

## Is It Waste or Is It a Product?

**The Regulatory Implications of Industrial  
Recycling in a Green Economy**

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**James T. Price**  
2013 AHMP Conference  
Orlando, Florida  
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WA 4433398.1

### Questions:

- “Mr. Price, we have found a use for this manufacturing byproduct that we used to send under manifest to a hazardous waste disposal facility, so it’s no longer a waste, right?”
- “And it’s out of the RCRA system, right?”

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### Answer:

- “It depends.”

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### Bridging the Gap: By-Product Synergy



By-Product Synergy (BPS) applies the principles of industrial ecology. In which companies work together to match unwanted by-products as resources for new products and processes. Artists, entrepreneurs, manufacturers, builders, and businesses can benefit from cheap – or even free – by-product materials. The innovation of repurposing of one company’s waste and redeploying it as a raw material cuts pollution, can reduce material costs and improve internal processes. In return, regulators familiar with our program have shown a willingness to explore ways of permitting reuse options.

Kansas City BPS is now in its seventh year of match-making and we have finally found the recipe for success.

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### Examples

- Battery recycling
- Scrap metals
- Waste fuels
- Industrial manufacturer byproduct from air pollution scrubber
- Natural blasting/cleaning material
- Solvent recycling
- Product breakage, spoilage, outdated

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### Common situations

- Environmental inspections
- Industrial materials
- Those who do not think of themselves as handling waste
  - Laboratories
  - Manufacturing reusables corral / boneyard
- Onsite vs. offsite reuse

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## Regulations when recycling

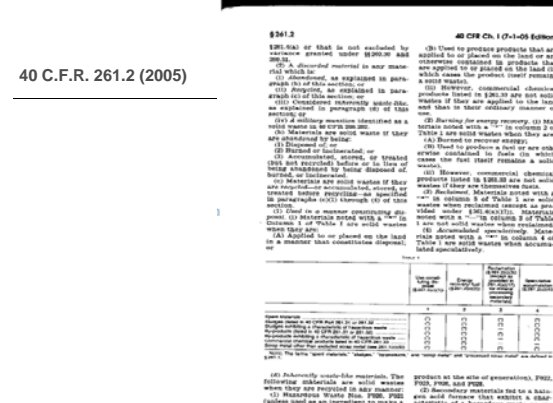
- Resource Conservation and Recovery Act
  - 40 CFR 261.2--Definition of Solid Waste
- State laws
- Local laws
  - KEY: Waste determination and management
- Comprehensive Environmental Response, Compensation and Liability Act

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## RCRA: Definition of solid waste

- 40 CFR 261.2
  - - 2008 Revision
  - - Pre-2008 version
- State laws
  - - Missouri: Pre-2008 version
  - - Other states: 2008 version

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40 C.F.R. 261.2 (2005)

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## 40 CFR 261.2

- 40 CFR 261.2(a)(1): Solid waste is material that has been *discarded*
- 40 CFR 261.2(a)(2): *Discarded* means:
  - - Abandoned
  - - Recycled as described in 40 CFR 261.2(c)
  - - Inherently waste-like

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## 40 CFR 261.2

- 40 CFR 261.2(c): Materials are *solid wastes* if they are *recycled* as follows:
  - - Used in manner constituting disposal (chart)
  - - Burned for energy recovery (chart)
  - - Reclaimed (chart)
  - - Accumulated speculatively
- 40 CFR 261.2(d): *Inherently waste-like materials* are wastes when recycled in any manner. [List follows in regulation]

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## Key RCRA definitional terms, questions

- “Spent material,” “byproduct,” “sludge,” “reclaimed,” “recycled”
- Has the generator decided to discard it?
  - SHOULD they have?
- Has the owner made a “waste” determination or a “product” determination?
  - - Documented?
  - - Examples: Boneyards, off-spec materials or take-back storage

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## Key RCRA definitional terms, questions

- Is it used directly as a substitute for a commercial product?
- Is it a pollution control sludge?
- Is it processed before reuse?
- Is it in a closed loop?
- Is it accumulated speculatively?
- Is it burned for energy recovery?
- Is it used in a manner constituting disposal?

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## Key RCRA definitional terms, questions

- If you contend a material is not a solid waste
  - 40 CFR 261.2(f)
  - Is there a known market?
  - Do you have documentation?
  - Owners/operators: Can you show you can recycle it?

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## Recyclable lead-acid batteries



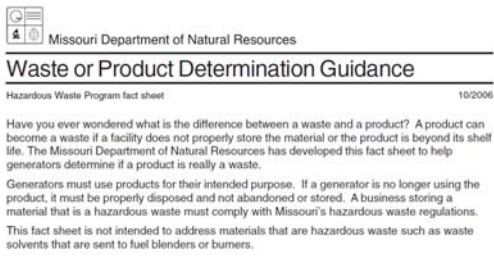
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## Electronics



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## Missouri Guidance, October 2006



Missouri Department of Natural Resources  
**Waste or Product Determination Guidance**  
 Hazardous Waste Program fact sheet 10/2006

Have you ever wondered what is the difference between a waste and a product? A product can become a waste if a facility does not properly store the material or the product is beyond its shelf life. The Missouri Department of Natural Resources has developed this fact sheet to help generators determine if a product is really a waste.

Generators must use products for their intended purpose. If a generator is no longer using the product, it must be properly disposed and not abandoned or stored. A business storing a material that is a hazardous waste must comply with Missouri's hazardous waste regulations.

This fact sheet is not intended to address materials that are hazardous waste such as waste solvents that are sent to fuel blenders or burners.

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## Missouri Guidance, October 2006

- Marketing and reuse:
  - Able to document ability to reuse the material
  - Actively attempting to market the material
- Storage:
  - Protected from environment
  - Must be able to identify the material
    - -training issues
  - Store as if it has value

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## MDNR Guidance, Cont'd

- Containers in good condition
- Expiration dates? Partially used?
  - Laboratories
  - Older, Off-Spec Materials
  - Maintenance materials



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## Labs, paints



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## MDNR Guidance, cont'd

- Can it be used as a substitute for another product without any processing or treatment?

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## Implications

- Hazardous waste inspections
- Storage
  - RCRA storage requirements met?
- RCRA treatment?
- Transactions with buyers
  - Manifesting
- Making available for sale
  - For example, Online exchanges

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## Bridging the Gap: By-Product Synergy

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Commercial

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Reuse Services

Providing Services for:  
Architects | Designers | Contractors | Owners | Suppliers | Deconstruction

**RECENTLY LISTED MATERIALS**

**Kansas National History Museum Station**  
Here is a unique piece from Taylor's restaurant in Lawrence, KS. This Kansas National History Museum stamped station, embellished with the Kansas flag...

**Restaurant Equipment and Furnishings**  
To reuse items from a complete restaurant remodel, including the kitchen, are available immediately. A partial fee includes period-furniture...

Residential


**PLANETREUSE**  
marketplace

Providing Services for:  
Reuse Centers | Home Owners/DIY | Contractors | Designers | Remodelers

**HOW IT WORKS**

You want reclaimed building materials in your project. Or, you have these materials to share. We find the best ways to make the connection. Your artwork and design benefit, not to mention the planet. PlanetReuse takes all the hard work out of incorporating reclaimed building materials into projects around the globe. We

**COMMERCIAL EXAMPLES**



**RESIDENTIAL EXAMPLES**

## repurposedMaterials

repurposedMATERIALS is located in Denver, Colorado. Reusing by Repurposing Byproducts and Waste of Industry. Is this email not displaying correctly? [View it in your browser](#)

July 9, 2013 *Please FORWARD to a friend or colleague.*  
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**re-pur-posed-MA-TE-RI-ALS** (noun) - byproducts and waste that have value "as is" to a second, unrelated industry.  
[LEARN MORE ABOUT US>>](#)

## Consumer products

**On My Desk:** A company reached out to us that has 227,000 expired bottles (about 100 pallets worth) of GermX brand hand sanitizer. (The product expired in 2008). The active ingredient is Ethyl Alcohol. Anyone know of a "repurpose" for out-of-date hand sanitizer in large quantity like this? Could it be burned as a fuel? [Learn More about Product>>](#) [www.germx.com](http://www.germx.com)



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## Other examples

- Demolition materials
- Used consumer products: Electronics, white goods, automobiles
- Industrial byproducts, co-products
- Fertilizer ingredients
- Large-lot, mixed goods transactions
- Solvents
- Metals

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## Industrial facilities!

**On My Desk:** A demolition contractor contacted us looking for buyers for any components...conveyors, turbines, etc...of a single 80-megawatt coal-fired generating unit that commenced commercial operation in 1992 prior to demolition. This power plant is located in the mid-Atlantic region. This could be dismantled and re-erected overseas! Please contact me - [damon@repurposedmaterialsinc.com](mailto:damon@repurposedmaterialsinc.com) - and I'll put you in touch with the demo contractor. **Serious inquiries only.**



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## Resources

- Federal regulations
- State regulations, guidance
- Regulators
- McCoy's RCRA Unraveled
  - - Eight ways to treat hazardous waste w/o permit
- EPA RCRA Online determinations, guidances
- EPA regulatory preambles
- Social media

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## Industrial materials

Institute of Hazardous Materials Management (IHMM) [LinkedIn](#)

July 2, 2013

**Still Active Discussions (1)**

[Updated CHMM/CHMP/HMMT Exam Prep Course!](#) 3 new comments [Like](#)  
Started by Richard Cartwright PE, CHMM, CPM®  
 Note: CHMM examination blueprint will change on July 1, 2013. Good news is that our August 14-16, 2013 training course has been updated... [more »](#)

**New Discussions (1)**

[What are the options for sustainability of manufacture over burden or off-specification of fiberglass products, especially fiberglass blow insulation, batt insulation and other fiberglass products?](#) [Like](#) [Flag](#)  
Started by Tony Nicolosi, Managing Member at ABCOV Companies, LLC

## Case Study 1



- Fiberglass manufacturer
- Acetone
- Recycling for parts cleaning
- Award
- State award
- EPA inspection

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## Case study 2



- Acid
- Opportunity: Clean through R.O. unit, reuse in manufacturing new product
- Pilot project: R.O. unit in another state

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## Case study 3



- Chemical manufacturer
- Product from air pollution scrubber: Phosphoric acid
  - - High quality
- Shipped to reuser, not manifested
- Change reuser to fertilizer manufacturer
- KDHE inspection, citation

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## Case study 4



- Chemical manufacturer
- Byproduct manifested as hazardous waste to treatment facility
- Found: User of material to use in own manufacturing process
- Next steps

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## Case study 5



- Manufacturer
- Process using VOC solvent to wash and remove oily substances from large quantities of materials
- How will that material and the process units be handled and permitted?
  - - Permitting
  - - Waste and disposal matters
  - - Closed loop? 40 CFR 261.4(a)(8)

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## Superfund and liability



- Superfund overview
- Is it an arrangement for disposal?
- Useful product defense

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## Liability considerations

- Seller's liability for improper reuse
- Superfund considerations
  - Liability to those who sell recyclable products: Is it "arrangement for disposal"?

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## Superfund Liability: Statutory provisions

- CERCLA section 127: Exemption for certain persons who "arrange for recycling"
  - Not owners of operators
  - Specific materials: Scrap paper, plastic, rubber (not tires), glass, textiles, lead, NiCd batteries, other batteries, metal

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## Superfund Liability: Statutory provisions, cont'd

- EPA guidance, 2002
  - Burden on those claiming exemption
  - Site-specific facts:
    - Is recycling actually occurring?
    - Nature of hazardous substances
    - Nature of transaction, prices paid
    - Compliance with management standards
  - Specific discussions for certain recyclable materials (e.g., scrap automobiles, metal pieces)

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## Superfund Liability: Burlington Northern case

- Supreme Court decision, 2009
- Seller's intent is a factor
  - - Continuum: Intent to dispose of hazardous substances v. useful product transactions
- No liability found on those facts
  - - Mere knowledge of spills not enough
  - - Sales of new products
  - - Principles could be applied to recyclable materials transactions

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## Drum recycling, for example



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## Drum recycling, for example




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## Developing your strategy

- Understand the regulations; Read them carefully
- Don't assume
  - - Legal opinion
  - - Regulatory inquiry, determination
  - - Compelling factual, technical, legal analysis

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## Inspections, inquiries

- Site visit
- How are your materials being handled?
  - - Processes?
  - - Storage?
  - - Do they produce waste before reuse, or after?
- Permits, authorizations
  - - But they might not protect you from all liabilities!

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## Contracting

- Representations, warranties
- Indemnities
- Inspections
- Other

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## Questions?

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