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Envoyé : lundi 7 décembre 2015 09:29
À : info@phosphorusplatform.eu
Objet : RE: Object: Art. 2(7)d of REACH and recovered phosphates

Dear Mr Thornton,

Please find attached a letter signed by Mr Klaus Berend, DG GROW, and Mr Bjorn Hansen, DG ENV, and concerning the above subject.

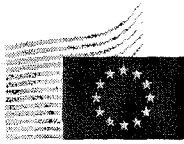
Sincerely,
REACH Team



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GROW/D1/EGJ/ds Ares(2015)6112781

Chris Thornton
European Sustainable Phosphorous
Platform
34 Rue Henri Wafelaerts
1060 Brussels, Belgium
info@phosphorusplatform.eu

Subject: Registration of struvite – response to e-mail of 12 December 2013

Dear Mr Thornton,

As requested, this letter is a formal version of the response already provided by e-mail to the questions posed in your e-mail of 12 December 2013 as regards the registration of struvite¹.

Please note that recovered substances are only subject to registration under REACH or any other REACH obligations when they have been deemed to have left the waste status, either through fulfilling harmonised End of Waste criteria², when these exist at EU level, or through a national decision, taking into account the relevant case law³.

In your message, you asked whether it is acceptable that other operators producing struvite in Europe, as a result of a recovery operation, could benefit from the exemption from registration, foreseen in Article 2(7)(d) of REACH, in a situation where, due to the absence of a previous registration of the substance by a "primary" manufacturer or importer, a registration had already been submitted by another recovery operator (who consequently at the time was unable to benefit from the exemption).

¹ Hexahydrated magnesium ammonium phosphate (EC No: 232-075-2)

² Based on Article 6(1) of Directive 2008/98/EC (Waste Framework Directive)

³ Based on Article 6(4) of Directive 2008/98/EC (Waste Framework Directive)

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As indicated in Article 2(7)(d)(i) the condition for an operator to benefit from the exemption from registration is "that the substance that results from the recovery process is the same as the substance that has been registered in accordance with Title II". Note that as indicated in the relevant ECHA guidance⁴ "*in order to benefit from the exemption in Article 2(7)(d) of REACH, it is sufficient that a registration was filed for the substance by any registrant. This registrant does not have to be part of the supply chain leading to the waste generation*".

Therefore, as long as the operator recovering the substance can demonstrate that the substance that he recovered is the "same as the substance that has been registered" (even if that registered substance is a recovered substance itself), and provided that the second requirement defined in Article 2(7)(d)(ii) is also fulfilled, that operator will be exempted from the obligation to register the substance.

Whether the situation that you describe for struvite could also occur again in the case of other substances, like those you describe in your e-mail (bone-ash, hydroxyapatite from precipitation of wastewater liquors or amorphous phosphate from sewage sludge incinerator ash), will depend on the existence of a previous registration of the same substance (be it primary or recovered) and on the feasibility of meeting the conditions in Article 2(7)(d). As in the case of struvite the previous considerations apply subject to compliance with Article 2(2) of REACH.

In the event that such a situation is expected to occur in the future, it would be advisable that recovery operators, being unable to rely on the "recovered substances" exemption (i.e. where the substance in question has not previously been registered), would organise themselves in a SIEF and arrive at the appropriate cost-sharing and data sharing arrangements prior to the first registration of the recovered substance, which should also facilitate compliance of all operators with the requirements contained in Article 2(7)(d)(ii).

Yours sincerely,



Klaus Berend
Head of Unit
DG Internal Market, Industry,
Entrepreneurship and SMEs



Bjorn Hansen
Head of Unit
DG Environment

⁴ Guidance on waste and recovered substances. Version 2. European Chemicals Agency, May 2010.