

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 WGT017 of the Decision-making Committee (DMC) – 29 July 2020

Background

1. In the Direction and Minute WGT016, the DMC indicated that the hearing was to be heard on 11 to 14 and 17 August 2020.
2. In relation to this, in WGT016, the DMC directed that all parties must submit all information and evidence to be considered for the application and/or presented at the hearing in relation to the application or submissions to the Environmental Protection Authority (EPA) by 5 pm on 27 July 2020. This aligns with the requirements in section 58(2) of the HSNO Act which requires that the applicant and submitters be notified of all further information a minimum of 10 working days prior to the commencement of the hearing.
3. The original submission period closed on 2 September 2019. This includes a two working day timeframe extension in response to submitter requests (under section 52 of the HSNO Act).

Request to be a late submitter – Whareroa Marae

4. The DMC has received a late request from Whareroa Marae to present a written submission and to speak on behalf of this submission at the hearing.
5. The DMC note that there have previously been requests from other parties to submit a late submission. These requests were declined by the DMC in Direction and Minute WGT014, where the DMC noted that in the interests of natural justice they would not be able to accept a late submission without reopening consultation to all parties. The DMC considered that sufficient time had lapsed since the original consultation period that it would not be appropriate to reopen consultation on the reassessment.
6. In the interests of natural justice the DMC considers that the decision regarding the late submission request from Whareroa Marae should be consistent with previous decisions and therefore have decided to decline the request for a late submission.

7. The DMC notes that representatives of the Whareroa Marae are included as speakers for other submitters: Tauranga Moana Fumigant Action Group (TMFAG), and Ngāi Te Rangi. The TMFAG speakers' list details the relationship of one of their speakers to Whareroa Marae. Ngāi Te Rangi Iwi, whose offices are based at Whareroa Marae, include members of Whareroa Marae as speakers to the iwi submission. The DMC considers that the presenters will therefore be able to use these avenues to reflect the content they may have presented in their own submission.

Late submissions of evidence

8. The DMC notes that multiple submitters have provided evidence in relation to their submissions after the timeframe outlined in the Direction and Minute WGT016.
9. The DMC notes that it has the ability to waive any timeframe under the HSNO Act if it deems it necessary, and if it is considered that it would not prejudice any party to the action to which the timeframe relates.
10. In regards to the specific issue of late submission of evidence the DMC considers that this should be addressed on a case by case basis, rather than by the application of a broad waiver.

Late submission of evidence – Dr Melanie Miller

11. The DMC notes that Dr Melanie Miller provided evidence in relation to their submission at 10.59 pm on 27 July 2020, and therefore after the submission timeframe.
12. This evidence concerned information regarding international obligations under the Montreal Protocol, and the position of Dr Miller and her co-submitter Dr Tom Batchelor as specialists on this matter.
13. In relation to the specific case of Drs Miller and Batchelor, the DMC considers that the evidence is material to the application and notes that while the information was not provided prior to the 5 pm timeframe, that it was provided on the same day. The DMC considers that accepting this evidence will not prejudice any party to the application. The DMC therefore considers that the evidence can be accepted as information to be considered by the DMC in relation to the hearing and consideration of the application. Presenting on this information at the hearing would not be considered introduction of new information.

Late submission of evidence – The Soil and Health Association of NZ

14. The DMC notes that Stefan Browning from The Soil and Health Association of NZ provided evidence in relation to their submission at 5:00pm on 28 July 2020, and therefore after the submission timeframe.
15. This evidence concerned the submitter's witnesses and their positions regarding the increased use of methyl bromide, and proposed epidemiological assessments of potential human health risks arising from chronic exposure to methyl bromide.
16. In relation to the specific case of Mr Browning's submission, the DMC considers that accepting this evidence will not prejudice any party to the application. The DMC therefore considers that the evidence can be accepted as information to be considered by the DMC in relation to the hearing and consideration of the application. Presenting on this information at the hearing would not be considered introduction of new information.

Response to the 17th Memorandum of Counsel

17. The DMC notes that the 17th Memorandum of Counsel from the applicant seeks confirmation as to whether the DMC will ask questions relating to the toxicology or ecotoxicology appendices to their application.
18. The DMC and submitters (at the discretion of the DMC) may ask any clarifying question at the hearing within the scope of matters under consideration and, furthermore, that questions may be prompted by aspects highlighted at the hearing. Therefore, the DMC is not able to limit the scope of its questions at this point.
19. The DMC considers that it is the applicant's responsibility to be prepared to answer any question asked of them, and that the right of reply may serve as an opportunity to address any questions that the applicant is not able to address at the time a question is raised.

Directions

20. The DMC directs the following.
 - a. The late submission from Whareroa Marae is not accepted.
 - b. That the evidence provided by Drs Miller and Batchelor is accepted as part of the information to be considered by the DMC in relation to the hearing and consideration of the application.
 - c. That the evidence provided by the Soil and Health Association of NZ is accepted as part of the information to be considered by the DMC in relation to the hearing and consideration of the application.
21. 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:



29 July 2019

Tipene Wilson
Chairperson

Date