

# 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

## WGT010: Direction & Minute of the Decision-making Committee – 18 February 2020

### Responses to Direction and Minute 9

#### Background

1. To orientate the reader a summary of the hearing’s background is set out.
2. Hearings on the application were held on 21 and 28 – 29 August 2018. Prior to the hearing (on 20 August 2018) the applicant provided information additional to that contained in their original application. The DMC permitted the inclusion of the new information at the hearing. The hearing was adjourned and a period of expert conferencing directed to enable parties to resolve variance in air dispersion modelling data. Submissions on the outcome of the expert conferencing process were accepted and the Decision Making Committee (DMC) sought further clarification on matters from one of these experts.
3. On 28 January 2019 the DMC advised that the subsequent information presented uncertainties and provided the applicant with the opportunity to provide further information to address these uncertainties or, for the DMC to proceed to determine the application. The applicant accepted the opportunity to provide further information and the hearing’s adjournment was extended. The applicant then provided further information. By this stage workplace controls had become an issue and the relevance of WorkSafe considering the possible issuing of a Safe Work Instrument (SWI) was raised.
4. On 18 June 2019 the DMC again extended the adjournment until either Worksafe advise that their process for considering the making of a SWI is concluded or the applicant notifies that they seek to finalise the hearing or, the DMC at its discretion conclude the hearing and initiate final consideration of the matter.
5. On 23 October 2019, the applicant sought permission to provide the DMC with further information. On 11 December 2019 the DMC stated in Direction and Minute 9 that it was open in principle to receiving further information and sought a time frame for the receipt of this information from the

applicant. The DMC indicated that other submitters would be given an opportunity to respond to this further information. Advice from WorkSafe on their consideration of an SWI was also sought.

6. This is the tenth direction and minute of the DMC and addresses the responses received from the applicant and WorkSafe to Direction and Minute 9, information provided by a submitter and directions for the next steps in APP202804.

### **The applicant**

7. The applicant provided a letter, dated **23 October 2019**, seeking the DMC's approval to submit further information (the new information). In response to the subsequent Direction and Minute (WGT009), the applicant indicated their intention to provide this new information (possibly including information extra and additional to that referred to in their letter of **23 October 2019**), by **23 March 2020**.
8. This timeframe is acceptable and the DMC direct the applicant to provide the new information by **23 March 2020**. If there is a delay in providing the new information then an extension must be sought.
9. The applicant also offered to provide some documentation that was submitted to WorkSafe for the Safe Work Instrument (SWI) process. The applicant is welcome to provide this information at this time or otherwise at the conclusion of the SWI process.
10. The DMC reserves its decision on whether information will be accepted into this process until it has been submitted for consideration.

### **WorkSafe**

11. WorkSafe has provided a letter setting out their intended timeframe for their separate SWI process identifying the appropriate mechanism within their process to manage the receipt of new information. Consultation on this process is expected to begin mid-February and run for six weeks.
12. The DMC has noted their response and thank WorkSafe for this update.

### **Information from STIMBR**

13. STIMBR has requested permission to submit a scientific paper for consideration by the DMC as part of this application process.
14. The DMC has considered this request and determined that it is not appropriate for a submitter to provide further information at this stage of the application process. An opportunity will be provided for submitters to respond to the further information provided as part of the hearing process. If STIMBR considers it relevant, the scientific paper may at that time be submitted for consideration by the DMC.

### **Next Steps**

15. The DMC notes the importance of having sufficient information to inform their decision while recognising the implications on timeframes and procedural fairness of an extended application process. It is noted that this application has been subject to a protracted stream of further information that is challenging for all parties to digest and comment upon. Therefore, it is the intention of the DMC to reconvene the hearing for the purpose of hearing from all parties in

respect of all of current application parameters and other relevant information received since **20 August 2018**. The time for reconvening the hearing will be guided by the SWI process being undertaken by WorkSafe. A future Direction and Minute will outline the process by which all parties can participate in a reconvened hearing.

16. To assist in progressing towards a reconvened hearing the applicant is directed to provide, in addition to the new information indicated above, a succinct document summarising how information submitted since **20 August 2018 has impacted on the original application parameters**, and the associated risks and benefits, by **23 March 2020**. Any responses from submitters to the new information are then to be received within 15 working days of the information being made available on the EPA's website. The DMC wish to indicate to the applicant that the introduction of further information to the application process beyond this date will further prolong the process of consideration
17. The DMC directs this Direction and Minute and the correspondence from the applicant and WorkSafe be made available on the EPA website with other application documents.

**For the Decision-making Committee:**



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**Dr John Taylor**

**Date 18 February 2020**

**Chairperson**