

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

WGT015: Direction & Minute of the Decision-making Committee – 10 November 2021

Reconvening of the hearing

Background

1. On 1 November 2021, the Decision-Making Committee (DMC) released Direction and Minute 13 addressing the reconvening of the hearing for EDN and invited all parties to the process to confirm whether they wished to be heard on matters within the scope of the reconvened hearing.
2. The reconvened hearing for EDN has been set for **Thursday 25 November 2021**.
3. This is the fifteenth Direction and Minute of the DMC. It addresses the details of the reconvened public hearing for APP202804 and presentations by the EPA and WorkSafe, participation of the parties, and hearing timing and expectations.

Hearing participation - presentations by EPA and WorkSafe, parties that wish to be heard

4. As previously advised, the scope of the reconvened hearing is confined to information before the DMC that has been substantially updated or revised since the adjournment of the first part of the hearing in 2018. This information includes changes to any technical parameters under which EDN may be used, the updated EPA Staff Report 2021 and updated Science Memorandum 2021, as well as other relevant documentation provided to the DMC after 29 August 2018 up to 1 November 2021, which are available on the EDN public consultation pages of the EPA website.
5. The DMC would like the EPA to give a presentation that addresses changes to any technical parameters under which EDN may be used, and the updated EPA Staff Report 2021 and updated Science Memorandum 2021, as well as the impact of the draft Safe Work Instruments (**SWIs**) on matters relating to the Hazardous Substances and New Organisms Act 1996 (**HSNO**).
6. The DMC would like WorkSafe to give a presentation that provides background information about the process to develop the draft SWIs, and the way in which they manage risks of EDN in the workplace. The presentation should also address the procedural steps required to make the draft SWIs legally binding.

7. The DMC thanks the applicant and submitters for their previous submissions. These should all be taken as read.
8. Eight parties (including the applicant) have indicated that they wish to be heard on matters within the scope of the reconvened hearing.
9. Four parties provided a response to the Updated EPA Staff report and Updated Science Memorandum in response to Direction and Minute 12. If these parties wish to be heard on additional matters other than those submitted in their responses, the DMC asks parties to advise the Committee via the EPA (as noted in Direction and Minute 14).
10. For the remaining parties (including the applicant), the DMC directs these parties to advise the Committee via the EPA which matters they intend to address at the hearing by 2pm Friday 12 November (also noted in Direction and Minute 14).

Confirmation of hearing timing and expectations

11. The reconvened hearing will be held remotely via Zoom and details will be set out in the Notice of Hearing.
12. For those parties who do not wish to be heard, access to view the hearing will be available via a link in the Notice of Hearing, which is available on the EPA website. This link will be available to the public.
13. The hearing will be transcribed, and transcriptions made available on the EPA website.
14. The DMC notes that the applicant is to have a maximum of one hour to present at the reconvened hearing, including answering questions.
15. The applicant's presentation at the hearing must address matters within the scope of the reconvened hearing and the DMC may take the opportunity to ask questions of clarification regarding the application and evidence.
16. Parties who wish to be heard and who have indicated that they wish to bring a witness must provide an outline the topics that they will cover. Witnesses should be able to bring expertise or special knowledge to bear on the matters raised in the submission.
17. The submitters, including their witnesses, will have a maximum of 20 minutes to make their presentation to the hearing. This time includes provision for questions of clarification by the DMC or by other parties.
18. The DMC would also like to remind all parties that parties who are submitters are not permitted to also appear as witnesses. For reasons of natural justice and fairness, each party is only to have one opportunity to present their case, whether that is as a submitter or a witness.
19. Parties should use their allotted time at the reconvened hearing to address their talking points, highlight their key points and be prepared to answer any questions which the DMC may have in respect of matters within the scope of the reconvened hearing. If any of the parties participating in the hearing wish to speak to a power-point presentation (or similar), this must be provided no later than 5pm on Friday, 19 November 2021 and made available to all parties.
20. The DMC will not allow any party to repeat verbatim its submission from the first part of the hearing or any subsequent submission or response, as its presentation at the hearing. These can all be taken as read.

21. The DMC would like to remind the applicant and all parties to the process that the purpose of a hearing under the Hazardous Substances and New Organisms Act 1996 is not for adversarial representation, nor will there be cross examination of submitters or witnesses permitted in this hearing.
22. As outlined in Direction and Minute 14, the DMC wishes to emphasise that the introduction by any party of new information or evidence at this stage in the proceedings will be at the discretion of the DMC. Should such new information or evidence be permitted, its introduction may require the DMC to adjourn the hearing for a second time in order to allow parties to consider and respond to this new information. This in turn is likely to delay a decision.
23. The DMC takes the opportunity to reiterate the reminder to all parties, as outlined in Direction and Minute 13, that the draft Safe Work Instruments (SWIs) that have been approved in principle are the result of a separate legislative process by WorkSafe, under the Health and Safety at Work Act 2015 (HSWA). Other than the draft SWIs themselves, matters relating to that statutory process or HSWA more broadly (including matters relating to compliance and enforcement) are outside the scope of the reconvened hearing.
24. The DMC reminds participants, including witnesses, that they should not expect to respond to or challenge any information presented at the hearing, outside of the applicant's right to reply, unless the DMC Chair gives leave to a participant to ask a clarifying question.
25. The DMC will expect participants to indicate via the videoconference technology if they would like to ask a clarifying question during the reconvened hearing. The DMC Chair will have the final say on whether a question is in scope of the hearing and will ask it on behalf of the participant. If the DMC Chair deems it appropriate, they may direct the participant to ask the question directly.
26. The DMC expects to receive evidence and information with differences in perspectives. It is the DMC's role to assess those differences and consider the merits of the evidence presented to it and make a decision based on that evidence.

Directions

27. The DMC directs the following:
 - a. The EPA to give a presentation on the application that addresses changes to any technical parameters under which EDN may be used, the updated EPA Staff Report 2021 and updated Science Memorandum 2021, and the impact of the draft Safe Work Instruments (SWIs) on matters relating to HSNO;
 - b. WorkSafe to give a presentation outlining the process (at a high level) to develop the draft SWIs, and the way in which they manage risks of EDN in the workplace. The presentation should also address the procedural steps required to make the draft SWIs legally binding;
 - c. The EPA is to allocate 45 minutes for WorkSafe to make its presentation and answer any questions posed by the DMC;
 - d. The EPA is to allocate 45 minutes in the Hearing for its presentation and answer any questions posed by the DMC;
 - e. The EPA is to allocate 1 hour in the Hearing Schedule for the applicant to present its case at the hearing and answer any questions posed by the DMC;
 - f. The EPA is to allocate 20 minutes for each of the other parties, inclusive of any questions posed by the DMC;

- g. Any party participating in the reconvened hearing that has indicated they wish to call a witness must provide an outline of the topics that the witness will cover to the EPA **2pm Friday, 12 November 2021**;
- h. Any party participating in the reconvened hearing that wishes to make a power-point presentation (or similar) must provide a final version of the presentation to the EPA no later than **5pm Friday, 19 November 2021**;
- i. The EPA to upload any presentations on its website, no later than **12pm Monday, 22 November 2021**;
- j. Any party to the hearing who has questions it would like to be asked can submit these to the DMC during the hearing for DMC to consider asking on behalf of that party;
- k. The EPA to make provision for the reconvened hearing to continue on Friday, 26 November 2021, should the DMC determine that it is necessary.

28. The DMC directs this Direction and Minute be made available on the EPA website.

For the Decision-making Committee:



Dr John Taylor

Date: 10 November 2021

Chairperson