



**Carpet Materials Management**

**Written Comments Received on the California Carpet Stewardship Plan,  
Addendum #3 (November 30, 2015)**

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CalRecycle received these written comments on the November 30, 2015, Addendum #3 of the California Carpet Stewardship Plan. The plan was submitted by the Carpet America Recovery Effort (CARE).

<b>Commenter</b>	<b>Representing</b>	<b>Comment</b>
Gail Brice	XT-Green	<a href="#">Letter: December 20, 2015</a>
Pamela Boyd Williams	California Retailers Association	<a href="#">Email: January 4, 2016</a>
Tim Goncharoff	Santa Cruz County	<a href="#">Email: January 20, 2016</a>
Randy Pollack	Carpet and Rug Institute	<a href="#">Letter: January 22, 2016</a>

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California Department of Resources Recycling and Recovery (CalRecycle)



## **Comments on the Proposed CARE ADDENDUM #3**

**December 20, 2015**

To the Carpet Team at CalRecycle and Carpet America Recovery Effort (CARE) –

XT-Green commends the efforts of CARE and supports the approval of the proposed CARE Addendum #3 of the California Carpet Stewardship Plan. This support is based on the need for these changes to be implemented as soon as possible to start getting the program back on track.

These changes include expanding the access to recycling centers. With this we request that the Phase V – Plus Expansion include the Counties of Orange, Riverside and San Bernardino. There are presently no collectors in these counties beyond private collections at larger generators.

Moving beyond Addendum #3, XT-Green is extremely concerned that the issues raised by CalRecycle associated with the current market crisis for nylon recycled output has not been adequately addressed. Therefore, more nylon solutions should be included in an additional Addendum issued during 2016. The only nylon change in Addendum #3, is an increase in the Type 1 incentive from \$.06 to \$.10 per pound of recycled output. This is the first increase since 2011 and will not come close to offset additional collection and processing costs over the past 5 years, not less offset the substantial decrease in the market value of the nylon recycled output.

Throughout Addendum #3, it is stated that various additional nylon solutions were “considered” but not included in the Addendum but will be considered again in 2016. XT-Green needs these changes in the nylon incentives to ensure the success of our new advanced carpet processing facility planned to begin operation in the third quarter of 2016.

The following is a list of these requests for changes submitted again for CARE’s consideration. This will help not only XT-Green but also the entire California Carpet Stewardship Program.

XT-Green has spent the past almost 3 years testing, developing and self-funding an advanced, next generation carpet recycling technology. Since the inception of this effort, the goals for the new technology and the new Southern California facility have included:

- Producing the highest quality reclaimed material
- Achieving record high recycling rates and generating minimal production waste
- Eliminating respirable dust exposure to our employees and fugitive particulate emissions to the environment
- Processing a wide range of carpet types and fibers but starting with nylon
- Utilizing recycled output as reclaimed material for products manufactured in California.

We are pleased to announce that XT-Green has successfully completed its final and most challenging stage of testing full-scale equipment for our innovative process and have demonstrated that our advanced technology will meet the above goals.

XT-Green thanks the CARE organization for its role in developing the XT-Green next generation carpet recycling technology. It was through relationships developed as members of CARE that XT-Green assembled the team and resources needed for this challenging project. We also appreciate the ongoing support and encouragement of Bob Peoples, Executive Director of CARE.

We also want to also personally acknowledge the long-term support of the CalRecycle carpet team, especially Kathy Frevert. Her support and kindness made a major difference in our efforts to overcome the increasingly-challenging obstacles to reach our goals.

With our technology development success, XT-Green is moving forward with our first California facility under the name of *EarthCare Recycling*. Although it will be located in Southern California, XT-Green plans to accept carpet from the entire state of California. The first phase of this facility is planned to begin operations by mid-2016 but...

In order to ensure a level playing field and the long-term viability of *EarthCare Recycling* (and other California carpet processors) additional changes are needed in 2016 beyond CARE's Addendum #3 of the California Carpet Stewardship Plan. These include:

- 1. Premium for processing Broadloom Commercial Nylon Carpet**

There are presently minimal recycling options for broadloom commercial nylon carpet both nationwide and in California, especially since Shaw stopped taking this material earlier this year. Processing broadloom commercial nylon carpet is difficult both technically and economically due to the lower face fiber yields and residual glue from installation that causes problems shearing or shredding this material. Therefore, the vast majority of commercial broadloom PCC is going to landfill or to waste-to-energy, even though commercial customers are interested in recycling both due to sustainability goals and available LEED credits for recycling their commercial carpet.

XT-Green's new advanced technology can process this material but the processing time is twice as long as residential carpet and the average face fiber yield is 50% less. There will also be additional capital and operational costs to process this material.

Therefore, to encourage processors to recycle commercial broadloom carpet a premium should be paid to offset the additional costs, e.g. a minimum of 50% above the incentive paid for residential nylon.

- 2. Tier 2 End User Nylon Incentive**

Due to the lack of secondary markets for PET recycled output, CARE established and will be increasing the payouts for "End User Non-Nylon Tier 2." These payouts have been successful in developing PET markets that would have not been economically viable without these incentives.

For nylon recycled output, there has historically been a market for this material with the buyers all being from outside of California, primarily on the east coast of the U.S. and international buyers, especially Asia. The volume of these markets and the value that they will pay for recycled nylon output has been significantly reduced due to lower oil prices and the resultant low cost of virgin nylon.

This lack of markets for the nylon has reduced the amount of nylon post-consumer carpet (PCC) processed. This has caused a severe contraction of carpet collections with the nylon carpet being too often landfilled due to the lack of buyers.

Due to the increased production of PET carpet, there is significantly less nylon PCC in the waste stream but it is still an important component to ensure a successful carpet recycling program. Unless end user market incentives are created for nylon recycled output like those for PET, the “problem material” without markets in the waste stream could flip from PET to the 30-40% represented by residential nylon PCC.

Therefore, similar to PET, secondary markets are needed for nylon recycled output especially in California. This should be paid to end users who turn this material into a product (this would not include pellets).

The proposed Tier 2 incentive for nylon would be @ 15 cents per pound of recycled nylon output used by the manufacturer.

3. **Higher incentives for low ash nylon recycled output** – Currently Tier 1 payments are based on > or < 25% ash according to the CARE protocol. A premium should be paid to high quality recycled content with < 5% ash. This will help create a level playing field for low ash/quality material, i.e. producers of recycled content with +5% to 25% are receiving higher payments as they are also being paid for the weight of the higher ash.
4. **Capital investments** – XT-Green will be making a major capital investment in the new facility. To support this, we’d like the incentive guarantees to be extended to a minimum of 3 years.

Thank you again for your good work in Addendum #3 and your consideration of these requests. Please contact me if you have questions or would like to know more about our new facility.

Regards --

*Gail Brice*

XT-Green  
2 Park Plaza, Suite 450, Irvine, CA 92614  
562-592-5989 (direct)  
562-448-4254 (mobile)  
[gail.brice@xt-green.com](mailto:gail.brice@xt-green.com)

To: CalRecycle Carpet Team

Re: California Carpet Stewardship Program Addendum #3 Plan

The California Retailers Association submits the following comment on the California Carpet Stewardship Plan Addendum #3, dated November 2015. We recognize that the deadline for comments was December 20th, but unfortunately we were, due to the holidays, not able to communicate our concerns by that date.

On page 5 of the Addendum, in Table 2, an increase in the carpet stewardship assessment from \$0.10 to \$0.20 per yard is proposed, to be effective "no later than March 1, 2016".

On page 33 of the Addendum, the proposed increase in the assessment is planned for April 1, 2016: "CARE will increase the assessment effective no later than April 1, 2016..."

California Retailers Association has no position on the increase in the assessment level itself. However, because the fee is collected at retail point of sale, the timing of implementation of a change is of major importance to the retail industry. A minimum of 60 days notice (90 days is preferred, but 60 is essential) of an assessment increase is needed to assure that retailers can become informed of the assessment level change, and make the necessary modifications to software at the point of sale. Changes to ancillary customer informational materials will also need to be made to reflect the new assessment amount. Action on Addendum #3 is scheduled for the January 26th CalRecycle Public Meeting; no notification of a proposed increase can be made prior to formal approval. This timeframe, essentially February 1, would allow only approximately 30 days notice of the increase if it were scheduled to become effective on March 1, as page 5 of the Addendum proposes.

**We respectfully request that the proposed assessment increase, if adopted by CalRecycle on January 26, become effective no earlier than April 1, 2016, as page 33 of the Addendum suggests.**

Please contact us if you have any questions. A representative of CRA will also be present at the January 26th meeting to respond to any questions at that time.

Thank you for your consideration of our request.

Sincerely,

Pamela Boyd Williams  
Executive Vice President

To: Scott Smithline, Director, CalRecycle

Dear Scott,

I support the staff recommendation for Provisional Approval of Addendum #3 to the California Carpet Stewardship Plan.

The response of the carpet industry to date has not been impressive. I am particularly troubled by their continued reference to market forces as the source of their troubles, as if the carpet industry is not an integral part of these market forces. I believe follow up to ensure that the industry meets its stated goals, and does not merely return with more excuses, is essential.

As you know, among the goals of extended producer responsibility (EPR) is to incentivize producers to develop products and processes which provide for easy recycling and minimize the need for landfill disposal. Clearly the Carpet Stewardship Program has not yet succeeded in this goal. The carpet producers lament the lack of a market for their discards, but offer no plan to either use the recycled material themselves or to change their processes to produce a more sustainable product. It is possible that increased incentives will spur other third-party processors to solve the problem, but it seems unlikely.

I suspect that the producers will be back before you at the end of the review period with more hands-in-the-air complaints about others failing to solve their problems. It seems clear to me that the only ones who can solve this problem are the carpet industry themselves, and I hope you will encourage them to do so, not only to help solve the problem of carpet disposal, but to set a proper example of a functioning EPR program when such programs are still fairly new to California.

Thank you,

Tim Goncharoff  
County of Santa Cruz



January 22, 2016

Mr. Scott Smithline  
Director  
California Department of Resources Recycling and Recovery (CalRecycle)  
1001 I Street – P.O. Box 4025  
Sacramento, CA 95812-4025

Re: Consideration of Addendum #3 to the California Carpet Stewardship Plan

Dear Director Smithline:

The Carpet and Rug Institute (CRI) and our individual members whose carpet is sold in California are committed to working with CARE and CalRecycle to make carpet recycling in California a success. However, as explained below, we are very concerned with several aspects of your staff's January 26 memorandum regarding Consideration of Addendum #3 to the California Carpet Stewardship Plan Revised. Most fundamentally, we urge you to choose the first option identified by staff—approval of the addendum. That approval will be consistent with CalRecycle's statutory mandate and sound policy. Moreover, we are confident that approval will allow CalRecycle, CARE, and other interested parties to continue working together, throughout the remainder of this year, to both implement the revised plan and develop a sound plan for 2017 and the future.

We also have serious doubts about CalRecycle's authority to "provisionally" approve the plan. As CalRecycle itself recognized when its regulations were promulgated, the statute itself grants no such authority: it only authorizes disapproval of a plan, with explanation, and an opportunity for the sponsor to revise it.<sup>1</sup> Moreover, even CalRecycle's regulations do not make reference to "provisional approval," but only to "conditional approval."<sup>2</sup> Even if that provision is consistent with CalRecycle's statutory mandate, the use of the term "conditional" implies that any limitations on an approval would be described with specificity and be quantifiable, so that the sponsor of the plan could know what further actions CalRecycle purported to require as the plan was implemented. Unfortunately, many of the "provisional approvals" urged in the staff document suggest that CalRecycle anticipates mandating further adjustments to this plan,

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<sup>1</sup> Final Statement of Reasons, CalRecycle, at 7 (Nov. 2, 2011).

<sup>2</sup> Cal. Code Regs. tit. 14, § 18942(b)(4).



without due process.<sup>3</sup> This promotes uncertainty in economically turbulent times, and would be inappropriate and counterproductive.

Furthermore, CRI is concerned that CalRecycle is not adequately considering practical consequences and existing market forces, as required by law. Two critical requirements of AB 2398 are that CalRecycle approve only plans that incorporate carpet stewardship efforts that are “feasible” and do not create competitive advantages.<sup>4</sup> These are important requirements. With the steep, unforeseen decline in oil prices<sup>5</sup>, demand for products made from post-consumer carpet has been sluggish, and the economics of carpet recycling are extraordinarily challenging. These facts have clearly and consistently been set forth by CARE in information provided to CalRecycle. CalRecycle cannot lawfully turn a blind eye toward these conditions.

The statutory terms governing CalRecycle’s goals and activities have well-established meanings. For example, when used in California statutes, the term “feasibility” implies “rejection of methods which are unworkable, excessively costly, or which would not result in a viable program.”<sup>6</sup> Moreover, “fiscal constraints are a critical part of the feasibility analysis. . . .”<sup>7</sup> By way of further example, the statutory definition of “feasibility” contained in the California Environmental Quality Act—and referenced in other contexts by the courts<sup>8</sup>—similarly mandates consideration of “economic, environmental, social, and technological factors”

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<sup>3</sup> See, e.g., H. Levenson to S. Smithline, *Request for Approval: Consideration of Addendum #3 to the California Carpet Stewardship Plan*, for Action by January 26, 2016, at 13 (Provisional Approval of CARE’s Response to Finding 6 indicates that the approval is contingent on revising the plan to allow assessments of up to 25 cents.).

<sup>4</sup> For example, Section 42972(a)(2) requires that a carpet stewardship plan “[i]nclude goals that, to the extent feasible based on available technology and information, increase the recycling of . . . carpet, increase the diversion of [] carpets from landfills, increase the recyclability of carpets, and incentivize the market growth of secondary products . . . .” Cal. Pub. Res. Code § 42972(a)(2) (emphasis added). The statute’s “findings” declare that “[i]t is in the interest of the state to establish a program.”

<sup>5</sup> For example, global petroleum prices have dropped from \$107/bbl in July 2014 to \$53/bbl in January 2015 to \$36/bbl by the end of December 2015.

<sup>6</sup> *Morris v. Williams*, 67 Cal. 2d 733, 772 (Cal. 1967) (McComb, J., dissenting). see also *Lopez v. Nissan N. Am., Inc.* 201 Cal. App. 4th 572, 582-83 (Cal. Ct. App. 2011) (“The word ‘practicable’ does not necessarily mean the most that can possibly be done,’ but rather is synonymous with ‘feasible’ and allows for reasonable limitations, including economic, practical and technical limits.”) (internal citations omitted).

<sup>7</sup> *Paterno v. State*, 113 Cal. App. 4th 998, 1024 (Cal. Ct. App. 2003).

<sup>8</sup> *Chambi v. WMC-SA, Inc.*, No. G046922, 2013 WL 6236742, at \*7 (Cal. Ct. App. Dec. 3, 2013).

<sup>9</sup> Cal. Pub. Res. Code § 21061.1; *Ass’n of Irrigated Residents v. Cnty. of Madera*, 107 Cal. App. 4th 1383, 1401 (Cal. Ct. App. 2003).





Mr. Scott Smithline

January 22, 2016

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and whether a regulation will affect the “economic viability” of industry.<sup>9</sup> CalRecycle thus has an obligation to consider and establish the feasibility of the approach it demands and approves.

We know of no analysis by CalRecycle of what level of assessment is feasible in the current—and rapidly changing—context. There is no basis whatsoever to reject or conditionally approve CARE’s proposed 100% increase. We are particularly troubled by the implication in the staff’s Recommended Additional Action in Response to Findings 1 and 6 that CalRecycle might seek to demand an increase in assessments before the expiration of this plan. This would be wholly inconsistent with both the statutory feasibility requirement and—in light of consumers’ other floor covering options—the parallel statutory requirement that actions be evenhanded, in particular, the mandate that “[t]he amount of the assessment shall not create an unfair advantage in the marketplace.”<sup>10</sup>

Our concern with the staff’s recommendation is exacerbated by the staff’s failure to recommend, in even “provisionally” approving the plan, that CalRecycle include its prior commitment to not pursue enforcement against CARE or others for alleged “noncompliance status.” This regrettably implies that CalRecycle intends to use the threat of enforcement to compel compliance with the vague “provisions” the staff has set forth. If the plan is not unqualifiedly approved, it is vital that this commitment to defer enforcement activities be restated.

Again, we stress our intention to work with CalRecycle and CARE to fulfill the commitments in the current plan and to help develop future, workable, plans. But uncertainty about CalRecycle’s intentions as the plan is implemented will not be conducive to continued, meaningful collaboration or sound public policy.

Sincerely,

The Carpet and Rug Institute



Joe W. Yarbrough  
President

cc: Randy Pollack

<sup>10</sup> Cal. Pub. Res. Code § 42972(c)(2).

