

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

APP203660

Under the Hazardous Substances and New Organisms Act 1996

In the matter of the modified reassessment of methyl bromide

By **Stakeholders in Methyl Bromide Reduction Inc**
Applicant

1ST MEMORANDUM OF COUNSEL FOR THE APPLICANT

12 November 2019

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Introduction

1. This memorandum is filed on behalf of Stakeholders in Methyl Bromide Inc (**STIMBR**). It addresses two matters arising from the Notice of Hearing and Hearing Procedures issued by the Decision-making Committee (**DMC**) on Friday 8 November 2019.
2. In summary, these are:
 - (a) Seven working days to provide written evidence to the DMC is unrealistically short and limits STIMBR's ability to file written statements with the quality and detail that STIMBR considers this hearing warrants.
 - (b) With at least four different modelling documents to consider the DMC is unlikely to be able to determine during a public hearing how the models should be interpreted. STIMBR believes that an expert conference that brings together the author of each document would provide the DMC and submitters a clearer understanding of how each model represents reality and its strengths and limitations. STIMBR considers this ought to occur prior to hearing, to provide greater clarity to the process and save time during (and potentially after) the hearing.

Notice period for filing evidence

3. The Notice of Hearing states that the hearing will commence on 3 December 2019. The Hearing Procedures require STIMBR to provide written statements of evidence by 19 November 2019 (being 10 working days prior to the hearing).
4. STIMBR is intending to call at least¹ five witnesses, including:
 - (a) Don Hammond, chair of the Board of STIMBR;
 - (b) Dr Jack Armstrong, phytosanitary treatment scientist;
 - (c) Glen Mackie, Technical manager, NZ Forest Owners' Association;

¹ In addition to these five, STIMBR will make available the authors of the toxicology assessment (Appendix 3 to the application) and ecotoxicity assessment (Appendix 4 to the application) to answer any questions the DMC may have in respect of those aspects of the application.

- (d) David Sullivan, meteorologist; and
 - (e) Mark Self, CEO of Genera.
5. The timing of the Hearing Notice and content of the Hearing Procedures, have given STIMBR seven working days' notice of a requirement to file the written evidence of these five witnesses. STIMBR cannot comply with such limited notice, other than by severely compromising the quality and detail of the written statements. Adding to the difficulty of the limited notice period, Mr Sullivan (who reside and works in the USA) is unavailable due to other fixed commitments for five of those seven days.
6. STIMBR acknowledges that the Hearing Procedures are provisional. They are also required to be appropriate and fair in the circumstances.² Given STIMBR's role as applicant, and the obvious reliance of the application on matters of expert assessment, STIMBR respectfully submits that seven working days' notice to prepare and file written statements of evidence is not appropriate or fair.

Expert conferencing

7. A related issue is that the Environmental Protection Authority (**EPA**) has commissioned additional air dispersion modelling, which is not yet available. When it becomes available (which STIMBR understands will be some time prior to 3 December 2019) it will add to an increasing body of information on air dispersion before the DMC, which includes:
- (a) The modelling reports contained in Appendix 7 of the Application (by Sullivan Environmental Consulting);
 - (b) A review filed with the submission from Bay of Plenty Regional Council (by Atmospheric Science Global); and
 - (c) A peer review of the Sullivan modelling, commissioned by the EPA (from Todoroski Air Sciences).
8. Those three sources already disclose that there are disagreements between experts on the topic of air dispersion modelling, and STIMBR anticipates the further modelling commissioned by the EPA may add to the issues at large

² Hazardous Substances and New Organisms Act 1996, s 61(7).

between the relevant experts. STIMBR has also learned today in response to an unrelated inquiry that the further air dispersion modelling is being undertaken by Todoroski Air Services and that the EPA has commissioned a further peer review of that work from another party.

9. In light of the evolving information on air dispersion it seems likely that all parties would benefit from expert conferencing on that topic to narrow the issues for the DMC's determination. STIMBR respectfully submits such conferencing would have the greatest value if it follows the filing of written statements, but precedes the commencement of hearing (so that refinement of the issues can enable the hearing to be conducted efficiently). The present timetable would not realistically accommodate this.

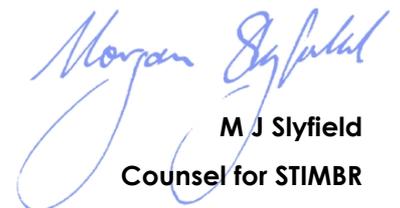
Possible solutions

10. Both the issues identified above could be addressed by deferring the commencement of the hearing. This could provide an appropriate and fair allowance for evidence preparation, and provide time for expert conferencing between the filing of evidence and commencement of the hearing.
11. STIMBR understands that 3, 4, 9, 10 and 12 December 2019 are the only feasible hearing dates remaining in 2019, and realistically the availability of parties and their witnesses may be heavily constrained during much of January 2020.
12. In light of this, if the DMC is minded to address the issues outlined above by deferring the hearing, then STIMBR respectfully proposes that the hearing could be deferred to the earliest feasible dates after January 2020, with further directions from the DMC proportionately adjusting the dates for filing evidence and directing expert conferencing prior to hearing.
13. For example, a proportionate adjustment could require all parties³ to file written evidence by 3 December 2019, and require experts who have filed evidence to conference and file joint statements no later than two weeks prior to the new hearing dates. STIMBR respectfully submits no prejudice could arise from such changes, as they would provide parties with more

³ STIMBR is unaware whether the seven working day notice period affects any other party intending to call evidence, but supports all parties having the benefit of any extension so as to avoid prejudice to any party.

time than is presently allowed for evidence preparation, and would leave open a suitably generous period to accommodate conferencing.

14. If the DMC is not minded to defer the hearing dates, then STIMBR respectfully requests that the date for filing its written statements of evidence, at a minimum, is enlarged by one additional week, to 26 November 2019. While this would not address STIMBR's proposal for expert conferencing prior to the hearing, it would provide STIMBR with the minimum amount of time necessary to enable STIMBR to file evidence of a suitable standard. It would also allow sufficient time for the DMC and parties to familiarise themselves with STIMBR's evidence in advance of the hearing.



M J Slyfield
Counsel for STIMBR
12 November 2019