

**Before a Decision-Making Committee**

**Of the Environmental Protection Authority**

**APP203660**

**Under** the Hazardous Substances and New Organisms Act  
1996

**In the matter of** the modified reassessment of methyl bromide

**By** **Stakeholders in Methyl Bromide Reduction Inc**  
Applicant

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**Memorandum of Counsel for Submitter**

**Tauranga Moana Fumigant Action Group**

**In response to Direction and Minute No. WGT037 of the DMC**

**25 June 2021**

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## **The DMC is failing in its duty to protect the environment, and the health and safety of people and communities**

1. The DMC has delegated authority from the Board of the EPA. The objective of the EPA is to undertake its functions in such a way that:
  - (a) contributes to the efficient, effective, and transparent management of New Zealand's environment and natural and physical resources; and
  - (b) enables New Zealand to meet its international obligations.<sup>1</sup>
2. Also, when undertaking its particular functions under an environmental Act, the EPA must also act in a way that furthers any objectives (or purposes) stated in respect of that Act.<sup>2</sup>
3. The Hazardous Substances and New Organisms Act 1996 (HSNO Act) is an environmental Act.<sup>3</sup> The purpose of the HSNO Act is to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms
4. The EPA and the DMC are failing to protect the environment, and the health and safety of people and communities. They are also failing to enable New Zealand to meet its international obligations with regard to the reduction in the use of methyl bromide.

### **Specific Comments on the WorkSafe Report Methyl Bromide use at the Port of Tauranga**

5. Genera are currently the only consented user of Methyl Bromide at the Port of Tauranga. Genera hold two fumigation consents with Bay of Plenty Regional Council, one applying at the Port of Tauranga (62719) and the other (63371) elsewhere within the Bay of Plenty region. Since their consents were issued in 2005 / 2006 the amount of methyl bromide used in the Bay of Plenty has risen sharply to around 240 tonnes per annum. This represents about half of all methyl bromide used in the entire country. Genera has applied to renew these consents and they are currently being processed by the BOPRC. A public hearing is likely to be held in the next few months.

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<sup>1</sup> Environmental Protection Authority Act 2011, section 12 (1).

<sup>2</sup> Environmental Protection Authority Act 2011, section 12 (2).

<sup>3</sup> Environmental Protection Authority Act 2011, section 5.

6. Given this timing, it is essential that any independent report produced by Work Safe in relation to MB use at the Port of Tauranga is accurate and provides meaningful data for the purposes of the public and workers understanding of the effects of Genera's application for continued use of Methyl Bromide at the Port of Tauranga, and as the fumigant is actually applied and dispersed, for modelling purposes.
7. Page number 17, table 1 summarises fumigation monitoring events and the estimated amount of methyl bromide released. However, there is no explanation of how the release was calculated? There is an inconsistency in the amount of methyl bromide released from each tarp on the monitored dates.
8. The Worksafe report uses 30% of methyl bromide released from the tarp for modelling. However, NZEPA hasn't finalised its decision on the amount that could be released at the end of the fumigation, and only five ppm is applicable for release.
9. The modelling of MB released is also inconsistent with Genera's consent condition requirements for use of Methyl Bromide at the Port of Tauranga, which is meant to be 100% recapture MB containment for containers and logs by April 2019.
10. PID was used as a hand-held detector for measuring the methyl bromide concentration at the fumigation site. Data provided in the WorkSafe report shows that there is a 1000 fold discrepancy between the GC and PID detector.
11. The modelling predictions was made for 19 fumigation events between August and January. During each event, one or two fumigations were included in the modelling scenario. However, this is not reflective of the maximum number of fumigation conducted per year. For example, 30 stacks at any one time were used for another fumigant to represent the worst-case scenario.
12. WorkSafe report states that there are significant variances between predicted and observed concentrates of Methyl Bromide, and that that model under predicts between 10-20% compared to monitoring results. TMFAG support the WorkSafe suggestion to add a correction factor of any modelling of Methyl Bromide of 25% but suggest this should be more conservative to be precautionary given the risks and increase to a correction factor of 30%.

13. According to NZ Ministry for the Environment, the 99.9th percentile is recommended as a Good Practice Guide for modelling the emission. However, the Work Safe modelling report doesn't mention the percentile values used for the methyl bromide emission.
14. Only a few months of meteorological data were used in the modelling, which is not reflective of prediction the worst-case scenario. For example, five years of meteorological data were used for other fumigant applications.
15. The log pile size and ship hold volume were not mentioned in the modelling assessment and this is critical information to determine Methyl Bromide quantities and effects.

**The DMC must close the evidence and issue its decision**

16. WorkSafe New Zealand ("WorkSafe") has presented a final monitoring and modelling report prepared on their behalf by Pattle Delamore Partners Limited (PDP) in relation to air dispersal of methyl bromide at the Port of Tauranga.
17. The DMC has directed that parties to the reassessment, including the applicant, may provide comments on the recent WorkSafe/PDP report on or before 25 June 2021.
18. The DMC has not stated, in its 37<sup>th</sup> Minute, that the comments (to be made by 25 June 2021) will be the final comments so that the hearing of evidence may be closed and the 30-working day statutory time limit for a decision to be released will start to run.
19. There will always be more evidence which could be presented to the DMC. The air dispersion models could continue to be refined with additional scenarios and iterations. The applicant could provide further modelling in response, that could then be commented on by the modellers retained by WorkSafe and the Bay of Plenty Regional Council (BORPC) and the EPA and others.
20. TMFAG's position is that enough is enough. TMFAG has already made this position clear in its Memorandum to the DMC dated 13 May 2021. The DMC must close the evidence and make a decision. If the applicant or any other submitter introduces any new evidence (or modelling) in response to the final report of PDP, that evidence should be immediately struck from the record and not taken into account by the DMC in preparing its decision.

21. TMFAG considers in these circumstances this hearing must be closed with urgency, to avoid any further prejudice arising for the submitters, the DMC must issue its decision within the 30 working days set out in the Act.

**Kate Barry-Piceno**



**Legal Counsel**

**For and on behalf of Tauranga Moana Fumigant Action Group Inc**

**25 June 2021**