

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 WGT016 of the Decision-making Committee (DMC) – 16 July 2020

Background

1. The hearing for the modified reassessment of methyl bromide has been set down for 5 days from 11-17 August 2020 as follows:
 - 11 August: 8.30am – 2.30pm
 - 12 August: 8.30am – 3.30pm
 - 13 August: 8.30am – 5.00pm
 - 14 August: 8.30am – 5.00pm
 - 17 August: 8.30am – 5.00pm
2. The hearing will be held remotely via either Zoom or other webinar function which will be confirmed in formal hearing procedures when they are issued.
3. For those submitters who did not indicate that they wished to be heard, the hearing will be available to view either through your own technology (home or work computer) or on selected days it will be available to view at EPA provided facilities. These facilities will be confirmed in formal hearing procedures.
4. The hearing will also be transcribed and recorded, both of which will be available on the EPA website.
5. All evidence in respect of the hearing is to be filed with the EPA by 5pm on 27 July 2020.
6. On 4 June 2020 Counsel for the applicant filed the 14th Memorandum of Counsel for the applicant. This memorandum noted various hearing procedures the applicant sought the DMC to consider allowing in this hearing. The DMC has considered these hearing procedures.

7. There has also been correspondence between Counsel for the applicant and the EPA in respect of hearing logistics. In this correspondence, Counsel for the applicant indicated that its client would require 4-5 hours to present its case.
8. Further hearing procedures and details will be issued at least 10 days prior to the hearing.

Confirmation of hearing timing and expectations

9. The DMC has considered the request from Counsel for the Applicant in respect of the additional time required to present its case at the hearing.
10. The DMC notes that standard procedure is for the applicant to have half an hour presentation time, and half an hour for questions from the DMC.
11. Counsel for the applicant has indicated that their client requires four to five hours to present its case, in addition to further time for DMC questions. Counsel for the applicant has indicated that the applicant intends to have six witnesses present in support of its case. These witnesses will file written statements of evidence at least ten working days prior to the hearing date.
12. The purpose of the applicant's presentation at the hearing is to provide a summary of the application and the pre-filed evidence supporting it, and provide the DMC the opportunity to ask questions of clarification in regards to the application and evidence.
13. The DMC, in considering this request, would not expect that four to five hours is required to present a summary of the applicant's case and its witnesses' evidence.
14. The DMC would like to remind the applicant, and Counsel for the applicant, that the purpose of a hearing under the HSNO Act is not for adversarial representation, nor will there be cross examination of submitters or witnesses permitted in this hearing. All information is to be provided at least ten working days prior to the hearing, and the hearing is an opportunity for the DMC to test and query the evidence before it.
15. Parties should use their allotted time at the hearing to highlight their key points and be prepared to answer any questions which the DMC may have.
16. The DMC reiterates that the purpose of providing all evidence to it before the hearing is so that all evidence (including the application and all submissions) is to be taken as read at the time of the hearing. The DMC will not allow any party to repeat verbatim its submission as its presentation at the hearing. However, parties may provide a written summary (no more than 1 double sided page) to the DMC and present that at the hearing.
17. The DMC would also like to remind all parties that parties who are submitters are not permitted to also appear as witnesses. For reasons of natural justice and fairness, each party is only to have one opportunity to present their case, whether that is as a submitter or a witness.
18. It is also noted in correspondence that Counsel for the applicant reserves its right to respond to any further information filed by the tenth working day before the hearing. The DMC would like to make it clear that no further evidence is to be provided after that date, and neither the applicant nor submitters are allowed to bring any new information to the hearing. If this does happen, the DMC has the right to disallow such information. If the DMC decides to accept new information, it may need to adjourn the hearing in order to consider this new information, which is likely to delay a decision.
19. The DMC reminds participants, including witnesses, that they should not expect to respond to or challenge any information presented at the hearing, outside of the applicant's right to reply, unless the DMC (and its Chair) give leave to a participant to ask a clarifying question.

20. The DMC will expect participants to indicate via the videoconference technology if they would like to ask a clarifying question. The DMC Chair will have the final say on whether a question is in scope of the hearing, and will ask it on behalf of the participant. If the DMC Chair deems fit, he may direct the participant to ask the question directly.
21. The DMC expects to receive evidence and information with differences in perspectives. It is the DMC's role to assess those differences and consider the merits of the evidence presented to it and make a decision based on that evidence.
22. Finally, the DMC notes that the procedures set out above differ from the proposed timetabling suggestions provided in the 14th Memorandum of Counsel for the applicant. While the timing of the steps proposed in that memo were not accepted by the DMC in a formal sense, the EPA – in its organisation of hearing logistics – has carried out steps such as asking submitters if they still wish to be heard at a hearing and progressing matters such as the filing of evidence by all parties at least 10 working days prior to the hearing. In the Directions below, the DMC has also requested that all parties indicate who they intend to have appear as witnesses at the hearing. To that end, the DMC has accepted some of the proposals in Counsel's memo.

Directions

23. The DMC directs the following:
 - a. The EPA is to allocate 2.5 hours (150 minutes), inclusive of 60 minutes for questions, in the Hearing Schedule for the applicant and its witnesses to present its case at the hearing.
 - b. Any party to the hearing wishing to call witnesses must indicate who these witnesses are and the topics that they will cover at least ten days prior to the hearing.
 - c. Any party to the hearing who has questions it would like to be asked can submit these to the DMC, during the hearing, for DMC to consider asking on behalf of that party.
24. The DMC will continue to issue Directions and Minutes as necessary to advise parties to the process of further communications or procedural matters.

For the Decision-making Committee:



Environmental
Protection Authority
Te Kaitiaki Take Kōwhiri

16 July 2020

Tipene Wilson

Date

Chairperson