

**Before a Decision-Making Committee  
Of the Environmental Protection Authority**

**APP203660**

<b>Under</b>	the Hazardous Substances and New Organisms Act 1996
<b>In the matter of</b>	the modified reassessment of methyl bromide
<b>By</b>	<b>Stakeholders in Methyl Bromide Reduction Inc</b>  Applicant

---

**16<sup>TH</sup> MEMORANDUM OF COUNSEL FOR THE APPLICANT**

**17 JUNE 2020**

---

---

**Counsel Acting**

M J Slyfield  
Stout Street Chambers

(04) 915 9277  
morgan.slyfield@stoutstreet.co.nz  
PO Box 117, Wellington

## Reply in relation to waiver application

1. By Direction & Minute WGT013 the DMC directed STIMBR to provide any response to comments on the waiver application within 5 working days.
2. STIMBR has considered the comments made by:
  - (a) Emma Jones,
  - (b) Guardians of the Sounds,
  - (c) John Gardner,
  - (d) Matariki Forests,
  - (e) TPT Forests,<sup>1</sup>
  - (f) Ministry for Primary Industry,
  - (g) Nelson Marlborough District Health Board,
  - (h) Rentokil, and
  - (i) Tauranga Moana Fumigant Action Group (**TMFAG**).
3. With the exception of TMFAG's comments, STIMBR does not consider any of the other parties comments warrant a reply from STIMBR.
4. STIMBR replies to three parts of TMFAG's comments.
5. First, TMFAG asserts that it has not had sufficient time to address matters.
6. This needs to be kept in perspective. Of relevance:
  - (a) There is no statutory prescription for the length of time for a submitter to be allowed to make comments.
  - (b) The waiver application plainly raises a matter that requires to be resolved with urgency — the impact of the recapture obligation is

---

<sup>1</sup> STIMBR acknowledges that these comments have been made on a confidential basis, and agrees to maintain the confidentiality of TPT Forest's comments pending further direction from the EPA as to whether this material is commercially sensitive.

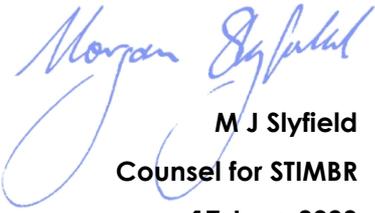
already having an effect on trade, as confirmed by the comments of Matariki Forests.

- (c) The EPA has granted 3 waivers prior to now in respect of this reassessment application, and in those instances no allowance for submissions was provided to participants.
- (d) The waiver does not require a substantive reassessment of the recapture standard. That is for the substantive process.
- (e) The DMC gave TMFAG two weeks to comment.

In all these circumstances, STIMBR submits that TMFAG has had ample time to respond to the narrow issues raised by the waiver application; and that the process the DMC has adopted is appropriate and fair to all parties.

7. Secondly, TMFAG asks for a hearing.
8. STIMBR opposes that request. All of the concerns raised in TMFAG's comments relate to the substantive reassessment. TMFAG is entitled to be heard on those matters when the substantive reassessment is heard. None of TMFAG's comments respond to the specific grounds on which the waiver is sought, namely the issues arising from letters of credit for continued log trade up to the recapture deadline.
9. If the DMC were to take a different view — that the matters raised in TMFAG's comments are of relevance to the waiver — there is still no need for a hearing. TMFAG's comments can be considered by the DMC alongside all other comments from other submitters, and a decision can be made on the papers, as has been the case for the three previous waivers. The matters STIMBR relies on in support of the waiver are well set out in the papers; as are the matters submitters have referred to in comments on the waiver. A hearing is unlikely to add materially to this.
10. Further, the recapture obligation is already having an impact on log trade, and the waiver therefore needs to be determined as a matter of urgency. Convening a hearing in these circumstances would delay a determination, and at this juncture such a delay would itself compound the effects on the log industry (irrespective of how the waiver application is ultimately determined). For all these reasons, STIMBR opposes a hearing on the waiver application.

11. Thirdly, TMFAG says that it wants to present evidence on an “environmentally sustainable alternative” to current methyl bromide fumigation at the Port of Tauranga. This is not of any relevance to the waiver application. It is a matter for the substantive reassessment. In order for TMFAG’s alternative to have any relevance to the waiver application it would have to be an alternative already available for the industry to use, at scale, in substitution for current methyl bromide fumigation practices. The alternative TMFAG refers to is well known to STIMBR, and it does not satisfy these requirements. Accordingly, any evidence TMFAG may wish to give concerning such an alternative is a matter appropriately left for the substantive reassessment hearing.
  
12. Finally, for clarification, there is one aspect of the waiver application that STIMBR needs to address, in response to paragraph 10 of Direction & Minute WGT013. STIMBR acknowledges the substantive reassessment may set a different deadline, which would replace the deadline set by the waiver application. However, the value of the waiver lies in the assurance it provides to the industry that the deadline will occur on a date *after* all outstanding letters of credit fall due, including letters of credit issued up to the date of the DMC’s determination of the reassessment. On this basis, if the waiver is granted on the terms sought, then in due course STIMBR will seek that the deadline not be *reduced* by the DMC’s decision on the substantive reassessment, regardless of the other outcomes of that decision.

  
**M J Slyfield**  
**Counsel for STIMBR**  
**17 June 2020**