

## ESG Essentials: What You Need To Know Now

### Episode 10 – Recycling Your Way to ESG Success

**Colvin:** Welcome to the latest episode of "ESG Essentials: What You Need to Know Now," a podcast from your friends at Fox Rothschild. I'm your host, [David Colvin](#), co-chair of the firm's Environmental, Social and Governance Practice Group. For any new listeners out there, Fox's series of short and snackable podcasts cover core ESG concepts. We explore important issues for businesses that are concerned with developing and deploying a solid ESG profile; in responding to increased scrutiny from regulators, investors or consumers regarding their environmental and social impact; and minimizing the potential legal, business and reputational risk that can be associated with ESG.

In this episode, I'm pleased to welcome back, from our Chester County office, [Adam Cutler](#). Adam is an environmental lawyer, he's a member of our ESG practice group and he's also a member of the firm's Environmental Department. Adam focuses his practice on environmental litigation as well as regulatory matters. He's joining us today to talk about recycling and recycling practices and costs, and how they fit into the world of ESG. So Adam, welcome back to the podcast.

**Cutler:** Thanks, David. Glad to be back and looking forward to this discussion.

**Colvin:** Absolutely. So let's jump right in. Many of our listeners may be working at companies that are just on the front end of addressing ESG and attempting to identify where the material risks and opportunities lie. Some of our listeners may be well on the road, or well down the road, in terms of developing and deploying their ESG profile.

But in terms of recycling, can you just talk a little bit about why it's important that recycling as a concept should be factored into any company's ESG program or profile, and why that's important?

**Cutler:** Absolutely. Recycling practices can be a reflection of a company's attitudes toward greenhouse gas (GHG) reduction and other environmental benchmarking. And they can also reflect smart business decisions with positive impacts on the bottom line. They can also focus on reduction of risks, because often the things that you send out in your waste profile -- if you aren't recycling or reusing or reducing your wastes -- can wind up in landfills, can wind up in other disposal situations. Those inherently carry some level of environmental liability risk down the road.

But really, what we're talking about here is more than just what most people think of as recycling: Putting your bottles and cans in a blue receptacle for collection. We're talking about really the sustainable management of waste when we're talking about this at the company level. So, by measuring and understanding companies' waste and waste practices, companies can really begin to think about ways to prevent waste at its source and even to move towards the sorts of closed loop circular systems that will avoid adding waste to what I think we all know is an already overtaxed environment out there, where landfills are filling up and we've got various problems out in the environment.

By reducing waste in your processes, you're more efficient. Your material costs and your recycling costs are lower because you're simply not generating as much waste that needs to be recycled, or, if it can't be recycled, disposed of. There are various standards that companies can use to assess their ESG performance when it comes to sustainable waste management. One of them out of many are the Global Reporting Initiative (GRI) standards and specifically GRI 306, which was recently updated in 2020.

**Colvin:** Very helpful. You talked about the why. We've answered the question why it's important to be factoring recycling into any ESG program. Can you talk a little bit, you know, how does that happen? How do you really factor it in?

And to your point, it's much broader than literally, making sure that we put our cans and our plastic in the right color-coded wastebaskets, that our paper gets in the right wastebasket. It's much broader than that. From your perspective and based on your experience, Adam, how can companies factor recycling into their ESG analysis in a meaningful way?

**Cutler:** We could think about this kind of in different categories. To take the biggest elephant in the room first, plastics, which we maybe commonly think of as easily recyclable. Plastic recycling is actually a lot more complicated than that. Not all plastics are the same, not all plastics are actually recycled and the way that they're recycled can differ between types of plastics. So at bottom, there are two key issues here for companies to think about when you're looking at this in the ESG context.

One, the vast majority of plastics are petroleum-based products. So we're talking about products with a high carbon intensity, high carbon footprint. Second, there's an increasing understanding of the adverse impacts, not just from a GHG emissions standpoint, but the adverse impacts of microplastics, which are the tiny breakdown particles from plastics that have been found. Essentially, they're ubiquitous in marine ecosystems and other parts of the environment. They're being found in animal bloodstreams, fish bloodstreams, human bloodstreams.

All of this is the backdrop for the plastics discussion. Companies that are able to cut back on their use of plastics, particularly disposable or single-use plastics, can achieve significant reductions in their carbon footprint. That has positive impacts, obviously not only on their company's ESG profile, but more broadly as well for global climate.

These reductions in use of plastics can happen through, for example, a careful rethinking of production processes, if your company is more focused on the production side of things in the manufacturing world or related industries.

It can happen through changing purchasing practices and consumption practices company wide, even at the most mundane level. Think about the average company lunch room and all of the plastics that might get used in the course of a day and by folks coming into that lunchroom or break room.

**Colvin:** That was a really helpful explanation with respect to the recycling of plastics, and you raised some points that I was not aware of, particularly with respect to the issue of microplastics. I think that would also be news to many of our listeners. So that's helpful. Can you talk a little bit about other

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categories of recyclable materials and how companies can include those as part of a recycling program within their ESG program?

**Cutler:** Sure. The next most commonly thought of category would be paper. As a society, it certainly may be true these days that more of our documents are living exclusively in the digital world than ever before. But paper is still a significant driver of recycling costs, particularly in service industries, but certainly not exclusively.

While there are a lot of variables, the production of new paper is something that certainly can be carbon intensive, as well as resource intensive in ways that itself can have adverse impacts on the client, for example, by way of deforestation. So again, companies can think about ways to change internal behaviors, change purchasing practices to either reduce consumption of paper overall and/or to favor the purchase and use of recyclable, sustainable paper products so that overall, they're contributing to a reduction in the necessity to manufacture new paper and contribute further to things like deforestation. All of that, when viewed overall, can have positive impacts when it comes to ESG assessments.

Some other key categories that I think people often don't think of when it comes to the sustainable management of waste are categories that are growing at significant rates over the most recent decade or so.

Food waste, when it winds up in a landfill, can generate significant levels of methane, which I think probably many of our listeners know is one of the most powerful greenhouse gases and contributes significantly to climate change. Again, thinking about reductions in food waste to the extent that is relevant to your company can have a positive impact on your ESG profile.

The other significant category and growing certainly over the last, let's say 50 years, is e-waste: electronics waste. Many electronics we now almost think about as disposable, right? The next generation comes along and we're ready to move on to the shinier object with more bells and whistles. What happens to that older generation of electronics, a lot of which contain high value recoverable materials that, often in the first instance, were either energy intensive or carbon intensive to extract from the earth or to refine? If we don't reuse or properly recover and treat those materials, they wind up in landfills or they wind up in incinerators. That can create its own issues in terms of burning these chemicals. But certainly, these are situations where thinking about policies and practices that would tend to reuse or recycle these electronics in appropriate and sustainable ways would avoid the need for the next round of GHG-intensive extraction of minerals or GHG-intensive refinement of those materials in the first instance to manufacture new products. So overall, by focusing more attention on the reduction, reuse and/or proper recycling of wastes, a company can make its profile much more sustainable and much more climate friendly.

**Colvin:** You talked a lot about ways that companies can engage in the sustainable management of their own waste. That's super helpful, but can you talk a little bit about what else businesses can do to have a positive impact, perhaps with respect to the sustainable management of the waste generated by others, and what companies should be thinking about with respect to, for example, their supply and customer chains?

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**Cutler:** Yes, and certainly as we project forward to the time when the SEC's ESG rule might come into effect, it's gonna be important for companies to look up and down its supply and customer chains at the practices of its vendors and the practices of its customers.

What are your vendors doing? Can you learn from them? Can you influence their practices if they're not already doing things in a sustainable way? Going back to the lunchroom example, does your lunchroom supply vendor only offer plastics or do they offer truly compostable products? There's a whole lot of nomenclature out there, and some compostable products are only truly compostable in certain instances, but are they offering alternatives to single use disposable plastics? If they're not, maybe your next RFP takes that into account and seeks to require your vendor to offer those options.

Another thing to think about is ground truthing. So, thinking about the recycling practices in your building. Whether your company owns that building or leases it, often those practices at the end of the day are left in the hands of the custodial or janitorial staff, and may be subject to various municipal vagaries about how recycling is handled.

But what do you really know about what happens to your recycling after you've asked your employees to put it into those color coded bins? Do the cans and bottles and paper wind up going to the right place? In some cases, companies are surprised to learn that their recycling bins just get combined together with the trash for collection.

Having these conversations with your custodial vendor or your landlord or your municipal recycling coordinator can be an important step. Taking that last example to a larger scale, companies don't want to be in a position where their public pronouncements about their recycling practices turn out to be inaccurate.

So, ground truthing, really, particularly, becomes important for public companies who might find themselves covered by the SEC's new rule. But in general, if you're going to be making public pronouncements about your company's sustainability and recycling practices, you do want to take those extra steps to make sure that in fact what is happening matches your public statements.

**Colvin:** Yeah, and I can't emphasize enough... I see ESG through the lens of litigation because that's what I've done my entire career, and I can't emphasize enough the importance of when public statements are made and disclosures are made -- whether that's in a public filing with the SEC, whether it's a company statement on a website, whether it's in marketing materials or even on social media -- that those statements actually match the reality that the company is facing. Meaning, that you're not overstating, that you're not making a commitment that you're not prepared to actually meet. And that's not to say that companies that make these commitments need to make changes overnight or that they should be expected to meet those commitments overnight. But whether it's through litigation or through regulatory enforcement action, companies are going to be forced to demonstrate that they have the appropriate infrastructure in place to be able to measure, validate and then report on these commitments.

So with respect to recycling, to the extent your company is making representations to the public about what its practices are and what its commitments are, it's very vitally important, from a legal, regulatory

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and reputational risk standpoint, that those disclosures and commitments be accurate, truthful and that there be substance behind them, so that you can demonstrate with tangible and concrete evidence that you're actually doing what you're saying.

**Cutler:** Absolutely. That even extends beyond the ESG context to more general, greenwashing sorts of claims where companies could be subject to liability under consumer protection statutes or fair trade statutes and regulations if their public pronouncements and public statements and disclosures don't match the reality.

**Colvin:** That's right. And what I think is difficult for companies to get their arms around, particularly in the ESG context, is the pressure that they're feeling to differentiate themselves in the market when it comes to environmental and social issues. They feel this sort of pressure to race, to get something out. Whether it's a commitment to reduce their carbon footprint, whether it's a commitment to use more renewable sources of energy, or whether it's a commitment to engage in better recycling practices, companies are finding themselves in the position of leaping before looking. And of course that just creates more legal and reputational risk for all the reasons you said.

The advertisement here is be careful, but more importantly, have the infrastructure in place to be able to demonstrate that your actions are meeting your statements and that you're capable of demonstrating that what you say is what you're doing.

So let's get back to recycling. What other advice, Adam, can you offer to companies who are wrestling with some of these thorny recycling issues and how to engage in the sustainable management of waste?

**Cutler:** In some ways, David, I would reflect back on what we're doing here at Fox Rothschild. We want to lead by example so we aren't just talking about these issues. We're, as a firm, trying to identify and implement practices that ensure we're operating sustainably and where necessary to make proactive sorts of corrections to past behaviors. If there's a better way to do it, why not be proactive and do it.

We're also in that proactive mindset because under the proposed new SEC rule, it's a very strong likelihood that our clients will be asking us to report on our recycling measures and waste reduction measures for their Scope 3 reporting. This is something that's important to us as a major nationwide law firm with multiple offices, and it's also important to our clients. Now, we are of course, as lawyers in the service industry, we don't have opportunities to rethink our production processes in ways that would actually cut our recyclables or our waste.

But as lawyers, we certainly do use a lot of paper and we certainly do drink a lot of coffee. While it may sound simple, all of those, for example, those single-brew coffee pods add up. One of the things we've done as a firm across our 29 offices is that we've partnered with a vendor that responsibly collects and recycles those single-brew plastic coffee pods. That's one step that we've decided to take firm-wide: Working with a reputable and responsible partner. Likewise, our firm Sustainability Committee is developing a policy focusing specifically on changing our firm-wide purchasing and consumption practices concerning plastics and paper.

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As a member of the Law Firm Sustainability Network, Fox Rothschild has just undertaken an assessment of our firm-wide practices using the American Legal Industry Sustainability Standard, or ALISS, and we achieved silver status. We've taken some significant steps to get to that point. We still have more room for improvement. We'd certainly like, next year or two years from now, to be saying that we've achieved platinum status. But I certainly foresee more progress over the next year as we get that paper and plastics policy implemented firm-wide across those 29 offices and start seeing both the cost reductions that we expect to see, making our practices somewhat more uniform across the firm when it comes to purchasing, but also becoming more sustainably focused along the way.

**Colvin:** Yeah, I can say just in terms of the work that we're doing on ESG for clients, it's very important to us when we're in the room with clients and talking about what they should be doing that we can look them in the eye and let them know that we're not just directing them to undertake these initiatives, some that may be costly. That we're actually doing it ourselves as a law firm here at Fox Rothschild and that we are leading by example.

I appreciate and thank you, Adam, for your engagement with respect to the firm's Sustainability Committee and the leadership that you've brought to the work that committee is doing. I appreciate very much your time today. I think that's all the time we have for this particular episode.

I appreciate you joining us again to talk about another important topic with respect to recycling. I think you imparted a lot of important information, and I hope our listeners learn something along the way. So thanks for being here, Adam.

**Cutler:** Thank you, David. I really appreciate the opportunity for the conversation.

**Colvin:** Absolutely. So that will conclude this episode of our "ESG Essentials" podcast. Please check in regularly and stay tuned for the next episode, which will be coming your way soon. Thanks everybody.

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