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COMMISSION IMPLEMENTING DECISION

of 11.1.2023

granting an authorisation under Regulation (EC) No 1907/2006 of the European Parliament and of the Council to Swedish Orphan Biovitrum AB for certain uses of 4-(1,1,3,3-tetramethylbutyl)phenol, ethoxylated (4-tert-OPnEO)

(ONLY THE ENGLISH TEXT IS AUTHENTIC)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC[1], and in particular Article 64(8) thereof,

Whereas:

(1) 4-(1,1,3,3-tetramethylbutyl)phenol, ethoxylated ('4-tert-OPnEO') is listed in Annex XIV to Regulation (EC) No 1907/2006 and uses of that substance are subject to the authorisation requirement in Article 56(1), point (a), of that Regulation.

(2) On 5 June 2019, Swedish Orphan Biovitrum AB ('the applicant') submitted an application in accordance with Article 62 of Regulation (EC) No 1907/2006 for authorisation for a use of 4-tert-OPnEO[2]. The use for which authorisation was sought is as a surfactant in the manufacture of biopharmaceuticals.

(3) On 24 September 2020, the Commission received the opinion on the application adopted by the Committee for Risk Assessment (RAC) and by the Committee for Socio-economic Analysis (SEAC) of the European Chemicals Agency[3] and sent to it pursuant to Article 64(5), second subparagraph, of Regulation (EC) No 1907/2006.

(4) RAC concluded in its opinion that it is not possible to determine a predicted no-effect concentration (PNEC) for the endocrine disrupting properties for the environment of 4-tert-OPnEO in accordance with Section 6.4 of Annex I to Regulation (EC) No 1907/2006, and that therefore 4-tert-OPnEO is a substance for which it is not possible to determine a threshold for the purposes of Article 60(3), point (a), of that Regulation. As a result,

[1] OJ L 396, 30.12.2006, p. 1.

[2] Different names and abbreviations are used to refer to the substance, including 'Triton X-100' in the chemical safety report.

[3] https://echa.europa.eu/documents/10162/489f5b41-90a9-293e-27eb-1bb6a18d5d30

Article 60(2) of Regulation (EC) No 1907/2006 does not apply to that substance and authorisations may therefore only be granted with respect to that substance under paragraph 4 of that Article.

(5) RAC noted that risk to the environment cannot be excluded for non-threshold substances, even at low exposure levels. Consequently, RAC takes the emissions of the substance as a proxy for the risk.

(6) RAC concluded in its opinion that the risk management measures and operational conditions described in the application are not appropriate and effective to limit the risk to the environment. In particular, RAC noted that the production process is taking place in a partly closed system and, although all solid waste and a large amount of liquid waste is collected for incineration and a carbon filter system is installed, a significant amount of wastewater contaminated with 4-tert-OPnEO is still discharged to the municipal sewer system. Therefore, RAC recommended to perform a mass balance analysis in order to confirm the predicted effectiveness of the risk management measures, as well as to increase the efficiency of the filter system, as conditions for authorisation. Moreover, RAC recommended a monitoring programme. Having evaluated RAC's assessment, the Commission agrees with its conclusion and recommendations.

(7) SEAC concluded in its opinion that it has no substantial reservations on the quantitative and the qualitative elements of the applicant's assessment of the socio-economic benefits and the risk to the environment associated with the use of the substance. Taking into account that conclusion, the lack of scientific knowledge at present to quantify or monetise the risk to the environment associated with the use of the substance, the estimated remaining emissions of approximately one kilogram of the substance per year, the estimated benefits due to avoided profit losses and avoided job losses in the order of tens of millions of euros over the recommended review period, the estimated cost of avoiding the remaining releases of the substance in the order of millions of euros per kg, and the qualitatively assessed additional socio-economic benefits of the continued use due to the availability of the biopharmaceutical product for treating haemophilia, the Commission concludes that the applicant has demonstrated that the socio-economic benefits of the continued use of the substance outweigh the risk to human health and the environment arising from that use.

(8) A suitable alternative should be safer, available, and technically and economically feasible. Where suitable alternatives are available in the Union, but not technically or economically feasible for the applicant or its downstream users, an authorisation may be granted if the applicant for authorisation submits a substitution plan. An alternative that provides the functionality and level of technical performance necessary for the use applied for should be considered to be technically feasible.

(9) In its opinion, SEAC concluded that there were no suitable alternative substances or technologies available for the applicant by the sunset date. The Commission, having evaluated SEAC's assessment and all relevant information available, acknowledges that testing and validation need to be completed to confirm the technical feasibility of the identified alternatives for both the viral inactivation step and the post-production cleaning step. The Commission therefore considers that it cannot be deemed that the identified alternatives allow the functionality needed for the use applied for. Thus, the Commission

agrees with SEAC's conclusion and considers that the applicant has discharged its burden of proof in demonstrating the absence of suitable alternatives both in the Union and for the applicant.

(10) The Commission acknowledges that the use of 4-tert-OPnEO for which authorisation was sought covers the use of the substance as a surfactant for virus inactivation in manufacture of biopharmaceuticals as well as a surfactant for post-production cleaning in manufacture of biopharmaceuticals, which have different substitution timelines due to different important requirements on the alternatives. Therefore, for the sake of clarity, it is appropriate to split the use applied for in 'as a surfactant for virus inactivation in manufacture of biopharmaceuticals' ('use 1'), and 'as a surfactant for post-production cleaning in manufacture of biopharmaceuticals' ('use 2').

(11) Therefore, having regard to the conditions laid down in Article 60(4) of Regulation (EC) No 1907/2006, it is appropriate to authorise the uses of 4-tert-OPnEO described in this Decision, provided that the risk management measures and operational conditions described in the chemical safety report as well as the conditions set out in this Decision are fully applied.

(12) The Commission has based its assessment on all relevant scientific evidence currently available, as assessed by RAC and SEAC, and, after having carried out a detailed examination, based its conclusions on a sufficient amount of material and reliable information allowing it to conclude. Nevertheless, additional scientific evidence would allow the Commission to perform its assessment on a more robust or broad evidentiary base in the future. Hence, it is appropriate to request that additional exposure and emission information be submitted.

(13) SEAC recommended in its opinion that the review period referred to in Article 60(9), point (e), of Regulation (EC) No 1907/2006 should be set at 7 years for the use applied for. As regards use 1 as described in this Decision, the Commission agrees with that recommendation, taking into account the relevant elements from SEAC's assessments, and, in particular, the lack of suitable alternatives in a shorter time.

(14) As regards use 2 as described in this Decision, the Commission notes SEAC's conclusion that substitution for that use could be completed faster and possibly within three years from the sunset date. Therefore, taking into account the uncertainties noted in SEAC's recommendation in this regard, including possible delays in substitution due to the transfer of production activities by the applicant, the Commission considers that as regards the use of 4-tert-OPnEO as a surfactant for post-production cleaning in manufacture of biopharmaceuticals, the review period should be set at 4 years from the sunset date.

(15) The language used to describe the risk management measures and operational conditions in the application for authorisation may be different from the official language of the Member State where the use takes place. Therefore, in order to facilitate supervision and enforcement of compliance with the authorisation, it is appropriate to require the authorisation holder to submit, upon request, a brief summary of those risk management measures and operational conditions to the competent authority of that Member State in an official language of that Member State.

(16) This Decision does not affect the obligation of the authorisation holder to ensure that a use of a substance does not adversely affect human health or the environment, having regard to the principle set out in Article 1(3) of Regulation (EC) No 1907/2006. Furthermore, this Decision does not affect the obligation of the authorisation holder under Article 60(10) of that Regulation to ensure that the exposure is reduced to as low a level as is technically and practically possible or the obligation of the employer to eliminate or reduce to a minimum risks to the health and safety of workers at work involving hazardous chemical agents in accordance with Article 5(2) of Council Directive 98/24/EC[4]. This Decision does not affect the application of Union law in the area of health and safety at work, in particular Council Directives 89/391/EEC[5], 92/85/EEC[6], 94/33/EC[7], and 98/24/EC, or any national binding occupational limit values which may be stricter than the applicable limit values under Union law.

(17) This Decision does not affect any obligation to comply with emission limit values or other requirements set in accordance with Directive 2008/50/EC of the European Parliament and of the Council[8] or Directive 2010/75/EU of the European Parliament and of the Council[9], nor any obligation to comply with emission limit values set to achieve compliance with the environmental quality standards established by Member States in accordance with Directive 2000/60/EC of the European Parliament and of the Council[10] or the environmental quality standards established in Directive 2008/105/EC of the European Parliament and of the Council[11]. Compliance with the provisions of this Decision does not necessarily imply compliance with emission limit values or environmental quality standards under any other provisions of Union law, which may include further or more onerous requirements.

(18) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 133 of Regulation (EC) No 1907/2006,

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4 Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 131, 5.5.1998, p. 11).

5 Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989, p. 1).

6 Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 348, 28.11.1992, p. 1).

7 Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work (OJ L 216, 20.8.1994, p. 12).

8 Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L 152, 11.6.2008, p. 1).

9 Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

10 Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

11 Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council (OJ L 348, 24.12.2008, p. 84).

HAS ADOPTED THIS DECISION

Article 1

An authorisation is hereby granted in accordance with Article 60(4) of Regulation (EC) No 1907/2006 for the following uses of 4-(1,1,3,3-tetramethylbutyl)phenol, ethoxylated (4-tert-OPnEO):

Authorisation number	Authorised use
REACH/22/46/0	As a surfactant for virus inactivation in manufacture of biopharmaceuticals
REACH/22/46/1	As a surfactant for post-production cleaning in manufacture of biopharmaceuticals

The authorisation is granted subject to the risk management measures and operational conditions described in the chemical safety report[12], as well as to the conditions set out in Article 2 of this Decision.

Article 2

1. The authorisation shall be subject to the conditions set out in paragraphs 2 to 6.
2. The authorisation holder shall perform a mass balance analysis after the implementation of the risk management measures and operational conditions and document it.
3. The authorisation holder shall increase the efficiency of the installed carbon filter system to the extent technically and practically possible, in accordance with the results of the analysis referred to in paragraph 2.
4. The authorisation holder shall carry out a monitoring programme of 4-tert-OPnEO and its principal degradation products after the carbon filter and prior to release to the on-site sewage treatment plant. The monitoring programme shall:
   (a) be carried out at least four times per year while the plant is in operation. The frequency of the measurements shall be such as to capture variability in the concentrations of the substance and its principal degradation products in the wastewater due to changes or operational fluctuations in the process;
   (b) be based on an analytical method capable of adequately characterising the substance and its principal degradation products in wastewater with appropriately low limits of quantification;
   (c) be recorded so as to include details of the sampling point, the analytical method, the concentrations detected and the corresponding environmental release values.
5. The authorisation holder shall use the information gathered in accordance with paragraphs 2 to 4 and related contextual information to regularly review, at least

[12] https://ec.europa.eu/docsroom/documents/43149

annually, the appropriateness and effectiveness of the risk management measures and operational conditions and, if needed, to introduce measures to further reduce emissions of 4-tert-OPnEO to a level as low as technically and practically possible.

6. The authorisation holder shall document and keep the information gathered in accordance with paragraphs 2 to 5 and submit it, upon request, to the competent authority of the Member State where the authorised use takes place.

Article 3

1. As regards the authorisation bearing number REACH/22/46/0, the review period shall expire on 4 January 2028.

   The authorisation shall cease to be valid on 4 January 2028 if the review report for that use has not been submitted in accordance with Article 61(1) of Regulation (EC) No 1907/2006 by 4 July 2026.

2. As regards the authorisation bearing number REACH/22/46/1, the review period shall expire on 4 January 2025.

   The authorisation shall cease to be valid on 4 January 2025 if the review report for that use has not been submitted in accordance with Article 61(1) of Regulation (EC) No 1907/2006 by 4 July 2023.

Article 4

Where the authorisation holder submits a review report as referred to in Article 61(1) of Regulation (EC) No 1907/2006, it shall include the information in accordance with Article 2(6).

Article 5

Upon request, the authorisation holder shall submit a brief summary of the applicable risk management measures and operational conditions described in the chemical safety report to the competent authority of the Member State where the authorised use takes place in an official language of that Member State.

Article 6

This Decision is addressed to Swedish Orphan Biovitrum AB, 11276 Stockholm, Sweden.

Done at Brussels, 11.1.2023

For the Commission
Thierry BRETON
Member of the Commission

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION