



Direction and Minute of the Decision-making Committee

Hazardous Substances and New Organisms Act 1996 (“HSNO Act”)

Application APP203974: Reassessment of hydrogen cyanamide

Direction & Minute WGT002 of the Decision-making Committee (DMC) – 24 November 2021

Background

1. The reassessment application for hydrogen cyanamide was prepared by the EPA and formally received on 20 September 2021. The reassessment application was published on the EPA website and opened for public submissions on 30 September 2021.
2. The HSNO Act specifies that the EPA shall allow at least 30 working days from the date of public notification for the receipt of submissions (section 59(1)(c)). Section 59(5) allows the EPA to extend any time limit under the HSNO Act subject to s59(4).
3. For the reassessment of hydrogen cyanamide, the EPA initially extended the submission period to 40 working days to allow for any additional delays or difficulties faced by submitters in view of changing Covid-19 alert levels and provided a submissions deadline of 26 November 2021.
4. A request for a further extension to the submission period was received on 4 October 2021 from the chemical supplier/manufacturer Nufarm. An additional request for an extension to the submission period was received on 5 October 2021 from the kiwifruit industry body Zespri.
5. The requests were considered together by the Decision-making Committee, and an extension to 20 December 2021 was granted. This was published in Direction & Minute WGT001 dated 22 October 2021.

Requests to extend submission period

6. A third request for extension to the submission period was received on 3 November 2021 from New Zealand Kiwifruit Growers Incorporated (NZKGI). The reasons provided were that the three experts engaged by NZKGI, two toxicologists and an occupational hygienist, require more time to complete their assessments in full. NZKGI also said they will be unduly prejudiced if they are unable to finalise their submission on behalf of all New Zealand kiwifruit growers, and that they are assisting individual growers with unique circumstances to complete their submissions which is time consuming. Further, they stated that to the best of their knowledge, amending the submission deadline will not alter the hearing date. An extension to 6 April 2022 was requested.
7. A fourth request for extension to the submission period was received on 15 November 2021 from Māori Kiwifruit Growers Incorporated (MKGI). The reasons provided were that more time was needed to ensure growers are able to fully understand the implications of the proposals, carry out necessary research and drafting and respond accordingly within the MKGI grower trustees meeting cycle. They also noted their interest in Zespri and NZKGI's toxicology assessments which could help furnish their submission. An extension to 6 April 2022 was requested.

Consideration

8. The Decision-making Committee (DMC) met on 17 November 2021 to discuss the NZKGI and MKGI requests.
9. The DMC discussed several different aspects of the time extension request, potential effects on the overall reassessment timeline and process, possible prejudice to NZKGI or MKGI as submitters, and potential prejudice to other submitters.

Potential content of the submissions from NZKGI and MKGI

10. As the industry representatives of kiwifruit growers, many of whom benefit from the use of hydrogen cyanamide on their crops, submissions from NZKGI and MKGI will be able to represent these growers' perspectives. The DMC considers that the content of the submissions made by NZKGI and MKGI on behalf of their growers will provide valuable information for their consideration of the reassessment.
11. Similarly, the expert reports commissioned by NZKGI may provide additional toxicological and/or occupational health data, modelling, or refinements. MKGI has also referred to carrying out necessary research and evaluating the NZKGI-commissioned reports. The DMC considers that this technical information could be a valuable source of evidence. Providing this evidence and any commentary from NZKGI and/or MKGI would be welcomed.

Length of extension requested and effect on the reassessment process

12. The statutory submission period of 30 working days from the date of public notification (section 59(1)(c) HSNO Act) has already been extended twice. The extension requested by NZKGI and MKGI is for a further 56 working days, which is a substantial additional amount of time relative to the statutory period.
13. Extending the public submission period for this amount of time could cause other interested parties to delay filing their submissions. This, in turn, would lead to a delay in the EPA summarising the submissions and, if necessary, analysing any technical data. It would also delay the logistics and preparatory work on organising hearing dates for the reassessment.
14. The DMC considers that these delays would have a knock-on effect on subsequent steps of the reassessment process. This aspect conflicts with the EPA's obligation to proceed with any application process as promptly as reasonable in the circumstances.

Possible prejudice to NZKGI and/or MKGI as a submitter

15. If the extension is not granted, NZKGI asserts that it will be significantly impacted and unduly prejudiced.
16. The DMC considers that NZKGI and MKGI currently have the same amount of time as other submitters to prepare and file their submission on the reassessment application. As for other submitters, they are benefitting from an extended submission period following the EPA's initial extension and granting of the subsequent extension requests.
17. The DMC understands that a submission on an application should provide a parties' reasons for submitting, the decision they are seeking, and an indication whether they wish to speak at the hearing. The DMC considers that the current submission period provides sufficient time for all potential submitters to provide at least this level of detail in their submissions. Therefore, NZKGI and MKGI would not be unduly prejudiced if the extension request is refused.
18. The DMC acknowledges that the commissioning and preparation of expert reports can take a significant amount of time and that these reports may provide additional technical detail that will assist the DMC in its consideration.
19. If there is insufficient time to complete the expert reports commissioned by NZKGI within the submission period, the submitter is encouraged to present that information, together with any commentary on the reports, at the earliest possible opportunity following the close of submissions. This would allow time for review of the information in good time prior to the hearing date.
20. It would be helpful if the DMC had an indication within a reasonable time after the close of submissions as to what further information parties are intending on providing as evidence – for example expert reports or statements. The DMC may then be minded to set out a timeline for the further exchange of evidence prior to a hearing.

Possible prejudice to other submitters

21. If the time extension is granted, NZKGI asserts that other parties will not be unduly prejudiced.
22. The DMC considers that the requested time extension is substantial and could cause delays to the overall reassessment process and to the hearing date and decision.
23. The DMC considers that it is in the interests of other submitters to have the process proceed in as efficient and timely manner as possible. The outcome of the reassessment may have significant effects on submitters and to the wider public, and it is in all parties' interests that the EPA reaches a decision within a reasonable time period.
24. Therefore, since the requested time extension would have impacts on the overall timings of the reassessment process, the DMC considers that other submitters would potentially be unduly prejudiced.

Conclusions

25. The DMC considers that granting the time extension would adversely affect the EPA's obligation to proceed with any application process as promptly as reasonable in the circumstances.
26. The DMC also considers that granting the time extension would potentially lead to other submitters being unduly prejudiced due to the delays that would cause to the overall reassessment process, and the extended lack of certainty on the reassessment outcome.
27. The DMC considers that refusing the time extension would not unduly prejudice NZKGI and MKGI since they have sufficient time to prepare and file a submission containing the information that is required under section 54 of the HSNO Act. Further information, including expert evidence, can be provided separately throughout the process, at the discretion of the DMC.
28. The close of the submission period does not prevent parties to the process from providing information to the DMC. The DMC is open to considering evidence, should that evidence prove useful for the DMC's consideration. While it is at the DMC's discretion as to whether to allow this evidence into the process, the DMC considers that it will benefit from relevant and useful information from submitters.
29. Once the DMC is aware of what information might be further provided as evidence, it may look to set out some time frame directions as to the exchange of that information.

Directions

30. The DMC directs the following:

- a. the requests for a further extension of the time period for making submissions on the reassessment application is refused,
- b. the deadline for making submissions remains as **5pm on 20 December 2021**,
- c. any party to the reassessment that intends to provide further relevant information, such as expert reports or advice, is to indicate to the DMC by **5pm on 31 January 2022**, the nature of the further information and the timeframe in which that information can be provided,
- d. the DMC will then consider whether an extension to the statutory time period between close of submissions and the hearing date is necessary in order to receive any of that information and issue a further Direction & Minute in this regard.

For the Decision-making Committee:

 <p>Environmental Protection Authority Te Mana Rauhi Taiao</p>	24 November 2021
<p>Dr Louise Malone Chair, Decision-making Committee Environmental Protection Authority</p>	<p>Date</p>