OFFICE OF ADMINISTRATIVE HEARINGS
GENERAL JURISDICTION DIVISION
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State of California
Department of General Services
Governor Edmund G. Brown Jr.

February 13, 2018

Department of Resources Recycling and Recovery
Attn: Office of the Chief Counsel
Legal Office, 19th Floor
801 K Street, MS 19-03
Sacramento, CA 95814

Subject: Carpet America Recovery Effort
OAH No. 2017040578
Agency No. 2017-001-CARPET

Enclosed are the following:

☒ The original Proposed Decision

☐ An agency order of adoption. If the Proposed Decision is adopted, please return a copy of the signed adoption order to the Office of Administrative Hearings.

☐ The original Decision

☒ Exhibits numbered: 1 – 84
Please make sure you have received all listed exhibits. If exhibits are missing, please contact OAH immediately.

☐ Email copy of the Proposed Decision to:

☐ The above referenced case was resolved prior to conclusion of the hearing. We are returning the enclosed original exhibits 1 – x to you.

TLK:nb

Encl.

Transmittal Form
OAH 60 (Rev. 04/09)

BEFORE THE
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
STATE OF CALIFORNIA

In the Matter of the Accusation Against: CARPET AMERICA RECOVERY EFFORT, Respondent.	Agency Case No. 2017-001-CARPET OAH No. 2017040578

PROPOSED DECISION

Administrative Law Judge Tiffany L. King, Office of Administrative Hearings (OAH), State of California, heard this matter on September 26, 2017, in Sacramento, California.

Ty D. Moore, Staff Attorney, and Karl Schweikert, Chief Counsel, represented complainant Department of Resources Recycling and Recovery (CalRecycle).

Attorneys Steven G. Churchwell and Randy Pollack, of Churchwell White LLP, represented respondent Carpet America Recovery Effort (CARE or respondent).

Evidence was received on September 26, 2017. The record was left open to allow the parties to file closing briefs. On December 1, 2017, CalRecycle filed a closing brief, which was marked for identification as Exhibit 81, and respondent filed a closing brief, which was marked for identification as Exhibit 82. On January 12, 2018, CalRecycle filed its reply brief, which was marked for identification as Exhibit 83, and respondent filed its reply brief, which was marked for identification as Exhibit 84. The record was closed, and the matter was submitted for decision on January 12, 2018.

SUMMARY

CARE is a national nonprofit corporation, and has served as the carpet stewardship organization for the California Carpet Stewardship Program since 2011. CalRecycle seeks civil penalties against CARE based on allegations the organization was not in compliance with the carpet recycling laws and regulations for each of the reporting periods in 2013, 2014, and 2015. The evidence established CARE did not demonstrate meaningful continuous improvement in its recycle output rate or other goals included in the carpet

stewardship plan for 2013, 2014, and 2015. Therefore, cause exists to impose civil penalties for each reporting period.

FACTUAL FINDINGS

1. On March 10, 2017, CalRecycle made and filed the Accusation by and through Ty Moore in his official capacity as its attorney. CalRecycle is responsible for overseeing the carpet stewardship program and enforcing its laws (Former Pub. Resource Code, §§42970-42983)[1] and corresponding regulations (Cal. Code Regs., tit. 14, §§ 18940 et seq.).

2. CARE is a nonprofit corporation pursuant to Section 501(c)(3) of Title 26 of the United States Code, whose stated purpose is to increase the reclamation and stewardship of postconsumer carpet. CARE was established in 2002 as a result of a Memorandum of Understanding (MOU) signed by members of the carpet industry, government representatives, nongovernmental organizations, and entrepreneurs. Since 2011, CARE has been the exclusive carpet stewardship organization representing carpet manufacturers authorized to sell carpet in California.

California's Carpet Stewardship Program

3. Effective January 1, 2011, the California Legislature adopted Assembly Bill 2398 (Stats. 2010, ch. 681) (Carpet Law), becoming the first state in the nation to establish a private-sector designed and managed statewide carpet stewardship program. (Former Pub. Resources Code, §§ 42970-42983.) In enacting the law, the Legislature made the following findings:

> (a) Discarded carpet is one of the 10 most prevalent waste materials in California landfills, equaling 3.2 percent of waste by volume disposed of in California in 2008. Because carpet is heavy and bulky, it imposes a significant solid waste management cost on local governments.
>
> (b) Numerous products can be manufactured from recycled carpets, including carpet backing and backing components, carpet fiber, carpet underlayment, plastics and engineered materials, and erosion control products. Several carpet recycling facilities currently operate in California, producing products and feedstock for products made from recycled carpet.

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[1] Certain sections of the Carpet Law were amended, effective January 1, 2018. (Stats. 2017, ch. 794, §§ 1-9.) Unless otherwise stated, all further references to the Public Resources Code are to the former code sections (effective January 1, 2011 through December 31, 2017), as those were the laws in effect at all times relevant to the matters herein.

(c) The United States carpet industry has established a third-party nonprofit organization, the Carpet America Recovery Effort, also known as CARE, to work with state governments to increase the amount of recycling and reuse of postconsumer carpet and reduce the amount of carpet going to landfills.

(d) CARE represents at least 90 percent of United States carpet manufacturers and 95 percent of the volume of carpet sold in the United States.

(e) According to CARE, in 2008, the most recent year for which data are available, 5.2 percent of carpet was diverted from landfills and 4.3 percent was recycled.

(f) It is in the interest of the state to establish a program, working to the extent feasible with the carpet industry and related reclamation entities, to increase the landfill diversion and recycling of postconsumer carpet generated in California.

(AB 2398, Chapter 681, Statutes of 2010.)

4. The purpose of the Carpet Law is to increase the amount of postconsumer carpet that is diverted from landfills and recycled into secondary products otherwise managed in a manner that is consistent with the state's hierarchy for waste management practices: (1) source reduction, (2) recycling and composting, and (3) environmentally safe transformation and environmentally safe land disposal. (Pub. Resources Code, § 42970, in conjunction with § 40051.)

5. CalRecycle is responsible for: approving or disapproving carpet stewardship plans submitted by manufacturers or their designated carpet stewardship organization; reviewing annual reports to verify the objectives of the plan are being met; and providing oversight and enforcement to ensure a level playing field among carpet manufacturers. (Pub. Resource Code, §§ 42973-42975, and 42978.) For manufacturers to be in compliance, they must have an approved plan, individually or as part of a stewardship organization, which: (1) achieves the purposes of the program; (2) includes goals that increase the recycling of postconsumer carpet, increase the diversion of postconsumer carpet from landfills, increase the recyclability of carpets, and incentivize the market growth of secondary products made from postconsumer carpet; (3) describes proposed measures for managing postconsumer carpet consistent with the state's solid waste management hierarchy; and, (4) includes a funding mechanism that provides sufficient funding to carry out the plan and demonstrate "continuous meaningful improvement" in recycling output rate and other goals included in the approved plan. (Pub. Resource Code, § 42972, subd. (a).)

6. A carpet stewardship organization is "an organization appointed by one or more manufacturers to act as an agent on behalf of the manufacturers to design, submit, and

administer a carpet stewardship plan." (Pub. Resources Code, § 42971, subd. (e)(1)(A).) CARE is the sole carpet stewardship organization for the State of California. (Pub. Resource Code, § 42971, subd. (e)(2).) At all relevant times, CARE represented an estimated 75 to 80 manufacturers who sell carpet in California. When the stewardship program first launched in 2011 and continuing through 2013, state law required consumers be assessed five cents per square yard of all carpet purchased in California to fund CARE's operation as the carpet stewardship organization. (Pub. Resource Code, § 42972.5, subd. (a).)

7. Pursuant to Public Resource Code section 42975, subdivision (a), CARE is required to demonstrate that it has achieved "continuous meaningful improvement" in the rates of recycling and diversion of postconsumer carpet subject to the stewardship plan and in meeting the other goals included in the plan. To demonstrate "continuous meaningful improvement," CARE must submit an annual report detailing its activities for the reporting period, including: (a) the amount of carpet sold by square yard and weight in the state; (b) the amount of postconsumer carpet recycled; and, (c) the amount of postconsumer carpet recovered but not recycled, by weight, and its ultimate disposition. (Pub. Resource Code, § 42976.)

8. CalRecycle shall review the annual report to determine if the carpet stewardship organization has complied with the law by demonstrating "continuous meaningful improvement" in the recycling and diversion rates of postconsumer carpet. (Pub. Resource Code, § 42973.) In determining compliance, CalRecycle shall consider: (1) the baseline rate of compliance against which the demonstrated improvement is compared; (2) the goals included in the CARE MOU; and, (3) information provided in the organization's report to CalRecycle. (Pub. Resource Code, § 42975.)

CARE's Stewardship Plan and Annual Reports

9. In December 2011, CARE submitted its stewardship plan (Plan) to CalRecycle. The Plan (version 1.4) included a primary goal of attaining recycling output rate of 16 percent by 2016. Additional goals included: increase the diversion of postconsumer carpet from landfill disposal; use recycled carpet in secondary materials manufacturing; increase education and outreach; increase convenient collection; and increase carpet recyclability. On January 17, 2012, CalRecycle conditionally approved the Plan, and required CARE to resubmit the Plan after one year to refine their specific goals and establish a baseline from which progress in recycling output could be measured. CARE requested and was granted an extension of time to resubmit the Plan.

10. On December 23, 2013, CARE submitted a revised Plan (version 3.0), which also included a goal of a recycling output of 16 percent by 2016. In addition, version 3.0 identified a baseline recycling rate of 12 percent (based on the second quarter of 2012), and a goal of increasing the recycling rate by one percent per year, until a rate of 16 percent was attained by 2016. CalRecycle approved the Plan, version 3.0, in January 2014. Subsequently, on March 10, 2014, CARE submitted minor corrections to the approved Plan

(versions 3.2 and 3.2.2), which were accepted by CalRecycle; however, these corrections did not change the Plan substantively with respect to recycling output and other goals.

2013 ANNUAL REPORT

11. On July 1, 2014, CARE submitted an Annual Report for the 2013 reporting period (1/1/13 – 12/31/13). The report listed a 12.2 percent recycling output rate for 2013. In mitigation, CARE noted that two California processors closed down during the reporting period, and three new processors were considering starting operations by the end of 2013. CalRecycle reviewed the report and determined that the stewardship program was noncompliant in 2013 as it had not achieved the goals set forth in the Plan.

12. CalRecycle evaluated the 2013 Annual Report in September 2014. On September 16, 2014, at CalRecycle's monthly public meeting, CalRecycle Director Carol Mortensen announced her determination that CARE was noncompliant in 2013. This determination was based on CalRecycle's finding that the 2013 Annual Report did not meet statutory requirements and that CARE did not make "sufficient continuous and meaningful improvement toward the goals approved in the Plan, particularly with respect to the last seven quarters that show no gain in the recycling rate."[2] In its determination, CalRecycle noted:

> CalRecycle recognizes that the Carpet Stewardship Program has had only two full years of reporting, that recent facility closures have impacted market dynamics, and that data is insufficient to definitely conclude that the Program will not achieve the Plan's goals. Therefore, CalRecycle staff recommend delaying any potential administrative action until the next annual report, and not requiring amendments to the deficient *2013 Annual Report*. This will allow CARE to devote more resources to program implementation in 2014.

Additionally, CalRecycle provided detailed comments on the 2013 Annual Report, which outlined key issues and deficiencies to be addressed by CARE. Specifically, CalRecycle identified a lack of "meaningful and continuous improvement" in the Plan's goals to increase the recycling and reuse of postconsumer carpet. It further disapproved of CARE's proposal to include postconsumer carpet exports toward the recycling rate in future years, noting the lack of accountability and oversight overseas as well as the desire to promote manufacturing of recycled content at California facilities to contribute to California's economic growth. Finally, CalRecycle warned it would consider administrative action to obtain compliance if CARE did not address these issues in its 2014 Annual Report.

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[2] The seven quarters referenced include the baseline period of the second through fourth quarters of 2012, and the four quarters of 2013.

13. On December 23, 2014, CARE submitted Addendum No. 1 to the Plan (version 3.2.2) for CalRecycle's review and approval. In the addendum, CARE proposed to increase certain subsidies and raise the fee assessment on carpet purchases to $0.10 per square yard (starting April 1, 2015.) CalRecycle approved Addendum No. 1 on January 5, 2015.

2014 ANNUAL REPORT

14. On July 1 2015, CARE submitted its Annual Report for the 2014 reporting period (1/1/14 – 12/31/14). The report listed an overall recycled output rate of 12.1 percent, with a downward trend to 11 percent reported in the fourth quarter. CARE asserted it increased the carpet fee assessment and restructured other incentives to encourage recycling. CARE also attributed the flat recycling rate, in part, on the decline in crude oil price from $105/barrel in 2012, to $93/barrel in 2013, to $71/barrel in 2014. CARE's Executive Director, Robert Peoples, Ph.D., testified at hearing that the drop in crude oil prices ultimately resulted in the cost of new carpet material falling below the cost of recycled carpet material in 2015.

15. CalRecycle evaluated the 2014 Annual Report in September 2015. At its monthly public meeting held on September 15, 2015, CalRecycle found that CARE again failed to demonstrate continuous meaningful improvement in the recycle output rate. Additionally, CalRecycle found CARE did not respond to market changes in a timely manner, did not provide services in all counties, underutilized its fund surplus, and made insufficient outreach to it stakeholders. Among other things, CalRecycle recommended that CARE increase its education outreach, expand collection opportunities to every county, introduce a tiered fee assessment based on the type of carpet purchased, and make adjustments to its decision-making process to timely respond to market changes and conditions. Again, CalRecycle deferred any enforcement action and requested CARE to submit a Plan Amendment and revised budget by November 30, 2015, for CalRecycle's review.

16. On October 9, 2015, CARE submitted for review Addendum No. 2 to the Plan, which proposed establishing grant and loan programs. On October 27, 2015, CalRecycle approved a limited pilot grant program. On November 30, 2015, CARE submitted Addendum No. 3 to CalRecycle, proposing to increase carpet assessments and recycling incentives, and to implement other programmatic changes responsive to CalRecycle's noncompliance findings. On January 26, 2016, CalRecycle approved Addendum No. 3.

2015 ANNUAL REPORT

17. On July 1, 2016, CARE submitted its Annual Report for the 2015 reporting period (1/1/15 – 12/31/15). The report listed an overall recycle output rate of 10 percent and no improvement in the diversion rate. Notwithstanding this decrease, CARE asserted it demonstrated "continuous meaningful improvement in the face of the many dramatic changes within the 12 months of 2015, especially in actions taken in the areas of

recyclability, reuse, convenient collection, outreach/education and market development." CARE's efforts included: expanding to 23 drop-off sites in 22 counties, with the expectation of expanding to all counties by July 2017; doubling its outreach/education budget and launching several communication initiatives targeting consumers; and adopting changes to improve responsiveness to market changes.

18. CalRecycle evaluated the 2015 Annual Report in September 2016. At its monthly public meeting held on September 21, 2016, CalRecycle found that CARE failed to demonstrate continuous meaningful improvement in its postconsumer recycling and diversion rates. Specifically, CalRecycle found: (1) the recycled output and diversion rates for 2015 were lower than the goals outlined in the Plan; (2) several large population centers continued to lack convenient access to carpet recycling; (3) CARE's education, marketing, and outreach did not result in increased carpet recycling or diversion; and, (4) CARE was still not responding to market changes in a timely manner. Based on these findings, CalRecycle initiated an enforcement action against CARE.

CARE's Arguments

19. "Continuous Meaningful Improvement." CARE argues that the phrase "continuous meaningful improvement" is not defined by statute or regulation, and therefore cannot support a finding that CARE violated the Carpet Law. "The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*In re Marriage of Hobdy* (2004) 123 Cal.App.4th 260, 366.) The plain meaning rule dictates that courts give the words employed by the Legislature their ordinary and usual meaning. (*Id.*)

Merriam Webster defines "continuous" as "marked by uninterrupted extension in space, time, or sequence." "Meaningful" is defined as "having a meaning or purpose." And, finally, "improvement" is "the act or process of improving."[3] The Carpet Law does not define or otherwise quantify what constitutes sufficient "continuous meaningful improvement" because it is CARE's responsibility, as the carpet stewardship organization, to create a Plan setting forth specific improvement goals in the areas of recycled output, landfill diversion, carpet recyclability, and reuse in secondary materials. Thus, by definition, the approved Plan specifically quantifies what CARE should achieve to demonstrate "continuous meaningful improvement."

20. Next, CARE contends that CalRecycle improperly determined CARE was noncompliant by focusing solely on each year's recycle output rate, to the exclusion of the diversion rate and other goals or contributing outside factors. The statute requires CARE to demonstrate continuous meaningful improvement in its recycling output *and* landfill diversion rates. (Pub. Resources Code, § 42975, subd. (a).) Sufficient improvement in one category does not excuse insufficient improvement in the other. In any event, CARE's argument is belied by the evidence which established CalRecycle did not rely on the recycle

[3] https://www.merriam-webster.com/dictionary.

output rate exclusively, but also considered the diversion rate, secondary material use, education and outreach, consumer accessibility, and CARE's responsiveness to market conditions and changes. Moreover, nothing in the statute prohibits CalRecycle from prioritizing the recycling output rate in its evaluation, or otherwise requires CalRecycle to give each stated goal equal weight in its evaluation of whether CARE demonstrated continuous meaningful improvement.

21. 2013 Annual Report. CARE contends that CalRecycle improperly evaluated the 2013 Annual Report against Plan version 3.2.2, which CalRecycle did not approve until mid-2014 and after the close of the 2013 reporting period. Plan version 1.4 set an overall goal of 16 percent recycling output rate by 2016, but otherwise did not delineate benchmarks for each year. CalRecycle conditionally approved Plan version 1.4 in January 2012, but required CARE to resubmit its Plan setting specific goals regarding recycle output rate and other goals. CARE was unable to resubmit the Plan by the one-year deadline and requested an extension, which was granted. CARE submitted Plan version 3.0 in December 2013, which identified a baseline of 12 percent in 2012 and delineated improvement goals of one percent annually in 2013, 2014, and 2015. CalRecycle approved Plan version 3.0 in January 2014, as well as subsequent versions 3.2 and 3.2.2, which included minor corrections and did not change the Plan substantively. Notwithstanding this timeline, the evidence established the recycle output rate in 2013 was 12.2 percent, an increase of only 0.2 percent from 2012, which was one of the bases for CalRecycle's determination that CARE did not demonstrate continuous meaningful improvement in 2013.

22. 2014 and 2015 Annual Reports. CARE argues it demonstrated continuous meaningful improvement in both 2014 and 2015 by maintaining recycle output rates of 12 percent and 10 percent, respectively, despite a significant and continuing decrease in the price of crude oil.[4] CARE also asserts that, with respect to 2015, CalRecycle did not give enough credit to CARE's efforts to significantly increase the fee assessment, the rate of carpet reuse in secondary material, and the number of drop-off sites around the state. For the reasons set forth in Findings 19 through 21, this argument also fails.

Civil Penalties

23. CalRecycle is authorized to impose administrative civil penalties, up to $1,000 per day, on any person or carpet stewardship organization which violates any provision of the Carpet Law. (Pub. Resource Code, § 42978, subd. (a)(1); Cal. Code Regs., tit. 14, §§ 18945, 18945.1.) "Intentional, knowing, or negligent" violations are subject to an administrative penalty of up to $10,000 per day. (Pub. Resources Code, § 42978, subd. (a)(2).) A carpet stewardship organization that fails to demonstrate "continuous meaningful

[4] In its reply brief, CARE compares the effect of declining price of crude oil on carpet recycling efforts with its effect on CalRecycle's bottles and cans program, citing a December 12, 2017 article from the Sacramento News and Review. Neither the article nor any evidence concerning the bottles and cans program was introduced at hearing, and therefore, neither is considered in this Decision.

improvement" in the recycling and diversion rates of postconsumer material, and in meeting other goals included in the stewardship plan, is subject to an administrative penalty of up to $5,000 per day. (Pub. Resource Code, § 42975; Cal. Code Regs., tit. 14, § 18945.1.)

24. In determining the appropriate penalty, CalRecycle must consider the "totality of the circumstances." (Cal. Code Regs., tit. 14, § 18945.) Specifically, section 18945.2 requires CalRecycle to consider all of the following:

(a) The nature, circumstances, extent, and gravity of the violation(s);
(b) The number and severity of the violation(s);
(c) Evidence that the violation was intentional, knowing, or negligent;
(d) The size of the violator;
(e) History of violation(s) of the same or similar nature;
(f) The willfulness of the violator's misconduct;
(g) Whether the violator took good faith measures to comply with this chapter and the period of time over which these measures were taken;
(h) Evidence of any financial gain resulting from the violation(s);
(i) The economic effect of the penalty on the violator;
(j) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community;
(k) Any other facts that justice may require.

25. CalRecycle established by a preponderance of the evidence that CARE did not comply with the approved Plan in 2013, 2014, and 2015 because it failed to demonstrate continuous meaningful improvement for each reporting period. (Pub. Resource Code, § 42975, subd. (a).) Failure to achieve continuous meaningful improvement during the reporting period is considered a Level 2 violation under California Code of Regulations, title 14, section 18945.1, for which a penalty of up to $5,000 per day may be assessed.

26. For failing to demonstrate continuous meaningful improvement during the 2013 reporting period, CalRecycle has requested civil penalties against CARE in the amount of $500 per day, for a total of $182,500.

California's carpet stewardship program was the first and only such program in the country. 2013 was the first year CARE's performance under the Plan was evaluated and, as such, the first time it was found to be noncompliant. There was no evidence that CARE's noncompliance was willful, intentional, or negligent. On the contrary, CalRecycle acknowledged CARE's efforts, that it was still possible for CARE to achieve the Plan's goals, and on that basis, CalRecycle deferred any enforcement action. There was no evidence that CARE experienced financial gain resulting from its noncompliance. CARE is the only authorized carpet stewardship organization in California and represents an estimated

80 manufacturers. Therefore, the penalty imposed must be sufficient to create a deterrent effect on CARE itself and the regulated community, but not so severe as to incapacitate CARE's ability to comply with the Plan in the future. When all the factors in California Code of Regulations, title 14, section 18945.1, are considered, a civil penalty of $500 per day, for a total of $182,500 is reasonable.

27. For failing to demonstrate continuous meaningful improvement during the 2014 reporting period, CalRecycle requests civil penalties against CARE in the amount of $4,000 per day, for a total of $1,460,000.

The recycle output rate did not improve in the 2014 reporting period, but rather decreased by 0.1 percent and was trending down in the last quarter. This was CARE's second consecutive year of noncompliance. However, there was no evidence that CARE did not act in good faith or that its noncompliance was knowing, willful or negligent.[5] While CalRecycle previously warned CARE that noncompliance in the 2014 reporting period may result in administrative action and civil penalties, the agency nonetheless deferred any enforcement efforts until after receipt of the 2015 Annual Report. CARE's size and that of the community it represents, in addition to its continuing violation of the statutory requirements, necessitate an increased penalty to serve a deterrent effect and encourage its compliance in future reporting periods. When all the regulatory factors are considered, CalRecycle's requested civil penalty of $4,000 per day is unreasonable. A civil penalty in the amount of $750 per day, for a total of $273,750, is more appropriate.

28. For failing to demonstrate continuous meaningful improvement during the 2015 reporting period, CalRecycle requests civil penalties against CARE in the amount of $4,500 per day, for a total of $1,642,500.

CARE's recycle output rate continued to decline since 2014, dropping two points to 10 percent. While CARE responded to some of CalRecycle's recommended actions, it did not implement them fully and continued to blame market changes for its lack of improvement. Although there was no evidence that CARE's noncompliance was knowing, willful or negligent, 2015 was its third consecutive year of failing to demonstrate continuous meaningful improvement. CalRecycle had twice deferred initiating enforcement action with the hope CARE would succeed in meeting the Plan's goals with additional time. However, the additional time was not enough. CARE's size and that of the community it represents, in addition to its continuing violation of the statutory requirements, necessitate an increased penalty to serve a deterrent effect and encourage its compliance in future reporting periods. When all the regulatory factors are considered, CalRecycle's requested penalty of $4,500 per

[5] CalRecycle alleged that CARE's noncompliance was "at least negligent and may have been knowing and intentional" because, in 2014, CARE opposed efforts to enact extended producer responsibility legislation or regulations (similar to California's carpet stewardship program) nationwide or in other states. However, there was no evidence establishing a nexus between CARE's activities outside of California and the carrying out of its duties as the sole carpet stewardship organization in California.

day is disproportionate and unreasonable, especially in light of the lack of knowing or willful intent or negligence on CARE's part, and the fact the stewardship program continues to experience growing pains. A civil penalty in the amount of $1,500 per day, for a total of $547,500, is more appropriate to serve a deterrent effect going forward.

LEGAL CONCLUSIONS

1. CalRecycle has the burden of proving, by a preponderance of the evidence, the violations alleged in the Accusation. (Evid. Code, §§ 115, 500.) CARE bears the burden of proving any evidence in mitigation. (*Ibid.*)

Applicable Statutes

2. Public Resources Code section 42972 provides, in pertinent part:

> (a) On or before September 30, 2011, a manufacturer of carpets sold in this state shall, individually or through a carpet stewardship organization, submit a carpet stewardship plan to the department that will do all of the following:
>
> (1) Achieve the purposes of this chapter, as described in Section 42970, and meet the requirements of Section 42975.
>
> (2) Include goals that, to the extent feasible based on available technology and information, increase the recycling of postconsumer carpet, increase the diversion of postconsumer carpets from landfills, increase the recyclability of carpets, and incentivize the market growth of secondary products made from postconsumer carpet. The goals established in the plan shall, at a minimum, be equal to the goals established in the CARE MOU, if it has been adopted at the time the plan is submitted to the department.
>
> (3) Describe proposed measures that 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.
>
> (4) Include a funding mechanism, consistent with subdivision (c), that provides sufficient funding to carry out the plan, including the administrative, operational, and capital costs of the

plan, payment of fees pursuant to Section 42977, and incentive payments that will advance the purposes of this chapter.

(5) Include education and outreach efforts to consumers, commercial building owners, carpet installation contractors, and retailers to promote their participation in achieving the purposes of the carpet stewardship plan as described in paragraph (1) . . . .

[¶] . . . [¶]

(c)(1) The funding mechanism required pursuant to paragraph (4) of subdivision (a) shall establish and provide for, on and after January 1, 2013, a carpet stewardship assessment per unit of carpet sold in the state in an amount that cumulatively will adequately fund the plan and be consistent with the purposes of the chapter. The assessment shall be remitted to the carpet stewardship organization on a quarterly basis and the carpet stewardship organization may expend the assessment only to carry out the plan.

[¶] . . . [¶]

3. Public Resource Code section 42975, subdivision (a), provides:

(a) In order to achieve compliance with this chapter, a carpet stewardship organization shall, on or before July 1, 2013, and annually thereafter, demonstrate to the department that it has achieved continuous meaningful improvement in the rates of recycling and diversion of postconsumer carpet subject to its stewardship plan and in meeting the other goals included in the organization's plan pursuant to paragraph (2) of subdivision (a) of Section 42972. In determining compliance, the department shall consider all of the following:

(1) The baseline rate of compliance against which the demonstrated improvement is compared.

(2) The goals included in the CARE MOU.

(3) Information provided in the organization's report to the department pursuant to Section 42976.

4. Public Resource Code section 42976 states:

> On or before July 1, 2013, and each year thereafter, a manufacturer of carpet sold in the state shall, individually or through a carpet stewardship organization, submit to the department a report describing its activities to achieve the purposes of this chapter, as described in Section 42970, and to comply with Section 42975. At a minimum, the report shall include all of the following:
>
> (a) The amount of carpet sold by square yards and weight, in the state during the reporting period. A carpet stewardship organization with more than one manufacturer may use average weight.
>
> (b) The amount of postconsumer carpet recycled, by weight, during the reporting period.
>
> (c) The amount of postconsumer carpet recovered but not recycled, by weight, and its ultimate disposition.
>
> (d) The total cost of implementing the carpet stewardship plan.
>
> (e) An evaluation of the effectiveness of the carpet stewardship plan, and anticipated steps, if needed, to improve performance.
>
> (f) Examples of educational materials that were provided to consumers during the reporting period.

Cause to Impose Penalty

5. Pursuant to Public Resource Code section 42978, subdivision (a)(1), and California Code of Regulations, title 14, section 18945, CalRecycle is authorized to impose a civil penalty on any person or entity who violates the Carpet Law. California Code of Regulations, title 14, sections 18945.1 sets forth the amount of possible civil penalties and penalty schedule.

6. As set forth in Findings 9 through 13, 19 through 21, and 25, cause exists to impose a civil penalty on CARE for failing to demonstrate continuous meaningful improvement during the 2013 reporting period, pursuant to Public Resource Code section 42975. As set forth in Finding 26, a civil penalty of $500 per day, for a total of $182,500, is appropriate.

7. As set forth in Findings 9, 10, 17, 18, 19 through 22, and 25, cause exists to impose a civil penalty on CARE for failing to demonstrate continuous meaningful

improvement during the 2014 reporting period, pursuant to Public Resource Code section 42975. As set forth in Findings 27, a civil penalty of $750 per day, for a total of $273,750, is appropriate.

8. As set forth in Findings 9, 10, 17, 18, 19 through 22, and 25, cause exists to impose a civil penalty on CARE for failing to demonstrate continuous meaningful improvement during the 2015 reporting period, pursuant to Public Resource Code section 42975. As set forth in Finding 28, a civil penalty of $1,500 per day, for a total of $547,500, is appropriate.

9. Pursuant to Public Resource Code section 42972, subdivision (c)(1), CARE is prohibited from expending assessments collected pursuant to the Plan for any purpose other than carrying out the Plan. Accordingly, CARE is prohibited from using collected assessments to pay the civil penalties issued herein.

ORDER

CARE shall pay a total of $1,003,750 in civil penalties to CalRecycle within 60 days after the effective date of the decision in this matter. CARE is prohibited from using assessments collected pursuant to the Plan to pay said civil penalties.

DATED: February 13, 2018

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TIFFANY L. KING
Administrative Law Judge
Office of Administrative Hearings