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COMMISSION IMPLEMENTING DECISION

of 14.12.2023

granting an authorisation under Regulation (EC) No 1907/2006 of the European Parliament and of the Council to Microporous GmbH for a use of trichloroethylene (TCE) in the context of a review and repealing Implementing Decision C(2017) 7928

(Only the German text is authentic)

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granting an authorisation under Regulation (EC) No 1907/2006 of the European Parliament and of the Council to Microporous GmbH for a use of trichloroethylene (TCE) in the context of a review and repealing Implementing Decision C(2017) 7928

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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/EC¹, and in particular Article 64(8) thereof,

Whereas:

- (1) Trichloroethylene (TCE) 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 1 December 2017, by Commission Implementing Decision C(2017) 7928² an authorisation was granted to Microporous GmbH for a use of TCE as degreasing solvent in the manufacture of polyethylene separators for lead-acid batteries (authorisation number REACH/17/23/0). The time-limited review period referred to in Article 60(9), point (e), of Regulation (EC) No 1907/2006 for that authorised use of TCE expired on 21 April 2023.
- (3) On 10 August 2021, Microporous GmbH submitted a review report in accordance with Article 61(1) of Regulation (EC) No 1907/2006 for authorisation of the use of TCE as extraction solvent in the manufacture of polyethylene separators for lead-acid batteries.
- (4) The European Chemicals Agency sent the opinions on the review report, adopted by the Committee for Risk Assessment (RAC) and by the Committee for Socio-economic Analysis (SEAC) of the Agency³, to the Commission pursuant to Article 64(5), second subparagraph, of Regulation (EC) No 1907/2006. On 20 December 2022, the Commission received the opinions.

¹ OJ L 396, 30.12.2006, p. 1.

² Commission Implementing Decision C(2017) 7928 final of 1 December 2017 granting an authorisation for a use of trichloroethylene under Regulation (EC) No 1907/2006 of the European Parliament and of the Council (Microporous GmbH).

³ <https://echa.europa.eu/documents/10162/1005da6b-80b0-76b0-b423-8f54f4e70775>

- (5) In its opinion, RAC confirmed that it is not possible to determine a derived no-effect level for the carcinogenic properties of TCE in accordance with Section 6.4 of Annex I to Regulation (EC) No 1907/2006 and therefore that TCE 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 that Regulation does not apply to that substance, and therefore an authorisation may only be granted under paragraph 4 of that Article.
- (6) In its opinion, RAC concluded that the risk management measures and operational conditions described in the review report are appropriate and effective in limiting the risks to workers and to members of the general population who could potentially be exposed to TCE via the environment. However, due to minor shortcomings in the exposure estimates for workers, as a result of the few, unrepresentative measurements and the lack of measured exposure data for specific worker contributing scenarios, as well as to further improve certain risk management measures, RAC recommended monitoring arrangements. Having evaluated the RAC assessment, the Commission agrees with its conclusion and recommendations.
- (7) In its opinion, SEAC concluded that the societal costs of not granting an authorisation are higher than the monetised risk to human health and the environment arising from the use of TCE. The Commission, having evaluated SEAC's assessment, concurs with that conclusion and considers that Microporous GmbH has demonstrated that the socio-economic benefits of continued use of TCE 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. Unless justified by particular circumstances, the Commission should not consider an alternative to be economically feasible, where its use leads to a negative economic impact of a magnitude that would jeopardise the economic viability of the operations related to the use for which an authorisation is sought.
- (9) In its opinion, SEAC concluded that there were no suitable alternative substances or technologies available for Microporous GmbH but there were technically and economically feasible alternative substances or technologies in the Union before the end of the review period set out in Decision C(2017)7928.
- (10) The Commission, having evaluated SEAC's assessment and all relevant information available, notes that research and development efforts are still necessary for the alternatives to achieve the required key functionalities, including process oil solubility, residue-free evaporation during drying, chemical stability, including heat resistance, and corrosive properties. Moreover, the identified alternative available in the Union, the substance hexane, is not economically feasible as it would require the relocation of the production plant in another Member State. Thus, the Commission considers that the identified alternatives either do not allow the functionality for the use applied for or are not economically feasible. Therefore, the Commission agrees with SEAC's conclusion and considers that Microporous GmbH has discharged its burden of proof in demonstrating the absence of suitable alternatives for the applicant, but concludes that there are suitable alternatives in the Union.

- (11) In its opinion, SEAC further concluded that the substitution plan submitted by Microporous GmbH is credible and consistent with the review period requested. The Commission, having evaluated SEAC's assessment, concurs with that conclusion and, taking into account the availability of suitable alternatives in the Union for the use applied for and the obligation to submit a substitution plan, considers that Microporous GmbH has discharged its burden of proof in demonstrating the absence of suitable alternative substances or technologies.
- (12) 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 TCE described in the review report, provided that the risk management measures and operational conditions described in the chemical safety report are fully applied.
- (13) 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 additional information on exposure and emission be generated.
- (14) In its opinion, SEAC recommended that the review period referred to in Article 60(9), point (e), of Regulation (EC) No 1907/2006 be set until April 2035. The Commission agrees with that recommendation, taking into account the relevant elements from RAC's and SEAC's assessments and, in particular, the authorisation holder's efforts to reduce exposure compared with the initial application, the socio-economic benefits and risk of the continued use of TCE, as well as the time and efforts necessary to identify and implement a technically and economically feasible alternative.
- (15) The language used to describe the risk management measures and operational conditions in the review report 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 or of its downstream users under Article 56(2) 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 under Article 4(1) and Article 5 of Directive 2004/37/EC of the European Parliament and of the Council⁴ to reduce the use of a carcinogen or mutagen at the place of work, in particular by replacing it, in so far as is technically possible, and to prevent workers' exposure to a risk to their health or safety. This Decision does not affect the

⁴ Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC) (OJ L 158, 30.4.2004, p. 50).

application of Union law in the area of health and safety at work, in particular Council Directives 89/391/EEC⁵, 92/85/EEC⁶, 94/33/EC⁷ and Directive 2004/37/EC, nor does it affect any national binding occupational limit values which may be stricter than the applicable Union limit values.

- (17) This Decision does not affect any obligation to comply with other regulatory provisions including emission limit values set in accordance with Directive 2008/50/EC⁸ or Directive 2010/75/EU⁹ of the European Parliament and of the Council, 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 Council¹⁰ or the environmental quality standards established in Directive 2008/105/EC of the European Parliament and of the Council¹¹. 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 authorisation should therefore be granted in the context of the review referred to in Article 61(1) of Regulation (EC) No 1907/2006. For reasons of clarity and legal certainty, Implementing Decision C(2017)7928 should be replaced by this Decision.
- (19) 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 trichloroethylene (TCE) (EC No: 201-167-4; CAS No: 79-01-6):

| Authorisation number | Authorised use |
|----------------------|---|
| REACH/23/38/0/R1 | As extraction solvent in the manufacture of polyethylene separators for lead-acid batteries |

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).

The authorisation is granted subject to the risk management measures and operational conditions described in the chemical safety report¹².

Article 2

1. The review period shall expire on 21 April 2035.
2. The authorisation shall cease to be valid on 21 April 2035 if the review report has not been submitted in accordance with Article 61(1) of Regulation (EC) No 1907/2006 by 21 October 2033.

Article 3

1. The monitoring arrangements set out in paragraphs 2 to 9 shall apply.
2. The authorisation holder shall install, at the latest by 14 June 2024, an alarm to be activated in case of an airflow drop in the extraction unit below the value which may lead to increase of TCE concentration in the extraction unit.
3. The authorisation holder shall carry out a monitoring programme of occupational exposure to TCE. The measurements shall:
 - (a) take place at least annually or more frequently if a significant increase in exposure to TCE takes place. The frequency of the measurements shall be sufficient to capture any potential increase in exposure of workers to TCE;
 - (b) be based on relevant standard methodologies or protocols;
 - (c) ensure a sufficiently low limit of quantification;
 - (d) comprise personal and static inhalation exposure sampling as well as biomonitoring;
 - (e) be representative of the risk management measures and operational conditions in place, the range of tasks undertaken and of the total number of workers that are potentially directly or indirectly exposed during the production of polyethylene separators for lead-acid batteries, including maintenance and other types of workers;
 - (f) be recorded so as to include contextual information about the tasks performed during sampling, the risk management measures and operational conditions in place and the duration of the monitoring.
4. The authorisation holder shall carry out biomonitoring measurements of TCE, collected with contextual information necessary to identify the relevant working contributing scenarios, risk management measures in place and changes in the process. The measurements shall be carried out at least annually and be based on samples collected at the end of the last shift of the working week.
5. The authorisation holder shall carry out measurements detecting TCE in:
 - (i) the production and finishing areas;
 - (ii) the extraction units;

¹² <https://ec.europa.eu/docsroom/documents/52695>

(iii) the exhaust air.

The measurements referred to in paragraph 5 shall:

- (a) be continuous as regards paragraph 5, points (i) and (iii), and at least weekly, taken with handheld device, as regards paragraph 5, point (ii);
 - (b) ensure a sufficiently low limit of quantification;
 - (c) be representative of the operational conditions and risk management measures used at the site where the authorised use takes place;
 - (d) be recorded so as to include contextual information associated with each set of measurements and, as regards the measurements referred to in paragraph 5, point (ii), the results shall be recorded in a manual logbook.
6. The authorisation holder shall carry out measurements of air flow velocity in the extraction units and of the carbon plant chimney. Those measurements shall be continuous and recorded so as to include contextual information associated with each set of measurements.
 7. The authorisation holder shall use the information gathered in the measurements referred to in paragraphs 2 to 6 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 the exposure and emissions to TCE to as low a level as technically and practically possible and in accordance with the hierarchy of control principles set out in Article 5 of Directive 2004/37/EC.
 8. The authorisation holder shall document and maintain the results of the measurements referred to in paragraphs 2 to 6, the related contextual information as well as the outcome and conclusions of the review and any action taken in accordance with paragraph 7, and shall make that information, including pseudonymised or aggregated biomonitoring results, available, upon request, to the competent authority of the Member State where the authorised use takes place.
 9. The authorisation holder shall document the steps taken to substitute TCE in accordance with the substitution plan, including any deviations from the initial plan and any contingency measures taken. The authorisation holder shall make that documentation available, upon request, to the competent authority of the Member State where the authorised uses take place.

Article 4

Where the authorisation holder submits a review report, it shall include:

- (a) the information referred to in Articles 3(8) and (9);
- (b) a revised exposure and emission assessment based on additional exposure and emission data.

Article 5

Implementing Decision C(2017) 7928 is repealed.

Article 6

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 7

This Decision is addressed to Microporous GmbH, Gewerbestraße 8, 9181 Feistritz im Rosental, Austria.

Done at Brussels, 14.12.2023

For the Commission
Thierry BRETON
Member of the Commission