



ESPP information note on recovered struvite and regulation

*Date: 5/10/2015. **Important:** this document is based on the conclusions of discussions between a number of struvite producing companies at the 2nd European Sustainable Phosphorus Conference, Berlin, 7th March 2015. It is provided for informal and indicative information only. It is accurate to the best of knowledge of ESPP. All regulatory obligations regarding struvite recovery are the responsibility of the companies or organisations concerned who should take appropriate legal or administrative advice if useful. ESPP cannot be held responsible in any way for consequences of the information provided here. Also, ESPP is not a regulatory consultancy and cannot provide advice or replies concerning specific cases or questions.*

REACH (European Chemical Regulation)

Article 2(7)d of REACH facilitates regulatory formalities for “recovered substances”
“The following shall be exempted ... (d) substances, on their own, in preparations or in articles, which have been registered ... and which are recovered in the Community if: (i) the substance that results from the recovery process is the same as the substance that has been registered ...”^{i ii}

There are currently (7/2015) **different interpretations** of the possible application of this article of REACH., including that ESPP has received a written response from the European Commissionⁱⁱⁱ indicating that:
“as long as sameness of the recovered substance produced by the second operator, with that of the registered substance (even if a recovered substance itself) can be demonstrated, ..., the second, and subsequent recovery operators would be exempted from the obligation to register the substance.

Since then, the European Commission has submitted questions concerning recovered phosphates to HelpNet, the coordination forum for national REACH helpdesks and to Commission services responsible for waste policy. Answers may be expected before end 2015.

Berlin Wasser have prepared, financed and submitted a REACH dossier for struvite. It was necessary that one company did this (article 2(7)d only applies if the substance has been registered once already). Berlin Wasser are proposing a simple cost-sharing scheme with prices for “dossier access” (right to refer) as follows:

- 4 000 € for production <100 tonnes per year struvite, dry weight
- 7 000 € for 100-1,000 tonnes per year
- > 1 000 tonnes: to be defined if needed

These are one-off payments. No further payment is required (unless in the future there are unforeseen additional future dossier costs e.g. additional testing). Conditions for access for e.g. several sewage works using the same struvite technology supplier should be discussed directly with Berlin Wasser.

It is **the legal responsibility of each struvite producer** to decide whether or not to submit a (co)-registration dossier to ECHA under REACH and whether or not to purchase “access” (right to refer) to the Berlin Water struvite REACH dossier.

The struvite producers present at the Berlin meeting

- agreed that EU producers of struvite should ensure that they have necessary information and preparation for REACH registration. They can thus show **“due diligence” in preparing for REACH**
- to do this, producers should
 - (a) **purchase access to the Berlin Wasser dossier** and
 - (b) carry out analysis^{iv} of their product to show that it is indeed “struvite” (**sameness**), i.e. can be considered to be the same substance as the struvite^v registered under REACH by Berlin Wasser
- they considered that it is **not necessary to actually submit the REACH co-registration dossier to ECHA** (and so not necessary to pay ECHA fees) in that currently available information justifies that this is not required by application of Art. 2(7)d



ESPP considers that

- it is **important that the Art 2(7)d exemption be indeed applied to recovered struvite** (and to nutrient recovery in general, after a recovered substance is registered once), because otherwise every sewage works or farmer recovering phosphorus would have to prepare a REACH co-registration dossier, submit to ECHA and pay ECHA fees. This would often be a deciding obstacle to P-recovery implementation
- it is nonetheless important that the objectives of REACH are fulfilled for recovered nutrients (testing to ensure **user, public and environmental safety and information**)
- this is ensured by the **Berlin Wasser REACH registration of struvite costs for this should be shared between all producers**

End-of-Waste

It is unclear whether recovered struvite is a “waste” and needs to pass “End of Waste” status, or whether it is considered a “by-product” and so is considered not a waste, and whether this impacts application of Art. 2(7)d. Interpretations currently vary.

Some companies have indicated to ESPP that they have obtained End-of-Waste status for struvite by self-declaration. ESPP is trying to collect documentation of these cases, to provide a precedent for future production in other Member States or regions.

EU Fertiliser Regulation and definition of struvite

The **EU Fertiliser Regulation 2003/2003 is currently under revision**, with the objective of widening its scope from only mineral fertilisers to authorise (CE label) organic and recovered fertilisers, subject to “annexing” specific criteria for each category. This revision process is now confirmed with announced objective of a draft revised regulation by end 2015, which will then go into the translation, European Parliament, Council decision process.

ESPP has proposed possible **criteria defining “what is struvite” and under what conditions it could be authorised as a fertiliser** (origin – substrate and recovery process, purity, contaminants, physical and safety criteria, labelling, testing and monitoring)^{vi}. This document is published on the ESPP public website^{vii}. The European Commission has asked (June 2015) its scientific service JRC to initiate the formal work process to elaborate an official proposal for such criteria.

For information, JRC has also been asked to work on **criteria for biosolid ashes** (from incineration of sewage sludge, manures, other biosolids) for use as a fertiliser, or as a fertiliser production raw material. ESPP is currently drafting input to this process for ashes.

ⁱ Note: the conditions of Art. 2(7)d(ii) do not apply to struvite because it is not Classified

ⁱⁱ See also the ECHA (European Chemical Agency) “Guidance on waste and recovered substances” https://echa.europa.eu/documents/10162/13632/waste_recovered_en.pdf

ⁱⁱⁱ Email from DG GROW dated 19/8/2014 in response to a written question from ESPP, copy available on request from ESPP

^{iv} Indicative guidance regarding analysis of inorganic phosphate compounds to show sameness can be found on the Inorganic Phosphates REACH Consortium website <http://www.reachcentrum.eu/consortium/ip-reach-consortium-126.html> Although this Consortium does not cover struvite, it does cover similar substances such as calcium and magnesium phosphates.

^v To consult the publicly available information from the struvite REACH registration, go to <http://echa.europa.eu/information-on-chemicals> and enter the EC number 232-075-2 in the search form

^{vi} ESPP “EU Fertiliser Regulation criteria for recovered struvite”, 24 April 2015 transmitted to DG GROW

^{vii} <http://www.phosphorusplatform.eu/platform/news/648-esp-p-proposes-fertiliser-criteria-for-struvite>