

**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

32ND MEMORANDUM OF COUNSEL FOR THE APPLICANT

28 MAY 2021

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Application for further waiver and directions

1. In this memorandum, Stakeholders in Methyl Bromide Reduction Inc (**STIMBR**) requests the Decision-making Committee (**DMC**):
 - (a) to grant a further waiver of the requirement to apply recapture technology to methyl bromide fumigations;
 - (b) to direct that recapture technology shall be applied to methyl bromide fumigations from 28 February 2022.

Background

2. The EPA controls currently in place require recapture technology to be applied to all methyl bromide fumigations from a specified date (the “recapture deadline”). The DMC has previously granted three waivers of this recapture control and directed that the recapture deadline be extended to 28 April 2021, 28 August 2021 and 28 November 2021.¹
3. The basis for the DMC’s three previous waiver decisions was that the recapture deadline has an impact on log exports to India many months in advance of the deadline actually being reached, due to the letters of credit used to secure payment from Indian importers.
4. These issues were described in detail in STIMBR’s previous applications for waiver and supporting affidavit.²

The need for a further waiver

5. The DMC’s last waiver of the recapture deadline alleviated the impact of the letters of credit issue up to 28 November 2021, being 180 days prior to 2 June 2021.
6. As 2 June 2021 approaches, the issue arises again. Payment for logs exported after 2 June 2021 on 180-day credit terms will fall due after 28 August 2021. The risk of non-payment will arise, for the reasons described in

¹ Direction and Minute WGT015 (1 July 2020) at [46]; Direction and Minute WGT026 (11 November 2020) at [43].

² 13th Memorandum of Counsel for the Applicant (14 May 2020); Affidavit of Ian Gear (14 May 2020), 21st Memorandum of Counsel for the Applicant (21 October 2020), 26th Memorandum of Counsel for the Applicant (18 February 2021).

STIMBR's previous applications for waiver,³ and further described in the submissions of Rayonier Matariki⁴ and evidence presented by Christopher Rayes at the methyl bromide reassessment hearing.⁵

7. The risk will increase and accumulate as log exports continue and the recapture deadline approaches:
 - (a) 180-day payment terms will be at risk after the end of May 2021;
 - (b) 180 and 150-day payment terms will be at risk after the end of June 2021;
 - (c) 180, 150 and 120-day payment terms will be at risk after the end of July 2021, and so on.
8. The advance impact of the letters of credit issue can be avoided if a gap of at least 6 months is maintained between the date of the DMC's final determination and the recapture deadline.
9. STIMBR cannot predict the date of the DMC's final determination, but notes the DMC is yet to close the hearing, and will have 30 working days to issue its decision once the hearing closes. Therefore STIMBR anticipates a determination will not be made by 2 June 2021, at which time the issues surrounding letters of credit will start to impact upon NZ's log trade with India.
10. STIMBR respectfully submits that it would be prudent to extend the recapture deadline by at least a further 3 months, i.e. to 28 February 2022. This would allow, in a practical sense, up until the end of August 2021 for the DMC to issue its final decision before the letters of credit issue begins to impact (again) on log trade with India.

The legal basis for the application

11. The DMC may waive the recapture deadline if it is satisfied that either:
 - (a) The applicant and submitters consent; or

³ Above n 2.

⁴ Submission dated 16 June 2020, in response to Direction and Minute WGT013; submission dated 4 November 2020, in response to Direction and Minute WGT025.

⁵ Expert statement of Christopher Rayes (27 July 2020); Transcript of hearing (12 August 2020) at p 136, lines 17-33.

(b) Any submitters who have not consented will not be unduly prejudiced.⁶

12. STIMBR's position is that no submitter will be unduly prejudiced by a further 3-month extension of the recapture deadline. There has been no change of circumstances since the previous waiver decisions that would mean any submitter is prejudiced by a further waiver.
13. The DMC invited other participants to comment on both previous waiver applications. STIMBR submits that the comments received on those applications fully disclose the range of interests that participants may conceivably have in relation to the present application, which avoids any need to invite further comments. The DMC can reasonably assume that there would be a mix of support and opposition to this application (as there was for the previous applications), and for all the reasons traversed in the DMC's previous waiver decisions, there would be no undue prejudice in granting this application. To proceed without seeking input from other participants would also be consistent with the DMC's decision on the last waiver application.⁷


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28 May 2021

⁶ Hazardous Substances and New Organisms Act 1996, s 59(4).

⁷ Direction and Minute WGT030 (1 March 2021) at [19]-[23].