

Memorandum

To: Dr Allan L Freeth
Copy to: Dr Fiona Thomson-Carter, Gayle Holmes
From: Lee Bailey
Date: 11 April 2019
Subject: Method to consult on reassessment of methyl bromide (APP203660)

Purpose

1. Stakeholders in Methyl Bromide Reduction Inc (STIMBR) lodged an application to reassess methyl bromide on Monday 25 March 2019. Following payment of their invoice and a completeness check on the application form, the application was formally received on 9 April 2019.
2. STIMBR want to amend the recapture and buffer zone controls in the approval HSR001635.
3. The Environmental Protection Authority's (EPA's) Chief Executive (CEO) has the delegated powers to decide the pathway determination for this application; that is, whether to use the EPA's discretion under section 63A(1) of the Hazardous Substances and New Organisms Act ("the Act") to conduct a modified reassessment.
4. If the CEO decides to not use the EPA's discretion under s 63A(1) (see separate memo relating to the reassessment pathway), then no further action is required on this memo. If the CEO's decision is that the reassessment is to be a full reassessment, then the application must be publicly notified pursuant to s63(2).
5. The purpose of this memo is to establish whether the EPA wants to publicly notify the modified reassessment of methyl bromide, or decide pursuant to s63A(4) not to publicly notify. If it chooses not to publicly notify, the EPA "must do everything reasonably practicable on its part to consult with all persons who, in its opinion, may be affected by the reassessment; give those persons a reasonable opportunity to make submissions and comments to the Authority on the reassessment; and consider all submissions and comments received" (or carry out a "targeted consultation") pursuant to s63A(5).
6. Although General Manager of the Hazardous Substances and New Organisms Group holds a delegation to make this decision, the CEO wishes to retain the power to make this decision in this case, pursuant to his delegation from the EPA Board on 6 May 2016.

Recommendation

7. That the CEO:

a.	notes the memo
b.	decides to that the EPA will publicly notify the modified reassessment of methyl bromide

Background

8. Methyl bromide, was approved under the Act on 29 October 2004, via the Hazardous Substances (Fumigants) Transfer Notice 2004, and has the HSNO Approval Number HSR001635.
9. It is used as a fumigant to treat a number of products prior to their export to selected countries, and for quarantine applications in imported goods, collectively known as quarantine and pre-shipment (QPS) uses.
10. The hazard classification of methyl bromide is: 2.1.1B, 6.1B (All), 6.1B (I), 6.1C (O), 6.6B, 6.8B, 6.9A (All), 8.2C, 8.3A, 9.1A (All), 9.1A (F), 9.2A, 9.3B, and 9.4A.
11. Methyl bromide was previously reassessed in 2010 following an application by the Chief Executive of the Environmental Risk Management Authority (ERMA, the EPA's predecessor agency).
12. The 2010 reassessment was heard by a decision-making committee (DMC). The DMC's decision included controls relating to buffer zones, and the need to recapture methyl bromide by 2020.
13. The DMC considered that recapture would be consistent with the intent of the Montreal Protocol, reduce the risks of direct effects on people, and reduce the indirect effects on human health and the environment.
14. In addition, the DMC considered that the recapture controls would allow for the continued use of methyl bromide in order to retain significant benefits related to preventing the introduction of human disease vector organisms, preventing the introduction and establishment of exotic pest/diseases affecting natural ecosystems and agriculture, and allowing access to overseas markets (particularly for the export of logs).
15. STIMBR applied for grounds to reassess methyl bromide in 2017 (APP203435). They provided evidence of a 50% increase in the use of methyl bromide between 2010 and 2016, alongside reviews of recapture progress. These grounds were granted by a DMC on 5 April 2018.
16. A second grounds application by the Pest Management Association of New Zealand to reassess the flammability classification (APP203435) was not granted. The information they provided was already known to ERMA/ EPA at the time of classification, and was therefore not "new information".
17. STIMBR provided an application form for the reassessment of methyl bromide on Friday 22 March 2019. The associated appendices were provided on Monday 25 March 2019. Their application, which aims to amend the recapture and buffer zone controls in the approval HSR001635, was lodged on 25 March 2019 upon receipt of these appendices.
18. The Hazardous Substances Applications Manager decided on a fee estimate of \$10,000+GST (excluding disbursements) on Friday 5 March 2019. The applicant was invoiced on Monday 8

April 2018. Their payment was received by the EPA on 9 April 2019, at which point the application was formally received.

19. Between the 2010 reassessment of methyl bromide and STIMBR's grounds application being granted, the controls for methyl bromide were subject to a major regulatory change. The majority of controls on the use of methyl bromide are now listed in Part 14-6 of the Health and Safety at Work (Hazardous Substances) Regulations (HSW(HS)Regs), not the HSNO approval. This regime came into effect on 1 December 2017.
20. The requirement for users to recapture methyl bromide, however, remains within the HSNO approval. This control effectively requires all methyl bromide fumigations to use technology to recapture sufficient methyl bromide so as to leave less than 5 ppm in the head space of the treated enclosed space. This requirement is due to become mandatory on 28 October 2020.
21. Methyl bromide is an ozone-depleting substance that is controlled under the Montreal Protocol. All countries are urged to refrain from the use of methyl bromide and to use non-ozone-depleting technologies wherever possible. Where methyl bromide is used for QPS purposes, "Parties are urged to minimise emissions through containment and recovery and recycling methodologies to the extent possible".

Method of consultation

22. The options for consultation in section 63A of the Act is for the EPA to publicly notify a modified reassessment, or not to publicly notify pursuant to s63A(4).
23. If the EPA chooses not to publicly notify pursuant to s63A(4), then it must "do everything reasonably practicable on its part to consult with all persons who, in its opinion, may be affected by the reassessment" in accordance with s 63A(5).

Discussion

24. Following the EPA granting grounds to reassess methyl bromide in April 2018 there has been considerable press and political interest in methyl bromide.
25. There has been significant interest in methyl bromide from both local government and non-governmental organisations, particularly in the Bay of Plenty.
26. The Tauranga Moana Fumigant Action Group is quoted in press articles as saying it wants to "eliminate or at least contain [methyl bromide] to a purpose built facility". Historical press articles indicate that other local action groups around New Zealand have also lobbied for their local port to restrict the use of methyl bromide.
27. The Bay of Plenty Regional Council have also been in contact several times to clarify that they will have an opportunity to comment any reassessment.
28. In addition to those groups affected by the use of methyl bromide, there are companies not affiliated with STIMBR who claim to be able to achieve the current recapture target of 5 ppm.
29. There may be reasons for submissions unanticipated by the EPA that could affect the information considered by the decision makers. This point may be especially significant for existing approvals as there is increased familiarity from industry and, possibly, the public.

30. Given the number of potentially affected parties, the EPA may be unable to comprehensively identify all parties who may be affected by the reassessment in targeted consultation. This would represent a degree of organisational risk.

Recommendation

31. To allow all interested parties to participate in the reassessment of methyl bromide, and to get a balanced view on the capabilities of current recapture technology, targeted consultation of the methyl bromide reassessment is not recommended. Instead, public notification of this application is recommended.

Further documentation

32. The following documents are provided to assist in your decision:
- current application form for the reassessment of methyl bromide, from STIMBR, dated 22 March 2019 (APP203660)
 - appendices for this reassessment (APP203600)
 - confidential appendices for this reassessment (APP203660)
 - letter from Bay of Plenty Regional Council (13 June 2018)
 - decision on the grounds for a reassessment of methyl bromide (APP203465).
33. The pathway determination to decide what type of reassessment will be conducted is provided at the same time as this memo.

Next steps

34. If you decide that it is appropriate to target the consultation for this modified reassessment, we will endeavour by all reasonably practicable means to identify and consult with interested parties. We may need to request a time waiver to allow this to happen to avoid going over the statutory timeframes.
35. If you decide to publicly notify the methyl bromide reassessment then we will proceed to do so as soon as practicably possible.
36. We will notify the Minister, Worksafe New Zealand, and other relevant government agencies as part of our routine application processing.

Decision on use of discretionary powers

- I have decided under section 63A(4) of the Act that the EPA **will not** publicly notify the modified reassessment of methyl bromide. As such and in accordance with section 63A(5) of the Act, the EPA will target its consultation with all persons who, in our opinion, may be affected by the modified reassessment of methyl bromide.
- I have decided that the EPA will not use the discretionary powers in section 63A(4) of the Act, and that the EPA **will** publicly notify the modified reassessment of methyl bromide, [Recommended option]


Environmental
Protection Authority
Te Mana Rauhi Tāhū

12 April 2019

Dr Allan L Freeth
Chief Executive

Date

Conflict of Interest Declaration

Identify whether a Conflict of Interest exists with the present application:

- Yes No

If your answer is yes please provide comments below:

The information provided on this form is, to the best of my knowledge, a full disclosure of any known or possible conflicts of interest I hold with regard to my position as a decision maker of this application at the EPA.


Environmental
Protection Authority
Te Mana Rauhi Tāhū

12 April 2019

Dr Allan L Freeth
Chief Executive

Date