# REQUEST FOR APPROVAL

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| **To:** | Caroll Mortensen<br>Director |
| **From:** | Howard Levenson<br>Deputy Director, Materials Management and Local Assistance Division |
| **Request Date:** | January 17, 2012 |
| **Decision Subject:** | Approval of California Carpet Stewardship Plan |
| **Action By:** | January 17, 2012 |

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**Summary of Request:**
Staff requests conditional approval of the California Carpet Stewardship Plan, submitted by the Carpet America Recovery Effort (CARE) and dated December 1, 2011, (and further edited January 9, 2012) as directed by the carpet stewardship law (Chapter 681, Statutes of 2010 [Perez, AB 2398]).

**Recommendation:**
Staff recommends conditional approval of the California Carpet Stewardship Plan to meet the statutory requirement of AB 2398. Final approval would be considered after submittal of pending California-specific data to inform the establishment of a baseline and to refine goals and implementation of the rural pilots that lead to statewide coverage.

**Action:**
On the basis of the information, analysis, and findings in this Request for Approval, I hereby conditionally approve the California Carpet Stewardship Plan, submitted by the Carpet America Recovery Effort (CARE) dated December 1, 2011 (and further edited January 9, 2012). The attached letter provides formal comments describing the specifics of the conditional approval and what items needs further clarification. Full approval is contingent on the following:

- In late summer/fall of 2012 (after CARE obtains one complete year of California-specific sales data and shares it with CalRecycle), CARE will revisit the baseline, measurement methodology (formula), and goals; and update sections of the Plan related to these topics. CARE and CalRecycle will aim to reconcile the difference in the estimates of carpet generation that currently exist.
- CARE will fully implement the rural pilots.
- CARE will add language to ensure that, regardless of which organization performs the audit, all audits are performed in accordance with 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.

- CARE will resubmit the Plan by December 31, 2012.

**Dated:** 1/17/2012

**Caroll Mortensen,** Director

**Attachments:**

1. California Carpet Stewardship Plan (updated and resubmitted Jan. 9, 2012)
2. CalRecycle Comments on the California Carpet Stewardship Plan
3. Comments From Stakeholders on the California Carpet Stewardship Plan

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**Background Information:**

Assembly Bill 2398 (Chapter 681, Statutes of 2010) established the first mandatory carpet stewardship program in the country. Pursuant to AB 2398, the Department has responsibility to approve or disapprove carpet stewardship plans submitted by manufacturers or their designated product stewardship organization; review annual reports to verify that the objectives of the plan are being met; and provide oversight and enforcement to ensure a level playing field among carpet manufacturers. For manufacturers to be in compliance, they must have an approved plan (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. Enforcement is addressed through a combination of civil penalties for non-compliance and transparency that allows all stakeholders and the public to evaluate progress. Additionally, carpet manufacturers and/or stewardship organization(s) must pay CalRecycle an administrative fee to cover the cost of its service that may not exceed five percent of the aggregate assessment collected.

To carry out these responsibilities, the Department adopted regulation on November 15, 2011, to add clarity to statute and outline administrative procedures. The regulation is pending approval by the Office of Administrative Law.

Additionally, the Plan is defined as a project under the California Environmental Quality Act (CEQA). To conform to CEQA requirements, CalRecycle prepared an Initial Study/ Negative Declaration (IS/ND), titled, "Negative Declaration & Initial Study Evaluating Approval of California Carpet Stewardship Plan," which evaluates potential environmental impacts of the Carpet Stewardship Plan submitted by CARE. The announcement is posted at this web address: http://www.calrecycle.ca.gov/EPR/PolicyLaw/Carpet.htm. The comment period for this IS/ND began on December15, 2011 and ends on January 16, 2012. As of January 9, 2012 no comments had been received. As part of the January 17, 2012, public meeting and prior to consideration of this item, CalRecycle must adopt the IS/ND for the California Carpet Stewardship Plan submitted on December 12, 2011. Minor editorial refinements of the Plan have occurred, but the edits do not affect the environmental analysis.

**Plan Submittal and Review Timeline:**

AB 2398 requires that CalRecycle make a determination within 60 days of receiving the Plan and that it must approve the Plan by March 31, 2012. Carpet America Recovery Effort (CARE), the carpet stewardship organization designated in AB 2398 as the sole stewardship organization until 2015, developed and submitted the Carpet Stewardship Plan (Plan) to the Department for approval:

- CARE first submitted the Plan on September 25, 2011, and has since resubmitted the Plan with a number of edits made in light of changes to the draft regulation before it was finalized and in response to comments by CalRecycle.
- CalRecycle reviewed the plan with CARE on November 30, 2011, and CARE submitted a new version that arrived December 12, 2011 (Attachment 1). CalRecycle staff reviewed that document and prepared formal comments (Attachment 2).
- The plan was posted on the public meeting webpage and Carpet Stewardship Program webpage: http://www.calrecycle.ca.gov/EPR/PolicyLaw/Carpet.htm#Program. CalRecycle encouraged interested stakeholders to review the Plan and provide comment to CARE and CalRecycle by December 30, 2011. This information was conveyed in an announcement at the December 13, 2011 public meeting and via a listserv message sent December 15, 2011.

**Analysis:**

A complete list of all comments submitted by stakeholders about the Plan is located on-line at this web address:
http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=597&aiid=571

Below are the most significant topics covered in CalRecycle's comments.

- **Goals:** The whole issue of establishing a baseline and goals is perplexing. CalRecycle conducted a waste characterization study in 2008 (using 2007 data) that indicates a much higher amount of carpet is disposed in California than the sales-based estimate used by CARE, even when considering the recession and statistical "noise" in the CalRecycle data. Staff revisited the methodology and sampling methods of the 2008 report and was unable to find errors that would reconcile the full difference.

  In addition, the formula provided in the Plan for establishing the amount of carpet discards generated appears to understate carpet disposal. Carpeted floors that are converted to other flooring do not appear in sales data. CalRecycle staff has anecdotal information that more carpeted floors are converted to other surfaces than the other way around, which suggests that the number for conversions is positive. Consequently, if this number was included, it would increase total carpet discards (generation). In short, the Plan must provide a clearer explanation of the data inserted into the formula and the formula must include an estimate of carpet disposal generated from conversions.

Based on these concerns, as part of conditionally approving the Plan, CalRecycle staff is proposing that CARE and CalRecycle use the first year to establish the baseline. This would mean that CalRecycle would not seek changes in the goals (percentages) at this time. Rather, CARE and CalRecycle would revisit the baseline and goals in late summer/fall of 2012 (after CARE obtains and shares one complete year of California-specific sales data). Changes to the goals, measurement methodology, and/or formula can then be explored using better data. Any proposed changes to the Plan will be presented at a CalRecycle public meeting, allowing stakeholder participation.

- **Consumer Convenience:** Rural counties have expressed concern during the regulation process about the Plan providing sufficient coverage throughout the state. CARE and its partners proposed conducting rural pilots to explore methods for providing carpet recycling services in each county and six counties agreed to participate. The initial plans for the pilot faced several challenges and implementation initially planned to start November 2, 2011, was delayed. Given the nature of pilots there may be need for further fine-tuning to provide carpet recycling services statewide. Part of the conditional approval mandates that the rural pilot is fully implemented and the program has statewide coverage.

- **Accounting and Audits:** The Plan indicates that an outside accounting firm will manage the accounting and auditing requirements and auditing is in accordance with Generally Accepted Government Audit Standards (GAGAS). GAGAS ensures that auditors must be independent in all matters relating to the audit work. However, the current wording is specific to a particular accounting firm and the same firm is mentioned as performing accounting and audit services. The Plan should more clearly explain the role of the outside accounting firm. Likewise, there should be a more general statement to ensure GAGAS applies to any entity performing an audit on the program. Part of the conditional approval mandates that all audits performed are done in accordance with GAGAS, regardless of which organization performs the audit, and 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.

- **Reserves or "Unused Funds":** Recent versions of the Plan use the term "unused funds" rather than "reserves." At least one stakeholder contacted CalRecycle with a concern over reserves, which increase throughout the years in the plan and are about 50% of the budget in 2016. The current version of the Plan has additional information about why there will be a build up of unused funds in initial years and that as recycling processing facilities begin operating to capacity, more incentives will be paid out and the unused funds will be disbursed. It should be noted that if more recycling occurs than estimated in the Plan, the amount of unused funds will be smaller. Given the somewhat experimental nature of the incentive approach used in the Plan, it seems prudent to start out this way, with recognition that adjustments may be needed during the implementation of this Plan. CARE should consider the impacts of different assessments and whether changes to the Plan should be proposed as part of the annual report (or in 2012 when goals are further considered).

**Findings:**

CalRecycle staff reviewed the Plan, compared it to the requirements found in statute and found that it conforms to the requirements in AB2398, and therefore the Plan may be conditionally approved. Full approval is contingent on the following:

- In late summer/fall of 2012 (after obtaining one complete year of California-specific sales data), CARE will revisit the baseline, measurement methodology (formula), and goals; and update sections of the Plan related to these topics. CARE and CalRecycle will aim to reconcile the differences in the estimates of carpet generation that currently exist.

- CARE will fully implement the rural pilots.

- CARE will add language to ensure that, regardless of which organization performs the audit, all audits are performed in accordance with 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.

- CARE will resubmit the Plan by December 31, 2012.

CalRecycle has adopted the Negative Declaration and Initial Study Evaluating Approval of California Carpet Stewardship Plan (SCH # 2011122052) and, prior to reaching its decision on this project, considered the Negative Declaration and any comments received during the public review period.