

Is Road Salt a RCRA "Solid Waste"?: Eighth Circuit Court of Appeals Opinion

Arkansas Environmental, Energy, and Water Law Blog



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The United States Court of Appeals for the Eighth Circuit ("Eighth Circuit") addressed whether the use of road salt met the statutory definition of "solid waste" under the Resource Conservation and Recovery Act ("RCRA"). See *Krause v. City of Omaha*, No. 15-2985 (February 22, 2016).

Randall Krause appealed from a United States District Court ("District Court") decision that dismissed his Complaint seeking declaratory and injunctive relief under RCRA in regards to the City of Omaha, Nebraska's use of sodium chloride and sodium ferrocyanide to melt snow and ice. Omaha had used road salt on a street that was located on a floodplain.

The Eighth Circuit upheld the District Court stating that the road salt described in the Complaint did not meet the statutory definition of "solid waste" under RCRA.

The key issue was whether the road salt was deemed "discarded."

In upholding the dismissal, the Court cited *Ecological Rights Found. v. Pac. Gas & Elec. Co.*, 713 F.3d 502, 514-18 (9th Cir. 2013) which affirmed a:

... lower court's dismissal of complaint claiming that utility company had violated RCRA by treating utility poles with wood preservative, which was released over time and was in turn "discarded" by rain water falling on poles; concluding that such wood preservative was not "discarded," and therefore was not "solid waste" under RCRA, when it was released into the environment as an expected consequence of its intended use.

[Click here to download a copy of the Eighth Circuit decision.](#)