

# **Update Report on Negotiations for the 2012 Memorandum of Understanding on Carpet Stewardship**

**September 8, 2011**

This report is intended as a record by the Carpet Stewardship Memorandum of Understanding (MOU) Joint Committee to record the status of the national MOU Negotiations. The Joint Committee are those individuals that participated as voting members in the national MOU Negotiations.

The purpose of the negotiations, which took place from April 2010 through August 2011, was to create the elements of a new MOU, to replace the original MOU signed in 2002<sup>1</sup>. The negotiation process did not result in the agreements necessary to develop a new MOU. The membership of the Joint Committee and other engaged stakeholders can be found in Appendix A.

This document summarizes the decisions that were made during the Negotiations, as well as key points of disagreement. The decisions that were made were in the context of ultimately being elements of an MOU. To read more about the decisions made, an archive of the documents produced during the negotiations can be accessed by contacting the facilitator (see Appendix A). It includes minutes of the Joint Committee, Work Groups, and the Resolution Committee; governance documents; and the working drafts of the MOU. This report was prepared by Anne Peters, Gracestone, Inc., facilitator of the negotiations, and by Georgina Sikorski, Executive Director of CARE; it incorporates extensive input from stakeholders.

The Joint Committee voted unanimously to adopt this report as the record of its work to date, on September 8, 2011.

These negotiations were entered into and were carried out in good faith by all parties. We wish to especially acknowledge the thoughtful contributions and participation of Dr. Marlin Gottschalk of the Georgia Department of Natural Resources, who passed away in May, 2011.

## **A. Purpose of This Report**

Based on the direction from the MOU Joint Committee (JC) in its August 16, 2011 meeting, the following report documents and 'memorializes' decisions and language from the work of the MOU Joint Committee as it worked towards crafting a 2012 MOU. As these elements were agreed to as components to be included in a complete MOU, they are useful to chronicle for future use, but do not stand alone or represent commitments by the members (or the entities that they represent) of the Joint Committee.

The information contained herein may inform the readers on the topic of carpet stewardship. This report also articulates areas of disagreement within the JC as reflected by stakeholder groups which were expressed as the barriers to being able to complete the MOU process, and which led to a suspension of the negotiations.

## **B. Issue Background**

### **2002-2010**

As a result of the MOU 2002, an independent third-party organization, known as Carpet America Recovery Effort (CARE) was established. The mission of CARE is to facilitate the carpet-industry-led initiative to find market-driven solutions to the diversion of post-consumer carpet from landfills, and to meet the time-sensitive goals of the 2002 Memorandum of Understanding for Carpet Stewardship.

CARE is a 501(c)(3) organization, with over 360 members, as of August 2011. It is governed by the CARE bylaws, and a Board of Directors, which includes entrepreneurs, the carpet industry, retailers and dealers, the Carpet and Rug Institute, and others as determined by the Board of Directors.

Detailed information on CARE, its mission, and current carpet recycling results may be found by going to [www.carpetrecovery.org](http://www.carpetrecovery.org).

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<sup>1</sup> The 2002 MOU can be found at <http://www.carpetrecovery.org/mou.php>

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In accordance with the requirements of the 2002 MOU, CARE fulfilled all of its Evaluation and Performance schedule requirements to date, including the publication of a CARE Annual Report for each year, beginning in 2003; CARE Annual meetings; a 2005 Interim Report; the 2007 Independent Assessment; and the initiation in 2010 of the new MOU 2012 Negotiations.

### **Current Status of CARE**

In reference to the current situation, CARE and its Board of Directors remain committed to its shared mission to divert carpet from the landfill and to recycle post-consumer carpet. CARE intends to continue its operations as the third-party organization for the carpet recycling industry. CARE will use this report to inform its ongoing operations, as it works towards the fulfillment of its mission.

### **April 2010-September 2011**

The Carpet Stewardship Memorandum of Understanding Joint Committee convened in April, 2010, with the intent of negotiating a new MOU that would come into force after the 2002-2012 MOU expired. For more information about the vision of the MOU negotiations, see Appendix B. Extensive work was carried out toward that end by JC members in 2010 and 2011. The intention was for the Joint Committee to agree on an MOU 2012 that would represent a voluntary, good faith, and transparent partnership between the stakeholders (government entities, carpet industry, non-governmental organizations, solid waste industry, and entrepreneurs), to increase the diversion of post-consumer carpet. It was not the intent of the MOU to create legal rights or obligations.

Interested parties may find more information on how the decisions that were part of the negotiations evolved over time in the archived documents from the process, including minutes, drafts, etc.<sup>2</sup>

It is important to note that agreement was reached on many aspects of the MOU (see Section C) and significant progress was made on elements that were not finalized or agreed to by the Joint Committee (see Section E and Appendix B). However because agreement could not be reached on critical aspects of the MOU (goals for 2024 and sustainable financing/future legislation) the Joint Committee was unable to craft an MOU that was acceptable to all stakeholder groups.

On August 16, 2011, the MOU Joint Committee agreed to suspend MOU negotiations for a period of at least 6 months. The primary reason was because agreement could not be reached on the sustainable financing mechanisms to build a carpet diversion and recycling infrastructure. The MOU Joint Committee agreed that at the end of the six-month period, a vote will be taken on the need and desire to resume talks. Regular communications of the JC will be held, at a minimum, on an annual basis. CARE has agreed to be responsible for initiating those communications.

### **C. Points of Agreement in the Draft MOU 2012**

The following areas were agreed to by binding vote of the Joint Committee<sup>3</sup> in the context that these elements would eventually combine to form part of the negotiated MOU. The sections presented below show the **verbatim** text approved by the JC and include Definitions, Denominator Methodology, and Roles & Responsibilities of the Parties.

### **DEFINITIONS**

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<sup>2</sup> Contact the negotiations facilitator for this information: Anne Peters, Gracestone, Inc. at 303.494.4934, [annep@indra.com](mailto:annep@indra.com).

<sup>3</sup> The decision process used in the MOU was set up and approved by the JC and worked as follows: To generate sections of the MOU, the Joint Committee formed smaller cross-stakeholder Work Groups (WG) to craft each element of the MOU. WGs were formed for: Definitions, Denominator Methodology, Evaluation, Rates & Dates (the negotiated outcomes goals), Roles & Responsibilities, and Vision. Each WG produced an approved work product which was then referred to the full Joint Committee for its review and approval. When the Rates & Dates WG could not reach agreement, it formed a Resolution Committee to seek to achieve agreement. All these groups are referenced in this document.

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**Carpet:** A manufactured article that is used in commercial or residential buildings affixed or placed on the floor or building walking surface as a decorative or functional building interior feature and that is primarily constructed of a top visible surface of synthetic face fibers or yarns or tufts attached to a backing system derived from synthetic or natural materials. Carpet includes, but is not limited to, a commercial or a residential broadloom carpet or modular carpet tiles. Carpet does not include a rug, pad, cushion, or underlayment used in conjunction with, or separately from, a carpet.

**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.

**Carcass:** The remains of a post-consumer carpet, after fiber is sheared or mechanically removed from the carpet face.

**Carpet America Recovery Effort (CARE):** A nationwide, 501(c)(3) non-profit organization whose focus is on post-consumer carpet stewardship.

**Carpet Industry:** The universe of participants involved in the production of carpet, including carpet manufacturers, fiber manufacturers, material suppliers, etc. It includes, but is not limited to, members of the Carpet and Rug Institute (CRI).

**Cement Kiln:** Cement production facility that may use CAAF as a source of energy and/or as an additive for cement production.

**Closed Loop Recycling:** A system in which material is remanufactured into the same type of product it was obtained from.

**Collection:** Any method of consolidating and temporarily storing recovered commercial and/or residential carpet.

**Disposal Diversion:** Carpet removed from the waste stream that was destined for the landfill or incineration, for the purpose of reuse, recycling, CAAF or waste-to-energy.

**Disposal Facility:** Facilities that are licensed and permitted to provide final disposal for the specific wastes they accept, including waste-to-energy, incineration, and landfilling.

**Entrepreneur:** Individual or privately-held company which is not a carpet manufacturer, who actively, collects, sorts, processes or manufactures products made from post-consumer carpet.

**Filler:** Materials such as calcium carbonate, etc. used in the production of carpet backing.

**Incineration:** Complete burning of material to ashes, with no energy recovery to reduce waste volume.

**Landfilling:** Landfilling includes the placement of post-consumer carpet and/or the residuals from a post-consumer carpet management method into a landfill disposal facility.<sup>4</sup>

**Market-Based Solutions:** Within normal market dynamics, establish incentives for the recycling of post-consumer carpet; the diversion of post-consumer carpets from landfills and incineration; the recyclability of carpets; and the market growth of secondary products made from post-consumer carpet. This can be accomplished within the context of CA AB 2398 or any other similar legislation, but is not limited to legislatively-driven strategies.

**Memorandum of Understanding (MOU) for Carpet Stewardship Stakeholder:** Any person participating in the process of developing the MOU, regardless of their voting status.

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<sup>4</sup> Resource Conservation and Recovery Act, 42 S.S. C. Section 6901 *et. seq.*, as amended, the major U.S. federal legislation first adopted in 1976 that governs the management of Solid Waste and Hazardous Waste in the U.S.

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**Municipal Solid Waste (MSW):** Any non-hazardous solid waste generated from residential, commercial, institutional, and industrial sources and any other non-hazardous garbage, refuse, or unwanted material.

**Product Stewardship** is a principle that directs all those involved in the life cycle of a product to take shared responsibility for reducing the health and environmental impacts that result from the production, use, and end-of-life management of the product. The primary responsibility lies with the producer or brand owner who makes design and marketing decisions.

**Recycled Content:** Also known as recovered material content, is the percentage of material, by weight, a product is made from that has been recovered from consumers in the municipal solid waste stream (post-consumer content) plus any industrial materials salvaged for reuse (pre-consumer/post-industrial content).

- **Post-Consumer Recycled Carpet Content:** The amount or percent of carpet, by weight, that is no longer used for or has served its manufactured purpose, that is incorporated into the manufacturing process of the same or a different product.
- **Post-Industrial/Pre-Consumer Recycled Carpet Content:** The amount or percent of carpet material, by weight, generated by manufacturers or product converters, such as trimming, overruns, and products returned to the mills, that is incorporated back into the manufacturing process of the same or a different product.

**Post-Consumer Carpet Materials:** Carpet that has completed its life cycle as a consumer item or is no longer used for its manufactured purpose.

**Post-Industrial/Pre-Consumer Carpet Material:** Carpet materials generated in manufacturing and conversion processes, including, but not limited to manufacturing scrap and trimmings/cuttings.

**Processing:** Preparing carpet material for reuse, recycling, CAAF, WTE, or disposal.

**Recycling:** Transforming or remanufacturing discarded carpet materials into usable or marketable materials, rather than for landfill disposal, incineration, WTE, CAAF, or reuse.

**Reuse:** Refurbishing and donating/selling recovered carpet back into the market for its original intended use. The reuse of recovered carpet retains the original purpose and performance characteristics of the carpet.

**Sorting:** The method used for segregating collected carpet into the various backing types (PVC, SBR Latex, etc.) and/or fiber types (e.g., Nylon 6, Nylon 6.6, Polypropylene and Polyester).

**Source Reduction:** The result of using less product or material in manufacturing and use of carpet, and/or reducing the amount of discarded carpet generated.

**Source Separation:** The process by which carpet is separated/segregated from all other materials at the end of its useful life (or when discarded).

**Waste-to-Energy:** Process of recovering thermal energy from solid waste through combustion.

### **DENOMINATOR METHODOLOGY**

The purpose of the denominator methodology is to be able to update the amount of post-consumer carpet discards on an annual basis, using actual sales, upgraded by factors that influence the sales calculation. Those factors include changes in imports/exports, percent of the market that is replacement carpet, average weight, and post-consumer carpet generated due to demolition.

The methodology used to calculate the amount of carpet available for collection is as follows:

#### **Carpet Available for Collection (Discards)**

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The factors used to calculate the amount of carpet discarded and therefore available for collection include:

**S** = Carpet Sales in square yards in the US for the previous calendar year. Sales data will come from the CRI Annual Reports, including a non-reporting factor of 1.08

**I** = Imports of carpet into the US in square yards

**E** = Exports of carpet out of the US in square yards

**R** = Percent of carpet that is being removed and replaced in existing buildings, rather than new construction. This post-consumer carpet is destined for the landfill.

**P** = Average weight of carpet per square yard. In 2010, the average weight was 4.2 lbs/square yard.

**D** = Pounds of carpet from demolition projects not replaced

**Formula Used for Calculating the Carpet Available for Collection (Discards):**

$$\text{Discards} = (((\text{S} + (\text{I} - \text{E})) * \text{R}) * \text{P}) + \text{D})$$

### **ROLES AND RESPONSIBILITIES OF THE PARTIES**

**All parties agree to assist in achieving all elements of the MOU.**

#### **a. Carpet America Recovery Effort (CARE)**

CARE is the industry-designated stewardship organization established to monitor and facilitate the achievement of all elements of the MOU.

CARE seeks market-based solutions and commits to perform the following activities:

- Facilitate growth of the collection, processing and end-use manufacturing infrastructure for post-consumer carpet.
- Serve as a resource for technical, economic and market development opportunities for recovered carpet.
- Develop and perform quantitative measurement and reporting on progress toward the Negotiated Outcomes Goals.
- Establish appropriate governance policies and procedures to manage the operational budget and the stewardship funds as related to legislated actions.
- Act as a technical resource link between the carpet industry and others such as collection agents, processors, and manufacturers, in order to maximize the reuse and recycling of carpet.
- Provide technical consultation and support to other signatories.
- Participate in the four-year review process as outlined in the Evaluation section.
- Engage with government agencies and CRI to work towards state/federal legislation to strategically achieve the outcomes of the MOU.

#### **b. Carpet and Rug Institute (CRI)**

CRI commits to the following activities to assist in achieving all elements of the MOU, for the management of post-consumer carpet:

- Represent itself on the CARE Board of Directors (BOD).
- Provide, as needed:
  - Staff support for CARE's committees and subcommittees, and
  - Secretarial, communication, and logistical support for CARE's meetings.
- Provide CARE with appropriate information/data for annual reporting, as feasible.
- Participate in the four-year review process as outlined in the Evaluation section.
- Engage with CARE and government agencies to work towards state/federal legislation to strategically achieve the outcomes of the MOU.

#### **c. Carpet Industry**

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The carpet industry will work through CARE, or individually, to achieve all elements of the MOU. The industry acknowledges that it has primary financial responsibility to adequately support the operations of CARE in its efforts to develop and sustain an infrastructure for the reuse and recycling of post-consumer carpet or otherwise provide these services on its own. The carpet industry agrees to:

- Strive to develop methods and technologies to increase the use of post-consumer carpet content in carpet.
- Strive to develop technologies and design strategies to facilitate the recycling and reuse of all carpet.
- Cooperate with NSF for the continual and improvement of the “NSF/ANSI Standard 140 for Commercial Carpets and Rugs.”
- Participate in the four-year review process as outlined in the Evaluation section.
- Provide CARE with appropriate information/data for annual reporting, as feasible.

### **d. Government Entities**

Government Entities agree to assist in achieving all elements of the MOU. Their tools may include, but are not limited to the following items. To the extent of their ability, they commit to:

- Participate in CARE committees as appropriate.
- Increase the number of public agencies and institutions supporting all elements of the MOU.
- Provide technical and financial assistance for market development opportunities, when feasible, to carpet reuse and recycling initiatives.
- Develop, adopt and promote the procurement of products produced with post-consumer carpet content.
- Increase non-signatory public agency and institutional procurement of products produced with post-consumer carpet content, such as specifying carpet certified to NSF 140.
- Employ policy and regulatory tools, as appropriate, to bolster the MOU agreement and to implement strategies to help meet the goals herein (such as incentives for recycling carpet and/or disposal bans and manufacturer responsibility measures).<sup>5</sup>
- Assist in educating the public about carpet collection opportunities for post-consumer carpet.
- Engage with CARE/CRI to work towards state/federal legislation to strategically achieve the outcomes of the MOU.
- Participate in the four-year review process as outlined in the Evaluation section.
- Provide CARE with appropriate information/data for annual reporting, as feasible.

### **e. Non-Governmental Organizations**

Non-Governmental Organizations that are signatories to this Agreement commit to the following activities to assist in achieving all elements of the MOU:

- Participate in CARE activities as appropriate and within the limits of their fiscal resources.
- Provide technical assistance for reuse and recycling of carpet as applicable within the scope of their mission, goals and fiscal circumstances.
- Assist with data collection, public education in support of design, carpet reuse and recycling, procurement of products with post-consumer carpet, and other outreach efforts, as appropriate.
- Promote the environmental benefits of carpet reuse and recycling.
- Promote the economic activity generated by increased carpet reuse and recycling.
- Participate in the four-year review process as outlined in the Evaluation section.
- Provide CARE with appropriate information/data for annual reporting, as feasible.

### **f. Entrepreneurs**

To the extent of their ability, entrepreneurs commit to assist in achieving all elements of the MOU:

- Seek and implement best available technology for recycling post-consumer carpet.
- Provide to the MOU stakeholders information on the challenges facing the entrepreneur community in the areas of collection and processing, as well as information on successes, new products, resources, etc.
- Facilitate the continuing education of the carpet reclamation network.

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<sup>5</sup> By signing the Agreement, the government signatories in no way abrogate their statutory or regulatory authority and responsibilities, nor remand, repeal, or otherwise alter the laws or regulations of their states and their agencies, including those of regional, county and local governments, and may exercise their statutory and/or regulatory authority during the life of the Agreement.

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- Educate and work with public purchasing agents, NGOs and other stakeholders on the opportunities to divert and procure products made with post-consumer carpet.
- Participate in the four-year review process as outlined in the Evaluation section.
- Provide CARE with appropriate information/data for annual reporting, as feasible.

### **D. Points of Disagreement**

In July, 2011 it became apparent that stakeholders were not coming into agreement on key areas of mutual interest – how to sustainably fund a carpet diversion/recycling infrastructure, legislation, and long-term collection and recycling goals.

A Resolution Committee (RC) was formed, as a subset of the Rates & Dates Work Group, with balanced stakeholder representation, to seek to find agreement and make recommendations to the JC for a way in which the MOU could move forward. (See Appendix A for list of who was on the RC). Stakeholders on the RC were asked to present their points of view as part of the Resolution Committee's efforts to come to a negotiated outcome. These statements (reproduced, below) were presented on the RC's teleconference on August 10, 2011 (the waste industry statement was provided on August 22, 2011; they missed the call due to vacation).

Ultimately, no such agreements or recommendations were able to be made.

#### **Carpet Industry Statement Regarding CARE MOU Negotiation** – Presented by Joe Yarbrough, Mohawk Industries

**State of the Industry:** To start with, it is important to understand, the unprecedented downturn in the economy has had a major impact on the carpet industry's ability to meet the recycling and diversion goals contained in the 2002 MOU. The industry has suffered approximately a 40% loss in sales since 2005. It is committed to take any and all actions that will strengthen the economic position of the industry. However, it is not prepared to take any actions which could further jeopardize the sustainability of the industry.

The carpet industry believes that substantial progress has been made toward a new MOU 2012 and we are dedicated to finalizing that new MOU. We continue in our commitment to a MOU 2012 that can meet our shared mission of recycling post-consumer carpet and in the process create jobs, increase consumer choices for products with recycled content, reduce landfill space and save valuable resources.

Having said that: the carpet industry recognizes that several parties have clearly stated that they will not be able to sign a new MOU that does not include a sustainable funding option. The industry respectfully wishes to address each of the two parts of the state sustainable funding option separately:

1. First of all, the carpet industry must be clear: the part of the state option that would require the industry to fund from carpet revenues numerous collection and sortation centers across the USA is not possible. This is not possible given the current economic conditions and the market-based network now in place upon which our entrepreneurs have invested and built their long-term strategies.

2. A sustainable funding option that is modeled in principle on California AB2398 is a viable option down the road once we have had time to analyze its ability to impact carpet recycling and more thoroughly understand the plusses and the shortcomings of the California experiment.

The industry wants to be clear, we are open and willing to make informed decisions, based on evidence and results that will be available from the experiment now in progress in California. The industry believes that sustainable funding could be viable for consideration providing that such an option:

- Maintains a carpet flooring industry that is both sustainable and viable.
- Meets the Guiding Principles as delineated in the CARE Stewardship Plan.

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- Allows for continuous, regular communications (at least biennially) on the progress being made under the sustainable funding legislation currently underway in California
  - a. Comprehensively review the feasibility of the experimental results in year 3 as part of our year 4 review of rates and dates.

So let us reiterate that the industry is committed to going forward to a completed MOU 2012 with any parties interested in doing so. We are committed to CARE and will continue to support its mission.

**Government Statement Regarding CARE MOU Negotiation** – edited version of statement presented by Matt Ewadinger, State of North Carolina

On behalf of the government participants, I would like to acknowledge all of the hard work and consensus-building on a wide variety of issues that this diverse group has achieved. We especially thank the carpet industry for its willingness to listen to alternative points of view and put forth ITS point of view in an open and collegial manner.

We recognize that these are indeed unsettling economic times, and that the carpet industry has certainly had to endure more than its share of the results of the current economic situation. As stated in a recent issue of *Floor Covering News*... "Confident may not be a good term to use considering the category (refers to the carpet industry) will most likely end the year at roughly the same levels as 2009 in terms of overall dollar sales and units. And 2009 was widely touted as one of the worst anyone ever saw." So I certainly understand the industry's cautious position.

Although we may not agree on all issues...one in particular...we have never doubted that the representatives from the carpet industry, have always bargained in good faith, and will continue to do so.

Regardless of whether or not an MOU is signed at this juncture or at some time in the future, we agree that all of the elements that have been agreed upon should be memorialized and become part of CARE's path forward.

At the same time, it seems that we have the same all-important discussion on "sustainable financing" over and over again – each time discussing the issue as if it were a new topic.

Those of us on the CARE Board in the early days can testify that sustainable funding, along with the need to develop markets for post-consumer carpet (Markets, Markets, Markets), has been an important goal of the CARE Board since its formation.

In fact, sustainable funding in one shape or form has been a goal since 2002. As the original MOU states in the Roles and Responsibilities of the Parties section: "The carpet industry acknowledges that it has primary financial responsibility for the implementation of the Negotiated Outcomes Goals."

The following year, in November of 2003, the CARE Board adopted an extensive Business & Market Development Plan which included two often-recurring goals:

1. Evaluate and select a funding mechanism to ensure CARE's ability to conduct the programs it deems necessary to fulfill its mission and ensure the attainment of the Negotiated Outcomes Goals; and
2. Identify and support new and existing businesses and technologies that utilize post-consumer carpet to increase market demand...

Then in 2007, the CARE Independent Assessment included recommendations to develop a sustainable and robust funding system for CARE, and to development markets for products made from post-consumer carpet.

Later, the CARE Board's goals for 2008 and 2009 said virtually the same thing. It is now 2011 and we are still talking about the need for sustainable funding and market development.

Just one short year ago the CARE BOD was working on model federal legislation known as the "The Used Soft Surface Floorcovering Recovery and Management Act". In May, 2010, we

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developed "Talking Points for the CARE Sustainable Funding Program". Those talking points included the following three items:

1. In its continuing commitment to support the diversion of carpet from the landfill, and to find market-based solutions to the reclamation and recycling of post-consumer carpet, the Carpet and Rug Institute Board of Directors approved moving forward with a Sustainable Funding Program to enhance the reclamation and recycling of Post-Consumer Carpet.
2. The Sustainable Funding Program includes enabling Federal Legislation of a reasonable stewardship fee.
3. And most importantly...The Carpet Industry will bring this expanded commitment to Sustainable Funding, to the re-negotiation of the Carpet Stewardship Memorandum of Understanding (MOU).

In September 2010, California became the first, and only, state to pass legislation enacting a carpet stewardship program funded by a small fee per yard assessed on carpet sold in the state. This legislation was supported by the local carpet recycling industry as well as by representatives of the carpet manufacturing industry. The California law makes specific reference to the Carpet MOU 2012, stating that goals in the MOU 2012 Update are, at a minimum, equal to the goals in the stewardship plan developed for California, if it is adopted by the time of plan submittal.

We feel it is critical to include sustainable funding in the final MOU 2012 as a necessary step to ensuring the long-term sustainability of carpet recovery and recycling and recovery. We further believe the door should not be shut to proposing legislation in other states at this time. The carpet industry has stated it would oppose pursuit of EPR legislation in other states, given the perceived experimental nature of the California program. They have offered to review the feasibility of expanding this type of program, and funding, to other states as part of a comprehensive review to be conducted by CARE over the course of the next three years. We believe waiting three years to learn from the sole example in the US imposes an unnecessary, and potentially damaging, delay in making concrete progress to sustainable carpet recovery and recycling in the US.

Because consensus cannot be reached on the all-important sustainable financing issue, we believe the best course of action is to postpone further MOU negotiations until a point in time when the carpet industry feels that it can put forward a plan for the development of sustainable financing that goes beyond the state of California.

### **Entrepreneur Statement Regarding CARE MOU Negotiation** – presented by Dee Cassell CDT, CSI, LEED AP; ReSpin

- We acknowledge the importance of each group's position in this process and appreciate the efforts put into this negotiation.
- The entrepreneurs are committed to this industry and growing their businesses. The collectors are an important first step in the process.
- We are pleased to see the progress and agreement on the definitions, rates & dates, roles & responsibilities, and the method for tracking the diversion and recycling.
- The areas of disagreement around some type of Sustainable Funding are a concern for us as we feel reaching an agreement for the MOU is important, but they will not stop us from continuing our efforts to grow our business and find viable end-markets for what we are collecting.
- End-market development is most critical to us and some type of funding (no matter where it comes from) would help accelerate the interest in post-consumer carpet collection and processing.
- California bill AB2398 is the legislation to watch and most of the MOU parties do not want to make a move until they see its success/failures. That is understandable since this is the first movement in the states regarding carpet. Perhaps we can organize the agreed upon points and put some type of measurement towards those things we have accepted. With frequent updates and discussion on its success, we should be able to take the current MOU language to the next level with measurements that all parties can agree on.

These comments are a reflection of a few entrepreneurs I have talked with throughout this process.

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**NGO Statement Regarding CARE MOU Negotiation** – presented by Bill Sheehan, Product Policy Institute

We acknowledge and appreciate the willingness of all parties to sit down and look for solutions to the problem of large amounts of petroleum-based carpet being wasted in landfills. We have been especially impressed by the willingness of the carpet industry negotiators to share important information about their industry.

Unfortunately, there remains a fundamental disagreement about industry responsibility for life-cycle impacts of carpet, including when consumers are done with it. Industry talks about carpet recycling as an *added expense* at a time the industry cannot afford it. NGOs want to see the costs of managing carpet at end of life included (internalized) in the product price, with industry managing the process, so that the expense of responsible management of carpet discards is shared by all manufacturers (and ultimately paid by consumers).

Sustainable financing is the crux of the matter for an MOU with targets and goals. The history of the first MOU does not give us faith that purely voluntary mechanisms will work. Postponing consideration of sustainable financing for another three years, pending outcome of results from California, is not sufficient basis on which to sign a new MOU, especially after the first ten-year MOU failed to achieve agreed results by such a wide margin:

- California's law could be rendered moot by the administrative fee issue.
- California is not the only model, or even the best model. State electronics legislation has evolved since 2003 and shown the value of legislative experimentation.

The bottom line is that we do not support an MOU that does not include credible and sustainable financing mechanisms. We recommend postponing any MOU agreement until sustainable financing is addressed.

**Solid Waste Industry Statement Regarding CARE MOU Negotiation** - presented by Harvey Levitt, Dalton-Whitfield Solid Waste Authority, GA

I would like to acknowledge and thank all participating parties for all the hard work and dedication of their time to the MOU Process.

The current economic times that we find our country in are very difficult to navigate and operate our businesses in a positive economic model and retain our employees in full force. This fact in itself has made the possibility of a national EPR by the carpet manufacturers not doable at this time.

As the carpet industry looks at putting on hold the concept of sustainable funding as a part of its business plan, there are other areas we can and should continue to support and continue to expand as the future times' allow.

I would like to recommend areas that may have a very positive effect on post-consumer carpet recycling:

- Education by all stakeholders as to the importance and the "how-to" for all entities in the PCC recycling loops. Starting at the generator thru the installer/collector/processor and on to the final end user markets.
- All and any types of creative incentives by all stakeholders to continue the PCC recycling loop to assist all groups involved in making their business models positive.
- Local governments may look at where their efforts could be productive such as:
  - Purchase of recycled carpet and products made from recycled carpet.
  - Flow control of some sort to keep PCC off the curb/street and into PCC recycler programs.
  - Franchise opportunity in collection to assist in making PCC collection more effective.

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- Local bans from disposal to MSW landfills only if markets are available for all the carpets being banned.

With some assistance of all of the above the American Entrepreneurs Spirit may have a larger success by collectors/sorters/processors and the end user markets to initially get started and to support those that are already in PCC recycling to expand their operations.

### **E. MOU Elements That Had Not Yet Been Finalized**

Several elements of the MOU were not agreed upon as of August 16, 2011. These sections had been worked on extensively by dedicated Work Groups and included elements upon which the Work Groups had agreed, but had not yet been voted upon by the Joint Committee. (See footnote 3 on page 2 for explanation of the decision process.) These sections were in various states of finalization – their status is explained in each subsection in Appendix B, where they are preserved verbatim, so as not to lose the work carried out in good faith by stakeholders.

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## Appendix A – Parties to the Negotiations

### Members of the Carpet Stewardship MOU Joint Committee

*\* indicates – served on the Resolution Committee*

Paul Ashman, *ERCS*  
Shirli Axelrod, *Seattle Public Utilities*  
Werner Braun, *Carpet & Rug Institute\** and *Co-Chair of the Joint Committee*  
Dee Cassell, *ReSpin\**  
Carole Cifrino, *Maine Department of Environmental Protection*  
Larry Cook, *Beaulieu\**  
Greg Cooper, *State of Massachusetts*  
Ty Dawson, *Milliken*  
Russ DeLozier, *Shaw Industries\**  
Howard Elder, *J&J/Invision*  
Matthew Ewadinger, *State of North Carolina\**  
Kathy Frevert/Fareed Ferhut, *California Dept of Resources Recycling and Recovery (CalRecycle)*  
the late Marlin Gottschalk, *State of Georgia*  
Michael Ginn, *PYROFLEX, LLC*  
John Glenn, *US EPA*  
Ron Greitzer, *Los Angeles Fiber\**  
Garth Hickle, *State of Minnesota\** and *Co-Chair of the Joint Committee*  
Frank Hurd, *Carpet & Rug Institute\**

Joseph Keating/Jerry Turner, *Vitro Minerals/Polar Industries\**  
Richard Kruse, *Kruse Carpet Recycling*  
Harvey Levitt, *Dalton-Whitfield Solid Waste Authority\**  
Billy Malone, *Solid Waste Assn. of North America (DeKalb County SW, Decatur, GA)*  
Shannon McClelland, *State of Washington\**  
Brendan McSheehy, *Universal Fiber*  
Sarah Murray/Cynthia Moore, *State of Wisconsin*  
Eric Nelson, *Interface*  
Bob Pilotti, *ECM Plastics*  
Lynn Preston, *Tandus Flooring*  
Sean Ragiel, *CarpetCycle*  
Lynn Rubinstein, *Northeast Recycling Council\**  
Heidi Sanborn, *California Product Stewardship Council\**  
Bill Sheehan, *Product Policy Institute\**  
Ron Simonetti, *Modular Carpet Recycling*  
Theresa Stiner, *State of Iowa*  
Fred Williamson, *Starnet*  
Joe Yarbrough, *Mohawk Industries, Inc\**

### Other Engaged Stakeholders

#### Staff

Anthony Cline, *CARE Operations Manager*  
Anne Peters, *Gracestone, Inc., Facilitator\*\**

Georgina Sikorski, *CARE Executive Director*

#### Interested Parties

Rich Abramowitz, *Waste Management Recycle America*  
Jay Bassett, *US EPA Region 4*  
Teresa Bui, *Californians Against Waste*  
Jeff Carrier, *Carpet & Rug Institute*  
Rich Castle, *ATR*  
Frank Endrenyi, *Sustainable Materials Solutions*  
John Frederick, *Recycling Organizations of North America*  
Sierra Fletcher, *Product Stewardship Institute*  
Jay Henry, *Shaw Industries*  
Thomas Holland, *Texas Carpet Recycling*

Sego Jackson, *Snohomish County, WA*  
Tom Kaczmarek, *Waste Management*  
Leslie Kochan/Jan Whitworth, *State of Oregon*  
Tom Pendley, *J&J-Invision*  
Peter Pettit, *State of New York*  
Shannan Reynolds, *State of Florida*  
John Roderique, *UNICOR/Federal Prison Industries, Inc.*  
Ron Sherga, *Sempiterno Solutions*  
Jeremy Stroop, *Carpet Recycling Association*  
Derek Young, *INVISTA*

\*\*Contact information to access the archives of the MOU 2012 Negotiations: Anne Peters, Gracestone, Inc. 303.494.4934, [annep@indra.com](mailto:annep@indra.com).

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## Appendix B – Not-Yet-Finalized Elements of the MOU

The text below is presented verbatim, as approved and reviewed by various work groups and committees. Note that these sections were not finalized and voted on by the Joint Committee. They are appended to this report to preserve the work carried out by stakeholders.

### VISION

*//Note from Facilitator: Two versions: Version (1) was ok'd by the JC to be reviewed and finalized after Rates & Dates (negotiated outcomes goals) were set; version (2) was submitted by two stakeholders after that, as an edit.//*

**(1)** The vision for this MOU is an ongoing voluntary, market-based, industry-led initiative by which all stakeholders work collaboratively to eliminate landfill disposal and incineration of post-consumer carpet, and to achieve escalating goals for reuse and recycling consistent with resource conservation and sustainable production and consumption strategies.

The Negotiated Outcomes Goals express the long-term commitment of the carpet industry to achieve this vision, including through design strategies and emerging technologies for reuse and recycling of all carpet.

**(2)** The vision for this MOU is an ongoing voluntary, market-based, industry-led initiative by which all stakeholders work collaboratively to eliminate landfill disposal and incineration of post-consumer carpet, and to achieve escalating goals for reuse, recycling, and post-consumer **carpet** recycled content in **products** consistent with resource conservation and sustainable production and consumption strategies.

### GOALS

*//Note from Facilitator: The following Goals for the 2016 and 2020 planning periods (and text below the chart) were agreed to by the Resolution Committee on August 3, 2011 and were to be recommended to the Joint Committee. There was NOT agreement about the 2024 goals.//*

#### Goals for carpet recycling collection (input) and recycling output:

Category	Measurement	Base Year (2009)	2013 - 2016	2017 - 2020	2021 – 2024*
<b>Denominator</b> (available for collection)	Million lbs	3718	3418	3557	3702
<b>Recycling collection (input)</b> (goes to recycling facility)	Million lbs	234	684	1058	2066
	% of available post-consumer carpet collected for recycling	6.3%	20.0%	30%	56.0%
<b>Recycling (output)</b> (new raw material)	Million lbs	105	410	688	1446
	% actually recycled	2.8%	12.0%	19%	39%

\* These 2021-2024 goals were not agreed to.

Increases in **recycling input** will likely arise from:

- a. Expanded opportunities for discarded carpet to be collected, specifically for recycling, through convenient collection and education.
- b. A higher portion of post-consumer carpet diverted will be recycled instead of used for CAAF or WTE as other end uses increase.

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- c. Increases in oil prices (now exceed \$100/bbl and are likely to remain so) and higher solid waste disposal tipping fees will drive new recycling activity.
- d. Increases in new program activities, e.g., increases in demand for products with recycling content, increases in demand for lower cost raw materials such as nylon, other plastics, etc., development of new recycling facilities entrepreneurial activities and improvement in technologies efficiencies will help drive more input at recycling facilities.

Increases in **recycling output** will likely arise from:

- a. Cleaner carpet feedstock to recycling facilities and better technology for utilizing the carpet going into recycling facilities will happen over time, in other words the current 45% efficiency should increase over time for the oil-based components.
- b. Improved recycling equipment technologies
- c. New recycling technologies and products

### **ROLES AND RESPONSIBILITIES OF THE PARTIES**

*//Note from Facilitator: As of August, 2011, US EPA had not yet completed internal approval of the following language regarding its roles and responsibilities.//*

#### **U.S. Environmental Protection Agency**

EPA endorses the efforts that CARE, the carpet industry, government and NGOs are taking through this agreement to make carpet a more sustainable material and encourages the:

- Development, adoption and promotion of products produced with post-consumer carpet content.
- Expansion of federal procurement policies to increase the use of products made with post-consumer carpet content, such as specifying carpet certified to NSF 140 Platinum level
- Collection of federal government data on its purchasing of new products made with post-consumer carpet content.
- Participate in the four-year review process as outlined in the Evaluation section.
- Engagement of federal, state and local governments to promote sustainable materials management

### **EVALUATION AND PERFORMANCE SCHEDULE**

*//Note from Facilitator: The Evaluation Work Group recommended the following language for the Evaluation/Performance section. It was reviewed by the JC on 4/14/11 – it was then set aside to be reviewed and finalized after Rates & Dates (negotiated outcomes goals) were finalized.//*

#### **a. Progress Reports**

The stakeholders of the MOU agree that they shall be jointly responsible through CARE for monitoring, assessing and reporting on the progress toward the Negotiated Outcomes Goals as set forth Section 2 of this Agreement. While reporting on the progress toward the Negotiated Outcomes Goals is the responsibility of CARE, stakeholders from the carpet industry, entrepreneurs, government and non-government organizations will maintain active roles, as defined in the Roles and Responsibilities section, in CARE to assist with data collection, analysis, and program evaluation to ensure transparency in reporting on the status of activity.

In each case where a report is required under this agreement the report shall at a minimum include progress toward meeting the Negotiated Outcomes Goals identified in Section 2. The CARE reporting schedule shall be:

- (1) **Annual Report.** CARE shall publish an annual report on or before April 30 of each year commencing in April 2013. This report shall contain, at a minimum,
  - an update on market development opportunities for recovered carpet,
  - information on quantities managed through the various management options outlined in the Negotiated Outcomes Goals,
  - an assessment of successes and obstacles encountered during the reporting period,

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- a summary from each signatory government entity on its efforts to remove obstacles and present opportunities within their respective government entity,
- a summary on U.S. EPA and other federal initiatives that have been encouraged or undertaken over the last year and any planned initiatives,
- a description of the education and outreach in efforts made the previous year to reach Negotiated Outcomes Goals,
- results of an annual government survey with regard to procurement and market development practices, and
- an overview of planned activities, financial planning and priorities for the coming year.

These reports shall be made available to the public through the CARE website and through any other means the parties deem appropriate. Please see the evaluation criteria below for further detail.

### **(2) 2016, 2020 Independent Studies.**

At each year (2016, 2020), an independent study, supported jointly by the MOU stakeholders and selected by the CARE Board of Directors shall be commissioned to evaluate the progress and identify existing barriers toward meeting the Negotiated Outcomes Goals set forth in Section 2 of this Agreement and the Interim Management Goals. (See Appendix A.) Report to be reviewed by Joint Committee and other key stakeholders, which should be re-convened to review and make recommendations on changes to the goals (and implementation plans) at that time.

**(3) 2024 Negotiations.** In year twelve (2024), CARE and other stakeholders shall create a multi-stakeholder process for developing recommendations and goals for the next twelve-year period. Invited stakeholders shall draw from the Joint Committee that prepared this MOU and shall be a fair cross-section and representation of those participants.

**(4) Final Report.** In 2025, CARE shall develop a final report detailing progress made in meeting the Negotiated Outcome Goals of the twelve-year planning horizon as set forth in Section 2 of this Agreement. This can be a part of the Annual Report for that year, but should be completed by April 2025.

### **b. Evaluation Criteria**

Progress toward the Negotiated Outcomes Goals shall be evaluated based upon:

- (1) A quantitative assessment of the amount of post-consumer carpet diverted to reuse, recycling, CAAF, and waste-to-energy. This assessment should indicate progress toward meeting the Negotiated Outcomes Goals.
- (2) An assessment of the economic results/benefits of post-consumer carpet economic activity, such as the number of reuse and recycling establishments, employment (e.g., FTE/thousands of pounds of carpet recycled and diverted), and throughput of recyclable materials.
- (3) An assessment of the efforts that have been undertaken by each of the parties identified in Section 3 of this Agreement toward meeting the Negotiated Outcomes Goals.
- (4) A thorough assessment of the efforts and results to date, including recommendations for changes in strategies and additional efforts to reach Negotiated Outcomes Goals.
- (5) An assessment of planned efforts by each of the parties as identified in Section 3 of the Agreement for the upcoming year.
- (6) When feasible, an assessment will be performed of the resources saved as a result of diverting post-consumer carpet from landfills or incineration and a quantification of greenhouse gas and other environmental savings achieved by diverting recovered carpet from landfills.
- (7) An assessment of education and outreach in efforts to reach Negotiated Outcomes Goals.

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(8) An assessment of participation by stakeholders, as outlined in the Roles & Responsibilities section, will be conducted on an annual basis.

### **c. Evaluation Outcomes**

(1) The signatories to this Agreement shall, after consideration of this information, make a subjective determination by weighing efforts, results, challenges, recommendations and other significant criteria to determine if any overall goals or strategies should be changed.

(2) If, at the conclusion of the 2016 and 2020 evaluation periods (or at any of the Annual Reporting periods), the Joint Committee and signatories to this Agreement determine that the interim goals as set forth in Appendix A of this Agreement have not been achieved, the signatories and the Joint Committee shall develop a detailed analysis with specific recommendations on how to proceed with an alternative strategy.

(3) CARE and stakeholders to this MOU will then, to the best of their ability, implement these recommendations.

### **d. Four-year Review Period Evaluation**

Review results to date and make recommendations of changes that need to be made to achieve goals, according to Evaluation Criteria in section 4.b, above.

### **ADDITION AND WITHDRAWALS OF PARTIES; EFFECTIVE DATE; TERMINATION; SIGNATURES**

*//Note from Facilitator: It was assumed that these sections would be much the same as in the 2002-2012 MOU.//*