



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Deputy Director General for Food Safety responsible for Directorates D, E, F and G

Brussels
SANTE/G2/MK/sc(2022)7668049

Subject: Letter in response to Ares(2022)4033785 - 31/05/2022 on possible use in fertilisers of Cat1 ABP ash and of materials derived therefrom

Dear Mr Hermann,

Thank you for your letter of 13 September 2022 on the above subject and for the legal opinion attached to your letter. I am pleased that you acknowledge the explanations provided in our letter Ares(2022)4033785 of 31/05/2022 concerning the uses of Category 2 and 3 ash in fertilisers.

The European Parliament and the Council excluded Category 1 materials from the feed chain to prevent the recycling and the re-introduction of BSE/TSE prions into the European herd. Fertilisers are the starting point of the feed chain, therefore the use of Category 1 material in fertilisers is not allowed either. This exclusion results in several restrictions and strict official controls all along the manufacturing chain of fertilisers. Any revision of legislation as regards the use of ashes from Category 1 material in the manufacturing of fertilisers is a question of public and animal health risk, and is subject to prior EFSA risk assessment.

Kindly note that this reply represents the technical position of the Commission's services and is not binding on the Commission as an institution. Please also note that the Commission services do not provide legal assistance or confirm legal interpretations provided by external parties. Only the Court of Justice of the European Union is entitled to interpret Union law with final binding authority.

Yours sincerely,

[e-signed]
Claire Bury

Mr Ludwig Herman
President of the European Sustainable Phosphorous Platform
e-mail : info@phosphorusplatform.eu

To: the European Commission:

Sandra Gallina, Director-General, DG SANTE

Copy: Hans Ingels, Head of Unit, DG GROW F2 Bioeconomy & chemicals

13th September 2022

Object: possible use in fertilisers of Cat1 ABP ash & of materials derived therefrom

Your refs. Ares(2022)4033785

Dear Ms Gallina,

Thankyou for your detailed and clear letter of 31st May 2022.

We note the confirmation that offgases from manure are not within the scope of the ABP Regulation.

We welcome positively your confirmation that work is underway to define ABP End Points for use in CE fertilising products of Cat2 and Cat3 ashes, and of materials derived therefrom.

We also welcome positively that your services are preparing a mandate to EFSA concerning the safety of Cat1 ashes. We fully support that ensuring safety is the priority. We wish to suggest that this mandate should:

1. cover not only Cat1 ashes, but also materials derived from Cat1 ashes, in particular phosphoric acid or phosphate chemicals extracted from such ashes.
2. cover not only use of Cat1 ashes used directly (on fields) as a fertilising product and use of materials derived from Cat1 ashes in the manufacture of fertilising products, but also other uses of materials derived from Cat1 ashes. For example, phosphoric acid recovered from Cat1 ashes can be of high purity, and Circular Economy benefits would be optimised “upcycling” of this acid not to fertiliser production but to the industrial commodity chemical market (as purified phosphoric acid).

We hope that you can take the above requests into consideration, in the EFSA mandate, in order to enable nutrient circularity, whilst ensuring safety.

We are at your disposal to provide any further information, or contacts with companies or knowledge institutes in our network susceptible to be able to do so, concerning ash processing and concerning nutrient chemicals recovered from ashes and their uses. Also, for your information, we have contracted a literature search on sanitary safety of Cat1 and other ashes, which we hope will be delivered before end 2023, and we will make this available to your services and to EFSA.

Your letter includes the following statement: “*the use of ash from ... Category I meat-and-bone meal in the manufacturing of organic fertilisers and soil improvers is currently not allowed in accordance with Article 32 of Regulation (EU) No 1069/2009*”. Because we are not legal experts, and because of the complexity of this discussion, we have contracted an expert Legal Opinion. The objective of this Opinion is to forward discussion, with the aim to hopefully find positive ways forward. We attach this Opinion for your information, in a spirit of constructive dialogue.

We hope that you will be able to take into consideration the legal approaches suggested in this Opinion and examine whether it may be possible to (subject to EFSA conclusions) enable (a) use of Cat1 ashes and materials derived therefrom in EU fertilising products, and (b) placing on the market as commodity chemicals of certain chemicals derived from Cat1 ashes, without modification of the ABP Regulation itself via Delegated Acts (modification of annexes of the ABP Regulation and of the Fertilising Products Regulation, EU End-of-Waste status, other to be defined).

Albeit repeating ourselves, we underline again that Cat1 ashes offer a quantitatively significant potential for phosphorus recovery in Europe, and that phosphate rock is on the EU Critical Raw Materials list, with pressure considerably increased by the consequences of Russia's war on Ukraine. Cat1 ashes are also qualitatively very relevant for phosphorus circularity, containing high phosphorus levels and low levels of heavy metal contaminants, so adapted both to the fertiliser recycling route and to "upcycling" to higher added-value and higher overall environmental benefit routes, by production of industrial commodity chemicals.

We also underline again ESPP's position that safety is the priority, as well as user confidence of this safety, and that in parallel to clarifying legal aspects (ABP Regulation, End-of-Waste, Fertilising Products Regulation, REACH) we fully support your proposal to request an EFSA safety assessment.

We hope that you will find this input positive and look forward to your replies to our requests and proposals above.

Yours faithfully



Ludwig Hermann, President.