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Sent: Friday, August 12, 2011 2:36 PM
To: Carpet Product Stewardship
Subject: Product Stewardship for Carpets
Attachments: FINAL SWANA LTF Carpet Product Stewardship Regulation Comments.pdf

Dear Mr. Ferhutt –

Attached are written comments on CalRecycles Product Stewardship for Carpets regulations. The comments are submitted on behalf of the Solid Waste Association of North America, California Chapters.

Please let me know if you have any questions.

Thanks!

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Legislative Advocate

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August 11, 2011

Howard Levenson, Deputy Director
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California Department of Resources
Recycling and Recovery (CalRecycle)
801 K Street, MS 19-01
Sacramento, CA 95814

Dear Mr. Levenson:

**COMMENTS ON ASSEMBLY BILL 2398 (PEREZ) IMPLEMENTING
PROPOSED PRODUCT STEWARDSHIP FOR CARPET REGULATIONS**

The Solid Waste Management Association of North America (SWANA), the largest association of solid waste professionals (7,700 members), is committed to advancing the practices of environmentally and economically sound management of municipal solid waste. On behalf of the SWANA California Chapters (over 900 members) and as the Chair of their Legislative Task Force (LTF) I want to express our appreciation for the opportunity to comment on the Proposed Product Stewardship for Carpet Regulations (Carpet Stewardship Regulations), which implement Assembly Bill 2398 (Chapter 681, 2010 Statutes).

The LTF is concerned that, with respect to transformation, the proposed carpet stewardship regulations go beyond the intent and the provisions in AB 2398, now in statute. AB 2398 specifically calls for diverting postconsumer carpet from landfills. Nowhere in the bill does it mandate or mention diverting carpet from transformation facilities. The bill does not even mention the word "transformation," so there is no basis for CalRecycle to imply that the bill gives staff the authority to limit transformation in favor of reduction, reuse, and recycling. This, however, is what CalRecycle is mandating in the proposed carpet stewardship regulations. CalRecycle is departing from the legislative intent of the bill and its provisions, and, as a consequence, what the bill authorized. The LTF requests that CalRecycle revert back to the exact provisions contained in AB 2398 and delete transformation from the regulations. It is important that the carpet stewardship regulations not abrogate the provisions of AB 939, which provides up to 10 percent diversion credit for solid waste managed through existing transformation facilities.

Definition of Diversion

As clearly stated in AB 2398, the purpose of the bill is to "increase the amount of postconsumer carpet that is diverted from landfills and recycled into secondary markets or otherwise managed in a manner that is consistent

with the state's hierarchy for waste management practices pursuant to [PRC] Section 40051” (emphasis added). The definition of “diversion” in the carpet stewardship regulations needs to be changed so that it is consistent with the bill. Therefore, “transformation facilities” should be removed from Section 18941(f) of the proposed regulations since this is not in the bill:

“(f) “Diversion” means any combination of waste prevention (source reduction), recycling, reuse, and composting activities that reduces waste disposed at permitted landfills ~~and transformation facilities~~ or otherwise managed in a manner that is consistent with the state's hierarchy for waste management practices pursuant to Section 40051.”

Solid Waste Management Hierarchy

CalRecycle appears to be directing how solid waste should be managed in California rather than following the provisions in AB 2398, which simply reference the existing solid waste management hierarchy. AB 2398 states that the proposed measures in the bill “will enable the management of postconsumer carpet in a manner consistent with the state’s solid waste management hierarchy, including, but not limited to source reduction, source separation and processing to segregate and recover recyclable materials, and environmentally safe management of materials that cannot feasibly be recycled.” Again, there is no mention of diversion from transformation facilities in the bill. Therefore, Section 18943(a)(4) should be revised to be consistent with AB 2398, as follows:

~~“(A) Proposed measures that will enable the management of post-consumer carpet in a manner consistent with the state’s solid waste management hierarchy pursuant to PRC Section 40051 and demonstrate that over time source reduction, reuse, and recycling will increase, over environmentally safe transformation and land disposal.~~

~~“(B) Management of carpet through source reduction, reuse and recycling must be greater than, and grow at a higher rate than management of carpet through carpet as alternative fuel, Waste-to-Energy, and incineration.”~~

Initial Statement of Reasons

CalRecycle’s Initial Statement of Reasons (ISOR) for the carpet stewardship regulations fails to cite their statutory authority to craft the regulations in a manner that limits transformation. There are only three references to the term “transformation” in the ISOR and none of them provide justification for the policy decisions being made. The policy decisions being made with regards to transformation are clearly above and beyond CalRecycle’s mandate in AB 2398.

Use of Emerging Technologies

One of the goals stated in AB 2398 is “to the extent feasible, based on available technology and information, increase the recycling of postconsumer carpet, increase diversion of postconsumer carpets from landfill, increase the recyclability of carpets, and incentivize the market growth of secondary products made from postconsumer carpet.” The use of conversion technologies, as they become commercially available, would help accomplish this goal since they would divert postconsumer carpets from landfills and produce alternative fuels, which helps preserve our natural resources. Therefore, conversion technologies should be defined in the carpet stewardship regulations and considered as a potential diversion option for postconsumer carpets.

The LTF appreciates your consideration of our concerns and requested changes to the proposed carpet stewardship regulations. As previously stated, the proposed regulations should simply implement AB 2398 and not impose any unauthorized mandates or dictate how solid waste should be managed in California.

Respectfully,



William Merry, Chair
Legislative Task Force
Solid Waste Association of North America, California Chapters

cc: Mark Leary, Acting Director, CalRecycle
CalRecycle (Faridoon Ferhut, Kathy Frevert, Bob Holmes)
Honorable John Perez, Speaker of the California State Assembly