



August 17, 2018

Scott Smithline, Director
CalRecycle
1001 I St
Sacramento, CA 95814

Re: Response to Findings in Connection with CARE’s Carpet Stewardship Plan 2018-2022

Dear Director Smithline:

This letter accompanies the Carpet America Recovery Effort’s (“CARE”) submission of its revised California Carpet Stewardship Plan 2018-2022 in response to the findings issued by CalRecycle in its May 15, 2018 report (Request for Approval, or “RFA”). As we have communicated to you, CARE and its members were surprised and disappointed to receive the RFA disapproving CARE’s Plan submitted to CalRecycle on March 15, 2018. In the continued spirit of cooperation with CalRecycle and stakeholders, CARE has worked intensively and to the best of its ability to revise its Plan to furnish additional explanation and detail requested by CalRecycle within the constrained time period for Plan resubmission. CARE is confident that it has produced a Plan that satisfies all requirements of the Carpet Stewardship Laws and thus merits approval by CalRecycle.

In addition to the Plan that remains forward-looking, CARE as it has done in the past submits this letter specifically responding to findings by CalRecycle in its RFA. Please note that this letter is not intended to duplicate or substitute for the detailed Plan or robust discussions therein. The responses below are intended to be constructive and help CalRecycle better understand CARE’s reasoning underlying revisions in the Plan in adherence to the Carpet Stewardship Laws, including the substantial changes enacted by AB 1158 that only first became effective at the beginning of this year.

Overall, as recent statistics show, CARE’s efforts are producing increasingly substantial gains in the recycling and diversion of carpet from landfills in California. Approval of the current Plan will help realize statutory goals and avoid further unnecessary interruptions of that progress. We would be glad to further discuss any of these issues with you at your convenience as you consider CARE’s submitted Plan.

Finding 1: Grants, Subsidies, and Incentives

A. Grants or subsidies to incentivize recycling of postconsumer carpet

The RFA found that CARE's March 2018 Plan "did not sufficiently meet the statutory requirements necessary that any grants or subsidies provided for the recycling of postconsumer carpet shall be structured to incentivize the recycling of carpet materials that have the highest recyclability" pursuant to Public Resources Code ("PRC") § 42972(a)(4). This provision was added by AB 1158 in late 2017 and did not apply to any prior Plan submission under the carpet stewardship program. The statute does not define "highest recyclability" or what it means to "incentivize" the recycling of those materials. Likewise, CalRecycle has not issued any regulations defining these terms. Nor has CalRecycle published interpretive guidance on this topic. Accordingly, the task has been left to CARE to adopt an approach to highest recyclability that comports with the statute.

In response, CARE in its revised Plan has expended significant efforts to substantially clarify its discussion of highest recyclability. CARE refers CalRecycle to, among other aspects of the Plan, the Subsidies and Grants subsections, including Tables 6-10, under Section F on Market Development. In defining highest recyclability, the Plan straightforwardly sets forth the relevant specific criteria (which the RFA did not question in the prior Plan), expands the included types of carpet materials including wool, separates commercial and residential uses, adjusts the rankings scale as recommended by the Advisory Committee, calculates relative rankings for different materials, and provides for regular updates based on frequently changing conditions in the volatile carpet recycling market as monitored via monthly output flows and additional stakeholder dialog. In turn, based on its definitional refinements and utilizing the Subsidy Justification Model, the Plan demonstrates how its subsidies and grants system aligns with incentivizing the recycling of materials currently determined to have the highest recyclability. Based on discussions with CalRecycle, CARE also has added to the Plan a voluntary supplemental subsidy for Nylon 6 and Nylon 6,6, the two materials determined to have the highest recyclability per current Table 6 – even though this supplemental subsidy is unnecessary legally or economically to incentivize the recycling of those materials.

This revised discussion of highest recyclability, subsidies, and grants reflects and reconciles different and sometimes conflicting input received from multiple stakeholders, and meets all requirements of the statute. CARE notes that the Carpet Stewardship Laws only require that those materials with the highest recyclability be subsidized under the Plan to incentivize the recycling of those materials. The statute does not require that the dollar amount of any subsidy or grant for carpet materials with the highest recyclability be greater or lesser than any other carpet material under the Plan. The Laws also do not require the Plan to incentivize only the single carpet material that might be deemed "highest recyclable." Nor does the statute equate highest recyclability with highest "commodity values."

To hold otherwise and elevate "highest recyclability" or "commodity value" to a dispositive criterion for the bulk of grant and subsidy dollars would impermissibly create a conflict within the statute, and transform its global recycling objectives into merely a medium to funnel economic benefits to select carpet products. The "highest recyclability" provision must be read within the statute as a whole so as to avoid rendering other statutory provisions insignificant or superfluous. Here, the newly added highest recyclability provision in AB 1158 does not displace

AB 2398’s core Plan obligation “to accept and manage all suitable postconsumer carpet, regardless of polymer type or primary materials of construction” (PRC § 42792(b)), or AB 1158’s overarching goal of achieving a 24% recycling rate by 2020 (PRC § 42792.2(a)). Generating sufficient recycled output to satisfy those statutory provisions requires continued incentives to prevent disposal of the carpet types that make up the largest part of current inventories and are more difficult to move within the market. That is, to use the examples from the RFA (at 3), a Plan that incentivizes recycling of currently determined highest recyclable carpet materials like Nylon 6,6 but does not increase total recycled output for carpet including large volumes of PET, and within the short timeframe goals of the statute, cannot succeed. Indeed, elsewhere in the RFA (at 11), CalRecycle acknowledged the need “to ensure that for existing carpet the yield goal is achieved...not by a decline in the collection of hard to recycle carpet or preferential collection of carpet with the highest recyclability.” For similar reasons, for any future subsidy and grant changes that may be warranted, the Plan also takes into consideration notification requirements made to recyclers to avoid disruptions in recycled output growth.

In any event, the revised Plan features grants and subsidies that incentivize carpet with the highest recyclability, and voluntarily adds a supplemental subsidy for the materials with the currently highest rankings in Table 6. At the same time, the Plan’s approach to highest recyclability continues to serve the overarching recycling output goal of the statute. The Plan is in full compliance with the terms of PRC § 42792(a)(4) on “highest recyclability,” and that provision requires nothing more for CalRecycle to approve the Plan.

B. Incentives or grants to state-approved apprenticeship programs

The RFA found that the Plan did “not include the statutorily required incentives or grants to state-approved apprenticeship programs for training apprentice and journey-level carpet installers in proper carpet recycling practices” under § 42972(a)(4). While the Plan already contained numerous activities providing incentives to such apprenticeship programs, CARE in response has revised the Plan to more specifically provide direct financial support for this purpose. The Plan commits to and expressly describes incentives or grants for apprenticeship programs, both existing and planned with timelines, and dedicates a funding line item for these efforts. CARE refers CalRecycle to, among other aspects of the Plan, (i) the discussion of Apprentice/Journey-Level Installer Grants and Incentives within the Grants subsection of Section F on Market Development; (ii) the discussion of How E&O, Grants, and Incentives Support Installer Training (in Proper Carpet Recycling Practices) under Section H on Education and Outreach; and (iii) the Attachment 4 Budget Narrative, the revised budget tables, and accompanying discussion. The Plan is fully compliant the terms of PRC § 42792(a)(4) on apprenticeship programs.

Finding 2: Funding Mechanism

The RFA stated that, based on the economic analysis in the Plan, CalRecycle was “unable to find that the funding mechanism complies with the statutory requirements.” This finding called for additional economic analysis. It also repeated the apprenticeship programs funding point in Finding 1.B, which is addressed above and not repeated here.

In response, the Plan more clearly presents its economic analysis and translates that analysis into the assessment level to adequately fund the Plan. In particular, the Plan expands and updates its economic, cost conversion, and financial models pursuant to the latest market information for carpet recycling inputs and outputs. These include but are not limited to the Cost Conversion Model and the Subsidy Justification Model. With the assistance of Aprio, the Plan also articulates the models employed, what they are designed to predict, and how they are used to project future costs of collecting, processing, and recycling postconsumer carpet. The Plan then derives the requisite assessment based on these variables. Among other things, CARE considers (i) sales projections and correspondingly targeted pounds of recycled output required to achieve the 24% recycling rate goal; (ii) how those recycling output pounds are distributed across the subsidy categories; (iii) based on subsidy dollars, the total subsidy payouts projected on a monthly basis; (iv) other program costs including grant budget justification; and (v) total program costs divided by the sales of new carpet to obtain a true cost per square yard for the proposed assessment in the Plan. The proceeds of the assessment are then appropriately paid out based on market conditions pursuant to the system of subsidies and grants described above and throughout the Plan. The Plan provides conversion cost and capacity growth data on an aggregate basis, and offers in good faith to review greater details with CalRecycle in a private setting to preserve confidentiality of such recycler information, which the RFA acknowledges is a valid concern (at 7). Based on this best available information and uniquely informed judgment based on market experience, the Plan reasonably forecasts that the outlined subsidies and grants will allow the Plan to achieve a 24% recycling rate by 2020, and a 26% recycling rate by 2022.

In evaluating the assessment in the Plan, it is imperative that CalRecycle consider all relevant statutory factors. To that end, CARE must disagree with the RFA's summary dismissal of the assessment's economic impact on carpet sales. Fundamentally, because statutorily the Plan is funded by an assessment on the sale of new carpet in California, it is arbitrary and counterproductive to disregard future carpet sales trends when evaluating the assessment level. Moreover, as a statutory matter, pursuant to the statute at PRC § 42972(c)(2), "[t]he amount of the assessment shall not create an unfair advantage in the marketplace." Likewise, PRC § 42973(a)(2)(B), the section outlining how CalRecycle should determine to approve or reject a carpet stewardship plan, instructs CalRecycle to make a finding that "[t]he amount of the assessment in the plan will not create an unfair advantage in the marketplace for one or more of the companies in the organization" (emphasis added). These mandates were not altered by AB 1158.

Tellingly, CalRecycle previously took the opposite position as in its RFA and considered unfair advantages among different companies under the Plan as well as between the carpet and other flooring sectors. Specifically, in an April 2017 decision on a prior Plan submission by CARE, CalRecycle rejected *exactly the same* text that re-appears in the RFA (penultimate paragraph on p.8). At that time, CalRecycle staff had made a more restrictive recommendation to again reject CARE's argument that the carpet stewardship program takes into account whether carpet can maintain its market share, concluding that the "Legislature could have provided such language ... but it did not." But in stark contrast to that staff conclusion, in the April 2017 decision the Director wrote:

CARE needs to provide an analysis demonstrating that a higher assessment will adversely impact market share and that the decline in carpet's share of the flooring market share is not a result of other

factors. If CARE does reasonably establish that a higher assessment will adversely impact market share then it has the right and responsibility under this producer responsibility law to find other methods to achieve the program goals.

CARE has provided precisely that information in the March 2018 Plan, and again in the revised Plan, including but not limited to the Bates White report in Attachment 10. In sum, unlike other products subject to stewardship programs in California (e.g., bottles, paint, mattresses), carpet products have accepted, viable, competitively-priced and readily available alternative floor covering options that consumers may instead purchase if the assessment is allowed to become too high, including wood, vinyl, ceramic, stone, engineered wood, and rugs. But the RFA makes no mention of this evidence, and instead returned to an interpretation the Director had struck just a year earlier.

Additionally, PRC § 42972(c)(2) states that “[t]he amount of the assessment shall be sufficient to meet, *but not exceed*, the anticipated cost of carrying out the plan” (emphasis added). The RFA (at 7) restates this requirement. Accordingly, CalRecycle cannot suggest that CARE continuously raise the assessment without some consideration of what amount is too high. Yet, the RFA reflects no such consideration.

Other statutory provisions of the also indicate that it is appropriate to consider economic impacts when evaluating the Plan’s assessment. Specifically, the statute also incorporates a feasibility standard in evaluating CARE’s Plan. The Integrated Waste Management Act (“IWMA”), of which the Carpet Stewardship Laws are part, states that “[t]he purpose of this division is to reduce, recycle, and reuse solid waste generated in the state to the *maximum extent feasible in an efficient and cost-effective manner....*” PRC § 40052 (emphasis added). This text sets forth the purpose of the IWMA, and applies equally to the carpet stewardship program and other waste programs which are under the same division (Division 30 of the California Public Resources Code). Consistently, PRC § 42972.1 requires CARE to incorporate Advisory Committee comments “to the extent feasible.” The goals of both the IWMA generally and the Carpet Stewardship Laws thereunder are to increase the amount of material recycled and diverted from landfills, but they recognize that CalRecycle should not prescribe specific activities as conditions of Plan approval without consideration of feasibility based on market realities, technological barriers, extreme cost, or other factors.

Relatedly, as CARE has repeatedly explained, CalRecycle’s desired level of cost uniformity and certainty as implied in the RFA is infeasible given the unique market dynamics, complexity, and variability of carpet recycling versus other products. Simply put, there is no one-size-fits-all formula for carpet. New products and recycling processes are coming on line all the time. Meanwhile, external factors such as the price of oil or virgin materials remain outside CARE’s control but continue to exert massive changes on the market on a real-time basis. Creation and growth of a new carpet recycling sector in California inherently takes time and technology, and is not merely a function of the amount of assessment dollars. A number of pilot projects and studies are underway, including in response to the new provisions introduced in AB 1158. Even the RFA (at 8) acknowledges “the cost and complexity associated with developing carpet recycling infrastructure,” and points to examples of robust investments in failed technology. Further, CalRecycle’s May 8, 2018 open letter to stakeholders—issued just one week before the RFA—acknowledges the cross-sector exacerbation of burdens and challenges to recycling in California occasioned by the China National Sword policy, and considers those factors when

evaluating program performance. Thus, the exercise is not as simple as stated in the RFA to “identify the capital costs required to build the needed carpet recycling infrastructure.”

With regard to the RFA’s concern about reserve funds, CARE has doubled the amount of reserves from one to two months. As explained in the Plan, this reserve amount is sufficient (including relative to how the State approaches its own reserve funds), and no statutory obligation exists for a higher level of reserves.

Finally, with respect to “differential assessments,” CARE refers to its Plan’s discussion of the topic within Section G on Financing Mechanism, as well as its prior responses to CalRecycle and the Advisory Committee on this subject. CARE remains open to the potential of differential assessments during the approved Plan period, including on the basis of price point as the concept was originally introduced. Yet, near-term implementation of a differential assessment system based on carpet face-fiber type is not feasible under the statute, and for the Plan’s articulated reasons requiring further study may not serve the statutory and Plan goals.

The main takeaway is that CARE, in coordination with CARE’s members, consultants, and external stakeholders representing all viewpoints, has undertaken extensive efforts to fully respond to Finding 2 in the RFA. The resulting Plan and its attachments, particularly when coupled with recent significant gains in California carpet recycling, provide the requisite economic analysis supporting the assessment for Plan approval. The Plan is in full compliance with the terms of PRC §§ 42792(a)(4), 42792(c)(2), and 42973.5 cited in the RFA. (The RFA refers to “PRC§42972(a)(5)(c)(2)” which does not exist.)

“Additional Analysis”

Pursuant to statute, PRC § 42973, “[i]f the department does not approve the plan, it shall describe the reasons for its disapproval in the notice” formally given to the submitter. The findings addressed above were the RFA’s only stated grounds for disapproval. While the RFA included an “additional analysis” section layering more issues that “may” exist in the Plan, these issues were not among the formal findings for disapproving the Plan, and thus should not be asserted as findings impeding approval of CARE’s revised Plan now. Nevertheless, CARE also has carefully reexamined and diligently revised its Plan in response to these “additional” issues.

A. Performance Goals

The RFA states that “CARE may not have adequately addressed the statutory requirements relative to collection convenience, recyclability, and markets” under PRC § 42972(a)(2)(B), (C), and (E). Though the RFA is not entirely clear on its perceived shortcomings or desired revisions in these areas, the Plan, particularly as revised, adequately addresses all of these areas. CARE refers CalRecycle to, among other aspects of the Plan, the discussion of these topics under Performance Goals within Section C, Section E, Section F, and Section H; the discussion of recyclability and highest recyclability in Section C.

With respect to collection convenience, the Plan demonstrates that after six years of CARE efforts, 95% of California’s population is now served by reasonably convenient collection sites located within their county, and efforts to increase this rate of coverage are ongoing. This growth and level of coverage eminently comport with the Carpet Stewardship Laws. There

appears to be a disconnect between the RFA’s example (at 10) of a single drop-off site in Los Angeles County and the 46 sites that actually exist there. The RFA also provides no reasonable rationale for wholesale exclusion of the private collection network, which are supported by CARE collector/sorter subsidies and the Agreed Upon Procedures (“AUP”) process, and are principally used by professional installers who account for the vast majority of postconsumer carpet generation in California – as opposed to the relative scarcity of do-it-yourself (DIY) homeowners for carpet projects who may directly bring carpet to a drop-off site. The Plan specifies funding for further collection convenience efforts, describes the scope and status of the current convenience study, and explains safeguards with respect to private collection sites.

With respect to recyclability, CARE refers CalRecycle to the text of the Plan and its above response on “highest recyclability.” Finally, regarding markets for postconsumer carpet, CARE refers CalRecycle to the activities under the Plan (which the RFA affirms are “meritorious”) and its above response regarding its budget and economic analysis. CARE through its annual reporting under the Plan will ensure that its reported metrics for existing carpet yield and recycled-carpet-content products are accurate, informative, and compliant with the Plan and statute. In sum, the Plan is in full compliance with the terms of PRC § 42972(a)(2)(B), (C), and (E).

B. Source Reduction

Lastly, the RFA states “CARE may not have adequately addressed the statutory requirement regarding source reduction” under PRC § 42972(a)(3). The Plan, particularly as revised, is in full compliance with the terms of that provision on source reduction. CARE refers CalRecycle to, among other aspects of the Plan, the discussion of this topic under Section C, Section E, Section F, and Section H; the discussion of recyclability and highest recyclability in Section C on Performance Goals and Section D on Solid Waste Management Hierarchy.

At the outset, it is important to specify the precise nature of the “statutory requirement” in § 42972(a)(3) cited by the RFA. This provision is specifically directed at “the management of postconsumer carpet in a manner consistent with the state’s solid waste management hierarchy,” of which source reduction is a component. The purpose of § 42972(a)(3) is to enable the proper management of *postconsumer* carpet rather than direct oversight of carpet manufacturing. Indeed, the Carpet Stewardship Laws clearly regulate the recycling of postconsumer carpet. *See* PRC § 42970 (“The purpose of this chapter is to increase the amount of postconsumer carpet that is diverted from landfills and recycled into secondary products or otherwise managed in a manner that is consistent with the state’s hierarchy for waste management practices pursuant to Section 40051.”); PRC § 42971(b) (CARE was “established to increase the reclamation and stewardship of postconsumer carpet”); PRC § 42971(k) (“‘Postconsumer carpet’ means carpet that is no longer used for its manufactured purpose.”). Thus, the focus of the statute and this Plan is on the very important step between carpet on the floor and before carpet becomes waste, and CARE’s source reduction efforts under the Plan are focused here.

In any event, as noted above, CARE has substantially revised its discussion of source reduction to respond to the concerns raised in the RFA. For example, the Plan clearly sets forth what activities it and the Carpet and Rug Institute will respectively undertake, includes the AUP in the Plan as indicated in the RFA, and discusses cleaning of carpet for reuse. While not compelled by the statute, the Plan also outlines additional efforts being pursued by industry that could have a

positive impact on source reduction of pre-consumer carpet beyond the Carpet Stewardship Laws. CARE will monitor and report on these efforts as information is available and warranted. However, CARE notes that such metrics may be highly difficult to obtain and provide little utility in evaluating source reduction. For example, the RFA's two identified criteria of carpet durability and light-weighting may cut into opposite directions, as carpet with less material often is not as durable. Moreover, such metrics for source reduction may not always be complementary to structuring grants and subsidies to incentivize highest recyclability.

Consultation with Advisory Committee

The RFA documents CARE consultation with the Advisory Committee as required by statute. As reflected in the RFA, CARE responded to each of the Advisory Committee's recommendations on the January 7, 2018 draft Plan. The Advisory Committee had only three remaining comments on the March 2018 Plan submitted to CalRecycle, which did not raise any of the findings or additional analysis points in the RFA other than the differential assessment issue addressed above. CalRecycle in disapproving the Plan did not adopt the Advisory Committee's recommendation for at least conditional approval of the Plan. For purposes of this Plan submission, CARE again has consulted with the Advisory Committee and has fully responded to its recommendations on the revised Plan in response to CalRecycle's RFA. *See* Attachment 5 of the Plan.

CARE wishes to convey its deep appreciation to you and the CalRecycle staff in advance for your consideration of today's submitted California Carpet Stewardship Plan 2018-2022 in accordance with the statute. We look forward to continuing to work with you toward its successful implementation.



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