

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 WGT018 of the Decision-making Committee (DMC) – 31 July 2020

Background

1. In the Direction and Minute WGT016, the DMC indicated that this application is to be heard on 11 to 14 and 17 August 2020.
2. In WGT016, the DMC directed that all parties must submit all information and evidence (including any nominations of witnesses and/or expert witness statements), to be considered and/or presented at the hearing 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 59 of the HSNO Act).

Late submissions of evidence

4. The DMC notes that multiple submitters have provided evidence in relation to their submissions after the timeframe outlined in the Direction and Minute WGT016.
5. The DMC notes that it has the ability to waive any timeframe under s59 of the HSNO Act, if it is considered that it would not prejudice any party to the action to which the timeframe relates.
6. With 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.
7. The DMC reiterates that there should not be any new information submitted to the DMC after 27 July 2020, that is, within 10 working days of the commencement of the hearing in accordance with section 58(2) of the HSNO Act, nor should any new information be presented at the hearing. The DMC may need to adjourn the hearing in order to consider any new information, which is likely to delay a decision.

8. The DMC notes that a number of submitters have now provided nominations of experts and/or expert witness statements after the deadline established in WGT016. A number of these are witness statements which do not introduce material additional to the submission, or additional speakers to the original nominated submitter.
9. The DMC highlight that expert witness statements need only be provided if a witness is to present as a formal expert witness in line with the code of conduct for expert witnesses in the Environment Court Practice Note 2014. Submitters and witnesses who simply wish to present on behalf of a submission do not need to complete or provide an expert witness statement.
10. The DMC reminds all parties that an expert witness has an overriding duty to impartially assist the DMC on matters within the expert's area of expertise and not to advocate for a position, regardless of who has hired them.

Late submission of evidence – Horticulture New Zealand

11. The DMC notes that Horticulture New Zealand provided evidence in the form of an expert witness statement in relation to their submission at 1:44pm on 30 July 2020, and therefore after the submission timeframe.
12. This evidence concerned the submitter's expert witness statement and their positions regarding the use of methyl bromide as a phytosanitary treatment for imports and exports in the horticulture industry. It is noted that the information presented in the witness statement was included in the submitter's original submission and therefore may not be considered new information.
13. In relation to the specific case of Horticulture New Zealand'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.

Late submission of evidence – Tenco Limited

14. The DMC notes that Tenco Limited provided evidence in the form of an expert witness statement in relation to their submission at 1:59pm on 31 July 2020, and therefore after the submission timeframe.
15. This evidence concerned the submitter's expert witness statement and their positions regarding the use of methyl bromide in the forestry industry and the potential adverse commercial impacts should methyl bromide not be able to be used. It is noted that the information presented in the witness statement was included in the submitter's original submission and therefore may not be considered new information.
16. In relation to the specific case of Tenco Limited'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 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.

Directions

17. The DMC directs the following.
 - a. That the evidence provided by Horticulture New Zealand is accepted as part of the information to be considered by the DMC in relation to the hearing and consideration of the application.
 - b. That the evidence provided by Tenco Limited is accepted as part of the information to be considered by the DMC in relation to the hearing and consideration of the application
18. 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:



31 July 2019

Tipene Wilson
Chairperson

Date