PUTTING A DENT IN

Metal Theft

Put more resources toward criminal investigation and prosecution, increase the penalties on thieves, and bring recyclers, law-enforcement agencies, and other affected parties together to find solutions to metal theft, recyclers say.

By Diana Mota

Metal theft doesn’t discriminate, says Chip Koplin, chair of ISRI’s materials theft task force and government and public affairs manager for Portland, Ore.-based Schnitzer Steel’s Southeast region (Macon, Ga.). “You have the same issue in every municipality and every state.” Whether the material is stolen from property that’s urban or rural, commercial or residential, public or nonprofit doesn’t matter, says Barry Wolff, vice president and general manager of Charleston Steel & Metal Co. (Charleston, S.C.) and president of the South Carolina Recyclers Association (Columbia, S.C.). “It’s a crime of opportunity. … A person who steals doesn’t care what he steals or who he takes it from.” Scrapyards are victims, too, says Jeff Farano Sr., corporate counsel and director of governmental relations for SA Recycling (Anaheim, Calif.). “We get ripped off all the time. Scrap comes in the front door and goes out under the back fence.”

Although thieves view every potential target as an equal opportunity, new laws states have enacted to combat the problem have an unequal impact, recyclers say. They have little to no effect on illegitimate operators or the thieves themselves, but they make it difficult and costly for legitimate recyclers to conduct business, says Danielle Waterfield, ISRI’s assistant counsel and director of government relations. Waterfield traces the vast array of state laws to an increased awareness of metals theft, a crime that has existed for decades, if not centuries. The problem seemed to enter the U.S. public consciousness in the mid-2000s, however, when metal prices were reaching new highs prior to the 2008 recession. Prices have gone up and down many times since then, but media and public attention to metals theft has not gone away. When hospitals, churches, or schools become victims of metal
theft, that’s front-page news, and the public outcry demands that something be done, Farano says. It’s become an emotional issue, he notes, and lawmakers’ “knee-jerk, reactionary” response usually is to implement “laws that attempt to prohibit recyclers from buying certain types of metal with the belief it will stop people from stealing that metal.”

Those who have worked on this issue say that such laws won’t solve the metals theft problem. “It’s not a simple matter of passing a law,” says Steve Levetan, senior vice president of Pull-A-Part (Atlanta), which operates in 12 states. “It takes a complete system” of laws that target and penalize thieves, effective enforcement, focused prosecution, personal responsibility, and teamwork among recyclers, lawmakers, law-enforcement agencies, and other stakeholders.

REFOCUSING THE LAWS

Forty-eight U.S. states have metals theft laws, Waterfield says, and that number could rise to 49 as North Dakota considers a metals theft bill in its 2013 legislative session. (Alaska, the remaining holdout, does not have—nor is it considering—metals theft legislation, she says.) The problem with most such laws is they focus on the scrap processors, not on the criminals, she says. Every law requires recyclers to maintain records about certain scrap sellers and sales transactions. Thirty-one states mandate that recyclers hold some metal purchases: The yard must automatically—or when notified by law enforcement—segregate the material and refrain from selling it for a period that ranges from 24 hours to 90 days. (The longer holds almost always require that law-enforcement agencies have probable cause to believe the material is stolen.) Twenty-seven states restrict when or on what terms yards can purchase scrap metal with cash, with some states banning cash payments for any metal transaction, for particular metals (such as copper), or for metal items such as copper air-conditioner coils. Twenty-eight state laws have registration or licensing requirements for metal recyclers, dealers, and/or transporters. Twenty-four states require scrap buyers to report certain scrap transactions daily or upon a law-enforcement agency’s request.

Without distinguishing markings, some types of scrap metal—such as the copper tubing above—are virtually impossible to identify as stolen. Other materials, such as municipal manhole or water meter covers (right), are more suspect, unless the recycler has a contract to handle such material.

The list of requirements keeps growing, Waterfield says, and the burdens they impose on the industry are costly, but they have shown little or no results. “There’s no evidence that restrictions on metals [purchases] deter metal theft,” Levetan says. These recyclers propose a different approach: “We need to come up with ways to penalize the thieves, not legitimate recyclers,” says Koplin, who is immediate past president of the Georgia Recyclers Association (Norcross, Ga.). He acknowledges, however, that doing so is “a real challenge.” Waterfield urges recyclers to keep the focus on the thieves when working with other stakeholders on new legislation. “Policymakers need to be reminded that it’s the thieves who are causing damage and endangering public safety.”

Metals theft laws should give law-enforcement agencies and the legal system the tools they need
South Dakota doesn’t need new laws to address the metals theft problem, says Attorney General Marty Jackley. Instead, his zero-tolerance approach to grand theft—as well as the state’s strict penalties for convicted criminals—are keeping the problem in check, he says.

The legal system should take property crimes seriously, Jackley says. “Oftentimes, if you look at a violent criminal’s history, you’ll see criminal activity progressed from property crimes to more serious crimes,” thus better enforcement of one could reduce the other. In South Dakota, theft of most property (not specifically metal) valued at more than $1,000 is a Class 4 felony, which is a 10-year prison sentence. “It’s a pretty heavy hammer,” he says. About 18 percent of the inmates in South Dakota’s state prisons are there for property-related crimes. Thefts valued at or under $1,000 are sentenced locally.

South Dakota’s theft laws base criminal charges and penalties on the stolen property’s market value. A revision of the law that will take effect this July creates a tiered system that starts with a two-year sentence for thefts valued at $1,000 to $2,500 and goes up to a 25-year sentence for thefts valued at more than $500,000. It lowers the penalties for low-valued thefts, and it raises the penalties for higher-value thefts—where metal thefts most likely would fall, Jackley says.

Though metals theft in the state has increased over the last five to 10 years, it’s still rare—Jackley estimates he comes across several cases a year. He can’t say for certain how many metals theft cases the state has prosecuted, but “I’m not aware of any we’ve lost.” He credits the low incidence of metals theft to the state’s tough theft laws, but also to reporting and tag-and-hold requirements on the sale of specific metals when a law-enforcement agency requests it, which create a paper trail for prosecutors. “If we question a particular sale, recyclers have to hold the material for 10 days for us to conduct an investigation,” Jackley says. “The reporting requirements make it difficult to receive and sell stolen material.”

South Dakota does not allocate specific resources to metals theft, but it has some additional tools that support its laws, Jackley points out. The attorney general has concurrent criminal jurisdiction with all 66 county state’s attorneys, or district attorneys, so his office can prosecute a case if the local authority doesn’t have the resources. “We have a double opportunity, so to speak, to make sure a case like metal theft doesn’t fall through the cracks,” he says.

“The attorney general’s office’s primary responsibility is to back up and assist local law enforcement and local prosecutors. Those folks … know what crimes are occurring in their communities.” The state attorney general’s office also has its own police force of about 50 officers, which is uncommon. Housing investigators and lawyers under the same roof makes the legal process run more smoothly because it creates more communication between the two groups, Jackley says. Other states could achieve similar results by developing close communications and working relationships between law-enforcement agencies and prosecutors, he adds.

Jackley co-chairs the National Association of Attorneys General’s criminal law committee. ISRI is working with that association to raise awareness about the scrap recycling industry and develop relationships with state policymakers. For more information, contact Danielle Waterfield, ISRI’s assistant counsel and director of government relations, at 202/662-8516 or daniellewaterfield@isri.org.
of disrupting communication or electrical service to critical infrastructure or to more than 10 customers can be fined at the court’s discretion, imprisoned for up to three years, or both.

Some states have forfeiture laws that take property, such as vehicles or tools, used in the commission of the crime and sell it to provide restitution to the state or victim, Koplin says. Georgia allows the forfeiture of tools but not vehicles because the thief could have commandeered someone else’s vehicle for the crime. Still, “that’s something we’ll continue working toward,” he says. Another idea is for those convicted of metals theft to lose public benefits, “but that would be quite a stretch to accomplish.”

Laws that make businesses more visible to law enforcement also help deter or catch thieves, Farano says. More states are considering registration and/or licensing requirements for recyclers, which ISRI members seem to support as long as they aren’t overly burdensome or used as a revenue-generating tool for states, Waterfield notes. Some states, such as New Mexico, make recyclers that sell materials such as manhole covers, guardrails, or catalytic converters register with the state. To register in New Mexico, a business must stipulate that it has all local and state-required business licenses and complies with U.S. Environmental Protection Agency regulations on stormwater. Registration gives law-enforcement agencies additional tools to shut down unauthorized processing operations that provide thieves with an outlet for stolen material, says Minda McGonagle, the lobbyist for the Responsible Metal Recyclers Initiative, a group of New Mexico scrap metal processors that supported the law. As Farano puts it, illegitimate scrap operations are “typically not following environmental or metal theft rules. Make them register, and you’re going to solve several problems.”

South Carolina took a slightly different approach: Individuals who sell or transport secondary nonferrous metals must apply for a two-year permit through the local sheriff’s office, Wolff says. Registering “doesn’t cost them anything, and it takes about 10 minutes.” Sheriffs can revoke a permit if the holder is convicted of a metals theft, he adds. Though the permit could cause some sellers to hop state lines, recyclers in Georgia and North Carolina, which border South Carolina, must collect most of the same information about scrap sellers as well as photograph them, Wolff says. “The information will still be there for law enforcement.”

These recyclers don’t support bans on the sale of certain materials, but they acknowledge that restricting who can sell such materials seems to be an effective theft deterrent. Ace Metals (Albuquerque, N.M.) has posted a sign listing New Mexico’s restricted items, which include highway signs, cemetery urns, and aluminum oxygen bottles. “If you show up with something on the list, you have to have a letter from a business owner or state organization that states you’re an authorized agent” for the sale of that material, says Tim Mings, general manager. “We frequently will call to verify it.” The company turns away anything that looks suspicious, he adds, and it calls its nearby yards to make them aware the seller might try again. In Georgia, a 2012 law limits who can sell copper and aluminum air conditioner coils. Authorized sellers are “folks who would legitimately have something like that,” such as HVAC or demolition contractors, or “people who can document they just replaced an air-conditioning unit by showing a receipt or work order,” Levetan says. “We have heard that—at least anecdotally—[the law] has had some impact” on reducing metals theft.

**STRICT ENFORCEMENT**

Laws are really a small part of the solution to crime, Levetan says—“It’s against the law to kill people, and we still have murders.” Farano agrees. “It’s not about getting the right legislation. It’s about getting good enforcement of the laws we have.”

One barrier to enforcement, says Jay Robinovitz, president and chief operating officer of Alter Trading Corp. (St. Louis), which operates in eight states, is “there’s very little room [in prisons] for perpetrators of crimes against property as opposed to crimes against people.” Metal thieves know this, so the law doesn’t deter them, Wolff says. “Thieves have to get jail time, or they won’t get the message. The first person who goes [to prison] for six or eight years could make the second person think twice.” If thieves aren’t going to spend time in jail, then laws need to have other serious consequences, Levetan says. “Unless there are real penalties, and the penalties are enforced, who’s discouraging these guys?” Wolff asks. “The judicial system must apply the law in a manner that sends a clear message to criminal thieves that this crime will not be tolerated.” Waterfield says.

The recyclers suggest that states should better enforce the laws they have before they create new ones. States such as California keep adopting new
regulations without adding enforcement resources, Farano says. California’s law-enforcement agencies don’t have the money or personnel to pursue rogue scrap processing operations, he says: The Los Angeles area has one officer assigned to more than 120 scrapyards in the city and two officers who cover the county. “It’s impossible for them to cover that much ground.” This puts legitimate recyclers at a disadvantage and tarnishes the industry’s image, he says. “I don’t think we need lots of studies that say if you have more enforcement, you’re going to drive the crime down. That’s just common sense.”

PERSONAL RESPONSIBILITY

Any discussion of metals theft prevention should include a conversation about the responsibility of a property owner to take reasonable precautions to deter theft, Wolff says. No one is going to mandate that individuals, businesses, utilities, or government agencies protect their property, Koplin says, but “it needs to be part of the discussion. Property owners have to treat [metal objects] as valuables and secure them.” Most people don’t think twice about locking their cars or homes, he points out. “This is no different.” The importance of securing property should be communicated to the public, he adds. Gary Bush, ISRI’s director of materials theft prevention, emphasizes several points to property owners: “Be aware of what you have, recognize what could be a target for thieves, and take steps to protect it.”

Automotive recycler Pull-A-Part spray paints company information or an identifying mark on potential metals-theft targets, such as the air-conditioner unit and catalytic converters above. Such marks can deter thieves, help police arrest guilty parties, and allow recyclers to recover stolen property.

Simply putting an identifiable mark on an item could deter or help prosecute a theft, recyclers say, because identifying and recovering material after it’s been stolen can be difficult. In most cases, “it’s darn near impossible to identify where scrap metal came from once it shows up at the yard,” Wolff says. “A piece of copper tubing is a piece of copper tubing; a condenser out of an air conditioner is a condenser out of an air conditioner.” If the material can’t be identified, then prosecutors can’t prove where it came from, Robinovitz says, and “the legal system can’t make a case.” That’s why Koplin and others suggest property owners mark material that could be a target for thieves whenever possible. “It has proven to be an effective way to prevent or even catch metal thieves,” Koplin says. In Columbus, Ga., a task force of law-enforcement officers, prosecutors, landlords, and recyclers created a program that assigns each landlord a color combination to paint on air-conditioning coils on each of their properties, Koplin says. “Recyclers were trained to look for the spray paint and to call police if they saw it.” Public-service announcements promoted the effort and put thieves on notice, he says. “Many times, when thieves see material is marked, they don’t even attempt to steal it. They know prosecutors could prove where they got the coil.”

Along the same lines, Pull-A-Part marks its catalytic converters. Thieves who recently stole some autocats from one of the firm’s locations were caught as they tried to sell them, Levetan says. “The recycler recognized the marking because we had previously notified him” of the system. As recyclers, “we have a responsibility to look for those markings,” he adds. “The police have a responsibility to enforce the law. Prosecutors have a responsibility to prosecute. You need all of those aspects working together to really affect metal theft.”
JOINING FORCES
Those interviewed seem to agree on the value of collaboration among legislators, law-enforcement agencies, the scrap industry, and property owners to combat the problem of metals theft. “We’ve seen that relationships, more so than laws, work,” Waterfield says. As with most crimes, effective deterrence requires community involvement, Farano says. Metals theft seems to have declined in Georgia in 2006, when law-enforcement agencies, recyclers, and other stakeholders began working together, Koplin says. “Thieves are pretty smart,” he points out. “The bad guys aren’t going to legitimate recyclers because they see us in the media, cooperating with law enforcement and prosecutors.”

Working with multiple stakeholders on this problem has several benefits, Robinovitz points out. It “could help state, county, and city officials to recognize the need and importance of bolstering enforcement and give the support needed to secure additional resources for law enforcement and to help them secure prosecution of the actual criminals. We need to work together to identify and prosecute the true thieves.” In the Albuquerque area, “we have a very active anti-theft police department that meets regularly with the scrap industry,” Mings says. The police officers will “bring in industry people, such as telephone or power company officials, who will give a talk so recyclers know better what to look for” if they come across potentially stolen material. Recyclers can emphasize to property owners the importance of immediately getting the word out when something is stolen, Wolff says, such as through ISRI’s ScrapTheftAlert.com system. Several states, including New Mexico, mandate that scrap dealers register with the automated online reporting system so they will get reports of stolen material, McGonagle says.

ISRI continues to seek other avenues for collaboration, Waterfield says. In January 2012, the association began working with state attorneys general, “a branch of government we had never reached out to previously.” As a result, the North Dakota attorney general asked ISRI for help drafting metals theft legislation the industry would support, she says. “We got in on the ground floor.”

DETERMINING WHAT WORKS
Are metals theft laws or any of these other efforts making a difference? It depends on whom you ask. “We don’t get as many calls on metal theft,” Wolff says, and a local sheriff has reported a reduction in metals theft crimes, but it’s all anecdotal, he says. If the laws are working, then why are legislators trying to impose more restrictions? Waterfield asks. Some laws might make it more difficult to sell stolen metal in one area, but that doesn’t stop thieves from stealing the metal there and selling it elsewhere, she says. In 2008, when Memphis, Tenn., passed a more restrictive law, the media reported that air-conditioning coils stolen in that state turned up at a recycling center in Arkansas, she points out.

Metals theft laws in some states, including Colorado and Ohio, create task forces to study the laws’ effectiveness and adjust them as needed—something Farano says he would like to see more states do. Also, law-enforcement agencies should report on how they use the information they collect from scrap dealers and whether it helps them catch thieves, he says. He acknowledges that collecting and analyzing that data puts more demands on law-enforcement resources, but these laws are “requiring us to do a lot of things at additional expense with no real proof” that the requirements have an effect on crime. “We need to identify places where we’ve had positive results and try to determine what caused them so we can replicate the process,” Levetan says. If a law is “putting a burden on us, and it’s not having the desired impact, then it’s a loss all the way around.”

An ISRI-funded study the Council of State Governments (Lexington, Ky.) is conducting could help determine what works, Waterfield says. The first part of the study is looking for localities that track metals theft separately from other property crimes—something ISRI encourages, Waterfield says. “That’s one of the challenges when trying to track what’s working…. Metal theft is often lumped in with property crime in general.” If researchers find enough data for a valid statistical sample, they will examine the metals theft laws in those jurisdictions and the crime statistics before and after the laws’ enactment to determine if there’s evidence of the laws’ effectiveness. “To date, there’s no empirical data that clearly indicates whether anything is working,” Waterfield says, “only anecdotal information supporting or condemning the laws. We’re trying to find—to the best extent possible—what works and what doesn’t.”

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