

# SKYE CON

CONSULTING IN GOVERNMENT AND ENVIRONMENTAL PROCUREMENT

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RE: Green Building and Textiles Workshop— Comment, Project No. P084203

As background, I am the Principal of a consulting firm specializing in government procurement of “environmental” products.

I spent over 30 years in the carpet industry, the last 15 with a significant emphasis on environmental issues. I have served on and chaired the boards of national organizations including the National Recycling Coalition and the Buy Recycled Business Alliance, and I have spoken internationally on the subject of sustainability. I have referred positively to The Guides in virtually every presentation I have made, and have used them in teaching others how to discern truth in environmental market claims. I have also testified before the Senate Committee on the Environment and Public Works regarding the purchasing of recycled content material by Federal agencies. These experiences have afforded me an excellent knowledge and understanding of The Guides and how they have been used, and not used, in industry.

While many of the examples I give below are informed by my carpet experience, my perspective is much broader and my comments are applicable beyond carpet. I am taking the liberty of departing from the format of the questionnaire to focus on a few issues. I will not try to address all components, only those that I have the most background on and feel are the most important.

The current Guides are exceptionally well written. They established a common terminology by which consumers could compare marketing claims, and standards to which industry could be held accountable. They were, and are, a model of clarity. Much of the potential impact of the Guides has not been realized, however, because they have not had significant public enforcement.

1. **Enforcement:** Enforcing the Guides, even if they remain unchanged, is the single most important action that can be taken to make them more meaningful. They are currently blatantly and knowingly disregarded by manufacturers because manufacturers don't feel that accountability for claims will be enforced. Claims for recyclability and recycling of products have been made in clear contradiction to the Guides, with the companies making the claims being fully aware of the Guides. For example, billions of dollars of products have been purchased based on claims of recyclability that did not meet FTC Guides. I recommend that FTC publically penalize a few large corporations in several industries for egregious violations. It would not take many examples to get the attention of corporate America, including manufacturers.
2. **Do Not Weaken:** There will probably be suggestions to weaken the Guides in some areas. Clarification is good, although the Guides are extremely well written already and need updating more than clarification, but there is no need to weaken them. It would be a serious discouragement to those who have built processes and marketing programs based on the current guides to be placed on an equal basis with those who have done less simply because the Guides

are weakened. That would clearly dampen enthusiasm for future development. Based on increasing complexity of the issues and increasing “sophistication” of marketing claims, if anything the guides should be strengthened.

- a. **Clarify Recyclability:** Claims are being made that products are recyclable when the recovered material is only being converted to power. While the so-called waste to energy process is not necessarily bad, it does not rank as high on EPA’s scale of diversion as recycling, and should not be given the same stature. When waste to energy has been accepted as an alternative to recycling, it has created a disincentive to create true recycling processes. The Guides address this, but more clarity would be beneficial.

Claims have also been made based on a future hope of recycling. This is clearly not and should not be within the frame-work of the Guides. There is virtually no product that cannot be given a claim of recyclability if enough time is built into the claim. Hypothetically, any product can be claimed to be recyclable given enough time to create the processes. It is a major disincentive to those who have spent the time, intellectual effort, and money to create a current recycling program if their product is put on an equal footing with one that may be recyclable only years down the road. Again, the Guides address this, but stronger language would be helpful. I strongly recommend that the Guides continue to specify that a product must have a currently operational program of recovery and recycling before a claim of recyclability can be made.

Clarity should be given regarding how to claim the amount of recycling that is being accomplished. For example, if 1000 pounds of material is recovered and 100 pounds of the recovered material can actually be recycled, some are making claims that 1000 pounds of material were recycled. Said another way, even if only 10% of a product’s components can be recycled, credit is being claimed by some for the pounds recovered, not for the pounds actually recycled. The Guides address this from the perspective of a claim of recyclability, but clarity could be given regarding claims of amount of material actually recycled.

- b. **Recycled Content, “Mass Balance Calculations”:**

While there may be some legitimate uses of mass balance calculations, the term has been misappropriated and applied to an entirely spurious concept. As an example, consider a hypothetical company which produces one hundred million pounds of material per year across several product lines. That same company includes one million pounds (1%) recycled content across all product lines. However, the market demand for recycled content is only in one million pounds of production. The concept is to mathematically allocate the one million pounds of recycled material as if it were all going into ten million pounds of production, giving a recycled content of 10%. Note that the recycled material is being spread out across all product lines but the calculation is being made as if it all went into only one segment of production. The absurdity of this is obvious. What if the company decided to mathematically allocate the one million pounds of recycled material to five million pounds of production? They could now make a claim of 20% recycled content when the consumer was getting only 1%. To further show the absurdity of this concept, what if the company decided to mathematically allocate all one million pounds of recycled material into one million pounds of production? They could now make a

claim of 100% recycled content for a product with 1% recycled content. Comments should be included in the Guides that would clarify how recycled content calculations are made. The recycled content reported for a product should be the actual recycled content contained in that product to avoid consumer deception.

3. **Carbon Credits, Offsets, Trading, etc:** Along with new concepts come new opportunities for confusion in the market place. This is a good example of how the Guides were originally exceptionally well written (although insufficiently enforced) but need to be updated to reflect current conditions. I don't have specific recommendations because it's not an area I am expert in, but an example of the things that I see emerging are claims for carbon offsets for planting a tree when in actuality it's a seedling being planted. Planting seedlings is good, and may have some benefit in 20 to 30 years, but the consumer should know the reality behind such claims. Although there are some forestry programs that are managed and monitored properly and meet certain standards, not all are. In the same vein, some oversight needs to be given to carbon credits and offsets. It seems that there is very little in the way of certifying the certifiers.
4. **Third Part Certification:** The Guides currently specify what is required in certifications. Because of the cost to smaller companies it may not be practical for all claims to be third party certified, but the guides could be clearer about what constitutes independent third party certification. There are examples of "certifications" which have been developed solely for the benefit of one company in a given industry. A mechanism needs to be in place to evaluate the financial relationship between the certifying organization and the company being certified. In a true third party scenario, the certifying organization should be paid for the evaluation, not for the certification. Currently there are situations in which a highly paid "consultant" develops a proprietary certification available only to the organization which is paying for the consultancy. Additionally, the criterion used in the evaluation for these certifications is not transparent. This destroys the credibility and benefit of legitimate certifications.

In summary, the Guides are well written but in some need of updating. Most of my suggestions are to add clarity and strength to areas already addressed in the Guides. The most significant step that can be taken is enforcement. No matter how good the updates are, at the current level of enforcement their potential will go largely unrealized.

Thank you,

Dobbin Callahan  
Principal  
Skye Con