



December 5, 2023

*Sent via email*

Robert Peoples, Ph.D.  
Carpet America Recovery Effort  
100 South Hamilton Street  
Dalton, Georgia 30722

**Subject: Notice of Disapproval of CARE's Contingency Plan Amendment and Training Guide**

Dear Dr. Peoples,

CARE submitted to CalRecycle an amendment to its *2023 to 2027 Plan*, which included its *Contingency Plan (2.0): California Program General Framework* and a separate attachment, *AB 2398 Operations Training Guide and Management Methodology (Contingency Plan Amendment)*. CalRecycle reviewed CARE's *Contingency Plan Amendment* and determined that it does not meet the requirements for approval.

Pursuant to Public Resources Code (PRC) section 42972(a)(7), a carpet stewardship organization must include in its stewardship plan a contingency plan that demonstrates how the plan will continue to be carried out should the plan expire without approval of a new plan or should the plan be revoked. PRC section 42972.7 requires a carpet stewardship organization, as part of its plan, to set up a trust fund or an escrow account, into which it shall deposit all unexpended funds and ongoing consumer assessments, in the event that the plan terminates or is revoked. Carpet America Recovery Effort (CARE) committed in its *California Carpet Stewardship Plan 2023 to 2027 (2023 to 2027 Plan)* to submit a revised contingency plan to CalRecycle by October 30, 2023, that is consistent with the requirements of CalRecycle's April 21, 2023, Request for Action approving CARE's *2023 to 2027 Plan*.

CARE's *Contingency Plan Amendment* does not meet the requirements for approval. Among other deficiencies, the *Contingency Plan Amendment* is not self-executing. In order for the contingency plan to be self-executing, an outside executor, like a trustee or "some other entity" is the only viable statutory option. The *Contingency Plan Amendment* does not identify the other entity, and it does not identify the process by which CalRecycle will be informed of the identity of the other entity. Instead, the *Contingency Plan Amendment* is constructed to transfer the program to "CalRecycle or its designated representative." (*Contingency Plan Amendment*, page 3.) That is not the process required by law.

CalRecycle's roles regarding the contingency plan are described under PRC sections 42972, 42972.7(a), and 42978. CalRecycle must review and approve or disapprove the contingency plan elements as part of its plan approval process (PRC section 42972). Following activation of a contingency plan, CalRecycle must direct funds in the possession of the trustee or escrow agent (PRC section 42972.7(d)); and CalRecycle may make modifications to the previously approved plan after one year (PRC section 42972.7(c)), assuming CalRecycle chooses to exercise the option to continue implementing the *Contingency Plan Amendment* beyond one year. Finally, CalRecycle has an enforcement role that encompasses the entire program (PRC section 42978). If manufacturers are selling carpet in California without coverage under an approved plan, which must include a contingency plan, following the effective date of the newly added provisions under Assembly Bill 729, effective January 1, 2020, CalRecycle may take enforcement action.

CARE's *Contingency Plan Amendment* must identify the trustee or other entity who will be implementing its *2023 to 2027 Plan*, ensuring that they are able to take over responsibilities within 30-day notice of pending termination or revocation of the *2023 to 2027 Plan*. In addition, all contracts and subcontracts for critical services that support the program must transfer to the designated "other entity" (i.e., trustee) upon implementation of the *Contingency Plan Amendment*; this may require that CARE recontract with service providers for its "critical services" to ensure that the other entity is able to continue uninterrupted operation of the activities in CARE's *2023 to 2027 Plan* under CalRecycle oversight.

The *Contingency Plan Amendment* states that it will self-execute. However, its construction does not allow that. CARE is misguided in its assertion that the program will be implemented by "CalRecycle or its designated representative." Additionally, CARE's assertion that CalRecycle should form a "Contingency Plan team" and CalRecycle should "anticipate a minimum six-month learning period to ensure a smooth transition, including execution of contracts, operational agreements, vendor payment processing and any necessary training" (*Contingency Plan Amendment*, page 4) is inconsistent with CalRecycle's role regarding the contingency plan. Asserting that CalRecycle form a "Contingency Plan team" fails to meet the requirement that the contingency plan be fully implementable without negotiation or contractual agreement. The proposed six-month transition also means that the *Contingency Plan Amendment* will not self-execute, as required.

CARE indicates in the *Contingency Plan Amendment* that it will only agree to coordinate regarding subsidy payouts under a consulting services agreement; to the extent that CARE fails to completely reconcile payments during the period it is in custody of assessment funds, as is required under the law, CalRecycle expects that CARE will coordinate the reconciliation of all accounts without any consulting agreement. Moreover, throughout the *Contingency Plan Amendment*, there are multiple references to CalRecycle having a contract with CARE or paying CARE for its consultation. Again, this fails to meet the requirement that the Contingency Plan be self-

executing and misstates CalRecycle's statutory obligation and role. Additionally, instead of providing all financial information concerning its 2023 to 2027 Plan to CalRecycle immediately, CARE states it will retain accumulated funds for "in process" or pending invoices submitted prior to and up to the official termination date. CARE states it will use program funds to continue to process invoices up to 30 days past the final termination date and requires payment of a reasonable administrative fee for invoice processing.

The *Contingency Plan Amendment* proposes that CARE will facilitate a transfer of the preliminary accounting of the fund balance and status within 30 days of notice of pending termination or revocation. This exceeds the required deadline of five days of notice of pending termination or revocation, or five days of actual termination or revocation, whichever is sooner.

The *Contingency Plan Amendment* does not commit to providing key information immediately upon self-execution, including contracts paid with assessment funds and contact information for mills, transporters, processors, manufacturers, contractors, and other key plan agents. Additionally, CARE does not directly commit to transferring certain assessment-funded work products to CalRecycle, such as the Economic Model and Financial Model.

For the foregoing reasons, CARE's *Contingency Plan Amendment* is disapproved. CARE may revise and resubmit the plan amendment within 60 days after receiving notice of disapproval by February 5, 2024.

CARE will be out of compliance with PRC section 42972(a)(7) as of December 30, 2023, when the existing Contingency Plan expires. As outlined above, CARE may revise and resubmit a plan amendment within 60 days after receiving this notice. Submittals are not deemed complete until all requested information is received. If a compliant Contingency Plan is not received within 60 days, CARE will be found in violation and enforcement actions may be taken. Non-compliance or submitting false or misleading information may result in violations subject to penalties of up to \$10,000 per day pursuant to PRC section 42978.

Sincerely,

Signed by Rachel Machi Wagoner, Director

Rachel Machi Wagoner  
Director

CC: Assembly Majority Leader, Hon. Cecilia Aguiar-Curry