

DEFINING NEW OPPORTUNITIES IN WASTE-TO-ENERGY - ABREU ADVOGADOS

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Waste-to-Energy (WtE) refers to any treatment that generates energy in the form of electricity or heat from a waste source.

The Landfill Directive and the Kyoto rules have strengthened the relationship between waste and energy via the ever-increasing production of RDF (Refuse Derived Fuel) from urban and industrial waste, and by using landfill methane to produce electricity and reduce CO₂ emissions. However the classification of waste, including certain types of sub-products, also has the potential to create new and interesting energetic uses. The key issues with respect to any energy are:

- safety in supply;
- renewable implementation; and

- fighting wastefulness.

Here we consider substances that are, or were, considered to be waste even though they can be used as fuel oil.

The scope of the concept of waste depends on the meaning of the term 'discard' used in Article 1(a) of Directive 2006/12/EC on waste. The use of a material listed in Annex IIB of that Directive does not itself allow a substance or object to be classified as waste and, conversely, the concept of waste does not exclude substances or objects which are capable of further economic use. The system of supervision and management established by the Directive is intended to cover all substances and objects discarded by the owner, even if they have a commercial value and are collected on a commercial basis for recycling, reclamation or further use.

This concept of 'waste' causes a huge hindrance to the development of the WtE industry, notably regarding substances that are officially waste despite possessing the characteristics of ordinary fuel. We have two main situations, and for each we have selected an example:

- A substance reused without any prior processing – which can be turned into energy, created in the scope of an industrial process and that should not be considered waste in the meaning of Article 1(a) of the Directive.

In this case there may be certain circumstances that constitute evidence that the holder has discarded a substance or object or intends or is required to discard it. This will be the case particularly where the substance used is a production residue. However, if a substance is used without any prior processing yet is an integral part of a production process it cannot be described as waste. The order of the Court (Third Chamber) of 15 January 2004, the Saetti case, relates to when a substance is produced intentionally or in the course of producing petroleum fuels in a refinery, which is certain to be used as fuel to meet the energy needs of the refinery and those of other industries – the Court considered that this did not constitute waste under the Waste Directive.

- A substance reused with prior processing – which can be turned into energy, created in the scope of a cleaning process and, after processing, should no longer be considered waste in the meaning of the Waste Directive.

The MARPOL Convention, which covers the prevention of pollution of the marine environment by ships from operational or accidental causes, requires parties to take all appropriate steps to promote the provision of facilities for the reception of oily water and residues. Such 'slops' are usually produced when oil tanks are emptied and washed-out so that necessary inspections can occur. Being a substance resulting from a washing process, it is considered waste. However, via a simple decantation procedure it can be once again turned into fuel oil.

Despite this fact, national legal frameworks still impose on the state environment agencies (and their waste departments) the management of this material – and require those industries that intend to burn it as conventional fuel to apply for a waste management licence.

Such stances by the regulatory authorities, in a time of announced scarcity, should be adjusted to reality: we are seeing the exhaustion of fossil fuels, and such an interpretation of the legal definition of waste, as in the above cases, will generate both a loss of material resources and of energy.

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