

REQUEST FOR APPROVAL

To: Carol Mortensen
Director

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

Request Date: September 25, 2013

Decision Subject: Consideration of Staff Recommendations Regarding Carpet America Recovery Effort's Annual Report

Action By: October 15, 2013

Summary of Request:

CalRecycle Staff requests approval to send a letter to the Carpet America Recovery Effort (CARE) regarding the *Annual Report to CalRecycle, July 2011 – June 2013, California Carpet Stewardship Plan* (hereafter referred to as the “First Annual Report”), providing staff’s comments and indicating that Annual Report is incomplete as it is missing a few items. This First Annual Report was submitted by CARE to CalRecycle on July 2, 2013 (see attachment 1), pursuant to the carpet stewardship law (Public Resources Code sections 42970, 42975-76; and Title 14, Natural Resources--Division 7, Article 1.0, Sections 18942, 18944, 18945). CalRecycle is required to evaluate the Annual Report for completeness. Staff reviewed the First Annual Report, compared it to the requirements in statute and regulations, and found that it is nearly complete; however, several items are missing and others need clarification, as explained later in this document.

Additionally, Staff acknowledges that CARE already is making changes to the California Carpet Stewardship Plan (Plan) referenced in the First Annual Report. On August 20, 2013, CalRecycle directed CARE to address substantive issues in the original revised Plan and to submit another revised Plan within 60 days (i.e., shortly after the October 2013 monthly meeting). Staff will then review the revised Plan and prepare an item with its recommendations regarding the revised Plan, tentatively for the January 2014 CalRecycle monthly meeting.

As explained in the “Annual Report Submittal and Review Timeline” section below, the current timing of the required Plan revision and staff’s subsequent recommendations, along with the potential timing of revisions to this First Annual Report, and the fact that the 2013 Annual Report is due by July 1, 2014, has resulted in a confusing situation and inefficient use of CARE’s, CalRecycle staff, and stakeholder time.

To make this less confusing and more effective for all involved, staff recommends that CARE be directed to respond by letter within 60 days to CalRecycle’s letter regarding the missing items of this First Annual Report and how it will address the items, but that CARE not be required to submit a new version of the First Annual Report. Instead, CARE should include the missing content, add clarity, and respond to staff’s comments when it submits the next 2013 Annual

Report. Staff also recommends that future Annual Reports cover a calendar year to facilitate program review in sync with annual financial statements.

Recommendation:

Direct staff to send a letter to CARE with suggested edits for clarity, recommendation of calendar year reporting period, and an explanation of what must be included in order to be in compliance with the Annual Report requirement of AB 2398. Further direct CARE to respond by letter within 60 days, rather than submitting a revised First Annual Report, and to address these comments when it submits the 2013 Annual Report by July 1, 2014.

Action:

On the basis of information, analysis, and findings in this Request for Approval, I hereby direct CalRecycle staff to send a letter to CARE with suggested edits for clarity, recommendation of calendar year reporting period, and explanation of what must be included in order to be in compliance with the Annual Report requirement of AB 2398. I further direct CARE to respond by letter within 60 days, rather than submitting a revised First Annual Report, and to address these comments when it submits the 2013 Annual Report by July 1, 2014.

Dated:



Carol Mortensen, Director

Attachments:

1. Annual Report to CalRecycle, July 2011 – June 2013; available at:
<http://www.calrecycle.ca.gov/Carpet/AnnualRpts/2012/201213AB2398.pdf>
 2. Letter from CalRecycle to CARE, Independent Audit section of Annual Report, August 30, 2013 <http://www.calrecycle.ca.gov/Carpet/AnnualRpts/2013/CAREAug2013.pdf>
 3. Request for Approval, Consideration of Approval of California Carpet Stewardship Plan Signed August 28, 2013
[http://www.calrecycle.ca.gov/Actions/Documents%5c112%5c20132013%5c925%5csigned%20RFA%20\(Disapproval\)-CARE%20Plan%20dated%2005-31-13.pdf](http://www.calrecycle.ca.gov/Actions/Documents%5c112%5c20132013%5c925%5csigned%20RFA%20(Disapproval)-CARE%20Plan%20dated%2005-31-13.pdf)
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Background Information:

Assembly Bill 2398 (Chapter 681, Statutes of 2010) established the first mandatory carpet stewardship program in the country. The Department has responsibility to approve or disapprove carpet stewardship plans submitted by manufacturers or their designated product stewardship organization (PRC section 42973); review annual reports to verify that the objectives of the plan are being met (PRC section 42975); and provide oversight and enforcement to ensure a level playing field among carpet manufacturers (PRC section 42974 and 42978). For manufacturers to be in compliance, they must have an approved plan (PRC section 42973 (b)) (or be part of a stewardship organization with an approved plan) and demonstrate achievement of continuous and meaningful improvement in the rates of recycling and other goals included in an approved stewardship plan (PRC section 42975(a)). Progressive enforcement is addressed through a combination of field inspections and civil penalties for non-compliance. The Office of Administrative Law approved regulations on January 26, 2012, to add clarity to statute and outline administrative procedures.

Annual Report Submittal and Review Timeline:

On July 2, 2013, CARE submitted the Carpet Stewardship Program's first Annual Report, titled, *Annual Report to CalRecycle, July 2011 – June 2013, California Carpet Stewardship Plan* as required by PRC section 42976 (see Attachment 1). In addition to reporting on the results of the program from its start in July 1, 2011, the Annual Report includes two appendices with independent financial audit information. Appendix III: *AB 2398 California Carpet Steward Plan Financial Assessment*, prepared by the independent auditor, Winter & Scoggins, covers the financial audit report of the AB 2398 program, while Appendix IV: *Carpet America Recovery Effort, Inc. Financial Statements* covers CARE financial statements. As required by regulation, CalRecycle separately reviewed these audit reports and shared its findings in a letter sent to CARE on August 30, 2013 (Attachment 2). The Annual Report also contains information about future activities and programmatic direction. Information about future activities and programmatic direction should be incorporated into a revised Plan that CalRecycle has directed CARE to submit later this fall (Attachment 3).

However, the current timing of the required Plan revision and staff's subsequent recommendations, along with the potential timing of revisions to this First Annual Report, and the fact that the 2013 Annual Report is due by July 1, 2014, has resulted in a confusing situation and inefficient use of CARE's, CalRecycle staff, and stakeholder time. If CalRecycle were to direct CARE to submit a revised First Annual Report within 60 days, the timing for that would mean receipt of the revised First Annual Report in December and then a public presentation of staff's recommendations in approximately the March 2014 timeframe. This would only be a few months after CalRecycle considered the revised Plan and a few months before required submission of the 2013 Annual Report. The Plan is the primary document that CalRecycle uses to assess the effectiveness of the carpet stewardship program. Accordingly, CalRecycle staff believes that future Annual Reports should address the revised Plan's goals and deliverables, and that staff's evaluation on any Annual Report should also be based on how the Annual Report reflects the Plan.

Analysis and Findings:

Staff reviewed the first Annual Report submitted by CARE for the California Carpet Stewardship program and identified specific areas where more information or adjustments are needed so the Annual Report conforms to statute. Staff also has suggestions for CARE's consideration that will improve future Annual Reports.

1. Revisions to the Annual Report that must be addressed for completeness review.

- a. Page 5, Program outline, sentence, "There are 20 companies listed as CARE collectors/processors total within the State as shown in Figure 1. The 21 companies fall into two main categories: collectors and processors and in some cases one company performs both functions." Include discussion of out-of-state facilities handling California carpet. These facilities need to be included on the maps (page 6) as well or otherwise described (e.g., X facilities in Kansas, Y facilities in Georgia). Also mention out-of-county processing of California carpet and what is or is not known about that.
- b. Page 9, Formula Used for Calculating the Carpet Available for Diversion in California (Discards). As a reminder, the formula in the Plan needs to match the one in the next version of the Annual Report.
- c. Page 17, Financing Mechanism. The Annual Report is missing discussion on some items:
 - (B) *Cost (\$)/capita*
 - (C) *Cost (\$)/pound collected*
 - (D) *Education/Communications (% of total program cost)*
 - (H) *Total cost to local government (if applicable)*
 - (J) *Surplus funding, if any, and how it will be applied to reduce program costs*
 - (K) *An evaluation of the assessment rate*

Regarding surplus funding, given the program is starting up and CalRecycle has specifically asked for surplus funding to be used to implement the program, the description could reference the Plan, which covers this topic.

- d. Page 17, Outreach and Education. The Annual Report is missing this information:

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.).
- e. Page 24, "For the year ended December 31, 2012, the auditors for the Carpet America Recovery Effort, Inc. issued an unqualified audit opinion on June 26, 2013. Net unrestricted net assets increased \$80,222 to \$421,137. Revenues were \$468,482 with total expenses of \$388,260. Program and support expenses were approximately 66% and 17% of total revenues, respectively."

To assist readers, explain that the accounting term "Unrestricted net assets" is synonymous with "unused" or "surplus funds."

The Annual Report only describes the national CARE program's unrestricted net assets, not the unrestricted net assets for the AB 2398 Program. For example, the AB 2398 program had a change in Net unrestricted net assets of \$2,104,784 to \$3,294,914 at the end of Dec 2013 (Appendix III, page 4). Insert discussion on unrestricted net assets for the AB 2398 Plan. The report could reference the Plan that is addressing how these funds will be used.

2. Revisions to the Annual Report to add clarity and accuracy.

- a. Page 3 and several other places, Agreed upon Procedures: The Annual Report mentions "Agreed upon Procedures". The Report should explain where these can be found.
- b. Page 3, Section 2. The Annual Report says "Note the terms recovery, diversion, and collected are synonymous and all data is based on post-consumer carpet (PCC)."

These terms are not always used synonymously and the Revised Plan and Annual Report and other program documents must have consistent terms. This can be accomplished by adding each term to the glossary in Attachment III of the Plan and then referencing this glossary or adding the glossary as an attachment to the Annual Report. Terms to add or modify for clarity follow (suggested new text is underlined):

Collection: Any method of consolidating and temporarily storing recovered commercial and/or residential carpet. When reported as a number, collection refers to all carpet removed from the waste stream, including materials that are intended to be recycled, but later are disposed. The term "available for collection" has the same meaning as "discards."

Discards: The annual pounds of unwanted carpets that are available for collection in region. This number is an estimate of the denominator for calculating recycling and diversion rates. Carpet that is collected, and then exported is counted as "discards".

Discards = ((Sales * R) * P) + [(Demolition factor) * (Sales * R) * P], where

Sales = carpet sales into California for the reporting period (square yards)

R = Percent of carpet that is replacement, or carpet replacing existing carpet (85%)

P = Pounds in the average square yard of carpet (4.2 pounds)

Demolition factor = Percent of carpet discarded from demolition projects that are not replaced with carpet (1.3 percent)

(See the *Formula Used for Calculating Carpet Available for Diversion* for further information on how this number is estimated, page XX. Some variables are not included in the formula because data are not available, including: trimmings from new carpet installations, imported carpets discards from other states, carpet removed and old flooring refinished. These variables are reconsidered each year and will be incorporated when and if available.)

Disposal Diversion, also referred to as “diversion” or “recovery”: Carpet removed from the waste stream that was destined for the landfill or incineration, for the purpose of reuse, recycling, CAAF or waste-to-energy. Carpet that is collected for disposal diversion, but is later disposed (e.g., it is non-recyclable, a contaminant or residue from a recycling process) is not counted as “diversion”.

Recovery: See “disposal diversion”

- c. Page 4, LEA. Write out “Local Enforcement Agency” the first time it appears.
- d. Page 5, reference to “Current Plan”. Include a date given there are multiple Plan submittals.
- e. Page 7, “While there has been discussion of de-selection as consumer’s transition to alternative flooring, the industry data suggests this is a minor component of the landfill flow.” Describe source of industry data and date published.
- f. Page 7, “MSW collection system following be separation”. This phrase is unclear and needs to be revised.
- g. Page 8, “Cumulatively 173M square years were sold and \$8.6M was collected through the end of Q1 2013”. Change “years” to “yards”.
- h. Page 8, Figure 2. Check Q1 2012, it should read 23.1 to be consistent with Quarterly Updates.
- i. Page 9, reference to “Torcivia Market Insights”. Provide a reference to the source of this information, date, and where published. Provide explanation on how the value changes over time and its relevance to California.
- j. Page 11, reference to the term “outlets”. “Outlets” should be changed to “recycled output” to be consistent with the Plan glossary and previous reporting. This comment applies throughout the document.
- k. Page 12, title of “Figure 5: Recycled Output by Type as a Percent of Diversion” Should “diversion” be replaced with “Total Estimated Carpet Discarded” or “Carpet Available for Collection”?
- l. Page 14, Describe number of jobs attributable to the carpet stewardship program as data are available. Include out-of-state jobs handling CA carpet and the time period covered (e.g., in 2012, survey results indicated that AB2398 generated 523 total jobs, 210 jobs in California).
- m. Page 15, Report describes the measurement methodology, assumptions, conversion factors, and data sources. Explain where to find this information.

- n. Page 15, title and terms used in Figure 6. Check for consistent terms here and with rest of the Annual Report. For example, this might be a more descriptive title: “Diversion and Recycled Output (by Type) as a Percent of Carpet Discards”
 - o. Page 21, “The full auditor’s reports for both organizations are included in this report as Appendices X & Y”. “X & Y” appear to be placeholders that need to be updated.
 - p. Page 21, “SUMMARY OF AUDIT RESULTS”. Change heading to “SUMMARY OF AUDIT RESULTS OF AB 2398 FINANCES” It needs to be clear this covers the program finances not CARE finances for the national program.
 - q. Page 22 and 23, dates. Several dates are provided without the year. Insert year for clarity throughout this section and check the verb tenses. For example, the Annual Report is dated July 1, 2013 and page 23 refers to a meeting that is scheduled to occur in June. The year should be included in the date and/or the verb tense corrected.
 - r. Appendix II: List of Processors and Collectors. Indicate that carpet from California is processed out-of-state and out-of-country, as well as in-state. At a minimum, list those who collect CA subsidy payments, i.e., in-state and out-of-state facilities handling California carpet and receiving payments.
- 3. Topics to be addressed in the Carpet Stewardship Plan and that may be referenced or described in the Annual Report as well.**
- a. Page 3, Section 2. “Note the terms recovery, diversion, and collected are synonymous and all data is based on post-consumer carpet (PCC).” See comment above for this section, the definitions need to be consistently used.
 - b. Page 3-4, list of items and Page 4, Looking Forward. There are several items in these lists that can be incorporated in the next version of the Plan.
 - c. Page 7, “In many cases independent collectors also run one or more parallel businesses. It is typical for a PCC collector to also collect foam carpet cushion.” A future Plan could consider expanding the Plan to include carpet cushion and evaluate whether this is feasible. There may be efficiencies that are financially and environmentally beneficial.
 - d. Page 9, Formula Used for Calculating the Carpet Available for Diversion in California (Discards) D must be explained better so there is transparency (see definition of “discards” on page 5).
 - e. Additionally, this section is missing the amounts calculated through the formula. In other words, there should be a Figure 3 (or text) that shows quarter by quarter the estimates of the amount of “Carpet Available for Collection (aka “Discarded”) in California”.

- f. Page 14, Describe efforts to increase the market growth of secondary products made from postconsumer carpet, “We believe this is an important approach and one for which renewed discussion with California should be encouraged.” This statement should be clarified to indicate if referring to the “State of California” and/or specific groups in California. Additionally, the Plan should provide ideas on how to advance procurement.
 - g. Page 17, Outreach and Education. Consider adding information about how the effectiveness of outreach and education activities will be determined, given that this has to be described in the Annual Report.
 - h. Appendix II: List of Processors and Collectors Indicate that carpet from California is also processed out-of-state and even out-of-country. At a minimum, list those who collect CA subsidy payments, i.e., in-state and out-of-state facilities handling California carpet and receiving payments, in addition to known in-state collectors.
- 4. Items may be incorporated into the current Annual Report and should be considered for future Annual Reports.**
- a. Page 4, Audit Results. It would be helpful to explain that the time period covered in the Annual Report is not the same as the time period for the Audits, which is for a calendar year, and that the audits use the accrual method of accounting, as directed by Generally Accepted Government Auditing Standards.
 - b. Page 11-12, Describe efforts to increase recycling of post-consumer carpet. A key aspect of CARE’s Plan is to use incentives to drive recycling. That could be discussed in this section along with discussion on the effectiveness of incentives to drive change.
 - c. Page 13, Describe efforts to increase diversion of post-consumer carpet from landfills. This section could be expanded to explain how the incentives impact diversion. Additionally, the rural pilots could mention that the pilots began working when CARE started covering the transportation costs so it was economically beneficial to the various parties involved.
 - d. Page 22, “Finding 12-2 - Functional Allocations Substantiation” Please see the letter from CalRecycle (Attachment 2) and incorporate the comment that CalRecycle seeks specific measures CARE has taken or plans to take to develop a system that supports how expenses will be allocated, including the applicable controls. It could also mention that future Annual Reports will need to include a State Compliance Report, along with the audit report, as required in the regulations.
 - e. Use the calendar year for future Annual Reports. The current report has inconsistent time periods. While the title says the dates covered are July 2011 to June 2013, the main body presents information for 7 quarters (July 2011 to March 2013), and the audits in Appendix

III and IV cover the year ending in 2012 (January 2012 – December 2012). Future Annual Reports should cover a calendar year (consistent with the audit reviews) so that program activities can be cross-referenced with costs. More current information can be provided in quarterly updates.

