



## **Draft Order declaring certain substances and articles as by-products under Law 7/2022 of 8 April 2022 on contaminated waste and soils for a circular economy.**

**29/07/2024**

I

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (hereinafter the 'Waste Framework Directive') was transposed into Spanish law by Law 22/2011 of 28 July 2011 on contaminated waste and soils. Both standards introduce a set of requirements that must be met in order for a substance or article, resulting from a production process the primary purpose of which is not the production of that substance or article, to be deemed a by-product and not as waste.

The four conditions laid down in Article 5 of the Waste Framework Directive for the change of legal status were as follows: it is certain that the substance or article is to be used at a later stage; that the substance or article can be used directly without having to undergo further prior processing outside of normal industrial practice; the substance or article is produced as an integral part of a production process; and that the subsequent use is legal, i.e. the substance or article complies with all relevant requirements for the specific application relating to products and to the protection of the environment and health, and shall not lead to overall adverse impacts on the environment or human health. For its part, Article 4(1) of Law 22/2011 of July 28 2011 brought together these four conditions with a minor alteration: in the second condition, the law mentioned 'usual industrial practice' instead of 'normal industrial practice', and the fourth condition maintained the same criterion, although without making specific reference to the subsequent use being legal.

Subsequently, Article 5 of the Waste Framework Directive, as amended by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018, amended Directive 2008/98/EC on waste. Following this amendment, the Waste Framework Directive maintains the wording of the four conditions to be met in order to achieve by-product status, although some changes are introduced. First, the European Commission may adopt implementing acts to lay down detailed criteria on the uniform application of the four by-product conditions. Second, where those detailed criteria have not been defined at Union level, they may be established by the Member States.

Next, Law 7/2022 of 8 April 2022 on contaminated waste and soils for a circular economy transposes Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018. Article 4 maintains the wording of the four conditions to be fulfilled in order to be able to consider a substance or article as a by-product. These conditions have to be fulfilled simultaneously in order to be able to apply the legal regime for by-products, otherwise the regime for waste would apply.



However, certain significant developments are introduced in relation to competence on the assessment and approval of by-product applications. Article 4(2) of the already-repealed Law 22/2011 of 28 July 2011 attributed the assessment of substances or articles to the Waste Coordination Commission and proposed their approval as a by-product to the then Ministry of the Environment, Rural and Marine Affairs, which was ultimately responsible for approval by order.

By contrast, Article 4(3) of Law 7/2022 of 8 April 2022 now divides the competence to assess and approve applications for by-products between the Ministry for the Ecological Transition and the Demographic Challenge (hereinafter ‘the Ministry’) and the competent authorities of the Autonomous Communities. On the one hand, the Autonomous Communities shall evaluate and authorise applications for by-products, if appropriate, for substances or articles originating from a production plant located in their territory, provided that they are intended for a specific industrial activity or process in the territory of their own community or in the territory of another community after a favourable report from that community. As for the Ministry, it is responsible for the evaluation and declaration of a substance or article as a by-product, when it is carried out with general scope throughout Spanish territory. In the latter case, the assessment and declaration procedure shall be initiated either ex officio or at the request of an autonomous community, eliminating the possibility that it is at the request of an interested party.

In accordance with final provision 4(2)(a) of Law 7/2022 of 8 April 2022, the declaration of a substance or article as a by-product shall be made by ministerial order.

## II

This Order follows the line of other orders on by-products approved and published in Spain. This standard is part of the scope of European Union law, where there is no uniform regulation on by-products through European regulations, but each Member State has developed European provisions with particularities since, at times, there are different national approaches on the concept of by-products and on the evaluation process.

In this case, the Ministry initiates ex officio the procedure for the declaration of certain substances or articles as by-products in accordance with Article 4(5)(a) of Law 7/2022 of 8 April 2022.

In the preparation of this Order, the relevant evaluation process has been followed for the declaration of certain materials as by-products. Consequently, the companies concerned submitted an application to the Ministry for each of the substances or articles. For the analysis of each of the applications, the Ministry commissioned a technical study in order to assess the adaptation of these materials to the concept of by-products.



The first condition laid down in Article 4(1) of Law 7/2022 of 8 April 2022 for a substance or article to be regarded as a by-product is the assurance that that substance or article shall be subsequently used. In this regard, each application was accompanied by both the documentation that could prove this, and the undertaking by the recipient companies that such use would take place, as evidenced by their signature and participation in the joint application.

With regard to the second condition, namely that the substance or article can be used directly without having to undergo further processing outside of usual industrial practice, it was found that no processing of the material is carried out and therefore it is also fulfilled.

As regards the third condition, that the substance or article is produced as an integral part of a production process, it can be said that each of the materials analysed derives from its own production process, constituting 'material obtained unintentionally', in accordance with the term 'by-product' as set out in the Interpretative Communication on waste and by-products from the Commission to the Council and the European Parliament of 21 February 2007.

Lastly, the fourth condition is that the subsequent use of the substance or article complies with all relevant requirements relating to products, as well as to the protection of human health and the environment, without overall adverse impacts on human health or the environment. It has been verified that the candidate materials for by-products comply with the requirements set in the standards set at product level that are included in the corresponding legislation. And in the event that there are no standards, it has been verified that these materials meet the technical specifications required by the user industries receiving the material. Regarding the generation of new adverse impacts, for each of the cases analysed it has been found that no new impacts are expected or that, at least, the use of the by-products shall not generate impacts other than those that could occur when using the material to which the by-products are capable of replacing.

Finally, the technical study carried out concluded with a report reflecting compliance with the four conditions laid down in Article 4(1) of Law 7/2022 of 8 April 2022, for each of the applications concerned, finally proposing to this Ministry its declaration as a by-product by ministerial order.

### III

This Order consists of seven articles and two final provisions. It is supplemented by an annex.

This standard aims to declare certain substances and articles as by-products, with application throughout the territory of the State, as established in Article 4 of Law 7/2022 of 8 April 2022.



The scope of this standard covers substances or articles of a very different nature, coming from different industrial activities and processes; some are derived from aluminium production, electrolytic copper production and oxalic acid synthesis. Others are substances or articles of agri-food industries, such as diluted sulphuric acid; and others, manufacturing remains from vegetable, timber and associated industries and tissue paper processing industry.

In addition, each of these materials is assigned certain uses to which they must be assigned so that they can meet the status of by-product, as regulated in Article 1(1) and in accordance with Article 4(1)(d) of Law 7/2022 of 8 April 2022. Therefore, any other use of the substances or articles covered by this standard that differs from those referred to in Article 1 would not be covered by this Order, since its consideration as a by-product would not have been assessed and would therefore have to be managed under the legal regime of waste, in order to ensure its proper management and to adequately protect human health and the environment.

#### IV

This standard meets the principles of sound regulation set out in Article 129 of Law 39/2015 of 1 October 2015 on the Common Administrative Procedure of Public Administrations. In accordance with the principles of necessity and effectiveness, this Order is based on the adequate protection of human health and the environment, determining in which situations the substances or articles it regulates are considered by-products and in which situations they are not and must comply with waste regulations. The declaration of certain substances or articles as by-products also ensures the protection of human health and the environment as it sets out the criteria under which they can be used safely and establishes traceability obligations during their use. Moreover, it is based on a clear identification of the objectives, and given the highly technical nature of the requirements set, it is considered the appropriate instrument to achieve them.

This standard complies with the principle of proportionality, since it regulates the essential aspects for the purpose it pursues, which is to determine when certain substances or articles derived from different productive activities can be declared as a by-product in accordance with Law 7/2022 of 8 April 2022.

In accordance with the principle of legal certainty, the standard is consistent with the rest of the national legal order and the European Union, since it allows clarifying the by-product status for certain substances and articles intended for specific uses and, in addition, with general scope for the entire Spanish territory. Consequently, it establishes a stable, predictable, integrated and certain regulatory framework, which facilitates the knowledge and understanding and, consequently, the action and decision-making of the sectors affected.



It also adheres to the principle of transparency, as all public information and hearing procedures have been scrupulously followed.

Finally, in application of the principle of efficiency, this standard ensures maximum efficiency in achieving its objectives at the lowest possible costs for its application.

In drawing up this Order, the Autonomous Communities and the representative entities of the sectors concerned have been consulted; It has also been submitted to the public information procedure, the Waste Coordination Commission and the Advisory Council on the Environment have been consulted in advance, in application of the provisions of Law 27/2006 of 18 July 2006 regulating the rights of access to information, public participation and access to justice in environmental matters (incorporating Directives 2003/4/EC and 2003/35/EC).

This Ministerial Order has undergone the procedure for the provision of information on technical standards specified in Royal Decree 1337/1999 of 31 July 1999, governing the provision of information in the field of technical regulations and standards and of rules on Information Society Services, to meet the provisions of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society Services. In addition, the World Trade Organization has been notified under the transparency commitments set out in the Agreement on Technical Barriers to Trade to which the Kingdom of Spain is bound as a member of the World Trade Organization.

The authorisation to carry out this Order is found in Article 4(5) and fourth final provision 2(a) of Law 7/2022 of 8 April 2022, and its constitutional basis in Article 149(1) (23) of the Spanish Constitution, which confers exclusive competence on the State in matters of basic legislation on environmental protection, without prejudice to the powers of the autonomous regions to lay down additional standards of protection.

By virtue thereof, with the prior approval of the Minister for Digital Transformation and the Civil Service, in agreement with the Council of State, I hereby decree:

#### *Article 1. Aim and scope of application.*

1. The following substances and articles are declared as by-products in the terms of Law 7/2022 of 8 April 2022 on contaminated waste and soils for a circular economy, provided that the requirements established in this Order, applicable throughout the national territory, are met:



a) Saturated sodium hydroxide in aluminium, generated during the anodising and extruding processes of aluminium, for direct use in the manufacture of sodium aluminate.

b) Artificial gypsum, obtained in electrolytic copper production facilities, for direct use as a setting regulator in the manufacture of cement.

c) 60 % nitric acid solution, generated in the manufacture of oxalic acid, for direct use in the manufacture of nitrogenous fertilising products, in accordance with national regulations.

d) Vegetable substrate, for use as a growing medium.

e) Diluted sulphuric acid, obtained in the production of food maize, for direct use in the manufacture of fertilising products, in accordance with national regulations.

f) Chippings, cuttings, sawdust, shavings, logs, curings, cuttings and scraps of virgin wood from logging, sawdust or the manufacture of plywood boards and fruit and vegetable packaging bottoms, for use in the manufacture of particle board and fibreboard.

g) Paper rejects, from converting in the manufacture of tissue paper end products, for use in the preparation of tissue paper pulp.

2. When the substances and articles of the previous section do not comply with the provisions of this Order, the legal regime of waste established in Law 7/2022 of 8 April 2022, as well as in its implementing regulations, shall apply to them.



## Article 2. *Definitions*

For the purposes of this Order, the following definitions shall apply:

- a) 'Diluted sulphuric acid': water solution with food grade sulphuric acid content, obtained in food maize production facilities.
- b) 'Converting': process of transformation or conversion of paper coils.
- c) 'Sodium hydroxide saturated in aluminium': mixture generated in the aluminium anodising and extrusion processes, using caustic soda.
- d) 'Tissue paper': lightweight paper made from paste, dry- or wet-crested or uncrested.
- e) 'Tissue paper product': processed product made from tissue paper in one or more layers.
- f) 'fertilising product': fertilising product as defined in Article 2.7 of Royal Decree 506/2013 of 28 June 2013 on fertilising products.
- g) 'EU fertilising product': fertilising product as defined in Article 2(2) of Regulation (EU) 2019/1009 of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003.
- (h) 'Producer': the natural or legal person who generates any of the substances or articles referred to in Article 1(1).
- i) '60 % nitric acid solution': water solution containing 60 % nitric acid, obtained in installations producing oxalic acid.
- j) 'Cultivation substrate': material as defined in Article 2(1) of Royal Decree 865/2010 of 2 July 2010 on growing media.
- k) 'Vegetable substrate': material resulting from the manufacturing process of preform substrate blocks used as planters.
- l) 'User': the natural or legal person who receives any of the substances or articles referred to in Article 1(1) and uses them for the subsequent use specifically indicated for each of them.
- m) 'Artificial gypsum': calcium sulphate obtained in electrolytic copper production facilities, in particular from sulphur gas desulphurisation processes.





*Article 3. Requirements for substances or articles in this Order to be declared as by-products.*

Substances or articles of Article 1(1) shall meet the following requirements to be declared as by-products:

a) From the moment they are generated on the producer's premises, during transport, and until their final use on the users' premises, they shall not be mixed with other materials, waste or other substances or articles.

b) They shall be stored in appropriate facilities or containers, properly insulated, with the aim of avoiding contamination of soil and surface and groundwater bodies.

*Article 4. Obligations of producers of substances or articles.*

1. A producer wishing to manage any of the substances and articles listed in Article 1(1) as a by-product shall submit a signed declaration of responsibility to the competent environmental body of the Autonomous Community where they are generated, indicating that it complies with the provisions of this Order. The minimum content of that declaration is set out in the Annex.

2. The producer shall send a copy of the declaration of responsibility to the competent environmental body of the Autonomous Community of destination when the user is located in an Autonomous Community other than that of the producer.

3. In the event of any significant change in the production process or in the by-product, the producer must inform the competent environmental body of the Autonomous Community where it is generated, as well as that of the Autonomous Community of destination, where appropriate.

4. The producer shall verify that substances or articles comply with the requirements laid down in Article 3 on its premises.

5. The producer shall comply with the information obligations of Law 7/2022 of 8 April 2022 which apply to them. The producer shall at all times keep a chronological record of the quantities produced and managed as a by-product, as well as their destinations, as set out in Article 64(2) of Law 7/2022 of 8 April 2022. This register shall be kept and made available to the competent authority for inspection for a period of 5 years.

*Article 5. Obligations for users.*

In order for substances or articles referred to in Article 1(1) to maintain their status as by-products, users shall:





a) verify that in their facilities the materials received comply with the requirements established in article 3;

b) if they are to use the substances or articles in the manufacture of a fertilising product or EU fertilising product, comply with the provisions of this Order and with the provisions of Royal Decree 506/2013 of 28 June 2013 on fertilising products and Regulation (EU) 2019/1009 of the European Parliament and of the Council, of 5 June 2019, in so far as applicable to them.

c) if they are to use the vegetable substrate as a cultivation substrate, comply with the provisions of this Order and with the provisions of Royal Decree 865/2010 of 2 July 2010 and Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019, as applicable.

d) keep a chronological record of the quantities used and their provenance, which must be maintained and kept available for inspection by the competent authority for a 5-year period.

#### Article 6. *Control of the autonomous communities.*

The competent authority of the Autonomous Community may, where it deems it appropriate, verify compliance with environmental waste requirements. The verification may be carried out on the producer's premises, during transport, or on the premises of the users of the by-product.

Where the competent authority of the Autonomous Community verifies the inaccuracy, falsity or omission of any data or information incorporated in the declaration of responsibility referred to in Article 4 of an essential nature, all this in accordance with the requirements of this Order, it shall determine the impossibility of continuing to manage the material as a by-product from the moment the facts are known, in accordance with Article 69.4 of Law 39/2015 of 1 October 2015 on the Common Administrative Procedures of the Public Administrations. In this case, the competent authority of the autonomous community shall issue a decision stating this circumstance and informing the producer that they must manage these substances or articles as waste in accordance with Law 7/2022 of 8 April 2022 and other applicable waste regulations.

For statistical and control purposes, the Autonomous Communities shall register each producer of the by-products regulated in this Order in the Register of By-products of the Electronic Waste Information System provided for in Article 66 of Law 7/2022 of 8 April 2022, in accordance with the procedure developed by regulation. The information relating to the by-product contained in this register shall be for the exclusive use of the administration and shall be kept up to date.



*Article 7. Transfer of by-products within the European Union.*

Regulation (EU) 2024/1157 of the European Parliament and of the Council of 11 April 2024 on shipments of waste, amending Regulations (EU) No 1257/2013 and (EU) 2020/1056 and repealing Regulation (EC) No 1013/2006 shall not apply in the following cases:

a) Where the by-products listed in Article 1(1) are dispatched from a producer's installation to a user in another Member State of the European Union, who has also declared these substances or articles as by-products for the same subsequent use.

b) When a user in Spain receives the by-products listed in Article 1(1) from a producer located in a Member State of the European Union that has declared as a by-product those substances or articles, for the same subsequent use.

*First final provision. Attribution of powers.*

This Order is issued under the provisions of Article 149(1)(23) of the Spanish Constitution, which confers exclusive competence on the State in matters of basic legislation on environmental protection, without prejudice to the powers of the autonomous regions to lay down additional standards of protection.

*Second final provision. Entry into force.*

This Order shall take effect 20 days after its publication in the 'Official State Gazette'.



## ANNEX

### Minimum content of the declaration of responsibility to be submitted by the producer.

|   |  |
|---|--|
| <b>BY-PRODUCT NAME AND CPA CODE</b>                                       |  |
| <b>NAME OF THE COMPANY PRODUCING THE BY-PRODUCT</b>                       |  |
| Address of the registered office of the producing company                 |  |
| Y ID  |  |
| <b>CONTACT DETAILS</b>  |  |
| CNAE code   |  |
| <b>NAME OF THE PRODUCTION PLANT(S) OF THE BY-PRODUCT</b>                  |  |
| Address of the production plant(s)  |  |
| NIMA (Environmental Identification Number) of the plant(s) (if available) |  |
| <b>NAME OF THE COMPANY RECEIVING THE BY-PRODUCT</b>                       |  |
| Address of the registered office of the producing company                 |  |
| Y ID  |  |
| <b>CONTACT DETAILS</b>  |  |
| CNAE code   |  |
| <b>NAME OF THE PLANT(S) RECEIVING</b>                                     |  |



MINISTRY  
FOR ECOLOGICAL TRANSITION  
AND DEMOGRAPHIC CHALLENGE

SECRETARY OF STATE  
FOR THE ENVIRONMENT

DIRECTORATE-GENERAL  
FOR ENVIRONMENTAL QUALITY  
AND ASSESSMENT

|   |  |
|---|--|
| <b>THE BY-PRODUCT</b>   |  |
| Address of the production plant(s)  |  |
| NIMA (Environmental Identification Number) of the plant(s) (if available) |  |

The above-mentioned production company declares, under its responsibility, that it complies with all the provisions contained in Order.....

(Place, date and signature)

FOR THE ATTENTION OF THE COMPETENT ENVIRONMENTAL BODY OF THE AUTONOMOUS COMMUNITY OF.....