

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 WGT025 of the Decision-making Committee (DMC) – 29 October 2020

Background

1. The Applicant, Stakeholders in Methyl Bromide Reduction (STIMBR) submitted, on 25 March 2019, a reassessment application to consider the recapture requirements for the use of methyl bromide.
2. The modified reassessment is currently underway in line with the statutory requirements of the HSNO Act. The hearing for the modified reassessment of methyl bromide took place remotely from 11 to 17 August 2020. Currently, the approval for methyl bromide requires that any use of methyl bromide must include a process to recapture a significant amount of the residual substance post-use.
3. The control regarding recapture requirements set in the 2010 reassessment of methyl bromide, as reissued on 19 July 2020, was to take effect on 28 October 2020.
4. On 2 March 2020 the Counsel for applicant submitted a 9th Memorandum of Counsel in which the basis for a possible application for the waiver of the recapture deadline was set out.
5. On 26 March 2020, the EPA provided advice to the DMC and published that advice. The advice concluded that it was possible for the applicant to submit an application for a waiver of the recapture deadline pursuant to section 59 of the HSNO Act. That any such application would be published for submitters to the reassessment process to submit on, and then all of the material relating to the application be considered by the DMC. This could be in the form of a ‘mini hearing’ or a decision on the papers. The decision of the DMC would then be whether or not to approve the waiver application, and if approved, what conditions to place around it, in the form of a direction under s59(3)(b)(i).
6. In response to a subsequent application for a waiver of this October 2020 deadline, received in the 13th Memorandum of Counsel, the DMC issued Direction and Minute WGT015 on 1 July 2020 waiving the recapture deadline of 28 October 2020 and directing that the time at which this comes into force is 28 April 2021.

7. On 21 October 2020, in the 21st Memorandum of Counsel, the applicant submitted an application for a further waiver of this time frame; that is, until 28 October 2021. This application was received in accordance with section 59(3)(a)(i) and 59(3)(b)(i) of the HSNO Act.

Application for waiver of recapture deadline

8. The 21st Memorandum of Counsel sets out the basis of the application for a further waiver of the recapture deadline – that is, that industry is reliant on irrevocable letters of credit in order to continue exporting logs to India, the length of which vary from 90 to 180 days. India requires these logs to be treated with methyl bromide before importation.
9. The 21st Memorandum of Counsel provides further information in relation to this matter.

Process for consideration of the application

10. In response to the previous waiver application from STIMBR, the EPA's advice on 26 March 2020 sets out the legal basis for the consideration of such an application and the process which it will need to follow. This legal basis and process apply to this request for a time waiver also.
11. A key consideration in this process will be for all parties to bear in mind that this application is supplementary to the reassessment process. The reassessment will continue as per the current timeline and following the statutory process set out in the HSNO Act. Any decision reached on this waiver application will be subordinate to any decision reached in the reassessment; that is, if a different timeframe is set in the reassessment this would take effect and the waiver timeframe would no longer apply. On this basis, this waiver application is not a quasi-reassessment application or decision. It is merely using a legal tool in the HSNO Act to ensure that industry can continue to function while a decision is reached on the substantive reassessment application.
12. As set out in the EPA's advice of 26 March, submitters will have the opportunity to comment on this waiver application. It is not an opportunity to provide further information in respect of the substantive reassessment.
13. Directions setting out the timetabling of the process are provided below.
14. Once the period to provide comments has ended, the DMC will review the comments and the waiver application, and make a decision on whether a hearing on this discrete matter is required, whether any further information is required, or whether the decision can be made on the written information provided.
15. While the impacts of any implementation timeframes might be considered for the substantive reassessment, the applicant and any other parties should not rely on the waiver decision to indicate what such implementation timeframes or recapture controls may be.

Directions

16. The DMC directs the following:
- a. The 21st Memorandum of Counsel is published on the EPA website on the date of this Direction and Minute.
 - b. Submitters to the reassessment application will have five working days to consider whether the waiver, if granted, would prejudice them and provide comment on the waiver application.
 - c. Once comments have been received, the applicant will have two working days to respond to any comments.
 - d. The DMC will consider all information provided and advise parties if a hearing is required. Otherwise, the DMC will provide a decision on the application within five working days of receiving the applicant's reply.
17. 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 October 2020

Tipene Wilson

Date

Chairperson