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**COMMISSION IMPLEMENTING DECISION**

**of 21.2.2023**

**granting an authorisation under Regulation (EC) No 1907/2006 of the European Parliament and of the Council to Rousselot bvba for a use 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<sup>1</sup>, 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 20 May 2019, Rousselot bvba ('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<sup>2</sup>. The use for which authorisation was sought is as a surfactant in the manufacturing of low endotoxin gelatin.
- (3) On 2 October 2020, the Commission received the opinions 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<sup>3</sup> and sent to it pursuant to Article 64(5), third 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 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, 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 Article 60(4) of that Regulation.

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<sup>1</sup> OJ L 396, 30.12.2006, p. 1.

<sup>2</sup> Different names and abbreviations are used to refer to the substance, including 'Triton X-100', in the chemical safety report.

<sup>3</sup> <https://www.echa.europa.eu/documents/10162/81fdc4bf-adb3-f225-36f8-6e5959d1eb00>

- (5) RAC noted that the 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) In its opinion, RAC concluded that the risk management measures and operational conditions described in the application are appropriate and effective to limit the risk to the environment posed by that use, both for the current and future installation. As regards the current installation, RAC noted that all solid waste and wastewater contaminated with 4-tert-OPnEO are collected and disposed of for incineration, resulting in zero emissions to the environment. As regards the future installation, RAC noted that the applicant confirmed that all solid waste and wastewater contaminated with 4-tert-OPnEO will be collected for adequate treatment and committed to implementing the best available technology for the treatment of all solid waste and wastewater. In order to ensure that such technology is fully implemented and effective, and that it does not result in higher emissions than the current operations, RAC recommended certain conditions for authorisation. Moreover, RAC recommended imposing additional monitoring programmes. Having evaluated RAC's assessment, the Commission agrees with its conclusion and recommendations.
- (7) SEAC concluded 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 continued use of the substance. Taking into account SEAC's conclusion, the lack of scientific knowledge at present to quantify or monetise the risk to the environment associated with the use of 4-tert-OPnEO, RAC's conclusion that no releases to the environment are expected, the estimated benefits due to avoided profit losses at minimum in the order of between EUR 100 000 and EUR 1 000 000 over the review period, the qualitatively assessed additional socio-economic benefits of the continued use due to the availability of products used in biomedical applications and the avoided environmental impacts from additional transport from a non-Union production site compared to the Union production site, as well as any relevant distributional impact, 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 or 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 for which authorisation is sought should be considered to be technically feasible.
- (9) In its opinion, SEAC concluded that there were no available alternative substances or technologies by the sunset date. The Commission, having evaluated SEAC's assessment and all relevant information available, acknowledges that the identified alternatives do not meet the required endotoxin levels necessary to meet regulatory requirements. The Commission therefore considers that the identified alternatives do not allow the functionality needed for the use for which authorisation is sought. Therefore, the Commission agrees with that 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) Therefore, having regard to the conditions laid down in Article 60(4) of Regulation (EC) No 1907/2006, it is appropriate to authorise the use of 4-tert-OPnEO described in the application, 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.
- (11) 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 require the generation of additional exposure and emissions information.
- (12) 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 12 years. The Commission agrees with that recommendation, taking into account the relevant elements from RAC's and SEAC's assessments, and, in particular, the conclusion that the operational conditions and risk management measures are expected to be appropriate and effective in limiting the risk to the environment and that there are no expected releases to the environment, the socio-economic benefits, the lack of suitable alternatives within a shorter timeline, as well as the long investment cycles and the time needed to obtain regulatory approvals.
- (13) 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.
- (14) 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<sup>4</sup>. 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<sup>5</sup>, 92/85/EEC<sup>6</sup>, 94/33/EC<sup>7</sup> and 98/24/EC, as well as any national binding occupational limit values which may be stricter than the applicable limit values under Union law.

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<sup>4</sup> 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).

<sup>5</sup> 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).

<sup>6</sup> 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

- (15) This Decision does not affect any obligation to comply with any other requirements including emission limit values set in accordance with Directive 2008/50/EC of the European Parliament and of the Council<sup>8</sup> or Directive 2010/75/EU of the European Parliament and of the Council<sup>9</sup>, 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<sup>10</sup> or the environmental quality standards established in Directive 2008/105/EC of the European Parliament and of the Council<sup>11</sup>. 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.
- (16) 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,

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 use of 4-(1,1,3,3-tetramethylbutyl)phenol, ethoxylated (4-tert-OPnEO):

| Authorisation number | Authorised use  |
|----------------------|---|
| REACH/23/6/0         | As a surfactant in the manufacturing of low endotoxin gelatin |

The authorisation is granted subject to the risk management measures and operational conditions described in the chemical safety report<sup>12</sup>, as well as to the conditions set out in Article 2.

#### *Article 2*

1. The authorisation shall be subject to the conditions set out in paragraphs 2, 3 and 4 of this Article.
2. Without prejudice to paragraph 3, the authorisation holder shall collect all solid waste and wastewater contaminated with 4-tert-OPnEO for adequate treatment. The

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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).

<sup>7</sup> 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).

<sup>8</sup> 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).

<sup>9</sup> 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).

<sup>10</sup> 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).

<sup>11</sup> 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).

<sup>12</sup> <https://ec.europa.eu/docsroom/documents/43324>

treatment shall minimise releases of 4-tert-OPnEO to environmental compartments as far as technically and practically possible. Release into the sewage system or surface waters does not constitute adequate treatment.

3. Immediately after the commissioning of the new installation, where the authorisation holder implements risk management measures for the treatment of wastewater contaminated with 4-tert-OPnEO other than incineration, that authorisation holder shall:
  - (a) demonstrate the effectiveness of those measures through an appropriate validation method;
  - (b) carry out a mass balance analysis based on the outcome of the measurements referred to in point (c) and the validation data referred to in point (a) to verify the efficiency and effectiveness of the measures at the production site for the first time by 21 May 2023. This analysis shall:
    - include details of the calculations carried out;
    - include the assumptions made, if any;
    - include the corresponding release values.
  - (c) carry out a monitoring programme of 4-tert-OPnEO and its principal degradation products in the wastewater prior to release into the environmental compartments. The monitoring programme shall be:
    - carried out at least four times per year and during the time of operation. The frequency of the measurements shall be such as to capture the variability in concentrations of the substance and its principal degradation products in the wastewater due to changes or operational fluctuations in the process;
    - based on an analytical method capable of adequately characterising the substance and its principal degradation products in wastewater with appropriately low limit of quantification;
    - recorded with details of the sampling point, the analytical method, the concentrations detected and the corresponding environmental release values.
  - (d) use the information gathered in the measurements referred to in point (c) and related contextual information to review, at least 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;
  - (e) document and keep the information obtained in accordance with point (c), as well as a detailed description of the risk management measures and operational conditions together with the information and any action taken pursuant to point (d). The authorisation holder shall submit that information, upon request, to the competent authority of the Member State where the authorised use takes place.
4. The authorisation holder shall make available the information gathered under paragraph 3, points (b) and (e), and submit it, upon request, to the competent authority of the Member State where the authorised use takes place.

### *Article 3*

The review period shall expire on 4 January 2033.

The authorisation shall cease to be valid on 4 January 2033 if the review report has not been submitted in accordance with Article 61(1) of Regulation (EC) No 1907/2006 by 4 July 2031.

### *Article 4*

Where the authorisation holder submits a review report as referred to in Article 61(1) of Regulation (EC) No 1907/2006, that report shall include the information in accordance with Article 2(4).

### *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 Rousselot bvba, Meulestedekaai 81, 9000 Gent, Belgium.

Done at Brussels, 21.2.2023

*For the Commission*

*Thierry BRETON*

*Member of the Commission*

