

REQUEST FOR APPROVAL

To: Scott Smithline
Director

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

Request Date: October 20, 2015

Decision Subject: Consideration of Addendum #2 to the California Carpet Stewardship Plan

Action By: October 21, 2015

Summary of Request:

Carpet America Recovery Effort (CARE) submitted *California Carpet Stewardship Plan (Plan), Addendum #2* (hereafter referred to as “*Addendum #2*”, see Attachment 1) on October 9, 2015. In *Addendum #2*, CARE proposes to establish grant and loan programs as an amendment to the *Plan* to support program implementation. This item requests the Director’s decision with regards to *Addendum #2*. CalRecycle anticipates that CARE will also submit an *Addendum #3* prior to November 30, 2015, that delineates additional proposed program improvements.

Options:

1. **Approve Addendum #2:** CalRecycle approves *Addendum #2* as submitted, which includes proposed Grant and Loan Programs.
2. **Partial conditional approval of Addendum #2, Cycle 1 Grant Pilot:** CalRecycle approves an initial grant solicitation (“Cycle 1”), for up to \$3 million dollars, of the proposed Grant Program as a 1-year pilot with the following conditions:
 - a. **Use of Funds:** At least 50% of the funds are directed to testing that is performed in California or infrastructure to be installed in California; use of funds cannot negatively impact existing collection or processing infrastructure; funds are used for capital expenses and/or product testing; funds cannot be used for disposal costs, either at a landfill or for thermal technologies (e.g., Kiln, Waste to Energy and incineration) or for Carpet as an Alternative Fuel; and grantees receiving funds for capital expenses must process California postconsumer carpet during the term of the award and for at least five years thereafter.
 - b. **Transparent and Competitive Grant Process:** To expedite this pilot, CARE conducts a webinar/workshop to solicit stakeholder feedback on the solicitation before it is issued; prior to any subsequent grant and loan programs being approved by CalRecycle, CARE establishes a California Council on Carpet Recycling and involves this Council in the development of such subsequent grant and loan programs before funds are issued. In addition, for Cycle 1 and any subsequent solicitations, there must be no conflict of interest between grantees and those individuals determining scoring criteria, scoring applications, and deciding on awards; and grantees are not required to be members of CARE.

- c. Accountability and Quality Control: CARE submits quarterly reports to CalRecycle on the implementation status of grants; and grantees must maintain verifiable documentation that they have processed California postconsumer carpet during and for at least five years after the award.
3. **Partial conditional approval of Addendum #2, Grant Program**: CalRecycle approves the Grant Program, which may involve multiple cycles/solicitations with a total expenditure not to exceed \$3 million dollars, as a 1-year program given CARE's current *Plan* expires at the end of 2016, with the following conditions:
 - a. Use of Funds: At least 70% of the funds are used in California; funds are used for capital expenses and limited short-term operational expenses; funds cannot be used for disposal costs, either at a landfill or for thermal technologies (e.g., Kiln, Waste to Energy and incineration) or for Carpet as an Alternative Fuel; and grantees must process California postconsumer carpet during the term of the award and for at least five years thereafter.
 - b. Transparent and Competitive Grant Process: CARE establishes a California Council on Carpet Recycling and involves this Council in the development of the grant program before funds are issued; there is no conflict of interest between grantees and those individuals determining scoring criteria, scoring applications, and deciding on awards.
 - c. Accountability and Quality Control: CARE submits quarterly reports to CalRecycle on the implementation status of grants; grantees must process California postconsumer carpet for at least five years after the award and maintain verifiable documentation.
 4. **Disapprove Addendum #2**: *Addendum #2* lacks important details and CalRecycle cannot approve it without changes. CARE can consider adding a grant and loan program to *Addendum #3* that includes additional information or revisions to address items described in the *Analysis* section of this document.
 5. **Take No Action but direct CARE to include this proposal as part of Addendum #3**. The current *Addendum #2* lacks important details and CalRecycle cannot approve it without changes. CARE can consider adding grant and loan programs to *Addendum #3* and including additional information or revisions to address items described in the *Analysis* section of this document.

Staff Recommendation:

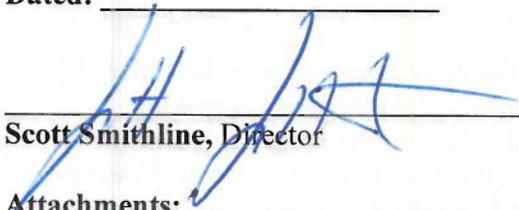
CalRecycle staff recommend Option 2. While staff would like to know what other programmatic enhancements will be proposed in *Addendum #3* and how the proposed grant and loan programs fit with these other enhancements, staff also acknowledge that CARE is responding to CalRecycle's September 2015 finding that the *2014 Annual Report* was non-compliant and that there is an urgent need to implement changes to improve the California Carpet Stewardship Program (Program). CARE has the responsibility to design the program that it believes will best achieve the goals of the program, most importantly a recycled output rate of 16% by 2016. Option 2 would allow CARE to implement a limited grant program as a pilot with specific conditions on use of funds, grant process requirements, and accountability provisions. These conditions would provide for stakeholder input, ensure the program benefits the State of California, and ensure timely accountability provisions.

CalRecycle staff also finds that *Addendum #2* is lacking relevant information for the proposed loan program, for example on eligible projects, collateral, ranges of fees, ranges of acceptable interest rates, etc. CARE can include additional loan program details for consideration in the November 30, 2015, Plan *Addendum #3* submittal. Another alternative, since the current Plan expires at the end of 2016, is that CARE could include a full description of a loan program in the new Plan that will be effective on January 1, 2017.

Action:

On the basis of the information, analysis, and findings in this Request for Approval, I hereby approve a limited pilot grant program, not to exceed \$3 million, to cover an initial Cycle 1, and according to the conditions that: At least 50% of the funds are directed to testing that is performed in California or infrastructure to be installed in California; use of funds cannot negatively impact existing collection or processing infrastructure; funds are used for capital expenses and/or product testing, and not for disposal costs at either a landfill or for thermal technologies; CARE conducts a webinar/workshop to solicit stakeholder feedback on the solicitation before it is issued; grantees are not required to be members of CARE; there is no conflict of interest between grantees and those individuals determining scoring criteria, scoring applications, and deciding on awards; CARE submits quarterly reports to CalRecycle on the implementation status of grants; and grantees are required to process California postconsumer carpet during and for at least five years after the award and maintain verifiable documentation. Finally, I direct CalRecycle staff to post quarterly updates on the grants at the CalRecycle Carpet website and provide me with regular updates of staff's evaluation of progress. As noted in *Addendum #2*, CalRecycle has the ability to suspend the grant program and, if there are inappropriate expenditures, I will exercise that option.

Dated: 10/27/15



Scott Smithline, Director

Attachments:

1. *California Carpet Stewardship Plan (Plan), Addendum #2 (Addendum #2)*, submitted October 9, 2015, available at the Public Notice: www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=1616&aiid=1468
2. *California Carpet Stewardship Plan Addendum #1*, January 2015, available at: <http://www.calrecycle.ca.gov/Carpet/Plans/AddenDec2014.pdf>
3. *California Carpet Stewardship Plan Revised*, January 2014, version 3.2.2.; available at: <http://www.calrecycle.ca.gov/Carpet/Plans/PlanJun2014.pdf>
4. *Stakeholder Comment Letters on Addendum#2*, available at: www.calrecycle.ca.gov/Carpet/Plans/Comments/default.htm
5. Public Notice of Final Decision of Carpet America Recovery Effort (CARE) *2014 Annual Report*, September 17, 2015, available at: <http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=1595&aiid=1448>

BACKGROUND

Assembly Bill 2398 (Chapter 681, Statutes of 2010) established the first mandatory carpet stewardship program in the country. CalRecycle 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)). The statute provides for CalRecycle to impose civil penalties on any person who violates any provision of the Product Stewardship for Carpet law (PRC 42970 et seq. and specifically section 42978). The Office of Administrative Law approved regulations on January 26, 2012, to add clarity to statute.

Due to the Extended Producer Responsibility (EPR) aspect of the carpet legislation, CalRecycle does not dictate specific design of the Program other than requirements mandated by statute, regulations, or the approved Plan. CARE is responsible for designing and implementing its California Carpet Stewardship Plan, titled *California Carpet Stewardship Plan Revised, version 3.2.2* and the *Addendum to the Plan Version 3.2.2 (Addendum #1)* (hereafter together referred to as *Plan*) (see Attachments 2 and 3), that the Director of CalRecycle approved in January 2014 and January 2015, respectively.

In September 2015, the Director of CalRecycle found the *2014 Annual Report* submitted by CARE to be non-compliant because it did not demonstrate that the Program is making continuous and meaningful improvements toward achievement of the Program goals. CalRecycle directed CARE to submit an Amendment to the *Plan* to CalRecycle by November 30, 2015 to address a set of key issues (see Attachment 5 and the document titled, *Request for Approval*).

On October 9, 2015, CARE submitted an amendment to the Plan, referred to as *Addendum #2* (see Attachment 1), that proposes a grant and loan program. CARE also has indicated it is preparing an *Addendum #3* that will cover remaining key issues not addressed in *Addendum #2* by November 30, 2015.

ANALYSIS

There is insufficient information to approve *Addendum #2* entirely as proposed. Key elements are missing as described below:

Key Issue 1: There is no assurance that grants or loans would be awarded to California facilities, use California-generated carpet, and benefit the State of California.

CARE states that \$1 to \$3 million are to be expended annually, including \$2 to \$3 million in the first cycle of the grant program. *Addendum #2* also states that “Priority will be given to California-based applicants” (page 3). However, as proposed, Cycle 1 could award a single \$3 million grant to an out-of-state entity without verification it is processing California-generated carpet. CalRecycle staff therefore recommend adding conditions to specify that a portion of the grant funds be awarded to California-based facilities and to add more timely reporting and assurances that grantees are using California-generated postconsumer carpet during and for a reasonable period of time after the award:

- a. At least 50% of the funds are used in California.
- b. Grantees must process California postconsumer carpet during and for at least five years after the award and maintain verifiable documentation.
- c. There is no conflict of interest among grantees and those individuals determining scoring criteria, scoring applications, and deciding on awards.
- d. CARE must submit quarterly reports to CalRecycle on the implementation status of grants

Key Issue 2: Funds could be spent to pay for disposal, contrary to the waste management hierarchy.

Addendum #2 states that “limited grant funds may be expended to offset the operational cost of diversion via energy recovery...and/or in those circumstances when material has exceeded storage guidelines and end markets cannot be identified for recycled output.” As presented, the term “limited” is vague and could mean any amount within the scope of the *Addendum*, while “energy recovery” could be used when storage guidelines are exceeded and recycled output is not available. This could inadvertently drive the unintended consequence of weaker recycled output. Given that this is inconsistent with the waste management hierarchy and there is an existing incentive program to cover the costs of energy recovery, CalRecycle staff recommend adding the following conditions:

- a. Funds will be used for capital expenses and/or product testing;
- b. Funds cannot be used for disposal costs, either at a landfill or for thermal technologies.

Key Issue 3: CARE plans to establish a California Council on Carpet Recycling; however, the Council will not be in place in time to provide adequate stakeholder input for Cycle 1.

Transparency and stakeholder input is important for Program success. *Addendum #2* states that CARE will develop a Conflict-of-Interest policy, but that is forthcoming and so CalRecycle cannot evaluate whether or not it is adequate. CalRecycle also understands that CARE plans to propose establishment of a California Council on Carpet Recycling, but this also is forthcoming. Since it is likely to take some time to establish such a Council, CalRecycle staff suggest that in the interim it is necessary to provide another means of stakeholder input on the proposed Cycle 1 program. CalRecycle staff recommend adding the following conditions to gain stakeholder input and allow CARE the opportunity to initiate a initial grant program in 2015:

- a. CARE conducts a webinar/workshop to solicit stakeholder feedback on the solicitation before it is issued
- b. There is no conflict of interest between grantees and those individuals determining scoring criteria, scoring applications, and deciding on awards.

CalRecycle staff will report to the Director of CalRecycle on how each of the conditions presented are being implemented, so that this can be a factor in future consideration of grant program success or failure.

Stakeholder Comments on the *Addendum #2*

Stakeholder comments received to date support CalRecycle's Key Findings, including:

- There is broad support for the concept of a grants and loans, but stakeholders have several concerns with current proposal, as described in the bullets below.
- There is no assurance that funds will be distributed in California. All stakeholders commented that all funds should be spent in California and several noted that \$2-3 million dollars for a grant and loan program may not be sufficient.
- There were concerns that CARE aims to fund the lowest-ranking activities on the solid waste management hierarchy, combustion and disposal, over higher-ranked recycling activities. Some stakeholders commented that combustion should be a last resort after higher-ranked options have been exhausted.
- There is support for the California Council on Carpet Recycling, but information is lacking on its composition and other details.
- Some stakeholders want to allow and encourage public entities to purchase products made by grantees.
- Some stakeholders want non-CARE members to be awarded funds and ensure there is no conflict of interest among CARE committees and grant or loan applicants and suggest that CalRecycle should approve awards while the CARE Program is non-compliant.
- One stakeholder requests that the list of needs be prioritized and allow grants to fund temporary storage, with certain provisions and safeguards to prevent "uncontrolled storage."
- One suggestion was to ensure the definition of "manufactured product" allows for parts that are used in a final product.

Additional CalRecycle Comments

The CARE's California Carpet Stewardship Plan expires at the end of 2016, making it particularly critical for CARE to demonstrate that it is willing and able to implement a successful California Carpet Stewardship Program. For CARE's new Plan to be in place by January 1, 2017, the Plan needs to be adopted in 2016 with adequate time allowed for CARE's submittal and CalRecycle's review and consideration of approval.

CARE moved very quickly with *Addendum #2*, and while it is encouraging to see a swift response, CalRecycle staff found some significant gaps in the information provided. CalRecycle looks forward to reviewing *Addendum #3* after CARE has had more time to consider and

incorporate stakeholder feedback. CalRecycle has the following recommendations and questions for CARE to consider in future Addenda to the *Plan* and/or in a new *Plan* submittal:

1. Grant Program Considerations:
 - a. Grants should be paid in installments after demonstrating completion of activities specified in grant agreements.
 - b. Grantees should provide matching funds and, if appropriate, performance bonds to ensure that temporary storage does not become an environmental liability.
 - c. CARE should provide clarification on whether grantees must be members of CARE for just Cycle 1 or if this requirement applies to all grantees for all cycles and explain why this is included as it does not seem necessarily applicable to entities that may be receiving grants for research or procurement.
 - d. Grant evaluation team should include a balance of California representatives.
 - e. While the concept of issuing grants to state entities for procurement may be feasible, the process entails a lengthy step of budget authorization that allows an agency to accept funds. It may be preferable to design the procurement piece as a pilot and with a participating business receiving the grant funds and conducting the pilot in partnership with the public entity. The public entity could be a partner and provide in-kind services such as assistance with evaluating the pilot.
2. Use of Funds
 - a. Funds could be used to level the playing field between costs of doing business in California as compared to other states to assist in-state applicants.
 - b. Funds may not be used to cover disposal costs, either at a landfill or for thermal technologies considered disposal in California, as this is lowest on the waste management hierarchy.
 - c. CARE should provide explanation of what it means by “product testing”, e.g., whether the testing is for ash/moisture testing, performance testing of new products, or for something else.
3. Project Eligibility Clarification
 - a. *Addendum #2* states “recycling or diversion of materials not otherwise eligible for Program incentives” are eligible projects. CARE should clarify exactly what these materials are as it is not clear.
 - b. *Addendum #2* states that “Limited grant funds may be expended to offset the operational cost of diversion via energy recovery (CAAF, Kiln and/or Waste-To-Energy) for waste materials and/or in those circumstances when material has exceeded storage guidelines and end markets cannot be identified for recycled output.” CalRecycle is not able to evaluate this as presented and has the following questions: What information is provided in storage guidelines? How does that information compare to what would be found in a Solid Waste Permit? How are grant funds, when used to offset operational costs of CAAF, Kiln, and /or WTE, different than existing incentive payments? Why are operational costs for collection, recycling, manufacturing not eligible?
4. Transparent and Competitive Process
 - a. CARE should establish a California Council on Carpet Recycling that has an empowered and influential role in the grant program and *Addendum #3* needs to describe the extent of the Council’s role, composition, and tasks.

- b. CARE states it may review proposals on an on-going basis; however, it is not clear how this is consistent with a transparent, competitive process.
 - c. CARE informs CalRecycle of the decision to make an award prior to announcing or issuing the awards.
5. Addenda Format
- a. Addenda need to be in a format that can be inserted as a new section to the Plan with the description of the request, background information, and extraneous explanations provided in a cover letter or separately from the Plan addenda.