

**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

---

**3<sup>RD</sup> MEMORANDUM OF COUNSEL FOR THE APPLICANT**

**25 November 2019**

---

---

**Counsel Acting**  
M J Slyfield  
Stout Street Chambers

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

## Introduction

1. This memorandum responds to Direction and Minute WGT001 of the Decision-making Committee (18 November 2019) (**the Direction**).
2. The Applicant:
  - (a) Seeks clarification of the meaning of paragraph 15(a);
  - (b) Provides an initial response to paragraph 15(a);
  - (c) Requests further directions in relation to paragraph 15(c); and
  - (d) Requests further directions in relation to paragraph 15(d).

## Paragraph 15(a)

3. Paragraph 15(a) of the Direction applies to the Applicant.
4. The Direction requires the Applicant to agree to provide any monitoring data it holds in respect of Tauranga Port, Napier Port and Northport. This appears to be limited to monitoring data already in existence.
5. However, paragraph 7 of the Direction states that the Applicant (among others) is to provide information “by preparing and providing modelling and monitoring data” (emphasis added); and paragraph 3 describes the parties to whom the Direction applies as “parties who may either currently hold relevant data, or who have the jurisdiction to obtain data required”.
6. This leaves the Applicant uncertain whether the Direction requires it only to provide monitoring data that is already in existence (and held by the Applicant), or requires it to prepare monitoring data. The Applicant intends to comply with the DMC’s directions, and therefore seeks clarification on this point. The Applicant considers such clarification may be of assistance to the other parties to whom the Direction applies.
7. Related to this, paragraph 15(a) does not set any time limit for providing the information. In the absence of a time limit, the Applicant is concerned that there is a lack of certainty about how long parties have to comply, and when the further information may be deemed to have ‘closed’. The Applicant seeks clarification on this point also.

8. In respect of Tauranga Port, the Applicant holds a copy of an October 2019 report by Golder Associates (NZ) Limited (**Golder**) titled *Technical Air Quality Assessment*. This report was provided to the Applicant in confidence by Genera Ltd. The report forms part of an application by Genera to Bay of Plenty Regional Council for renewal of air discharge consents. As paragraph 15(a) of the Direction applies to Bay of Plenty Regional Council, and paragraph 15(b) of the Direction applies to Genera Ltd, the Applicant anticipates one (or both) of them will provide the report to the DMC.
9. The Applicant also holds copies of graphs that portray the results of some monitoring at Napier Port and Northport. These also were provided to the Applicant by Genera. As paragraph 15(b) of the Direction applies to Genera, the Applicant anticipates Genera will provide this material to the DMC. Further, the Applicant considers Genera is a more appropriate party than the Applicant to address any additional requirements arising out of paragraph 13 of the Direction in relation to this material.

#### **Paragraph 15(c)**

10. The Applicant notes the Direction given to WorkSafe under paragraph 15(c).
11. As a general proposition, the Applicant considers monitoring of actual air dispersion can be useful to validate or corroborate the accuracy of air dispersion modelling. This is, however, dependant on the monitoring protocol. The monitoring must be designed and implemented so that it will provide data in a form that can be usefully compared to the relevant modelling.
12. The Applicant understands the scope and nature of WorkSafe's monitoring are matters for WorkSafe, and have not been directed by the DMC. Until the scope and nature (and potentially other relevant parameters) of the monitoring are known, it cannot be assumed that the monitoring will assist the DMC to analyse the apparent discrepancies between the modelling that has been done by Sullivan Environmental Consulting (**Sullivan**) and the modelling that has been done by Todoroski Air Services (**Todoroski**).
13. The Direction does not disclose whether the DMC intends to make available the advice it receives from WorkSafe (as to the scope and nature of the monitoring), nor the results of the monitoring itself. The Applicant respects that it is solely for the DMC to determine whether it is satisfied with the

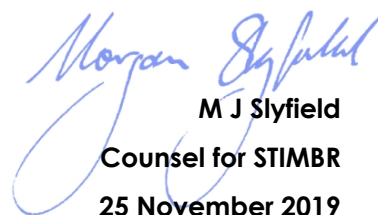
information it receives, yet that is a matter separate from making the advice and information available to the parties. The Applicant respectfully submits that information received by the DMC should as a matter of good practice be made available to all parties without delay. Some parties, including the Applicant, have engaged experts, who will need time to consider any new information, and may need time to prepare additional evidence (or undertake additional modelling), before any new hearing date arrives. The Applicant seeks confirmation that the process will provide for this (and further directions, to the extent that any are necessary to address this).

14. The Applicant also notes the EPA's 18 November 2019 media release describes the DMC as being "responsible for deciding if changes are needed to the rules around methyl bromide use". For the avoidance of doubt, the Applicant's position is that the DMC is responsible for determining the modified reassessment, which is concerned exclusively with the recapture control. No other "rules around methyl bromide use" are within the scope of the modified reassessment.

**Paragraph 15(d)**

15. The DMC has received air dispersion modelling from the Applicant's consultants (Sullivan), which has been critiqued by consultants for Bay of Plenty Regional Council (Atmospheric Science Global) and consultants engaged by the EPA (Todoroski). Subsequently the DMC has obtained further air dispersion modelling from Todoroski and a peer review from Pattle Delamore Partners. As mentioned above, there is further modelling that has been undertaken at Port of Tauranga by Golder, which seems likely to be provided to the DMC either by Bay of Plenty Regional Council or Genera Ltd. This will leave the DMC with three different sets of air dispersion modelling, and three different peer reviews of various parts of them.
16. As the DMC has recorded, there are discrepancies between at least the Sullivan and Todoroski modelling. This includes differences of approach in terms of the model to be used (i.e. AERMOD or CALPUFF) the assumptions in the modelling and the data to be input into the model.
17. This is relevant context for the decision recorded at paragraph 15(d) that the EPA is commissioning air dispersion modelling at Napier Port and Northport.

18. The Applicant supports the decision that air dispersion modelling for those ports should be obtained, but it is clear from the documents the DMC has already received that the experts on air dispersion modelling do not agree on what model is appropriate to use, what assumptions should be made, and what data should be input.
19. The Applicant respectfully submits that before any further air dispersion modelling occurs, it would be sensible and efficient for the DMC to direct the relevant experts to conference, to see what they can or cannot agree about the modelling methodology. Merely commissioning one of the experts to undertake further modelling while those fundamental disagreements remain at large seems likely to furnish the DMC with information that will be as contested as the information it already has. By comparison, if an expert conference can produce some agreement (it need not even be complete — it would be of significant advantage even if some of the areas of disagreement could be reduced) then the scope for further dispute over the results of the additional modelling will diminish. Relevant to this, the Applicant is considering engaging additional experts who may be appropriate to include in any expert conferencing.
20. In light of the above, the Applicant requests the DMC to reconsider the proposed approach for obtaining further air dispersion modelling. The Applicant submits any costs incurred obtaining further modelling without first requiring an expert conference as described, would not be reasonable costs for the purposes of any cost recovery from the Applicant.

  
**M J Slyfield**  
**Counsel for STIMBR**  
**25 November 2019**