

**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

20TH MEMORANDUM OF COUNSEL FOR THE APPLICANT

14 SEPTEMBER 2020

Counsel Acting

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1. STIMBR has read and considered the DMC's Direction & Minute WGT023.
2. STIMBR supports the DMC requesting additional information that the DMC considers it needs to inform its deliberations.
3. STIMBR is not yet aware whether Todoroski Air Sciences (**TAS**) has provided the DMC with a time frame for undertaking the additional modelling. In the meantime, STIMBR raises a number of matters in response to Direction WGT023.
4. The DMC has heard evidence from four air dispersion experts: Mr Bender (for WorkSafe), Mr Todoroski (for the EPA), Ms Barclay (for BOPRC) and Mr Sullivan (for STIMBR). The latter three were part of the expert panel convened by the DMC, and they co-authored (along with Ms Niuewenhuijsen) the joint statements that established the methodology for further modelling.
5. Direction WGT023 directs the EPA to procure a further expert to review the the additional modelling to be prepared by TAS, and confirm that the additional modelling is in line with the expert panel's joint statements.
6. With respect, STIMBR submits that those best placed to confirm whether the modelling is in line with the joint statements are the authors of those statements. As the additional modelling is to be undertaken by one member of the panel (Mr Todoroski), the task of confirming whether the modelling conforms with the joint statements would be best performed by the other members of the panel who remain involved, namely Ms Barclay and Mr Sullivan. This would be far more efficient than involving a new expert who has not participated in the hearing, and will have to grapple with all of the relevant information "from scratch".
7. Further, STIMBR assumes that at least part of the DMC's intention is to ensure that the DMC has available for its deliberations the least contentious information. STIMBR is concerned the current process will not achieve this. All the experts who are not involved in the new modelling, or its review, will almost certainly be engaged to comment on the new modelling once it is available. That is, the DMC is almost certain to receive comments from Mr Sullivan, Ms Barclay and Mr Bender. Once these are added to the modelling of Mr Todoroski, and the opinions of a new expert reviewer, the DMC will be in receipt of just as many (if not more) divergent views than those it has

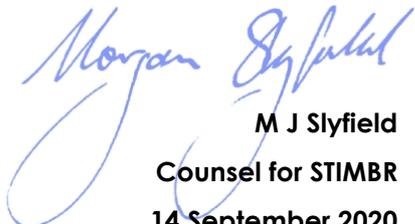
already heard. This may increase the scope of disagreement between experts, rather than lessen it.

8. STIMBR respectfully submits that the most reliable course to lessen the extent of disagreement between the experts would be to continue to use the expert panel both to guide the modelling and review the modelling. It is likely to be of greater assistance to the DMC if Ms Barclay and Mr Sullivan are directed to confer with Mr Todoroski in the design of the modelling, that Mr Todoroski is directed to undertake the modelling accordingly, and that Ms Barclay and Mr Sullivan are directed to review the modelling and confirm that it has been correctly performed in line with the joint statements and the DMC's Directions.
9. STIMBR also notes that paragraphs 10(a) and (c) of Direction WGT023 refer to the additional modelling as "deterministic", and the body of the Direction provides no explanation for this. Mr Todoroski, Ms Barclay, Mr Sullivan and Ms Niuewenhuijsen were unanimous that far-field modelling must account for variability (seasonal, hourly, time of day, location on port, percent recapture, size of log stack, number of ship holds, dosage rates),¹ and they agreed that a Monte Carlo, i.e. probabilistic, approach would be used.² In the absence of any explanation within Direction WGT023, STIMBR cannot ascertain whether the DMC's departure from the unanimous agreement of the experts (by requiring the further modelling to be deterministic, not probabilistic) is deliberate. If that is the DMC's intention, then STIMBR requests to know the basis for this.
10. Finally, if 10(b), (c) and (d) of Direction WGT023 remain in their current form, STIMBR is concerned that allowing only an opportunity to comment, and allowing only 10 working days for that to occur, is unlikely to provide a reasonable opportunity for STIMBR to evaluate and respond to the new information. STIMBR is plainly aware of the need for a timely resolution of the reassessment, but this must be balanced by the need for hearing procedures that are fair and appropriate. STIMBR reserves its position on what process

¹ Joint Statement of Experts in the Field of Air Dispersion Modelling, 19 March 2020 at [15](a).

² Joint Statement of Experts in the Field of Air Dispersion Modelling, 30 January 2020, table beneath [17]; Joint Statement of Experts in the Field of Air Dispersion Modelling, 19 March 2020 at [15](a).

may be appropriate pending any response by the DMC to the matters raised above, and pending the outcomes of the further modelling work.



M J Slyfield
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14 September 2020