

**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

22ND MEMORANDUM OF COUNSEL FOR THE APPLICANT

9 NOVEMBER 2020

Counsel Acting
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Reply in relation to waiver application

1. By Direction & Minute WGT025 the DMC directed STIMBR to provide any response to comments on STIMBR's waiver application¹ within 2 working days.
2. STIMBR has considered the comments made by:
 - (a) Bay of Plenty Regional Council (**BOPRC**),
 - (b) The New Zealand Forest Owners Association,
 - (c) The Ministry for Primary Industries,
 - (d) New Zealand Apples and Pears,
 - (e) Pacific Forest Products NZ Ltd,
 - (f) Rayonier-Matariki Forests,
 - (g) Rokit Global, Rokit Trading and Rokit Packing Company,
 - (h) The Soil & Health Association of NZ (**Soil & Health**),
 - (i) T&G Global,
 - (j) Tenco Ltd,
 - (k) United Fresh New Zealand Incorporated, and
 - (l) WorkSafe New Zealand.
3. With the exception of the comments from BOPRC and Soil & Health, STIMBR does not consider any of the other parties' comments warrant a reply from STIMBR.

Reply to BOPRC's comments

4. BOPRC says it is not clear why the lack of an ongoing trade relationship may put at risk the payments that fall due under letters of credit beyond that date.² BOPRC's references are limited to the memoranda of counsel for

¹ 21st Memorandum of Counsel for the Applicant, 21 October 2020

² At paragraph 2a.

STIMBR, and do not disclose whether BOPRC has considered the affidavit evidence³ and other evidence⁴ that supports the application, or the reasoning set out in the DMC's previous waiver decision.⁵ STIMBR considers the reasons are clear, but if the DMC shares any of BOPRC's doubt, STIMBR will provide clarification at the DMC's request.

5. BOPRC "does not believe the industry should continue venting methyl bromide without any recapture whatsoever".⁶ This implies there is no recapture presently applied, which is not the case. As the DMC has heard, Genera applies recapture technology, and has done for many years, in accordance with the requirements imposed by BOPRC on Genera's discharge consent.
6. STIMBR agrees with BOPRC that any extension must be as a stepping stone towards the highest practicable level of recapture achievable.⁷ The present waiver application, and the broader approach STIMBR has taken towards the substantive reassessment are both entirely consistent with those aspirations.
7. In all other respects, STIMBR considers BOPRC's comments do not warrant a reply, being matters more properly considered as part of the substantive reassessment, not the waiver application.

Reply to Soil & Health's comments

8. The dual premises of of Soil & Health's comments seem to be:
 - (a) The reassessment has been sought late; and
 - (b) Full recapture (i.e. to the existing recapture standard) should commence immediately, or use of methyl bromide discontinue, before the DMC determines the reassessment application.
9. In reply, STIMBR reiterates that it lodged its application for reassessment in March 2019, 19 months prior to the (original) recapture deadline; and has

³ Affidavit of Ian Gear in Support of Application for Waiver, 14 May 2020.

⁴ Expert statement of Christopher Rayes (27 July 2020); Transcript of hearing (12 August 2020) at p 136, lines 17-33.

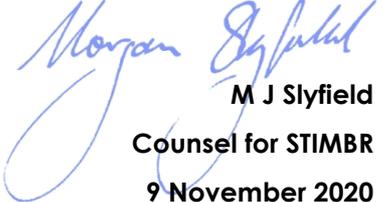
⁵ Direction and Minute WGT015, 1 July 2020.

⁶ At paragraph 2b.

⁷ At paragraph 2b.

done everything in its power to progress the application to the swiftest resolution possible without compromising the the quality of the science on which the DMC's decision must ultimately be based.

10. Secondly, STIMBR submits that to require full recapture in advance of a proper determination of the reassessment would entirely negate the purposes of the reassessment and undermine the extensive work undertaken by all participants, and the EPA, in this process to date.



M J Slyfield
Counsel for STIMBR
9 November 2020