approval required that all audits performed are done in accordance with GAGAS, regardless of which organization performs the audit, that it be clear which organization performs accounting functions and which organization performs audits, and that the financial audit is specific to the California Carpet Stewardship Program.

CARE added language to the newly revised Plan to address this condition in the section titled "Reviews" on page 38.

Staff Recommendation: CARE needs to change the section title from "Reviews" to "Audits" (to conform with Section 18942 (c)(2)).