

REQUEST FOR APPROVAL

To: Carol Mortensen
Director

From: Howard Levenson
Deputy Director, Materials Management and Local Assistance Division

Request Date: January 21, 2014

Decision Subject: Consideration of Approval of California Carpet Stewardship Plan

Action By: January 21, 2014

Summary of Request:

Staff requests approval of the California Carpet Stewardship Plan, submitted by the Carpet America Recovery Effort (CARE) and dated December 23, 2013 (see attachment 1, hereafter referred to as "Plan v3.0"), pursuant to the carpet stewardship law (Public Resources Code (PRC) section 42970-42983).

Staff reviewed Plan v3.0, compared it to the requirements in statute and regulations, and found that it conforms to the basic requirements, with a caveat that its financial resources are very minimal for a statewide program and adjustments may be needed as the Plan is implemented to ensure it remains fiscally sound and adequately advances the goals.

CalRecycle notes that statute does not set specific numeric goals, rather it requires demonstration of continuous and meaningful improvement in carpet diversion and recycling. Given the speculative nature of the carpet recycling infrastructure, markets, impacts of incentives, it is premature to determine whether Plan v3.0 will be successful and if it will result in a continuous meaningful improvement. The current overall recycling rate is about 12% and Plan v3.0 has a goal of 16% by 2016 and an aspirational goal of 24% by 2020 for recycled output. CARE will prepare and resubmit a Plan in 2016, in roughly two years, so there will be an opportunity to evaluate the incentive approach put forth in Plan v3.0 and consider if it can achieve the intent of AB2398 or needs further adjustment.

Several improvements are found in Plan v3.0 as compared to previous versions. New incentives are in place to address non-nylon materials (sometimes referred as the "PET issue"). The new incentives, combined with a grant program and funding for research, appear to be making some impact in addressing the issues associated with PET carpet recycling. CalRecycle will closely follow program implementation with the expectation that CARE will effectively utilize the new California program manager to engage California stakeholders, address issues that arise, take appropriate measures to meet the goals, and ensure that the program continues to improve. Under this Plan CARE also has the flexibility to make adjustments which may include the hiring of additional in-state staff; education, outreach and incentives for collection to meet processing facility needs; and changes to incentives; assessments; grants; market development; or other aspects of the carpet stewardship program. Staff acknowledges that CARE has made

considerable progress in addressing issues raised in the August 20, 2013, public meeting, which is discussed below.

Recommendation:

Staff recommends approval of the California Carpet Stewardship Plan December 23, 2013 (Plan v3.0), with respect to meeting the statutory requirement of PRC section 42972. Staff recommends that CalRecycle approve Plan v3.0 pending: completion of California Environmental Quality Act approval (underway) and minor corrections to the Plan v3.0 as noted in Attachment 7, *Minor Corrections to the California Carpet Stewardship Plan version 3.0*. During the interim until CEQA is finalized, 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 approve the California Carpet Stewardship Plan, submitted by CARE dated December 23, 2013, having found that it conforms to the statutory requirement of PRC section 42972. Plan v3.0 shall become effective immediately, pending completion of California Environmental Quality Act approval and minor corrections to the Plan v3.0 as noted in Attachment 7, *Minor Corrections to the California Carpet Stewardship Plan version 3.0*. CARE will submit a new Plan when Plan v3.0 expires in 2016.

Dated: 4/21/2014

Carroll Mortensen
Carroll Mortensen, Director

Attachments:

1. California Carpet Stewardship Plan version 3.0 (updated and resubmitted December 26, 2013); available at: <http://www.calrecycle.ca.gov/Carpet/Plans/2013OctV3pt0.pdf> (Plan under consideration for approval)
2. California Carpet Stewardship Plan version 2.8 (updated and resubmitted November 5, 2013); available at: <http://www.calrecycle.ca.gov/Carpet/RevStewardPl.pdf>
3. California Carpet Stewardship Plan version 2.5 (updated and resubmitted May 31, 2013); available at: <http://www.calrecycle.ca.gov/Actions/Documents/77/20132013/898/California%20Carpet%20Stewardship%20Plan.pdf>
4. California Carpet Stewardship Plan version 1.4, (conditionally approved January 17, 2012); available at: <http://www.calrecycle.ca.gov/Carpet/Plans/CARE.pdf>
5. Annual Report to CalRecycle, July 2011 – June 2013; available at: <http://www.calrecycle.ca.gov/Carpet/AnnualRpts/2012/201213AB2398.pdf>
6. July 2011--September 2013: CARE Sustainable Funding Oversight Committee: Q3 2013 AB2398 Summary & Recommendations for Approval; available at: <http://www.calrecycle.ca.gov/Carpet/Plans/CARE2013Q3.pdf>

7. Minor Corrections to the California Carpet Stewardship Plan version 3.0; (January 8, 2014) Available at:
<http://www.calrecycle.ca.gov/Actions/Documents%5c112%5c20142013%5c1014%5cAttachment%207.pdf>

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 4), 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 that needed to be addressed 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, hereafter referred to as Plan v2.5 (see Attachment 3). 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.

On July 2, 2013, CARE submitted the Carpet Stewardship Program's first Annual Report, as required by PRC section 42976 (see Attachment 5).

On October 28 and November 5, CARE submitted the Plan version 2.8 (Attachment 2) to CalRecycle, the latter had some corrections. In response to stakeholder and CalRecycle comments, CARE provided CalRecycle with Plan version 3.0 on December 26, 2013.

Comments received on all versions of the Plan are available at:

<http://www.calrecycle.ca.gov/Carpet/Plans/Comments/default.htm>

Additionally, on December 9, 2013, CARE submitted supplementary information entitled "CARE Sustainable Funding Oversight Committee: Q3 2013 AB2398 Summary & Recommendations for Approval" (Attachment 6). This document provides the most recent status of carpet diversion from landfills and recycled output.

Analysis:

The Plan v3.0 addresses many issues previously raised by CalRecycle and stakeholders. While it still lacks details that would be helpful for understanding the potential for program success, it increases the potential for continuous and meaningful improvement in carpet diversion and recycling by: establishing a California program manager and allowing consideration of additional staffing, if needed; adding about \$500,000 to education and outreach; establishing a grant

program, research project, and incentives to develop markets for non-nylon materials; and adding language to provide flexibility to modify incentives, assessments, incentive payments, staffing and other aspects of the program to adapt to new conditions impacting carpet recycling. The Plan presents a budget that has a small, positive fund balance at the end of 2016.

Below is a review of key comments by CalRecycle and stakeholders on Plan v2.5 and Plan v2.8 and to what extent they have been addressed in Plan v3.0.

Issue 1: Goals and Baseline.

Goals: *CalRecycle said the Plan needs to demonstrate continuous and meaningful progress with a greater commitment to recycling.*

- CARE modified the goals by adding an aspirational goal of 24% recycled output by 2020, caveated with a number of assumptions. Assumptions include that the US economy continues to grow, new processors and new non-nylon outlets come on line, there are improvements in data collection and more carpet is collected, increases in state agency procurement of products made with carpet (e.g., signage, decking, vehicles, carpets, or other) and CalRecycle works with CARE on procurement and permitting. Given two California processing facilities shut down in early 2013 and the substantial startup time needed to open new facilities, it may not be feasible to increase the goal beyond 16% by 2016. An aspirational goal of 24% recycled output shows a higher level of commitment, and in staff's view is a reasonable target given current market conditions and the time needed to establish new in-state processing capacity and new outlets for non-nylon materials. CalRecycle will further evaluate the goals in 2016 when CARE submits a new plan.

Baseline: *CalRecycle said the Plan needs to provide more transparency in the baseline formula and continued efforts to improve data unknowns.*

- Overall, there is more transparency. While there remain questions about the data assumptions and some uncertainty as to whether the formula fully captures all carpet discards, CARE and CalRecycle agree to collaborate on improving the formula over time. The formula provides a means to calculate a baseline for measuring if the program is achieving meaningful and continuous improvements.

Issue 2: Market Incentives. *CalRecycle said the Plan needs to incorporate more details about market incentives and how they are anticipated to work.*

- Statute allows CARE to adjust the incentives. Plan v3.0 has new incentives and some information about how the incentives are anticipated to work. Additionally, language in the plan allows for further adjustments (see Plan v3.0 pages 30-34) and CARE briefly explains 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.*

- Plan 2.5 showed a substantial surplus of funds. In contrast, Plan v2.8 showed a deficit for 2016 of negative \$788,000. CalRecycle informed CARE that it is not acceptable to show a deficit. The Plan must either work with available funds (spend less) or increase funds (e.g., increase the assessment). Plan v3.0 (see Table V) indicates there would be about \$400K in reserve at the end of 2016. Plan v3.0, as compared to Plan v2.8, estimates more carpet being sold, less funds being spent on a grant program (\$300,000 versus \$900,000 over 3 years); and

an overall a smaller budget for the rural program, while still allowing growth and expansion to new counties.

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.*

- CARE indicates that it is reviewing possible mechanisms to fund an assurance pool and will weigh options and finalize its position in 2014. Additionally, CARE has increased oversight by independent auditors (see Plan v3.0 page 34).

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.*

- CARE will implement a rural county collection program using the successful business model employed during the pilot.

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.*

- CARE added a California Program Manager to Plan v3.0 and has already hired the new California Program Manager. Plan v3.0 provides information on the budget and duties of this new hire. Furthermore, Plan v3.0 includes flexibility to hire additional staff, if needed (see Plan v3.0 page 33)

Issue 7: Education and Outreach. *Previous versions of the Plan did not include an adequate budget for education and outreach.*

- Plan v2.5 did not have a budget for education and outreach. Plan v2.8 had only \$21,000 budgeted for education and outreach over 4 years. This is not adequate for a state the size of California; furthermore, many activities identified had already occurred. Plan v3.0 increased the budget for education and outreach to \$515,000 over 4 years and it now describes future activities. While the budget is still significantly less than what is often found for education and outreach programs, it may be sufficient if well-targeted and well-executed. Having a California Program Manager to oversee these activities increases the likelihood of success. In 2016, the budget and educational and outreach activities can be reevaluated as part of the Plan update. It is important that education and outreach is utilized to increase market demand for recycled carpet and timed to support facilities when markets are favorable and the demand for old carpet is greater than the supply; sometimes regional education and outreach is more suitable.

Issue 8: Definitions. *Terms have not been consistently used and are not always the same as terms used for other programs*

- To provide better clarity, CARE recently posted, *Definitions Used in the AB2398 Plan*, to serve as a central on-line reference for program definitions and help ensure a consistent use of terms in all documents related to AB2398 (e.g., Plan, Annual Report, Quarterly Updates). While *Attachment III, Definitions Used in the Plan*, provides many definitions, others terms are found in the main body of the Plan (e.g., Tier 2) and will not be easy for stakeholders to find. Additionally, the new term “gross collected” may be confusing if readers do not realize that “gross collected”, which includes materials collected prior to processing, includes

materials that may be landfilled (the terms “collected” and “recovered” also include materials that may ultimately be landfilled). CARE and CalRecycle will work together to refine definitions, based off of Attachment III, and post these definitions on-line.

Other Issues:

Several stakeholders provided comments on issues that are beyond the scope of the AB2398 program or beyond the scope of what CalRecycle can require in the Plan. For example, existing local, state, and federal laws govern recycling facilities; AB 2398 does not require stewardship organizations to oversee compliance with other laws such as those covering recycling processing facilities. While CARE is only responsible for the AB2398 program, CARE can have a role in providing education and awareness of other laws and does provide basic information in its Best Management Practices on common types of permits for the handling, processing and storage of post-consumer carpet facilities. Additionally, CARE revised its *Agreed Upon Procedures* for entities applying for payments, introduced procedures to better monitor inventories, and has taken steps to help ensure program participants comply with local, state and federal requirements.

Another example of a comment that is beyond the scope of CalRecycle’s authority is that CalRecycle cannot require CARE to raise the assessment, as was suggested by some stakeholders. A higher assessment would provide additional program funds, but it is difficult to justify such a change when the program has surplus funds and is making overall progress as compared to the first year, which serves as a baseline.

Recommendation:

Staff recommends approval of Plan v3.0 pending completion of California Environmental Quality Act approval (underway) and minor corrections to the Plan v3.0 as noted in Attachment 7. During the interim until CEQA is finalized, staff recommends that the program continue to operate under the existing Plan, conditionally approved on January 17, 2012.

The AB2398 program is in relatively early stages and much is being learned. CARE has responded to a set of important issues and made changes to its Plan. Progress over the next few years will determine if the approach offered in Plan v3.0 works sufficiently and what further changes are needed in the 2016 Plan for successful implementation.

