REQUEST FOR APPROVAL

To: Mark Leary
Acting Director

From: Howard Levenson
Howard Levenson
Deputy Director, Materials Management and Local Assistance Division

Request Date: March 15, 2011

Decision Subject: Approval to Formally Notice Proposed Product Stewardship for Carpet Regulations

Action By: March 15, 2011

Summary of Request: Staff requests approval to begin the formal rulemaking process and formally notice proposed Product Stewardship for Carpet Regulations needed to implement the carpet stewardship law (Chapter 681, Statutes of 2010 [Perez, AB 2398]).

Recommendation:
Staff recommends approval of the "Proposed Product Stewardship for Carpet Regulations" so that it may be forwarded to the Office of Administrative Law and the formal regulatory process may begin.

Action:
On the basis of the information and analysis in this Request for Approval and the findings set out above, I hereby approve the "Proposed Product Stewardship for Carpet Regulations" and direct staff to forward the regulatory packet to the Office of Administrative Law so the formal regulatory process may begin.

Dated: 3/28/2011

Mark Leary
Acting Director

Attachments: Proposed Product Stewardship for Carpet Regulations

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Background Information, Analysis, and Findings:

To implement Assembly Bill 2398 of 2010, the Department has responsibility to approve or disapprove of carpet stewardship plans submitted by manufacturers or their designated product stewardship organization; review annual reports to verify that the objectives of the plan are being met, and provide oversight and enforcement to ensure a level playing field among carpet manufacturers. For manufacturers to be in compliance, they must have an approved plan and demonstrate achievement of continuous and meaningful improvement in the rates of recycling and other goals included in a stewardship plan. Enforcement is addressed through a combination of civil penalties for non-compliance and transparency that allows all stakeholders and the public to evaluate progress. Additionally, carpet manufacturers and/or stewardship organization(s) shall pay CalRecycle an administrative fee to cover the cost of its service that may not exceed five percent of the aggregate assessment collected.

To carry out these responsibilities, the Department seeks to promulgate regulations that add clarity and administrative procedures covering: definitions; submittal instructions; stewardship plan approval criteria; criteria for acceptance of annual reports; the establishment of a progressive enforcement approach; records retention; proprietary, confidential or trade secret information; and a process for CalRecycle to accept payment for its services related to oversight and enforcement activities.

Staff have met with numerous stakeholders, participated in the national Carpet MOU process, and conducted a public workshop on February 22, 2011 to share informal draft regulatory text. Comments from the public have been incorporated into the "Proposed Product Stewardship for Carpet Regulations" (Attachment 1). The primary concerns expressed by stakeholders about the draft regulatory language and staff's response to these concerns are briefly summarized here:

- **Carpet as an Alternative Fuel**: Viewpoints vary among stakeholders on the use of unwanted carpet as a fuel. Staff incorporated a definition of Carpet as an Alternative Fuel (CAAF) that says CAAF must be processed to recover reusable/recyclable materials, before being used as fuel. It further indicates that CAAF is not recycling, but may count as a form of diversion. The definition of "recycling" was removed as it is already in current statute and no clarification is needed and the term "diversion" was adjusted to be consistent with current state laws and regulations.
- **Scope:** Several stakeholders asked whether synthetic turf and indoor-outdoor carpets were covered under AB 2398. Staff added definitions that would exclude synthetic turf, which is used primarily in outdoor settings as a replacement for sod, and include indoor-outdoor carpet which is used inside and outside of buildings and is made by carpet manufacturers. Another unclear term is "rugs", which appears in AB 2398 without definition. Staff added a definition that would define flooring originally made as carpet to remain as carpet, even if it is cut into smaller portions.
- **Identification of polymer type:** Several stakeholders commented on the need for those removing old carpet to be able to readily identify the polymer type. Some suggested that labels should be added to the back of carpet for this purpose, while others suggested that hand-held devices would more feasible and efficient. Staff investigated this idea and modified the language so the plans must describe how service providers handling old

carpet will be able to readily, accurately, and economically identify the type of carpet polymer to facilitate reuse and recycling. CalRecycle does not recommend specifying a technology or approach in regulation, thereby allowing flexibility over time, but it would require that plans address this issue.

- **Adherence to the solid waste management hierarchy:** Several stakeholders identified places where the informal draft regulatory text could be modified to better align with the solid waste management hierarchy. Staff incorporated these edits.
- **Scope of audit reports:** Staff added language clarifying the scope of audits. State government agencies typically receive more than financial information from CPAs preparing audits. Additional audited information is often presented in a separate state compliance report, and staff added language for this type of information to be included in audits as well. For example, a CPA could provide information on whether or not the program met other requirements such as attainment of goals in the plan.
- **Records retention:** Staff added language on additional records that need to be retained for enforcement purposes. In addition to wholesalers' and retailers' records on carpet sold or offered, records also are needed on dates of sales and the assessment fee collected.

After the CalRecycle public workshop on February 22, CARE publically discussed its work to date in developing the stewardship organization and program. At both the CalRecycle workshop and the CARE stakeholder consultation, stakeholders raised a number of additional issues related to program implementation. These included:

- **Overall implementation details.** Most questions sought clarity of stewardship plans and program implementation, particularly the funding mechanism and incentives, provided in CARE's presentation. Staff understands that CARE is planning a follow-up webinar on these topics.
- **Incentive payments.** Many stakeholders are concerned about the incentives being the same for filler and carpet as an alternative fuel. To align with the solid waste management hierarchy, incentive payments for a recycled material should be higher than material used as fuel, if incentive payments are provided to the latter.
- **Retailers.** CARE is starting outreach efforts to retailers. Several stakeholders were concerned about the lack of retailer participation thus far.
- **Outreach.** Several stakeholders suggested additional groups that need to know about carpet stewardship in California and offered ideas to CARE on how to reach them.

These are all important issues that CARE will need to address in the stewardship plan it submits to CalRecycle. However, these issues are outside the purview of the regulatory package that is the subject of this Request for Approval and hence are not discussed further herein.

Approval of this "Proposed Product Stewardship for Carpet Regulations" Request would allow staff to file the regulatory package with the Office of Administrative Law and, when that is published by OAL, to initiate the formal rulemaking process. CalRecycle staff anticipates that the formal process will begin in April 2011. The regulatory process is scheduled to be completed in December 2011. The law requires that carpet stewardship plans be approved by March 31, 2012. A tight schedule must be maintained to meet this deadline.

PROPOSED PRODUCT STEWARDSHIP FOR CARPET REGULATIONS

TITLE 14:	**NATURAL RESOURCES**
DIVISION 7.	**DEPARTMENT OF RESOURCES, RECYCLING AND RECOVERY**
CHAPTER 11.	**PRODUCT STEWARDSHIP**
ARTICLE 1.	**PRODUCT STEWARDSHIP FOR CARPETS**

Section 18940. Purpose.

The purpose of this Article is to clarify existing statute and establish administrative procedures to efficiently and effectively implement the department's responsibilities under the law for product stewardship for carpets and to provide a uniform competitive business environment to all carpet manufacturers, retailers, and wholesalers pursuant to §42970 of the Public Resources Code.

Note: Authority cited: Sections 40502 and 42970, Reference: Section 42970, Public Resources Code.

Section 18941. Definitions.

(a) Except as otherwise noted, the definitions of this Article supplement and are governed by the definitions set forth in Chapter 20 (commencing with §42970), Part 3, Division 30 of the Public Resources Code:

(1) "Must" or "shall" means a provision is mandatory.

(2) "May" means a provision is permissive.

(b) "Administrative fee" means payments from the manufacturer or stewardship organization to the department that cover the costs of its administrative, oversight, and enforcement services necessary for manufacturers or stewardship organizations to effectively implement carpet stewardship plans.

(c) "Assessment" means the amount added to the purchase price of carpet that is subsequently remitted to a stewardship organization or manufacturer, and shall be spent on implementing the carpet stewardship plan.

(d) "Aggregate Assessment" means the sum of all assessments collected in the state of California in a calendar year.

(e) "Carpet as Alternative Fuel" (CAAF): Fuel that has been produced from source-separated, and sorted post-consumer carpet and processed, including (1) extraction of components for recycling if at all possible; and (2) size reduction, shredding, and/or blending with coal fines, etc. CAAF is not a type recycling, but it is a type of diversion for the purpose of this Article.

(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.

(g) "Indoor/outdoor carpet" means a type of carpet, regardless of construction, made of synthetic materials that have been especially designed or treated to withstand moisture, extremes of temperature, ultra-violet rays, and other types of exposures. Indoor-outdoor carpet may be broadloom or carpet tiles that are applied in building interiors as well as exteriors. Indoor-outdoor carpet is defined as carpet for the purpose of this Article.

(h) "Reporting period" means the period that commences in January and ends in December, and represents twelve consecutive months in the preceding calendar year.

(i) "Rug" means a loose laid soft floor covering manufactured from natural or synthetic fiber that is not intended to cover the entire floor and is not made from broadloom carpet or carpet tiles.

(j) "Significant or Material Change" means any change in a required element of the carpet stewardship plan or annual report.

(k) "Synthetic turf" means a primarily outdoor synthetic product manufactured to look like natural grass for use as a sport playing surface and alternative to lawns. Synthetic turf is not carpet.

Note: Authority cited: Sections 40502 and 42971, Reference: Sections 40127, 40180, 40191, 40192, 40201, 41780, 42970, 42971, Public Resources Code.

Section 18942. Submittals.

(a) A corporate officer, acting on behalf of a manufacturer or stewardship organization, shall register with the department. The registration process shall include, but not be limited to, the following information:

(1) Contact information of the corporate officer responsible for submitting stewardship plan and annual report documents to the department and for overseeing carpet stewardship program activities, including, but not limited to:

(A) Contact Name

(B) Title

(C) Name of Company or Stewardship Organization

(D) Mailing address and physical address

(E) Phone number

(F) E-mail address

(G) Web address, if applicable

(H) Location and custodian of records

(2) List each manufacturer participating in the stewardship organization, including, but not limited to:

(A) Contact Name

(B) Title

(C) Name of Company or Stewardship Organization

(D) Mailing address and physical address

(E) Phone number

(F) E-mail address

(G) Web address, if applicable

(H) Location and custodian of records

(3) List of brands covered under the stewardship plan.

(b) The stewardship plan must be submitted electronically according to instructions provided by the department. A hard copy signed by a corporate officer of a manufacturer or stewardship organization, under the penalty of perjury, must also be submitted to the department.

(1) The information submitted in a stewardship plan shall address the criteria for approval in §18943 and be organized according to this standard outline:

(A) Contact Information

(B) Scope

(C) Performance Goals and Activities

(D) Solid Waste Management Hierarchy

(E) Collection System

(F) Market Development

(G) Financing Mechanism

(H) Education and Outreach

(I) Program Performance Measurement

(J) Stakeholder Consultation

(K) Audits

(2) Plans shall be updated within 30 days of a significant or material change.

(3) The approved stewardship plan shall be a public record, except that financial, production, or sales data reported to the department by a manufacturer or stewardship organization is not a public record under the California Public Records Act, as described in Chapter 3.5 (commencing with §6250) of Division 7 of Title 1 of the Government Code and shall not be open to public inspection. The department may release financial, production, or sales data in summary form only that cannot be attributable to a specific manufacturer.

(c) The annual report shall be submitted by a corporate officer acting on behalf of a manufacturer or stewardship organization that is operating a carpet stewardship program under a department-approved stewardship plan.

(1) The annual report must be submitted electronically to the department, according to instructions provided by the department. A hard copy, signed by a

corporate officer of a manufacturer or stewardship organization under the penalty of perjury, must also be submitted.

(2) The information submitted in an annual report shall address the criteria for a finding of compliance per 42976 as outlined in §18944 Annual Report Compliance Criteria and be organized according to this standard outline:

(A) Contact Information

(B) Executive Summary

(C) Scope

(D) Program Outline

(E) Description of Goals and Activities

(F) Market Development

(G) Financing Mechanism

(H) Education and Outreach

(I) Audits

Note: Authority cited: Sections 40502, Reference: Sections 42972, 42975, 42976, Public Resources Code.

Section 18943. Criteria for Plan Approval.

(a) Product stewardship plans must contain the following:

(1) Contact information. Identify the manufacturer or designated stewardship organization responsible for the plan submittal.

(2) Scope. The program described in the stewardship plan is:

(A) Designed to accept and manage all applicable post-consumer carpet, regardless of polymer type or primary materials of construction.

(B) The stewardship plan submitted follows the standard outline (see §18942 Stewardship Submittal Instructions).

(3) Performance Goals and Activities. The program described in the stewardship plan shall contain a set of performance goals and criteria that include, but are not limited, to the following items:

(A) Numeric performance goals and a description of how program goals will be achieved for the following categories:

1. Increase the recyclability of carpets.
2. Incentivize the market growth of secondary products made from post-consumer carpets.
3. Increase the reuse of post-consumer carpets.
4. Increase the recycling of post-consumer carpets.
5. Increase the diversion of post-consumer carpet from landfills.

(B) The goals established in the plan are at a minimum equal to the goals established in the CARE MOU, while recognizing the current recycling infrastructure and capacity in California is higher than the nation, and estimating changes in market conditions, and anticipating recycling infrastructure and capacity in California.

(C) Each goal has a baseline from which it is measured using the units used in the CARE MOU and reporting requirements.

(D) The plan describes a methodology for estimating the amount of carpet available for collection in California.

(E) Report on source reduction.

(4) Solid Waste Management Hierarchy. Describe:

(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 the management of carpet through carpet as alternative fuel, Waste-to-Energy, and incineration.

(5) Collection Systems. Describe the system that will be used to collect and properly manage post-consumer carpet. This description must include the following:

(A) Type of collection sites used.

(B) Types of destinations for reuse and recycling activities, processing and/or disposal by product type.

(C) Description of how service providers handling old carpet will be able to readily, accurately, and economically identify the type of carpet polymer to facilitate reuse and recycling, e.g., labeling on the back of carpet, affordable laser detection devices, or other technology.

(D) General description of best management practices to be followed by the service providers, including any training that the manufacturer or stewardship organization intends to provide to or require of service providers to ensure proper collection and management of post-consumer carpet.

(E) Description of how each consumer that pays a carpet stewardship assessment, including but not limited to those in rural areas, will have an opportunity to conveniently and properly manage their post-consumer carpet.

(6) Market Development. Describe incentives or methods to increase recycling of carpet into secondary products.

(7) Financing Mechanism. Include a funding mechanism that provides sufficient funding to recover, but not exceed, the cost of the carpet stewardship program, including the administrative, operational, and capital costs of the plan. The funding mechanism includes the following:

(A) A carpet stewardship assessment per square yard of carpet sold in the state, or by some other unit, as approved by the department.

(B) A budget for the program that includes revenue estimates from the assessment, full program costs, and administrative costs; including those pursuant to Section 18948 regarding service payments to the department.

(C) A requirement that any surplus funds will be put back into the program to reduce the costs of the program, including the assessment amount.

(D)An assessment amount that is sufficient to meet, but not exceed, the anticipated cost of carrying out the plan.

(E) An assessment amount that does not create an unfair advantage in the marketplace.

(F) An allocation of funds that support the solid waste management hierarchy and program goals identified in the stewardship plan.

(G) Stewardship organization and manufacturers shall allocate revenues and expenditures applicable to this program in accordance with Generally Accepted Accounting Principles.

(H) The stewardship plan shall describe how the collection and expenditure of carpet assessment funds shall be kept separate from other activities of the stewardship organization.

(8) Education and Outreach. Include education and outreach efforts to consumers, commercial building owners, carpet installers, and retailers to promote their participation in achieving the purposes of the carpet stewardship plan. The description shall include how the outreach and education methods will be used and distributed, and how effectiveness of these activities will be measured. Educational information may include, but is not limited to, signage, written materials, advertising or other promotional materials pursuant to Section 42972 (a) (5).

(9) Program Performance Measurement. Describe how attainment of the goals will be measured per §18943(c). Program data shall be collected for purposes of annual report submittal (see §18944 Annual Report Compliance Criteria). Information to be provided includes, but is not limited to:

(A) Specific information on the measurement methodology, assumptions, conversion factors, if used, and data sources.

(10) Stakeholder Consultations. A manufacturer or stewardship organization that submits a plan shall include a process of consultation with affected stakeholders and consider the existing infrastructure in the development of the plan. Stakeholders may include, but are not limited to, other manufacturers and stewardship organizations, service providers, state and local governments, non-governmental organizations, haulers, demolition or other contractors, recyclers, retailers and wholesalers, installers, and consumers.

(11) Audits. Include a process by which the financial activities of the stewardship organization and individual manufacturer that are related to implementation of the stewardship plan will be subject to an independent audit, results of which will be submitted in the manufacturer or stewardship organization's annual report and reviewed by the department.

Note: Authority cited: Sections 40502,
Reference: Sections 42972, 42973, Public Resources Code.

Section 18944. Annual Report Compliance Criteria.

(a) The annual report must contain the following:

(1) Contact information. Identify the manufacturer or stewardship organization responsible for the annual report submittal.

(2) Executive Summary. Provide an evaluation of the effectiveness of the carpet stewardship plan, and anticipated steps, if needed, to improve performance.

(3) Scope. The program described in the stewardship plan accepts and manage all applicable post-consumer carpet.

(A) Indicate any changes in the program scope from the approved stewardship plan.

(B) Indicate the scope is unchanged, if no changes have occurred during the reporting period.

(4) Program Outline. Describe the carpet stewardship program, including information on the following topics:

(A) Types of collections sites and basic information about recycling facilities in California, e.g., how carpet is collected, number and location of processors, throughput and capacity of recycling facilities.

(B) Include facility name(s) and address(es) for each method of disposition.

(5) Description of goals and activities based on the stewardship plan. State goals from the approved plan, the baseline from which goals were measured, and report on achievement during the reporting period.

(A) The annual report shall include, but is not limited to, quantitative information and discussion on the following:

1. Amount of carpet sold by square yards and pounds, in the state during the reporting period that is covered under the approved stewardship plan. A stewardship organization with more than one manufacturer may use average weight.
2. Amount (pounds) of post-consumer carpet that is available for collection.
3. Amount (pounds) of carpet source reduced, if measureable.
4. Amount (pounds) of post-consumer carpet collected, by weight, during the reporting period.
5. Disposition, that is, amounts reused, recycled, incinerated for energy recovery or disposed of in a landfill; of collected post-consumer carpet, by pounds, during the reporting period.
6. Describe efforts to increase recyclability of carpets.
7. Describe efforts to increase recycling of post-consumer carpet.
8. Describe efforts to increase diversion of post-consumer carpet from landfills.
9. Describe other environmental impacts as data are available, e.g., green house gas emissions.Descriptions of any enforcement actions or problems related to plan implementation.
10. Describe efforts to increase the market growth of secondary products made from post-consumer carpet.
11. Describe number of jobs attributable to the carpet stewardship program as data are available.

(B) Information on goals shall be accompanied by supporting information covering, but not be limited to the following topics:

1. Description of the measurement methodology, assumptions, conversion factors, and data sources.
2. Data are California-specific.

3. Report demonstrates that over time source reduction, reuse, and recycling increased, while environmentally safe transformation and land disposal decreased.
4. Report demonstrates continuous meaningful improvement toward achievement of goals.
5. Report covers progress toward achievement of all goals in the approved stewardship plan.

(6) Market Development. The annual report shall include a description of possible market development activities to incentivize the market growth of secondary products made from post-consumer carpet.

(7) Financing Mechanism. The annual report shall include a description and evaluation of the program's financing mechanism, including whether or not the funding was sufficient to recover, but not exceed, the full cost of the stewardship program. The annual report shall include, but not be limited to, the following total program cost information, and include any supporting documentation. Any proposed change in the amount of the carpet stewardship assessment fee must be submitted to the department for re-approval (See §18943 *Criteria for Plan Approval*):

(A) Total Program Cost
(B) Cost($)/capita
(C) Cost ($)/pound collected
(D) Education/Communications (% of total program cost)
(E) End-of-life materials management (% of total program cost)
(F) Program administration (% of total program cost, including annual administrative fee for service payments to the department)
(G) Governance (program oversight) (% of total program cost)
(H) Total cost to local government (if applicable)
(I) Amount of the assessment, aggregate assessment funds collected, how spent and amounts of each major expenditure
(J) Surplus funding, if any, and how it will be applied to reduce program costs

(K) An evaluation of the assessment rate

(8) Outreach/Education. List educational outreach activities in the stewardship plan. Provide a description of educational materials that were provided to retailers, consumers, carpet removers/installers, contractors, during the reporting period (provide electronic samples). Identify the method used to determine the effectiveness of educational and outreach surveys (e.g., surveys, hits on specific web pages, number of participants at events, etc). Education and outreach materials may include, but are not limited to, signage, written materials, advertising or other promotional materials pursuant to Section 42972 (a) (5) and Links to website(s) created and maintained by the manufacturer or stewardship organization.

(9) Audits. The annual report shall include an independent financial audit funded from the carpet stewardship assessment. The audit shall be conducted in accordance with auditing standards generally accepted in the United States of America, and standards set forth in Government Auditing Standards issued by the Comptroller General of the United States. The audit report shall also include a separate state compliance report on the carpet program requirements as directed by the department.

(A) The department may investigate further. If the department decides to further review the findings of the independent auditor, the review will be conducted based on same information the individual manufacturer or stewardship organization provided to the independent auditor.

(B) Financial audits must be prepared by a Certified Public Accountant.

(C) The department may request supplemental information from the individual manufacturer or stewardship organization during the course of review of a manufacturer- or stewardship organization-submitted financial audit, if necessary.

(D) The department will inform the individual manufacturer or the stewardship organization within 60 days of the results of its review.

Note: Authority cited: Sections 40502,
Reference: Sections 42972, 42976, Public Resources Code. Section 19812, Title 5, California Code of Regulations.

Section 18945. Civil Penalties.

A civil penalty may be administratively imposed by the department on any person who is in violation of any provision of this Article. The responsible party or parties shall be determined by the department based on the totality of the circumstances.

(a) Any manufacturer offering carpet for sale or for promotional purposes in California or a manufacturer or stewardship organization submitting a plan or report to the department is subject to enforcement under this Article. Manufacturers are subject to penalties as a result of the failure of their designated stewardship organization to comply with this Article on their behalf.

(b) Notwithstanding paragraph (a), a product manufacturer is not subject to any penalty for failing to comply if that product manufacturer can demonstrate that it provided true and accurate information to the stewardship organization and the stewardship organization failed to properly report this on behalf of the manufacturer.

(c) A stewardship organization is not subject to a penalty for failure to comply as a result of submitting false or misleading information if it can demonstrate that it received false or misleading information from a manufacturer that was the direct cause of its failure to comply with this Article.

(d) Any wholesaler or retailer that offers carpet for sale in the state, or who offers carpet for promotional purposes in the state, is subject to enforcement under this Article.

Note: Authority cited: Sections 40502 and 42974, Public Resources Code.
Reference: Section 42974 and 42978, Public Resources Code.

Section 18945.1. Amount of Civil Penalties and Administrative Penalty Schedule.

(a) Civil penalties may be imposed administratively in accordance with the following penalty tables:

(1) Base Penalty Table I is to be used for stewardship organizations and manufacturers.

(A) Identify what violations have occurred.

(B) Identify the severity of the violations.

(C) Establish the possible range of the base penalty per violation based on the severity levels described in paragraph (b).

Base Penalty Table I: For Stewardship Organizations and Manufacturers		
Violation	Description of Violation	Severity
PRC 42972(a)	Failure to submit, individually or through a stewardship organization, a stewardship plan to the Department	Level 3
PRC 42973(b)	Failure to resubmit a stewardship plan within 60 days after receiving a notice of disapproval from the Department	Level 1
PRC 42973(b)	Failure to obtain Department approval of a stewardship plan	Level 3
PRC 42972(e)	Failure to notify the Department within 30 days after instituting a significant or material change to a Department-approved stewardship plan	Level 2
PRC 42975	Failure to demonstrate to the Department continuous meaningful improvement in the rates of recycling and diversion of postconsumer material subject to a stewardship plan and in meeting the other goals included in an organization's stewardship plan	Level 2
PRC 42976	Failure to submit, individually or through a stewardship organization, an annual report to the Department	Level 3
PRC 42976	Annual report does not contain required elements	Level 2
PRC 42977(a)	Failure to pay an annual administration fee to the Department	Level 3
PRC 42974(b)	Offering a carpet for sale or for promotional purposes that is not subject to a Department-approved stewardship plan	Level 3
PRC 42972(c)(3)(B)	Stewardship assessment is not clearly visible on invoice or functionally equivalent billing document as a separate line item	Level 1
PRC 42972(c)(3)(B)	Invoice or functionally equivalent billing document is not accompanied by a brief description of the stewardship assessment or a Department-approved label	Level 1
14 CCR 18946	Failure to meet record keeping requirements	Level 2

(2) Base Penalty Table II is to be used for wholesalers and retailers.

(A) Identify what violations have occurred.

(B) Identify the severity of the violations.

(C) Establish the possible range of the base penalty per violation based on the severity levels described in paragraph (b).

Base Penalty Table II: For Wholesalers and Retailers		
Violation	Description of Violation	Severity
PRC 42974(b)	Offering a carpet for sale or for promotional purposes that is not subject to a Department-approved stewardship plan	Level 3
PRC 42972(c)(3)(B)	Stewardship assessment is not clearly visible on invoice or functionally equivalent billing document as a separate line item	Level 1
PRC 42972(c)(3)(B)	Invoice or functionally equivalent billing document is not accompanied by a brief description of the stewardship assessment or a Department-approved label	Level 1
14 CCR 18946	Failure to meet record keeping requirements	Level 2

(b) For the purpose of implementing this [Section/Article], penalty severity levels are described as follows:

(1) For a violation classified as Level 1, the amount of the base penalty may be up to $1,000 per day.

(2) For a violation classified as Level 2, the amount of the base penalty may be up to $5,000 per day.

(3) For a violation classified as Level 3, the amount of the base penalty may be up to $10,000 per day.

(c) The department will set the final penalty amount after considering the criteria set forth in Section 18945.2. The department may increase the final penalty beyond the penalty range established pursuant to paragraphs (a) and (b), if it determines, after considering the criteria set forth in Section 18945.2, that such an increase is warranted and appropriate.

Note: Authority cited: Sections 40502 and 42974, Public Resources Code. Reference: Sections 42972, 42973, 42974, 42975, 42976, and 42977, Public Resources Code; and Section 11506, Government Code.

Section 18945.2. Criteria to Impose a Civil Penalty.

In assessing or reviewing the amount of civil penalty imposed for a violation of this chapter, the department or the court shall consider all 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 factor that justice may require.

Note: Authority cited: Sections 40502 and 42974, Public Resources Code.
Reference: Section 42978, Public Resources Code.

Section 18945.3. Procedure for Imposing Civil Penalties.

(a) Civil penalties may be administratively imposed in accordance with the procedures outlined in the Administrative Procedure Act at Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code with the exception of Government Code Section 11505(c).

(b) The accusation or complaint and all accompanying documents may be served on the respondent by the following means:

(1) Personal service.

(2) Substitute service by using the same service procedures as described in Section 415.20 of the Code of Civil Procedure.

(3) Certified Mail: For respondents who have submitted a stewardship plan, certified mail or registered mail if the letter containing the accusation or complaint and accompanying material is mailed, addressed to the respondent at the latest facility or mailing address(es) provided in the stewardship plan on file with the Department. Any address provided in the stewardship plan may be used for service of process. Proof of service of the accusation or complaint shall be the certified mail receipts or registered mail receipts proving the accusation or complaint and accompanying materials were sent to respondent by certified mail or registered mail. For respondents who have not submitted or are not required to submit a stewardship plan to the department, certified mail or registered mail pursuant to the procedures indicated in the Administrative Procedure Act at Section 11505(c) of the Government Code applies.

(c) Civil penalties may be imposed pursuant to the Public Resources Code Section 42978 in the discretion of the trier of fact in the civil proceeding.

Note: Authority cited: Sections 40502 and 42974, Public Resources Code. Reference: Section 11500, Government Code; and Section 42978, Public Resources Code.

Section 18946. Record Keeping Requirements

Each stewardship organization, manufacturer, wholesaler, or retailer required to comply with Chapter 20 (commencing with Section 42970), Part 3, Division 30 of the Public Resources Code shall:

(a) Maintain records to support the requirements in this Article. Stewardship organizations and manufacturers must maintain records to support Sections 18943 and 18944. Wholesalers and retailers must maintain records on all carpet sold or offered for promotional purposes in the state including:

(1) The manufacturer of the carpet.

(2) The date(s) the retailer ordered the carpet from the manufacturer.

(3) The date(s) the retailer purchased the carpet from the manufacturer.

(4) The date(s) the retailer sold or offered the carpet for promotional purposes.

(5) Invoices or functionally equivalent billing documents.

(6) Certification letter(s) from the department if provided by a manufacturer to demonstrate that carpet from the manufacturer is or was subject to a department-approved stewardship plan.

(b) Provide the department with immediate access to its facilities, operations, and any relevant records necessary to determine compliance with this Article, upon request. The records required by this Article shall be accessible for three years.

(c) Make all records required by this Article available for inspection or audit by the department, or it's agent and other duly authorized regulatory agencies during normal working hours.

(d) Submit copies of specified records to the department upon request or at a frequency approved by the department.

(e) The department may take disciplinary action against any stewardship organization or manufacturer who fails to provide the department with access pursuant to this subdivision including, but not limited to, imposing penalties and the immediate removal from the department's list of manufacturers that are in compliance with Chapter 20 (commencing with Section 42970), Part 3, Division 30 of the Public Resource Code and this Article.

Note: Authority cited: Sections 40502 and 42974, Public Resources Code. Reference: Sections 42972, 42972.5, 42973, 42974, 42975, 42976, 42977, 42977.1, 42978, and 42981, Public Resources Code.

Section 18947. Proprietary, Confidential, or Trade Secret Information.

The public disclosure of records supplied to the department pursuant to this Article that are, at the time of submission, claimed to be proprietary, confidential, or trade secret

shall be subject to the disclosure provisions in Title 14, California Code of Regulations, Division 7, Chapter 1, Article 4 (commencing with Section 17041).

Authority cited: Section 6253, Government Code. Sections 40502 and 40502 and 42972 through 42977.1, Public Resources Code.

Reference: Sections 6250 et seq., Government Code. Sections 40062 and 42323, Public Resources Code.

Section 18948. Service Payments to Department of Resources, Recycling and Recovery.

(a) The department, using information provided in annual reports, its actual program costs for previous years, plans submitted in prior years, information from other sources, and assessing program needs; shall estimate the costs to be incurred by the department in connection with the administration and enforcement of the requirements of this chapter for the next fiscal year.

(b) The department director, or his/her deputy director designee, shall approve the fee charged for each stewardship plan for the full administration and enforcement costs by April 30 each year starting 2012.

(c) Any department fee shall be prorated, if there is more than one stewardship plan, by the number of plans submitted.

(d) The department will issue invoices for each plan by May 31 each year. Payment is due annually on July 1.

(e) The department's approval of a plan shall be revoked if payment is not received. Plans revoked for lack of payment may be reinstituted upon payment.

Note: Authority cited: Sections 40502, 42977, Public Resources Code Reference: Section 42977, Public Resources Code.

Roles and Responsibilities of Carpet America Recovery Effort (CARE) pursuant to AB 2398

Background on CARE:

The Carpet America Recovery Effort, (CARE), is a 501(c) (3) third party non-profit organization, which works with all stakeholders, to increase the amount of diversion, recycling and reuse of postconsumer carpet and reduce the amount of post consumer carpet going to landfills.

CARE was established in 2002 as a result of a Memorandum of Understanding for Carpet Stewardship (MOU) negotiated among the carpet industry, states, and nongovernmental organization stakeholders. The current MOU expires in 2012, and stakeholders are actively engaged in the development of a new MOU (MOU 2012).

The Role of CARE as Carpet Stewardship Organization (CSO) for AB2398

1. CARE is the sole Carpet Stewardship (CSO) for AB 2398, until April 1, 2015.
    a. A CSO is an organization appointed by one or more manufacturers to act as an agent on behalf of the manufacturer to design, submit, and administer a carpet stewardship plan.
    b. An individual manufacturer may also submit a stewardship plan
    a. After April 1, 2015, a carpet stewardship organization appointed by one or more manufacturers, may submit a plan.

The Responsibilities of CARE as the CSO

1. Collect the Carpet Stewardship Assessment

1. As of July 1, 2011, until January 1, 2013, a manufacturer of carpet shall add a Carpet Stewardship Assessment of $0.05 per square yard upon the purchase price of all carpet sold in the state by that manufacturer.
2. For those manufacturers who are a part of the CARE Stewardship plan, the assessment will be remitted on a quarterly basis to CARE.
3. A label may appear on all customer invoices indicating the Carpet Stewardship Assessment. The label is the current CARE logo, for use on all invoices or functionally equivalent billing documents.
    a. The law states that the assessment shall be accompanied by a brief description of the assessment or a label approved by the department.

2. Develop an approved Carpet Stewardship Plan

1. CARE is required to submit a Carpet Stewardship Plan to CalRecycle by September 30, 2011. The plan will be reviewed CalRecycle and revised as needed. The plan must be approved by March 31, 2012 to be in compliance.
2. Any plan not approved by March 31, 2012, shall be out of compliance and CARE is subject to the penalties until the plan is approved by the department.
3. The plan includes a funding mechanism to carry out the plan, including administrative, operational, and capital costs, the payment of fees, and incentive payments.
4. The plan shall accept and manage all suitable postconsumer carpet, regardless of polymer type or primary materials of construction.
5. The plan will include education and outreach efforts to consumers, commercial building owners, carpet installation contractors, and retailers to promote their participation:
    a. Signage that is prominently displayed and easily visible to the consumer

b. Written materials and templates of materials for reproduction by retailers to be provided to carpet installation contractors and consumers at the time of purchase or delivery or both.
c. Promotional materials or activities, or both, that explains the purpose of carpet stewardship and the means by which it is being carried out.

6. CARE shall consult with retailers and wholesalers in the development of the plan, in order to minimize the impacts on retailers and wholesalers.

3. Negotiate Performance Goals for the Carpet Stewardship Plan

1. 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
2. The goals shall include: 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.
3. The goals shall be 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.

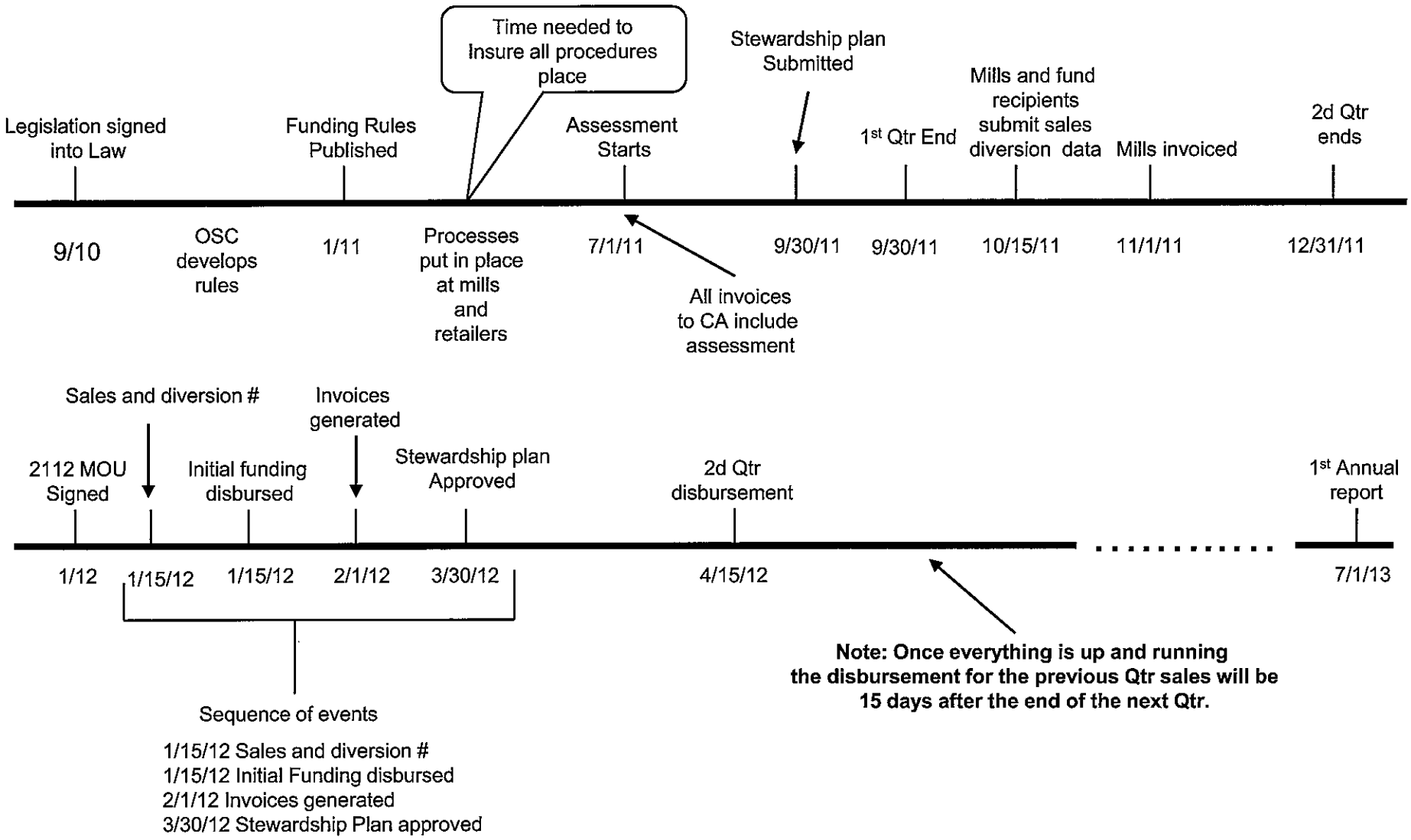
4. Distribute the Carpet Stewardship Assessment Fee

1. Prior to approval of a carpet stewardship plan, CARE shall spend revenues to achieve measurable improvements in the landfill diversion and recycling of postconsumer carpet.
2. Starting July 1, 2012 and annually through July 1, 2014, CARE shall pay CalRecycle an annual administrative fee, as determined by the department.
    a. Each year after the initial payment, the annual administrative fee may not exceed 5 percent of the aggregate assessment collected for the preceding calendar year.
3. CARE will communicate requirements to participate in the distribution of funds. The communication shall include, but not be limited to, a process by which the financial activities of the organization or individual manufacturer that are related to implementation of the plan will be subject to an independent audit, which may be reviewed by CalRecycle.

5. Measure and Report Performance through an annual report

1. CARE will prepare and submit an annual report to CalRecycle, on or before July 1, 2013, and annually thereafter, to report progress against goals. The report will include:
    a. Comparisons to baseline compliance
    b. The goals included in the CARE MOU
    c. Other information that may be considered to be of importance to CalRecycle.
2. CARE will report continuous improvement against AB 2398 goals.
3. 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
    b. The amount of postconsumer carpet recycled, by weight
    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.

Timing for implementation of AB 2398



THE CARPET RECYCLERS
A GF INDUSTRIES COMPANY

State-Wide Network of Independent Carpet Collectors being developed by *The Carpet Recyclers* to Gear Up for California AB 2398 Carpet Stewardship Law

The Carpet Recyclers, operators of a state-of-the-art, zero-waste-to-landfill carpet recycling facility in La Mirada California, is expanding its post-consumer carpet collection capabilities through an Independent Carpet Collectors (ICC) Program to meet the already-increasing carpet recycling market created by California AB 2398.

Operating as independent contractors, *The Carpet Recyclers'* ICC partners will operate recycling collection and post-consumer carpet preparation facilities throughout California. Their responsibilities include:

- Serving *The Carpet Recyclers'* state-wide recycling customers and soliciting new local carpet recycling customers
- Providing trailers for the collection of used carpet for recycling
- Sorting, cutting and transporting clean, segregated carpet to *The Carpet Recyclers'* processing facility in La Mirada or collection facility in Oakland.

The Carpet Recyclers pay for the sorted post-consumer carpet, ready to be processed for recycling. ICC partners additionally charge a fee for carpet coming into their facilities. *The Carpet Recyclers'* support to their ICC partners includes operations and sales training, referrals, marketing material support and, as sorting carpet into various fiber types requires a $20,000 portable spectrometer, *The Carpet Recyclers'* program includes a monthly spectrometer lease option.

Three ICC facilities have already opened in San Diego, Palm Springs and Pomona California. *The Carpet Recyclers* are now taking applications for additional Independent Carpet Collector partners in other regional territories. Although potential ICC partners with an existing presence in the carpet or solid waste industry have some advantages, *The Carpet Recyclers* is open to talking to all hard-working, ethical, entrepreneurial individuals and organizations interested in this opportunity to 'do well by doing good.'

Because carpet is an oil-based product, since starting operations in 2010 *The Carpet Recyclers* has already diverted over 50 million pounds of carpet from landfills, reused 4.8 million gallons of oil and kept 48,260 metric tons carbon equivalent of greenhouse gases out of the atmosphere. Presently 1.3 billion pounds of carpet is disposed annually in California landfills – 3% of all waste disposed. To encourage carpet recycling, starting July 1, 2011, AB 2398 requires a 5-cent carpet stewardship assessment to be placed on every square yard of carpet sold in California. The assessment must be shown on all invoices to increase consumer awareness.

Additional information about us and our parent company GF Industries can be found at TheCarpetRecyclers.com and GFIndustries.net. AB 2398 information is available on the Carpet American Recovery Effort (CARE) website carpetrecovery.org. Those interested in the *The Carpet Recyclers'* Independent Carpet Collector (ICC) Program should contact Carey Merrill at 562-857-4343 or at Carey.Merrill@TheCarpetRecyclers.com.

SOURCE: The Carpet Recyclers

January 12, 2011 15:23 ET

The Carpet Recyclers Partners With KKW Trucking

KKW Commitment to Green Transportation Adds to Environmental Benefits From The Carpet Recyclers' West Coast Operations

LA MIRADA, CA--(Marketwire - January 12, 2011) - The Carpet Recyclers today announced their partnership with KKW Trucking to expand the quality transportation services available to its carpet recycling customers and ensure the least impact on the environment from the transport of post-consume carpet to their recycling facilities.

Based on fuel efficiency, outstanding environmental performance and an average age of 1.5 years of thei 350 unit tractor fleet, the U.S. EPA has awarded KKW Trucking the top score in their SmartWay Transpor Partnership program. The Carpet Recyclers' zero-waste-to-landfill facilities will divert over 100 million pounds of carpet from landfills in 2011. The nylon recovered will save over 230,000 barrels of oil that would have been required to manufacture virgin nylon and keep over 100,000 metric tons of greenhouse gases out of the atmosphere.

Operating throughout the 11 Western States, KKW will drop off one of their over 700 -- 28 foot or 53 foo -- enclosed trailers at The Carpet Recyclers' customer locations. When filled with used carpet, an empty trailer will be delivered and the full one taken by KKW Trucking to The Carpet Recyclers' state-of-the-art facilities.

"Early on we realized that we would need to include transportation as part of The Carpet Recyclers' services," said Larry Fink, President. "We are thrilled to partner with an innovative company like KKW Trucking who not only provides outstanding customer service but is also committed to minimizing the impact on the environment from their operations."

"Our commitment to 'being green' extends into our offices, warehouses and even the hybrid cars provide to our sales staff," added Dennis Firestone, KKW Trucking President and CEO.

"We were shocked that almost 4% of all waste going into landfills is old carpet and are very excited to pl a role in helping The Carpet Recyclers recover this valuable resource. I'm confident that KKW and The

Carpet Recyclers are the right team, at the right time to take our integrated businesses to a new level of performance that will day in and day out exceed our customers' expectations."

Products made from carpet recycling include new carpet, carpet padding, a wide range of building produc and high-energy fuel. A new California carpet recovery bill passed during 2010 establishes the nation's first comprehensive, industry-backed carpet recovery program. The Carpet Recyclers have created over 5 new green jobs since 4th quarter 2010.

See www.TheCarpetRecyclers.com and www.KKWtrucks.com for more information or contact Gail Brice a 562-592-5989 or gail.brice@TheCarpetRecyclers.com