

IN THE MATTER of the Hazardous Substances and New Organisms Act 1996 (“HSNO Act”)

AND

IN THE MATTER of the Decision-Making Committee with delegated responsibility for powers and functions related to the hearing and deciding of applications under the HSNO Act

THE DECISION-MAKING John Taylor (Chair)

COMMITTEE Ngaire Phillips

Kerry Laing

DATE 23 August 2018

DIRECTIONS AND MINUTES OF THE DECISION-MAKING COMMITTEE

Regards Application APP202804; to import EDN (Ethanedinitrile), a fumigant for use on timber/logs under commercial conditions

1. Following the direction made by the Decision-Making Committee (DMC) Chair at the Hearing on 21 August 2018, this minute is to be documented and made available on the EPA website where the application documents are made available. The DMC may make other Directions or Minutes available to the Applicant and submitters as this hearing proceeds.
2. On 20 August 2018 the Applicant provided 2 documents to the EPA for consideration:
 - (a) “Draslovka’s response to the EPA in support our application to register EDN” (“**Applicant’s response**”); and
 - (b) “Air Concentration Dispersion Modelling Assessment of Ethanedinitrile (EDN) Concentrations in Tauranga Port, New Zealand.” (“**Applicant’s additional modelling information**”).
3. On 21 August 2018, STIMBR, a submitter, also provided new information (**STIMBR new information**). Collectively, the Applicant’s response, the Applicant’s additional modelling information, and the STIMBR new information are referred to as “**new evidence**”.
4. The DMC has accepted the introduction of this new evidence from the Applicant and STIMBR. It notes that EPA, WorkSafe, and submitters have not had an opportunity to review this and may wish to comment on it when they do.
5. Having accepted the new evidence, the DMC has directed that it should be made publicly available on the EPA website as soon as practicable after the conclusion of the Wellington hearing.
6. The Applicant was permitted to present on the basis of the new evidence it has provided at the hearing in Wellington on 21 August 2018. This was subject to the provision of this direction which is intended to provide for procedural fairness to all participants in light of the late provision of evidence, and to assist in reaching a robust decision.

7. The Applicant's presentation suggests that the new evidence that it has provided is fundamental to the issues under consideration. The DMC has also formed the view that the following two areas may benefit from expert conferencing to resolve or narrow technical issues on which there is currently disagreement:
 - (a) air concentration dispersion modelling
 - (b) tolerable exposure limits
8. The purpose of the expert conferencing process is for experts to meet to attempt to agree on relevant facts and issues or clearly agree on the facts and issues on which they cannot agree and the reasons for that disagreement. Discussions are to be structured and, to ensure this is the case, will have a facilitator. Apart from the facilitator, other persons, including members of the DMC will not participate. Apart from a signed joint statement from the experts, the discussions that take place during conferencing cannot be introduced into evidence.
9. Experts must be people who hold relevant qualifications and/or experience in the subject matter and must participate with the aim of reaching a common understanding rather than as an advocate for a position.
10. I direct that the Applicant and any submitters who wish to have one or more experts participate in expert conferencing within the relevant period covered by this direction provide the names of these experts, their qualifications, and confirmation of their availability to gayle.holmes@epa.govt.nz no later than 5 September 2018. Both the EPA and WorkSafe may provide experts who will participate in the expert conferencing.
11. There will be no provision for accepting additional participants beyond those identified by the date as outlined above.
12. I further direct:
 - (a) expert conferencing will take place between the 24th September to the 12th of October 2018. Meetings between experts on air concentration dispersion modelling and tolerable exposure modelling may occur separately.
 - (b) experts must make themselves available at the relevant dates and times and be available to discuss an agenda with the appointed facilitator prior to conferencing
 - (c) EPA staff will organise locations and specify exact dates and times, which will be made publicly available in a schedule by 10 September 2018.
 - (d) If there is any dispute about whether a person should participate as an expert, this will be referred to the DMC
 - (a) experts are expected to prepare prior to conferencing so as to maximise the usefulness of conferencing time
 - (b) experts are required to produce any data which advances their view of the facts or issues to other participants in the expert conference at least 5 working days prior to the time of conferencing,
 - (c) there will be no provision for inclusion or acceptance of any information provided later than the deadline as outlined above.
 - (d) to the extent data become material to the signed joint statement, these will be made available to submitters and the public on the EPA website
 - (e) at the conclusion of conferencing a signed joint expert statement showing the matters on which the experts agree and disagree, and the reasons for any disagreement should be produced.

- (f) the joint expert statements must be provided to EPA staff by 16 October 2018 and be made available by the EPA website on 17 October 2018.
 - (g) the signed joint expert statements will be available for updating information or evidence provided by the EPA or WorkSafe, and to submitters who wish to provide further comment in accordance with the procedures directed in this minute.
13. EPA staff and WorkSafe are, within 15 working days after the joint expert statement has been made public, to:
- (a) evaluate the Applicant's response and additional modelling information together with joint witness statement resulting from expert conferencing,
 - (b) update the Science Memorandum and EPA staff report, and WorkSafe advice as a result of this evaluation, if required.
 - (c) make any updated Science Memorandum, EPA staff report or WorkSafe advice available to all parties on the EPA website.
14. Written comments from submitters must then be provided to the EPA within 10 working days after the updated documents have been made available. Submitters who provide written comment should indicate whether the submitter wishes to be heard.
15. The DMC will, issue a further direction as to whether it considers that the DMC needs to reconvene for a further hearing on the matters raised by the new information referred to in this direction or joint expert statements, within five working days after the close of submissions.

For the DMC:



24 August 2018

Dr John Taylor
Chairperson

Date