

2015 CARE ANNUAL REPORT
REQUEST FOR APPROVAL

To: Scott Smithline
Director

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

Request Date: September 20, 2016

Decision Subject: Consideration of the Carpet America Recovery Effort 2015 Annual Report

Action By: September 21, 2016

Summary of Request:

Carpet America Recovery Effort (CARE) submitted the *CARE California Carpet Stewardship Program Annual Report, January 2015 – December 2015* (hereafter referred to as the “2015 Annual Report,” see Attachment 1) on June 30, 2016. This item requests the Director’s compliance determination regarding the *2015 Annual Report*.

Options:

1. Based on the Statewide Technical and Analytical Resources (STAR) staff findings that several key components of the *2015 Annual Report*, as well as previous *Annual Reports*, are noncompliant, direct the Waste Evaluation and Enforcement Branch (WEEB) to verify these findings and other potential violations of the statute and regulations and, if warranted, consider action(s) including but not limited to imposition of civil penalties, a compliance schedule, or other options to achieve compliance.
2. Based on STAR staff findings that several key components of the *2015 Annual Report*, as well as previous *Annual Reports*, are noncompliant, and the fact that CARE has made recent efforts which may ultimately achieve the goals of the current Plan, suspend referring this issue to WEEB for enforcement evaluation until data through the end of 2016 are available to evaluate compliance with Program goals. Pending outcome of 2016 data, then this case may or may not be referred to the WEEB for further verification of the findings and other potential violations of the statute and regulations, and, including but not limited to consideration of imposition of civil penalties, a compliance schedule, or other options to achieve compliance.

Staff Recommendation:

CalRecycle staff recommend Option 1. Efforts to date have not resulted in a demonstration of continuous meaningful improvement; in fact, the recycled output rate dropped from 12 percent in 2014 to 10 percent in 2015. Therefore, staff recommend WEEB further investigate STAR’s finding and proceed with enforcement actions as appropriate as described in Option 1.

Action:

On the basis of the information, analysis, and findings in this Request for Approval, I hereby direct the Waste Evaluation and Enforcement Branch to commence enforcement evaluation as described in Option 1 above.

Dated: 9/21/16

[Signature]
Scott Smithline, Director

Attachments:

1. *Annual Report to CalRecycle, January 2015 – December 2015:*
<http://www.calrecycle.ca.gov/files/Carpet/CARE2015.pdf>
2. *California Carpet Stewardship Plan Revised, January 2014, version 3.2.2.:*
<http://www.calrecycle.ca.gov/Carpet/Plans/PlanJun2014.pdf>
3. *California Carpet Stewardship Plan, Addenda #1, #2 and #3 – links to the individual documents may be found at:* <http://www.calrecycle.ca.gov/Carpet/Plans/default.htm>
4. *CalRecycle Response to Independent Audit section of 2015 Annual Report, August 29, 2016:*
<http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=1885&aiid=1722>
5. *Stakeholder Comment Letters on the 2015 Annual Report:*
<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, with the purpose (Public Resources Code [PRC] §42970) of increasing the amount of postconsumer carpet that is diverted from landfills and recycled into secondary products or otherwise managed in a manner that is consistent with the state's hierarchy for waste management practices pursuant to PRC §40051. 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. 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 implement the recycling program.

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

While CalRecycle does not dictate specific design of the Program, it is responsible for evaluating the Program to determine if the requirements mandated by statute, regulation, or the approved Plan are fulfilled. Specifically, CalRecycle has responsibility to approve or disapprove carpet stewardship plans submitted by manufacturers or their designated product stewardship organization (PRC §42973); review annual reports to verify the objectives of the plan are being met (PRC §42975); and provide oversight and enforcement to ensure a level playing field among carpet manufacturers (PRC §42974 and §42978). For manufacturers to be in compliance, they must have an approved plan (PRC §42973(b)), or be part of a stewardship organization with an approved plan, and demonstrate achievement of continuous meaningful improvement in the rates of recycling and other goals included in an approved stewardship plan (PRC §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 §42978). The Office of Administrative Law approved regulations on January 26, 2012, to add clarity to statute.

CARE is implementing its California Carpet Stewardship Plan, titled *California Carpet Stewardship Plan Revised, version 3.2.2* (Attachment 2). CARE also submitted three Addenda to the Plan (Attachment 3), most recently Addendum #3, approved by the Director in January, 2016. These documents are collectively referred to as the Plan.

In 2014, CalRecycle found the California Carpet Stewardship Program out of compliance because the *2013 Annual Report* demonstrated the Program was not making continuous meaningful improvement. CalRecycle found the Program noncompliant once again in September 2015, based on review of the *2014 Annual Report*. At that time CalRecycle provided specific suggestions and delayed any potential enforcement action until receipt and review of the *2015 Annual Report* to allow CARE time to make improvements, including improving its Plan to attempt to improve recycling. These updates were included in various Addenda to the Plan.

On June 30, 2016, CARE submitted the Carpet Stewardship Program's third Annual Report, titled *CARE California Carpet Stewardship Program Annual Report, January 2015 – December 2015*, as required by PRC §42976 (Attachment 1). The *2015 Annual Report* also includes (in section 11) a *Report Addendum: Additional Progress – 2016 Updates*.

Additionally, the *2015 Annual Report* includes independent financial audit information. Appendix 10.10, *Audited Financial Statements*, prepared by the independent auditor, Winter & Scoggins, covers the *CARE 2015 Audited Financial Statement* (section 10.10.a), *CA Carpet Stewardship Plan 2015 Audited Financial Statement* (section 10.10.b), and *Performance Audit 2015* (section 10.10.c). As required by regulation, CalRecycle staff separately reviewed these audit reports and shared the findings in a letter sent to CARE on August 29, 2016 (Attachment 4). The letter noted several findings have remained unresolved from previous years. CARE's lack of improvement relative to the regulatory and statutory requirements may be reviewed further by the department.

FINDINGS AND ANALYSIS OF CARE'S 2015 ANNUAL REPORT

The *2015 Annual Report* describes CARE's performance data for 2015 as well as the actions CARE took in response to CalRecycle's noncompliance determination in September 2015 (regarding the *2014 Annual Report*). CalRecycle acknowledges CARE made several changes to the Program with respect to the finding that it was noncompliant based upon the *2014 Annual Report*. However, the *2015 Annual Report* does not demonstrate that CARE is meeting critical performance goals outlined in its approved plan and in statute, in particular relative to recycled output and "continuous meaningful improvement."

Although there may be other violations of statute and regulations, the following key findings on the *2015 Annual Report* support that CARE is noncompliant:

FINDING 1: *The recycled output and other Program goals are not showing continuous meaningful improvement.*

- *Requirements:* PRC §42975(a) states an Annual Report must demonstrate "continuous meaningful improvement in the rates of recycling and diversion of postconsumer carpet" and in meeting other goals presented in the statute, regulations, and approved Plan.
- *Analysis:* The *2015 Annual Report* shows that the key measure of recycled output, along with diversion, are lower than the goals outlined in the approved Plan and that other key goals also did not improve in 2015.
 - Goals with trend information (compared to 2014) are presented below:
 - Recycling rate: The recycled output fell from 12 percent of discards in 2014 to 10 percent in 2015, whereas the required Plan goal is 16 percent by 2016. The last twelve quarters – three years – have shown some fluctuation but declined overall from a high of 14 percent in Q1 2013.

- Source Reduction: There is no change in source reduction (the average weight of carpet remains 4.2 pounds per square yard).
- Recyclability: Overall recyclability of carpet has not improved. As indicated by yield figures, 34 percent of gross collections were converted into recycled output in 2015, a 1 percent decrease from 2014.
- Reuse: Reuse did increase in 2015 (602,000 pounds compared to 174,000 pounds in 2014), but represents a small fraction of the carpet discarded during the year. Moreover, the 428,000-pound gain in reuse was more than offset by an 8 million-pound drop in recycled output compared to 2014.
- Diversion: Net diversion decreased, from 29 percent of discards (103 million pounds) in 2014 to 23 percent (81 million pounds) in 2015, with a significant portion of diverted materials being sent to cement kiln and waste-to-energy (about 30 million pounds in 2015).
- Market growth: 2015 did show an increase in pounds of non-nylon postconsumer carpet materials shipped and sold to end-use manufacturers. In 2015, 11.7 million pounds of non-nylon carpet materials were sold to end-use manufacturers, an increase of 18% over 2014 (9.9 million pounds). Nevertheless, non-nylon carpet sales to end-use manufacturers represents only 11 percent of gross collections for the year and this market growth was offset by a decline in shipments of postconsumer nylon materials.

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

- *Requirements:* Title 14 of the California Code of Regulations (CCR) §18943(a)(5)(E) requires carpet consumers to have reasonably convenient opportunity(ies) in each county to manage their post-consumer carpet.
- *Analysis:* Many counties still lack carpet recycling services.
 - The *2015 Annual Report* indicates 25 official CARE drop-off sites and 9 independent sites in the state (compared to 14 official sites in 2014). CARE now serves 22 counties, with a goal of at least one official site in all 58 counties by July, 2017. (Note: CARE drop-off sites are locations where CARE has set up and provided direct funding for carpet collection containers and transportation of those containers to a recycling facility; independent sites are those that are operated by collector-sorter entrepreneurs operating within the CARE program.)
 - Many large population centers lack convenient access to carpet recycling. Los Angeles and San Diego Counties, for instance, have only four sites between them, all of which are “independent” locations.
 - CARE estimates there about 200 additional private carpet collection containers statewide that feed into the CARE program via independent collector-sorter entrepreneurs but are not set up directly by CARE nor do they receive assistance from CARE. However, it is not clear what level of convenience these sites offer consumers. The *Report* states, “These sites are generally only available to installation contractors for carpet disposal following tear-out.”

FINDING 3: *CARE’s current Marketing, Education and Outreach (ME&O) efforts have not resulted in increased carpet recycling or diversion reported in the 2015 Annual Report. As CalRecycle previously concluded in its September, 2015 review of the 2014 Annual report, 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. It is unclear whether individual ME&O metrics identified by CARE actually lead to continuous meaningful improvement.*

- *Requirements:* Among other things, CCR §18944(a)(8) requires the carpet stewardship organization to “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.”
- *Analysis:* CARE did expand its ME&O efforts and funding in 2015, taking a number of actions to increase education and outreach, especially to retailers. Additionally, CARE established grants and other market development efforts to expand use of postconsumer carpet materials in new products. Actions included:
 - Expanded face-to-face retailer visits (CARE visited 10 percent of retailers in 2015, or 250 out of 2500 estimated at the time);
 - Developed an interactive map of collection opportunities;
 - Conducted two stakeholder workshops;
 - Made presentations to various agencies and industry groups;
 - Hired an additional full-time staff member;
 - Retained the services of a market development consultant; and
 - Established new grant programs.

Nonetheless, these activities were demonstratively insufficient, as recycled output fell in 2015 to just 10 percent of discards. Moreover, CARE has not established clear metrics for evaluating the effectiveness of individual ME&O activities or criteria for determining the points in the supply chain (e.g., retailers vs. installers) most likely to contribute to continuous meaningful improvement for the Program.

FINDING 4: CARE is not responding to market changes in a timely manner with assessment and incentive adjustments, and the assessment may not be set high enough to fund infrastructure development and drive markets for increased recycled output.

- *Requirements:* Due to its EPR approach, California’s Carpet Stewardship law does not specify the details of how CARE develops programs to address market challenges. However, the statute, specifically, PRC 42972(a)4 and (c), requires the stewardship organization to “Include a funding mechanism...that provides sufficient funding to carry out the plan, including the administrative, operational, and capital costs of the plan, payment of fees...and incentive payments that will advance the purposes of this chapter” and, “The funding mechanism ...shall establish and provide for...a carpet stewardship assessment...in an amount that cumulatively will adequately fund the plan and be consistent with the purposes of the chapter” and “...The amount of the assessment shall be sufficient to meet, but not exceed, the anticipated cost of carrying out the plan.”
- *Analysis:* CARE responded to CalRecycle’s Recommended Actions regarding the *2014 Annual Report* with a number of new or expanded initiatives, as detailed in its Addenda 2 and 3. In 2015 CARE made the following changes in an effort to increase markets:
 - Shifted from quarterly to monthly subsidy reporting and payments;
 - Raised the assessment from \$0.05 to \$0.10 per square yard;
 - Increased non-nylon incentives;
 - Established the California Council on Carpet Recycling (CCCR); and
 - Began an economic study to produce a software tool to help CARE adjust its assessment and incentive values more effectively.

Due to the timing of Annual Report submittal and review, CARE’s above response did not happen until late in the 2015 calendar year. However, CalRecycle made a similar finding regarding the *2014 Annual Report* and provided assistance on methods to increase the

marketability of recycled carpet. This lack of timely response has resulted in CARE's Annual Report demonstrating a decline in key program performance measures.

PROGRAM PERFORMANCE IN 2016

An Addendum to the *2015 Annual Report* notes further Program expansion in 2016, including additional collection sites, new grant awards, further increases to the assessment and incentives, expanded outreach and education, and activation of the CCCR.

CalRecycle acknowledges these efforts, many of which respond to deficiencies in the Program and may lead to improved carpet recycling in California. However, CalRecycle's current Annual Report evaluation by definition is limited to results achieved in 2015. As discussed above, nearly all performance measures declined in 2015 as compared to 2014, notably the drop in recycled output from 12 percent to just 10 percent of discards. This is now the third year in a row that CARE has been noncompliant, but promised additional programs to be implemented in the future. Regardless of potential improved results in 2016, CalRecycle concludes the data do not support a finding that CARE is meeting or is on track to meet the goals outlined in its approved Plan.

Moreover, while not part of the 2015 compliance determination, data from CARE's first quarterly report in 2016 does not demonstrate continuous meaningful improvement going forward. In Q1 2016, recycled output dropped even further to 9 percent of discards, from 11 percent in Q4 2015. It appears unlikely CARE can achieve its goal of 16 percent recycled output by December 31, 2016, as required in its Plan.

STAKEHOLDER COMMENTS

CalRecycle received five comment letters from stakeholders regarding the *2015 Annual Report*.

Attachment 5 is a webpage link that provides the full text of these letters:

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

The comments are summarized in the table below. Two letters (one representing multiple stakeholders) cited lack of continuous meaningful improvement and lack of adequate collection infrastructure, and recommended finding CARE non-compliant and taking enforcement action. Two letters concluded that the program is not adequate for various reasons and made recommendations focused mostly on the anticipated new Plan. One letter indicated that CARE's recently-implemented grants and increased subsidies have allowed carpet recyclers to experience a higher and steadier flow of material.

Stakeholder	Comments
<p>California Product Stewardship Council Californians Against Waste National Stewardship Action Council San Francisco Department of the Environment Administrator, Mojave Desert and Mountain Recycling Authority Los Angeles County Solid Waste Committee / IWMTF Rethink Green</p>	<p>Under the requirements of California's AB 2398, Carpet America Recovery Effort (CARE) is tasked with demonstrating to CalRecycle "that it has achieved continuous meaningful improvement in the rates of recycling and diversion and other specified goals in order to be in compliance." However, CARE's 2015 Annual Report instead shows that carpet recycled output has remained virtually unchanged for the five years of reporting since program inception and in fact, went slightly down from a recycling rate of 12% in 2013 and 2014 to just 10% in 2015. Due to this weak performance for five years running, CalRecycle is urged to deem CARE non-compliant and enforce the law accordingly.</p> <hr/> <p>Lack of Collection Infrastructure is Unacceptable</p>
<p>Greenwaste Carpet Recycling</p>	<p>Although the recycling industry as a whole experienced a very tumultuous 2015 due to the market conditions expressed in the 2015 Annual Report by CARE, the inclusion of the new Grant Programs and the increased incentives and subsidies to California CSE's and processors outlined in Amendment 3 have allowed the carpet recyclers to once again experience a steady flow of incoming and outgoing postconsumer carpet materials.</p>
<p>Fiber Commercial Technologies, LLC</p>	<p><u>Funding Deficiency:</u> Suggest increasing the Carpet Stewardship Assessment to \$0.50 /SY in 2017 to create the initial liquidity reserve and 2017 subsidy payment.</p> <p><u>Subsidy Design and Longevity:</u> The subsidy program should be designed and guaranteed for seven years without reduction. Investment by recyclers and manufacturers in equipment requires typically seven-year depreciation.</p> <p><u>CARE Oversight and Philosophy:</u> CARE's California Stewardship program is managed by carpet manufacturers who have significant concern regarding the impact of consumer fees, subsidy program cost requirements on their retail carpet demand. These concerns have restricted CARE's activities from generating consistent and increasing California carpet waste redirection to recycling. The CARE stated position promoting "Market Based Solution", which demand unsubsidized recycling solutions, is unrealistic and unsuccessful and it should be eliminated if CARE is to remain in charge of California's carpet stewardship program oversight. FCT urges CalRecycle to require that CARE adopt and submit a Stewardship Plan amendment resolving the FCT concerns. If CARE does so, FCT believes CalRecycle should award an additional one-year term for stewardship responsibility to CARE and review the results of the Plan in 2017.</p>

<p><i>XT-Green</i></p>	<ul style="list-style-type: none"> • The California Carpet Stewardship Program continues to be out of compliance with the AB 2398 statute and regulations. • Changes have been instituted by CARE over the past year through Addendum 2 and 3 to help resolve the non-compliance issues but significant results have not yet been seen. • Comparisons of carpet recycling rates outside of California demonstrates that subsidy programs do work. • The revised subsidy/incentives in the California Carpet Stewardship Program has attracted additional carpet recycling/processing facilities to California planned for startup in 2017 including XT Green's new facility. • Significantly more PCC will need to be collected to support these facilities. • The requirement for a new 5-year California Carpet Stewardship Plan beginning in 2017 provides an opportunity to create a more aggressive Plan to increase the rates of carpet recycling, collections and expand the carpet recycling infrastructure in California. • Besides the California Carpet Stewardship Program created by AB 2398, California's commitment to recycling is demonstrated by mandatory commercial recycling requirements in AB 341, the States 75% recycling goal by 2020 and the inclusion of carpet recycling as a strategy in California's greenhouse emission reduction program. <p>Based on the above, XT Green respectfully requests CalRecycle to:</p> <ol style="list-style-type: none"> 1. Utilize all appropriate measures to ensure that CARE (and the carpet industry it represents) understands that the State of California has a long-term commitment to carpet recycling. 2. The 2017 California Carpet Stewardship Plan must be designed to meet aggressive goals, resolve the current and upcoming issues identified by XT-Green and other stakeholders including supporting a carpet recycling infrastructure in California. 3. California stakeholders continue to be represented both through the California Council on Carpet Recycling and by additional representation on the CARE SPC and SPOC.
<p><i>ReFiber</i></p>	<p>At ReFiber, we strongly urge CalRecycle to stay with CARE for one more year. The increased incentives that CARE has implemented are very close to bearing fruit. We believe a change in leadership at this time will be more likely to diminish recycling than to augment it.</p>