

DIRECTION & MINUTE OF THE DECISION-MAKING COMMITTEE

Hazardous Substances and New Organisms Act 1996 (“HSNO Act”)

Application APP203660: modified reassessment of methyl bromide

Direction & Minute WGT010 of the Decision-making Committee (DMC) – 10 March 2020

Background

1. This Direction & Minute addresses the 9th memorandum of counsel for the Applicant and the issues raised in that memo.

Issue

2. The issue addressed is in respect of the requirement that the recapture control for all methyl bromide use is due to come into force on 28 October 2020. While it has been apparent for some time that there is an issue with compliance with this requirement by the October 2020 date, a new issue has now been raised with the DMC.
3. The DMC understands from the information provided in the 9th Memorandum of counsel that this has raised a potential problem for exporters and their ability to receive payment for shipments of logs to India from 1 May onwards. The Indian government requires all log exports to be fumigated with methyl bromide, and these shipments are subject to payment on 180 day irrevocable letters of credit. Due to the uncertainty in respect of the timing of the finalising of the reassessment process, this means from 1 May 2020 exporters may have issues with payment for log shipments to India.
4. Counsel for the applicant has requested that the DMC considers whether it has the jurisdiction to make an interim decision in the reassessment process which will address the time frame for the recapture control coming into force.

Discussion

5. The DMC acknowledges the issue raised by counsel for the applicant in the 9th memorandum of counsel, the need to seek a resolution to this issue and the suggested basis for such a decision put forward by counsel for the applicant.
6. While the timeframe for compliance with any new control that might be imposed as a final outcome of this reassessment process is clearly a matter the DMC will take into account and make a decision

on, the DMC does not consider that it is in a position to make an interim decision at this stage in the process.

7. Even if the DMC was to find that it does have such jurisdiction to make an interim decision, it would prove very difficult at this point in the process for the DMC to make such a decision. The experts who convened the conferencing on the methyl bromide reassessment are yet to finalise this expert conferencing, and the DMC has requested that on the basis of this conferencing, the applicant is to carry out further modelling (WGT008). The applicant has indicated that this will take approximately 11 weeks to complete (8th memorandum of counsel for the applicant).
8. Therefore it would be difficult for the DMC to, at this stage of the process, make an informed decision on the timing of the recapture control coming into force. The DMC does not have enough information before it in the reassessment process to be able to assess the risks, benefits and effects associated with the extension of time suggested by the applicant.
9. The DMC acknowledges that it is critical for the reassessment of methyl bromide to proceed to a hearing as soon as possible, but it cannot do so without all of the evidence before it which has already been identified as essential to this process.

Alternative options

10. The DMC considers that there may be other statutory options available that would assist the applicant in resolving the issue raised in the 9th memorandum of counsel.
11. Any option would need to be consistent with the current reassessment process and where matters currently stand within that process.

Direction

12. The DMC directs that the EPA provides it with advice in respect of any other available statutory options in order to assist the applicant in resolving the issue with the recapture control time frame. This advice is to be provided to the DMC for its consideration as to next steps in the reassessment process by **4pm Friday 27 March 2020**. It will be circulated to parties and published on the EPA website shortly thereafter. The DMC will issue its position on next steps once it has reviewed this advice from the EPA.
13. The DMC will continue to issue Directions and Minutes as necessary to advise parties to the process of further communications or procedural matters.



Tipene Wilson

Date 10 March 2020

Chairperson