

REQUEST FOR APPROVAL

To: Scott Smithline
Director

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

Request Date: September 15, 2015

Decision Subject: Consideration of the Carpet America Recovery Effort 2014 Annual Report

Action By: September 17, 2015

Summary of Request:

Carpet America Recovery Effort (CARE) submitted the *Annual Report to California Department of Resources Recycling and Recovery (CalRecycle), January 2014 – December 2014, California Carpet Stewardship Plan* (hereafter referred to as the “2014 Annual Report”, see Attachment 1) on July 1, 2014. This item requests the Director’s compliance determination with regards to the 2014 Annual Report.

Options:

1. Find CARE to be noncompliant based upon the *2014 Annual Report* and direct the Waste Evaluation and Enforcement Branch (WEEB) to commence enforcement evaluation and, if warranted, consider action(s) including but not limited to imposition of civil penalties.
2. Find CARE to be noncompliant based upon the *2014 Annual Report* and allow CARE to submit a Plan Amendment and revised budget to CalRecycle by November 30, 2015, that addresses Program deficiencies and the key findings outlined in this Request. The Plan Amendment and revised budget will be subject to CalRecycle approval or disapproval. If the Plan Amendment and/or revised budget is not submitted, or if the submitted Plan and/or revised budget is disapproved, this case will be referred to the Waste Evaluation and Enforcement Branch for enforcement evaluation and action(s), including but not limited to consideration of imposition of civil penalties.
3. Find CARE to be noncompliant based upon on the *2014 Annual Report*; however, suspend referring this issue for enforcement until the 2015 Annual Report is submitted, with information regarding the effectiveness of the Program changes implemented in April 2015.

Staff Recommendation:

CalRecycle staff recommend Option 2. Staff acknowledge that CARE did respond to CalRecycle’s September 2014 finding that the 2013 Annual Report was non-compliant and subsequently undertook several changes to improve the Program. However, these efforts are not sufficient or timely, and they have not resulted in a demonstration of continuous and meaningful improvement in the *2014 Annual Report*. While CalRecycle staff recognizes that changes have been made to many aspects of the Program, as described in the *2014 Annual Report*, staff

concludes additional improvements must be made for the Program to meet statutory requirements. Therefore, staff recommends that CARE be found non-compliant based upon on the *2014 Annual Report*, pursuant to the law for product stewardship for carpet (Public Resources Code sections 42970, 42975-76; and Title 14, Natural Resources--Division 7, Article 1.0, Sections 18942, 18944, 18945), because the Program is not making continuous and meaningful improvement and does not meet the minimum requirements per regulations.

Action:

On the basis of the information, analysis, and findings in this Request for Approval, I hereby find CARE to be non-compliant based upon the *Annual Report to California Department of Resources Recycling and Recovery (CalRecycle), January 2014 – December 2014, California Carpet Stewardship Plan*, dated July 1, 2015. I also direct staff to postpone taking any enforcement to allow CARE time to submit to CalRecycle a Plan Amendment and revised budget by November 30, 2015, that address the key findings outlined in this Request for Approval. The Plan Amendment and revised budget will be subject to CalRecycle approval or disapproval no later than CalRecycle's January 2016 public meeting. If the Plan Amendment and/or revised budget are not submitted timely, or if they are not subsequently approved, the program and current Annual Report will be referred to the Waste Evaluation and Enforcement Branch for enforcement evaluation and action(s). Finally, I direct staff to engage with CARE, or other interested parties, to establish a schedule for the submittal of a new Plan, given the current Plan expires by the end of 2016. Given CARE's performance to date, making program improvements over the next year will be critical for assessing any proposed new plan and for determining necessary enforcement action(s).

Dated: _____

Scott Smithline, Director

Attachments:

1. *Annual Report to CalRecycle, January 2014 – December 2014*; available at: <http://www.calrecycle.ca.gov/files/Carpet/CARE2014.pdf>
2. *California Carpet Stewardship Plan Revised*, January 2014, version 3.2.2.; available at: <http://www.calrecycle.ca.gov/Carpet/Plans/PlanJun2014.pdf>
3. *Addendum to the Plan Version 3.2.2.*, available at: <http://www.calrecycle.ca.gov/Carpet/Plans/AddenDec2014.pdf>
4. *CalRecycle Response to CARE, Independent Audit section of Annual Report*, August 21, 2015: <http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=1589&aiid=1440>
5. *Stakeholder Comment Letters on the 2014 California Carpet Stewardship Program Annual Report* available at: <http://www.calrecycle.ca.gov/Carpet/AnnualRpts/Comments/default.htm>

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.

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* (hereafter referred to as *Plan v3.2.2*) (see Attachments 2 and 3), that the Director of CalRecycle approved in January 2014 and January 2015, respectively.

CalRecycle found the California Carpet Stewardship Program out of compliance in September 2014 because the *2013 Annual Report* did not meet the minimum requirements per regulations and because it was not clear that the Program was making continuous and meaningful improvement. CalRecycle provided specific suggestions and delayed any potential administrative action until receipt and review of *2014 Annual Report* to allow CARE time to make improvements.

2014 Annual Report Submittal and Review Timeline

On July 1, 2015, CARE submitted the Carpet Stewardship Program's third Annual Report, titled *Annual Report to California Department of Resources Recycling and Recovery (CalRecycle), January 2014 – December 2014, California Carpet Stewardship Plan*, as required by PRC section 42976 (see Attachment 1). The *2014 Annual Report* also includes a *Report Addendum: Additional Progress – 2015 Updates* (section 11).

In addition to reporting on the results of the Program for 2014 and providing the addendum on 2015 updates, the *2014 Annual Report* includes an appendix with independent financial audit information. Specifically, Appendix IV: *Audited Financial Statements*, prepared by the independent auditor, Winter & Scoggins, covers the *CARE 2014 Audited Financial Statement* (section 10.4.1), *CA Carpet Stewardship Plan 2014 Audited Financial Statement* (section 10.4.2), *Independent Auditor Letter to CalRecycle* (section 10.4.3), and *Performance Audit 2014* (section 10.4.4). As required by regulation, CalRecycle staff separately reviewed these audit reports and shared its findings in a letter sent to CARE on August 21, 2015 (see Attachment 4, *CalRecycle Response to CARE, Independent Audit section of Annual Report*).

ANALYSIS

Assembly Bill (AB) 2398 was passed in 2010 with the intent to achieve improvements in the landfill diversion and recycling of postconsumer carpets in the waste stream. AB 2398 mandated an extended producer responsibility (EPR) or product stewardship approach. EPR is a strategy to place a shared responsibility for end-of-life product management on the producers, and all entities involved in the product chain, instead of on the general public and local governments, with oversight and enforcement provided by a governmental agency (CalRecycle has oversight and enforcement for the carpet, paint, and mattress EPR programs). EPR encourages product design changes, allows the costs of recycling to be incorporated into the total cost of a product, and places primary responsibility on the producers who make design and marketing decisions to collectively determine the most cost-effective way to successfully implement the recycling program. It also creates a setting for markets to emerge that truly reflect the environmental impacts of a product, and to which producers and consumers respond. In contrast, a non-EPR approach could entail the state collecting and disbursing funds, as well as prescribing program components.

With respect to carpet, the California Legislature determined that continuous and meaningful improvement in the landfill diversion and recycling of postconsumer carpets in the waste stream is needed. As discussed in detail below, to date the Carpet Stewardship Program has not shown continuous and meaningful improvement.

From CalRecycle's perspective, if an EPR approach to managing carpet cannot be effectively implemented, then other legislative approaches that have resulted in successful recycling programs could be considered. In fact, CalRecycle is responsibly implementing several government-run recycling programs, e.g., Covered Electronic Waste Recovery and Recycling Program, Waste Tire Recycling Management Program, and Beverage Container Recycling Program with annual revenue streams (in Fiscal Year 2012-13) of approximately \$87 million, \$52 million and \$1 billion, respectively. Several of these programs address materials that are significantly smaller portions of the waste stream than carpet comprises. These government-run programs are fundamentally different from the CARE Program as CalRecycle sets or implements the assessments, collects the funds, designs the program, provides enforcement and ensures that a high recycling goal is achieved with a level playing field in all aspects. (See discussion of assessment and recycling program revenues in Key Finding #6 below.)

Due to the EPR nature 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's responsibility is to design and implement the California Carpet Stewardship Program so as to achieve continuous and meaningful improvement in landfill diversion and recycling of postconsumer carpets in the waste stream and it has considerable flexibility in achieving this broad goal.

CARE began implementation of the California Carpet Stewardship Program in 2011, over four years ago. After initial gains during the first year of implementation, from a 7% to 12% recycling rate, the recycled output over time (i.e., the eleven quarters ending December 31, 2014) has remained flat at around 12% and dipped down to 11% at the end of 2014. The lack of continuous

and meaningful improvement resulted in CalRecycle finding the Program out of compliance in September 2014. CalRecycle provided specific suggestions and delayed any potential administrative action until receipt and review of *2014 Annual Report* to allow CARE time to make improvements.

CalRecycle Staff Analysis of the 2014 Annual Report

CalRecycle staff reviewed the *2014 Annual Report* with respect to actions required per statute, regulation or the approved Plan and offer the following analysis.

Overall finding: CalRecycle acknowledges that CARE responded to the finding that it was noncompliant based upon the *2013 Annual Report* and undertook several changes to improve the program. For example, CARE established accounting procedures and payment systems that appear to be working well based on independent audits, which is a significant accomplishment. CARE also implemented an increase in the assessment and a set of new incentives to advance the program goals. In 2014, CARE finally hired a full-time person, a couple of part-time contractors and an education and outreach firm to assist their efforts in California.

However, these efforts have not been sufficient nor timely, as detailed below, and the Program has not demonstrated continuous and meaningful improvement. CARE needs a plan that is more robust, addresses several key gaps and/or barriers, and demonstrates faster and more effective implementation. The approved Plan expires at the end of 2016 and so this next year is critical as it provides CARE with the opportunity to demonstrate it is up to the task of fully implementing a successful industry-designed carpet stewardship program that is funded by California consumers.

CalRecycle staff recommend that CARE be allowed to submit to CalRecycle a Plan Amendment and revised budget by November 30, 2015, that addresses the key findings outlined below. CalRecycle staff believes that this should include an action plan for “required” action items below and, at a minimum, an explanation of pros and cons and how it carefully considered the remaining potential action items. CARE is not limited to the suggestions provided in the key findings. If the Plan Amendment and/or revised budget are not submitted timely, or if they are not subsequently approved, CalRecycle staff recommends that the program should be referred to the Waste Evaluation and Enforcement Branch for enforcement evaluation and action(s). Four key findings relate to actions required by statute, regulation, or the approved Plan:

Key Finding 1: The recycled output and other Program goals are not showing meaningful and continuous improvements.

Requirements: Public Resources Code (PRC) section 42975(a) states that an Annual Report must demonstrate meaningful and continuous improvements of goals presented in the statute, regulations, and approved Plan. PRC section 42972 (d) and 14 CCR section 18943 (10) require stakeholder consultations when developing a Plan, including, but not limited to, *other manufacturers and stewardship organizations, service providers, state and local governments, non-governmental organizations, haulers, demolition or other contractors, recyclers, retailers and wholesalers, installers, and consumers.*

Implementation/Noncompliant Status: The *2014 Annual Report* continues to show that the key goal of recycled output fails to demonstrate continuous and meaningful improvement. Goals with trend information (compared to 2013) are presented below:

- **Recycling rate:** The recycled output is a flat trend at 12 percent of discards in 2014, whereas the goal is 16 percent by 2016. This is the most important indicator or metric regarding continuous and meaningful improvement. The last eleven quarters have shown some fluctuation and a slight decrease in the recycled output from 12 to 11 percent in Q4 2014. Furthermore, based on the Q1 2015, the 2015 Annual Report may continue to show a lack of improvement. While this recycled output information does not reflect the potential effect of new incentives that became effective in April 2015, it is an indication that the goal is not going to be achieved in the 2015 or 2016 without a change in the trend, which has been flat, and significant improvements in the remaining quarters of 2015.
- **Source Reduction:** There is no change in source reduction (average weight of carpet remains 4.2 lbs./yd²).
- **Recyclability:** Due to recyclability of collected carpet, there is a lower yield on carpet collected (6% decrease in recycled output yield from collected carpets).
- **Reuse:** There is an insignificant increase of 0.04% in reuse.
- **Diversion:** Diversion increased (from 21% to 27% of discards, with some materials being sent to cement kiln and waste-to-energy)
- **Market growth:** The metrics provided in the Plan are unclear in demonstrating trends, although there appears to have been some improvements in activities. For example, in the Plan (page 12) CARE says it will annually survey all manufacturers of secondary products to quantify volumes of new products. These volumes have not been reported. However, CARE has provided information on some indicators of market growth such as a list of products made from secondary materials, contacts made with various groups, pilot studies to test products, and hiring consultants.

The current Plan expires in 2016 and the process to develop a new Plan must include consultations with stakeholders as required in statute and regulations as noted above. For these consultations to be meaningful, they need to occur early in the process so there is time for CARE to fully consider ideas that are offered. The California Mattress Recovery and Recycling Program has an Advisory Council that has been actively engaged and viewed positively by participants. Additionally, a large portion of stakeholder comments on the *2014 Annual Report* (See section below, *Stakeholder Comments on the 2014 Annual Report*) recommend that a similar approach should be considered as a means to help CARE work collaboratively with stakeholders and make program improvements.

Recommended Action Item(s):

- a. CARE should submit a Plan Amendment and revised budget with action items and associated funding designed to ensure that the Program shows continuous and meaningful improvement in achieving the requirements in statute, regulations, and the approved Plan. The action items must be designed to result in a meaningful increase in recycled output and other goals.
- b. CARE should consider establishing a California advisory committee that meets regularly and involves all key stakeholder groups, including retailers and installers, and provides

input to CARE on design and implementation of the Program to help it achieve continuous and meaningful improvement.

Key Finding 2: Consumers purchasing carpet do not have reasonable access to recycling services in all counties.

Requirement: Regulations require a very basic convenience level: Carpet consumers will be provided reasonably convenient opportunity(ies) in each county to manage their post-consumer carpet. Title 14CCR section 18943 (a)(5)(E)) states that the Plan shall provide: *“Description of how each consumer that pays a carpet stewardship assessment, including but not limited to those in rural areas, will be provided reasonably convenient opportunity(ies) in each county to manage their post-consumer carpet.”* (underline added for emphasis)

Implementation/Noncompliant Status: CARE has not yet demonstrated that it is or will be providing collection opportunities in every county. CARE has established a rural Program whereby CARE provides collection trailers, covers the transportation costs of the trailers to processors, along with signs and educational materials to interested rural counties. CARE has been expanding this Program, but limits participation to only those counties defined as rural. Based on information in the *2014 Annual Report*, there are 200 private collection sites in California but exact locations are not identified. Meanwhile, about half of California’s counties lack collection services. The *2014 Annual Report* does not explain how recycling services will be provided in all counties. A basic premise of the CARE Plan is to offer incentives to make recycling services economically viable, but not pay the full cost of the recycling services. However, that still may not be sufficient or viable if it is more expensive than landfilling; for example, a facility in Sacramento County offers carpet recycling, but at double the cost of landfilling. In addition, some central valley counties now lack recycling services compared to a few years ago, as some collection locations have shut down. With the closure of several Tier 1 processors in California, additional regions now do not have regional carpet recycling options.

Recommended Action Item:

- a. CARE’s Plan Amendment should list counties without viable recycling services, explain how viable collection for recycling services will be provided, and present a schedule for introducing services in counties that do not have them.

Key Finding 3: Education and outreach are lacking. Key target audiences such as installers, retailers, and consumers remain unaware of CARE’s Carpet Stewardship Program, what recycling services are available, what assessment funds are used for, and what their respective roles are in making the Program successful.

Requirement: Title 14CCR Section 18944 (a)(8), Outreach/Education requires the following in part: *List educational outreach activities in the stewardship plan. Provide a description of educational materials that were provided to retailers, consumers, carpet removers/installers, contractors, during the reporting period. Identify the method used to determine the effectiveness of educational and outreach surveys (e.g., surveys, hits on specific web pages, number of participants at events, etc).* In addition, Title 14 Code of California Regulations

(CCR) Section 18943(a)(7)(B) requires an approved plan to contain a budget that includes revenue estimates from the assessment, full program costs, and administrative costs.

Implementation/Noncompliant Status: Although CARE has provided an education and outreach description in its Plan, CARE has not effectively reached specific and important targeted audiences. As reported in 2014, CARE's education and outreach was extremely limited, being primarily focused on the Rural County Program, except for the end of the year when CARE conducted an education and outreach pilot in the San Francisco Bay Area. While CARE did lay a potentially broader foundation in late 2014 that can be used to guide its efforts forward, its efforts came too late in 2014 to demonstrate results. Based on the information below, CalRecycle questions whether the efforts are sufficient, in part because the resources dedicated to the effort, actions and due dates are unknown.

1. In late 2014, CARE hired Gigantic Idea Studio to conduct education, outreach, and marketing research and establish metrics. CARE used this information to establish a baseline from which to measure education, outreach, and marketing activities in future years (see *2014 Annual Report* pages 86-88). The list of metrics presented is not well organized or clearly marked as to which items are intended to be tracked each year.
2. CARE's budget, which appears in the Plan, shows that funds for education and outreach decrease from 2014 to 2015 and thus does not confirm CARE's level of commitment toward improving education, outreach and marketing.
3. In a 2014 survey, CARE contacted 52 stakeholders within five primary audiences (Manufacturers/Processors, Retailers/Contractors, Collectors/Sorters/Sites, Recycling coordinators, and other stakeholders) and explored current practices and opportunities. CARE found key target audiences remained unaware of the Program. While this was only a survey, CalRecycle notes that the universe of target audiences is significantly larger (i.e., there are thought to be approximately ~6000 installers, ~3000 carpet retailers, and ~550 local jurisdictions in California) and that CARE's education, outreach, and marketing activities need to be much greater to reach these audiences. Given the size of the state, the number of affected retailers and installers, and work needed, CARE may need to hire more resources to ensure effective education and outreach.
4. CalRecycle staff, through their field inspections as well as via informal discussions with retailers and wholesalers, confirm that CARE's reported survey findings are consistent with findings from the field – i.e., there is a lack of a basic understanding regarding the CARE program. Based on the 300 field inspections performed to date, approximately 45% of carpet retailers and wholesalers have no knowledge of CARE or CalRecycle's website, and approximately 55% are either not adding an approved assessment label or are adding an incorrect assessment label. Furthermore, approximately 20% of retailers and wholesalers are not adding or collecting any assessment on consumer invoices (CARE reports that 99% of manufacturers pay into the California Carpet Stewardship Program so this appears to be more a question of transparency to consumers).

In contrast to the PaintCare program, carpet inspections are typically contentious and business contacts have a more limited understanding of the CARE program. In comparison, paint inspections go without issue, and staff have noted that the business contacts have been provided outreach materials, personal contact from PaintCare staff, and/or instructions manuals from PaintCare. Lastly, carpet retailers and wholesalers

regularly ask CalRecycle inspectors two questions. The first is about recycling options as many have searched and no carpet recyclers are available in their area. The second is in regards to how the assessment is correlated to recycling options. All of this points to the overall lack of information being provided to key entities affected by the program. In addition, some contention from retailers may arise from the requirement for approved carpet labeling; in contrast, paint retailers do not have to use an approved label on customer receipts or billing statements.

5. CARE's education and outreach materials in 2014 provided additional market development information as compared to 2013, but significantly more work is needed to advance markets and provide outlets for the collected and processed carpet materials. CARE's education and outreach materials and Program activities could be enhanced to further encourage manufacturers to use processed carpet materials as raw materials in new products and consumers to purchase recycled content products. CARE could consider additional approaches to advance market development beyond research, a brochure, presentations, and one in-state consultant. For example, many recycling programs that CalRecycle implements use grants and/or pilot studies that enable businesses or government entities to try new products with less risk.

Recommended Action Item(s):

- a. CARE's Plan Amendment should clearly present which metrics (see *2014 Annual Report* page 86-88) will be used in evaluating effectiveness of education, outreach, and marketing activities to retailers, consumers, carpet removers/installers, collectors, and processors.
- b. CARE's Plan Amendment should present a list of education and outreach actions that it will complete, along with identifying a lead person, deliverables, due dates, and an associated approved budget.
- c. CARE's Plan Amendment should provide timely and effective education and outreach to in-state processors that supports in-state recycling operations and balances increases in collection with increases in processing.
- d. CARE must carefully consider providing education and outreach and other market development approaches (e.g., grants, pilot studies) that encourage manufacturers to use processed carpet materials as raw materials in new products and encourage consumers to purchase recycled content products.

Key Finding 4: The definition of "processor" was modified from the approved Plan. This term is being used to evaluate performance and CARE should avoid changing definitions to make them contrary to the statute, regulations, or the approved Plan without good cause and clear explanation in the Annual Report.

Requirement: CARE shall consistently use terms as defined in statute, regulations and its approved Plan. Based on the direction CalRecycle provided to CARE in 2014, revisions to those terms are approved only if CalRecycle confirms that a new term defined in an annual report is not in conflict with terms in statute, regulation, or the approved plan, and it is approved as an amendment to the Program definitions in the approved Plan, CARE shall add the term to the list of Program glossary. (Attachment 2, Detailed Comments for CARE, 2013

Annual Report page 4). The approved Plan defines “processor” whereby a Tier 1 processor processes whole carpets while a Tier 2 manufacturer takes output from a Tier 1 processor and makes new products (page 36). One requirement of the Annual Report is to identify the number and location of processors and processing capacity which are indicators of recycling infrastructure growth. Therefore, consistency in the use of the term “processor” is important.

Implementation/Noncompliant Status: In the *2014 Annual Report*, CARE has provided a new unapproved definition of “processors” to include Tier 1 Processors and Tier 2 manufacturers, and is now referring to Tier 2 manufacturers as “processors” (Appendix V, page 103). By combining these together, CARE is reporting that the number of “processors” has increased while in actuality the number of Tier 1 processors declined from 11 in 2013 to 8 in 2014.

CalRecycle reviewed the new definition of “processor” and found it to conflict with the definition provided in the approved Plan. The Plan (page 36) defines processors and Tier 2 manufacturers as follows: *Carpet processors are companies or facilities that take used carpeting (whether handled by a sorting facility or brought directly by a collector) and process it for use as a feedstock in a manufacturing facility. In addition, downstream manufacturers have been added to the Program to create pull-through specifically for non-nylon materials recovered from post-consumer carpet. The Plan refers to these downstream manufacturers as Tier 2 manufacturers [emphasis added].* As the Program evolves, there may be a need to clarify or change definitions. Since definitions are a critical part of metrics being used to measure Program performance, it is important that any changes in definitions be deliberate, for good cause, obtain prior CalRecycle approval before using them, and with clear explanation on how to interpret the performance metrics within the context of the definitional change.

Recommended Action Item(s):

- a. CARE must confirm if the use of “processor” in the *2014 Annual Report* is a deliberate definitional change and if so, how the change impacts performance metrics. The Department recommends that CARE amend its Annual Report to provide clarity regarding use of the term “processor” in the *2014 Annual Report* so it is clear if the context is a Tier 1 processor, or both Tier 1 processors and Tier 2 manufacturers.
- b. CARE must carefully consider implying or changing definitions that are contrary to statute, regulations, or the approved Plan and only make deliberate changes in definitions for good cause and with clear explanation on how to interpret the performance metrics within the context of the definitional change.
- c. CARE may add new definitions by defining them in an annual report and, once approved by CalRecycle, the new definition must be included as an amendment to the Program definitions in the approved Plan.

In addition to the above recommendations, the following key findings are related to indicators or metrics that CalRecycle considers to be important to a robust and responsive recycling program. These key findings are not specifically related to actions required by statute, regulation, or the approved Plan. However, CalRecycle staff recommend that CARE consider each of these key

findings for inclusion in the Plan Amendment because CalRecycle believes these additions would result in a more effective and successful program in California.

Key Finding 5: CARE is not responding to market changes in a timely manner with assessment and incentive adjustments that result in increased recycling output.

Requirement: There is no specific requirement regarding CARE's internal decision-making process, but CARE's current approach is slow and appears to be making achievement of the goals less feasible.

Implementation Status: The recycled output trend had been essentially flat for over 3½ years before CARE decided to increase the assessment and restructure incentives in December 2014. CalRecycle approved the proposed increase in January 2015 and CARE implemented these significant changes by April 2015, a fairly short time period considering education and outreach. These actions are included in the addendum to the *2014 Annual Report* (pages 105-115), *Additional Progress - 2015 Updates*.

However, other market changes have occurred and CARE has yet to take action. For example, the Plan was designed when crude oil was at a higher price point and recycled nylons could be sold for higher prices than today. The *2014 Annual Report* indicates that crude oil prices fell substantially in 2014, resulting in less expensive raw material inputs for virgin plastics and less demand for recycled nylon. Consequently, due to changing market conditions that impact demand and prices for recycled nylon, the basic Program incentive applicable to nylon -- unchanged since the Program's inception -- appears insufficient at this time, as processors are competing with the lower virgin nylon price point but still need enough to cover their costs. In addition, if nylon incentives are adjusted appropriately, the nylon that is currently being exported would instead be incentivized to be handled domestically which would increase recycled output. This may help CARE achieve its recycling goal.

Recommended Action Item(s):

CARE should consider including in its Plan Amendment, the following:

- a. Adjustments to its decision-making process and/or the Plan to enable timely decisions that support economically viable recycling and continuous and meaningful improvement. CARE could consider potential triggers that provide for decision-making meetings, adjustments or streamlined approvals.
- b. Adjustments to the nylon incentive to compensate for existing market conditions.
- c. Developing a methodology to assess market changes and provide timely responses. The methodology should provide for efficient identification of market changes and their associated impact on the effectiveness of incentives as well as a faster implementation of assessment/incentive adjustments that drives an economically viable recycling program. As part of the methodology, CARE could consider what time period or amount of change, e.g., a change in commodity price over a certain time period, would require an assessment/incentive adjustment within certain parameters. Given market fluctuations, there may be a need for a mechanism to lower incentives as well.

Key Finding 6: The assessment is the same for all carpet types, while the cost to recycle different types varies considerably. In general, the assessment is a very low percentage of total product cost.

Requirement: PRC 42972 (c)(2) states: *“The amount of the assessment and the anticipated revenues from the assessment shall be specified in the plan and shall be approved by the department as part of the plan. The amount of the assessment shall be sufficient to meet, but not exceed, the anticipated cost of carrying out the plan. The amount of the assessment shall not create an unfair advantage in the marketplace.”*

Implementation Status: Currently there is one assessment amount for all carpet types regardless of the recyclability of the carpet type and associated cost to process it into a marketable recycled content product, which provides little incentive for green design. In particular, while polyester carpet is increasing in the market place and in the waste stream, it also costs more to recycle than other carpets and has fewer secondary product markets. To level the playing field and encourage green design, the assessment should be tied to recyclability, taking into consideration the increased recycling costs and market development needs.

In addition, regardless of carpet type and recyclability, the assessment is a very low percentage of the total product cost. While the assessment on carpet is currently set at about 0.5 percent of the product cost, other recycling programs for paint, mattresses, electronic waste, tires, and beverage containers have assessments more in the range of 2 to 3 percent of the product cost (the percentages are variable within a product type – 2-3 percent is an average). The total revenue collected to run these programs is \$35 million, \$40 million, \$87 million, \$52 million and \$1 billion, respectively (paint Fiscal Year 2013-14, others are Fiscal Year 2012-2013). The list of recycling programs managing these products includes both EPR and government-run programs, and the paint, tire and beverage container programs have much higher recycling rates in the range of 25 to 85 percent compared to the carpet program at 12 percent. This suggests that the carpet assessment may not be set at a high enough level to implement a recycling program that will meet the recycled output goals and continuous and meaningful improvement.

Recommended Action Item(s):

CARE should consider including in its Plan Amendment, the following:

- a. Implementing a tiered assessment paid by consumers or manufacturers that places a higher assessment on carpets that are more costly to recycle.
- b. Setting the assessment at an adequate level to provide sustainable funding for a recycling program that meets the recycled output goals and continuous and meaningful improvement.

Stakeholder Comments on the 2014 Annual Report

CalRecycle received four comment letters from stakeholders; two of the letters represented multiple stakeholders. Overall, the stakeholder comments support CalRecycle’s Key Findings including: lack of continuous and meaningful improvement in the Program, lack of timely response to market changes with incentive adjustments, lack of services in all counties,

underutilized fund surplus, a good portion of California funds flowing to out-of-state entities, and insufficient outreach to stakeholders. Briefly,

- 90% of stakeholders comment that CalRecycle should find the *2014 Annual Report* non-compliant and further comment that the Program is under performing, some say “seriously underperforming.”
- 80% of stakeholders ask CalRecycle to consider imposing civil penalties.
- 70% of stakeholders commented on the need for an advisory committee or process to better engage stakeholders.
- 90% of stakeholders highlight the lack of recycling services in parts of the state.
- 70% of stakeholders comment on the lack of consumer outreach and education since 2011.
- 80% of stakeholders comment that the nylon incentive is insufficient to make recycling economically viable.
- 70% of stakeholders comment that the assessment should reflect the cost to recycle the carpet.
- 80% of stakeholders comment that the surplus is too high and funds need to be used to support the program, particularly collectors and sorters in California.
- 80% of stakeholders comment on a lack of support for California carpet recycling facilities.

Some reviewers observed a lack of commitment by the carpet industry to the success of the program and offered suggestions such as: requiring manufacturers to label the carpet fiber type on the back of their product, providing collectors and processors with carpet sorting instruments, establishing an advisory committee or process to better engage stakeholders, setting an assessment that reflects the cost to recycle and an economically viable nylon incentive, requiring manufacturers who produce PET carpet to take their product back at end of life, reconsidering goals and the incentives needed to achieve the goals, and incorporating California’s greenhouse gas reduction goals in the design of a robust Program.

Stakeholders also raised the issue that funds collected from California consumers via the carpet assessment flow to out-of-state entities. Specifically, more than half of processors/manufacturers eligible for subsidies operate outside of California, i.e., 5 processors are in-state and 9 are out-of-state. Of the 5 large Tier 1 processors, 2 are in-state. Given the portion of carpet manufacturing in Georgia and the desire for closed-loop recycling, it is logical that some material processing and Tier 2 manufacturing will occur out-of-state. However, preferential incentives for California processors/manufacturers could result in reduced greenhouse gas emissions for transportation of materials as well as the creation of California businesses and jobs. For materials that require out-of-state manufacturing, it would be more efficient to transport consolidated raw materials rather than shipping whole carpets that might contain a good portion of material that is not recyclable. Resource tools for collectors to properly sort recyclable carpets, such as providing carpet fiber detectors, and preferential incentives for in-state processors to separate and consolidate raw materials would help develop a local recycling infrastructure. However, while this has also been a concern of CalRecycle staff, there is no requirement that CARE use funds collected from California consumers to incentivize recycling in California that creates businesses and jobs. Attachment 5, stakeholder comment letters received by CalRecycle, can be viewed at (<http://www.calrecycle.ca.gov/Carpet/AnnualRpts/Comments/default.htm>).

Additional Important Observations Regarding the CARE Plan Expiring in 2016

The California Carpet Stewardship Plan expires by the end of 2016 by its own terms. A new Plan will need to be approved by the Director of CalRecycle prior to its expiration if CARE intends to continue being a stewardship organization for carpet in California. Making program improvements over the next year will be critical for the Director's assessment of this new Plan. The development of the Plan for subsequent years will provide CARE and stakeholders an opportunity to assess what is working well, what needs improvements, and how to adjust the overall Program. Additionally, it will provide another opportunity to refine program metrics, reset goals and consider more profound changes that will enable a successful program.

It is essential for CARE to communicate its intent and if appropriate provide scheduling to develop its new Plan since, without a new approved Plan, manufacturers and retailer selling of carpet in California could be subject to civil penalties pursuant to the statute.

The process to develop a Plan and have it approved can take about six months or more. A new Plan could be submitted by CARE, or by individual or groups of manufacturers. If CARE intends to submit a new Plan, then because of the time involved, it will need to work with CalRecycle staff and agree on the process and a schedule by the end of 2015. This will help ensure a new Plan is approved on time so carpet sales can continue under an approved Plan(s) and there is a smooth transition to whatever changes are put forth. Additionally, as noted, some carpet manufacturers may want to submit their own Plan (either as a group or individually) and sufficient transparency and advance notice is needed so they have time to prepare, if necessary. No matter who submits a Plan or Plans, this process needs to consider the stakeholder recommendations from workshops in July 2015 along with new stakeholder consultations that are part of the Plan development process (see *Key Finding 1*).

For the 2015 Annual Report and any future Plan, CalRecycle staff would like to continue working with CARE or other potential Plan submitters on standardizing tracking and reporting metrics, including but not limited to how CARE estimates total carpet discards, material throughput, and jobs generated by the Program, the latter which had some numbers in the *2014 Annual Report* that appear inconsistent with past reports.

Finally, given that it appears the Program is not on track to meet its 2016 recycling goal of 16%, this next year is particularly critical for CARE to demonstrate that it is willing and able to implement a successful carpet stewardship program.