

DIRECTION & MINUTE OF THE DECISION-MAKING COMMITTEE

Hazardous Substances and New Organisms Act 1996 (“HSNO Act”)

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

WGT009: Direction & Minute of the Decision-making Committee – 11 December 2019

Applicant request to provide new information

1. This is the ninth direction and minute of the decision-making committee, and seeks to address the request from the applicant, to provide new information to the process for APP202804.
2. In a letter to the Environmental Protection Authority (EPA) dated October 2019, the applicant requested permission to provide new information for consideration by the Decision-Making Committee (DMC). The information proposed related to a revised application rate, new air dispersion modelling information, and information relevant to the consideration of EDN use in New Zealand from other jurisdictions.
3. This direction and minute, and the associated request from the applicant, is to be made available on the EPA website with the application documents.

Consideration of request

4. The DMC having considered the importance of having sufficient information to inform their decision, and the implications on timeframes and procedural fairness, is open to accepting the new information described by the applicant into the process.
5. However, the DMC wish to express their concern that introducing new information at this stage, will likely result in further delays in the decision-making process.
6. The DMC notes that its consideration of the application thus far has been prolonged due to multiple delays including, the prolonged resolution of accepted information following the hearing by expert conferencing, the provision of information by the applicant following a direction and minute of the DMC dated 12 February 2019 and the development of SWI(s) by WorkSafe, the controls identified in those SWI(s) being an important component of the information to be considered by the DMC. The hearing has been adjourned until WorkSafe advises that an SWI has been made or approved in principle (with accompanying information) or that no SWI has been

made. The DMC will use this information to consider if workplace requirements are adequate and if there is any residual risk to the public.

7. Preferably, however, there is scope for the new information to be provided to the DMC in parallel with the SWI process.
8. Noting the separation between different statutory processes, and in no way directing any actions or activities within this separate statutory process conducted by WorkSafe NZ, the new information proposed by the applicant will likely be necessary in determining the Safe Work Instrument (SWI). As such, the DMC requests the applicant to advise WorkSafe about the new information, if it has not already done so and for WorkSafe to, no later than **16 January 2020**, provide a statement clarifying its view of any interface between the new information and the Safe Work Instrument (SWI) process. This statement also includes an update on the timeframe, and any implications from this request on that timeframe on the SWI process.
9. The DMC also requests that the applicant to provide a timeframe for the provision of any new information no later than **23 January 2020**. To the extent that WorkSafe considers the new information relevant or able to be accepted as part of the SWI process, the applicant's timeframe should also take into account that the DMC and other submitters could be considering this information in parallel with any SWI process. In the interests of fairness to all parties, all new information to be provided by the applicant must be provided together, at the same time.

Requirements for new information

10. As per, Minute and Direction 6 (12 February 2019), the DMC wish to reiterate its view that air dispersion modelling undertaken on behalf of the applicant has significant inherent uncertainty, and alone, is an unreliable basis for decision-making. The DMC has indicated its desire for ambient environmental monitoring of EDN from appropriately-scaled fumigation trials to address this uncertainty. For this reason, the DMC is not inclined to use air dispersion modelling as the sole basis for making a decision without compelling evidence of safety and agreement by all parties. Provision of further modelling that provides no improvement on this situation (other than to provide some comparative numbers for use scenarios other than log stack fumigation) is unlikely to significantly progress the understanding of the risks associated with this application.
11. The DMC wish to advice the applicant that should they wish to provide further information, including air dispersion modelling data, it is not the role of a DMC to define technical parameters therein. Where air dispersion modelling is used the responsibility to establish suitable parameters rests with the applicant and its technical experts and with the application team of the EPA. Therefore the DMC will not be involved in setting acceptable parameters.
12. Reiterating their earlier statements, the DMC has a greater interest in large scale trial information, including measurement of environmental levels and information on the feasibility of recapture, that provide clarity on the potential risks associated with this application.

Next Steps

13. Following receipt of the timeframe from the applicant as to when the new information will be provided, the DMC will confirm whether this is acceptable by issuing a minute that will be made available on the EPA website. The applicant's proposed timeframe will also be published.
14. Should the DMC accept the proposed timetable, when new information from the applicant is received by the EPA it will be made available on the EPA website as promptly as possible. Once available, all parties to the proceedings will be invited to comment on the information within **15 days** after the information is made available on the EPA website.

For the Decision-making Committee:



11 December 2019

Dr John Taylor

Date

Chairperson