



# 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 WGT003 of the Decision-making Committee (DMC) – 24 February 2022

### Background

1. The EPA’s reassessment application for hydrogen cyanamide was formally received on 20 September 2021. The application documents were published on the EPA website and open for public submissions between 30 September 2021 and 20 December 2021.
2. In Direction & Minute WGT002, requests for a further extension to the submission period were refused but the DMC clarified that it would be open to receiving additional information after the submission period had closed, receipt of which would be at the DMC’s discretion. The DMC requested that any submitter who would be seeking to submit additional information provide details by 31 January 2021 of when that information would be available and a brief description of the information.
3. The submission period closed on 20 December 2021, and around 200 submissions were received.
4. The HSNO Act specifies that the EPA shall fix a date for commencement of the hearing which should be no more than 30 working days after the closing date for submissions (section 59(1)(d)). For the current reassessment, since submissions closed on 20 December 2021, the hearing should be set to commence on 28 February 2022 (given that the period between 20 December and 15 January as well as weekends and the Monday after Waitangi Day are specified as non-working days under section 2 of the HSNO Act).
5. The DMC will now need to consider if it is appropriate to extend this time limit in order to allow some or all of the proposed additional information to be provided.

6. Section 59(5) allows the EPA to extend any time limit under the HSNO Act subject to 59(4). This requires that either the applicant and all submitters consent to the extension or those parties who do not consent will not be unduly prejudiced. In addition, all matters should be carried out as promptly as is reasonable in the circumstances.

### **Requests to submit additional information**

7. A request from Alzchem, in conjunction with Nufarm, was included within both of their submissions to conduct and submit results from further dermal exposure studies and a field study on risks to birds in New Zealand kiwifruit orchards. An exact timeframe for these studies was not provided to the EPA, although the bird field study would be conducted in New Zealand winter.
8. In a separate letter dated 23 December 2021, NZKGI noted they could provide the following additional information on 29 April 2022: applicator exposure and toxicology findings, reduction in profitability, occupational exposure trials, input value selection for quantitative modelling, the toxicology of hydrogen cyanamide and the proposed carcinogenicity classification, and information on shelterbelts as an alternative to buffer zones for mitigating spray drift.
9. Zespri sent a letter dated 31 January 2022 advising of a further study monitoring exposure to workers and a bird survey both to be provided in spring 2022. They also will have a toxicologist's report available to be submitted in April 2022. Their letter requested that the time period between close of submissions and the hearing be extended to allow the additional information into the process. It was claimed that submitters would not be unduly prejudiced by the extension, whereas proceeding with a hearing in the absence of sufficiently robust evidence would unduly prejudice all submitters.
10. John Levers sent several emails requesting for the following additional information to be considered: a Commissioner's Report from the 2021 People's Enquiry expected to be available in March 2022, two video recordings, a transcript, a New Zealand Newsroom article, and a BMC Public Health journal article.

### **Requests relating to the hearing**

11. Within their submission, NZKGI requested that the DMC consider holding the hearing in Mt Maunganui or Tauranga. Seeka followed up their submission with an invitation to the DMC to hear their submission with evidence from their growers at their head office in Te Puke and emphasised that Zoom or travel to Wellington would likely not be feasible options for their growers.
12. Regarding timing of the hearing, Seeka advised that growers would find it difficult to participate in a March 2022 hearing due to it coinciding with the start of harvest season. Zespri requested that the hearing be held after October 2022 so that all additional evidence can be considered.

### **Other requests**

13. Within their respective submissions, John Levers requested that the DMC visits Northland to gain an understanding of kiwifruit orchards and Roanne Crone suggested that the DMC visit kiwifruit orchards in the Bay of Plenty.

## **Consideration**

14. The DMC met on 21 February 2022 to discuss the requests to provide additional information and consequential time extension.
15. The DMC discussed several aspects of the different requests to submit further information, such as the effects on the reassessment timeline, the relevancy of the studies mentioned by Alzchem, Nufarm, NZKGI and Zespri, and potential prejudice to other submitters.

## **Relevancy of the additional information**

16. The DMC considers that receiving the proposed scientific studies from the submitters who advised they will have further information may close information gaps that exist in the EPA science memorandum.
17. The proposed studies from Alzchem, in conjunction with Nufarm, on dermal exposure risks and the field study focused on acute risks for birds will provide important technical information.
18. The additional reports that NZKGI intends to provide relating to applicator exposure, other occupational exposure risks, along with further toxicology findings, an economic benefits assessment, information on shelterbelts as an alternative to buffer zones, and an assessment relating to the proposed carcinogenicity classification, will all be helpful in the reassessment process.
19. The DMC considers the proposed study from Zespri on worker exposure risks, the bird survey and the toxicologist's report are also relevant.
20. The additional information raised by John Levers provides information from a different viewpoint and is largely already available such that the DMC considers this will be useful to review alongside all other information in the reassessment process.
21. In conclusion, the DMC considers that the additional information that is proposed to be provided will be important in the context of the reassessment and may close some of the data gaps in the EPA's initial assessment. Having robust scientific information available in all aspects of risk assessment in advance of the hearing will assist the DMC in reaching a decision on the reassessment.

## **Effect of additional information on the hearing deadline and overall timeline of reassessment**

22. The DMC notes that the majority of the additional information is proposed to be submitted in April 2022. Some reports are proposed to be submitted in spring 2022, in cases where additional studies are proposed to be carried out during the spraying season which takes place in winter 2022.
23. NZKGI has proposed that their additional reports can be submitted by 29 April 2022. Similarly, Zespri's toxicologist's report is proposed to be submitted in April 2022 and John Levers' People's Inquiry Report is proposed to be submitted in March 2022. This is within a reasonable timeline that will not greatly increase the overall timeline of the reassessment and will allow for review and verification of the additional information in accordance with the Hazardous Substances Methodology Order.

24. Zespri's worker exposure monitoring study and bird survey are proposed to be conducted in winter 2022, with reports available in spring 2022. Similarly, Alzchem and Nufarm propose conducting a dermal exposure study and bird study during winter 2022 and submitting reports thereafter.
25. The DMC considers that a firm deadline should be set for receipt of this additional information, as this will impact on an indicative hearing date that can be set and any extension to the statutory deadline for the hearing.
26. The DMC also considers that sufficient time must be given for the EPA to review the reports, including understanding the methodology of the studies, analysis of data, and the conclusions drawn, and if necessary, determining how to incorporate the new information into the EPA risk assessments. It would be useful if submitters intending to carry out further studies could provide a detailed summary in advance of carrying out that work.

#### **Time extension and possible undue prejudice to other submitters**

27. The DMC considers that the requests to submit additional information in spring 2022 would result in a substantial time extension to the period between close of submissions and the hearing. As such, this will cause delays to the overall reassessment process, to the hearing date and subsequent decision.
28. However, the DMC also considers that it is in the interests of other submitters to have the process proceed in as efficient and timely manner as possible. If the reassessment were to proceed to a hearing with substantial data gaps and without the necessary robust scientific evidence in all aspects of the risk assessment, then it is likely that the DMC would not be able to make a decision at that point.
29. 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 DMC has all the information it requires in advance of the hearing so that it may reach a robust decision.
30. Therefore, since the requested time extension is being made solely to allow for the filing of additional reports and studies, some of which must necessarily be carried out during New Zealand winter, the DMC considers that granting the time extension will benefit all parties to the reassessment and they would not be unduly prejudiced.
31. In view of the numbers of submitters for this reassessment, it is not considered feasible to seek consent from all parties to this time extension. Therefore, the DMC's assessment that submitters are not unduly prejudiced fulfils the requirement of section 59(4) of the HSNO Act.

### **Consideration in respect of hearing location and other requests**

32. The DMC acknowledges the respective requests from NZKGI to hold the hearing in Mt Maunganui or Tauranga and from Seeka to hear submissions in Te Puke. The DMC considers there is value in selecting a hearing location that will allow the majority of those affected by the decision to attend in person if that is their preference.
33. The use of remote technology should also be used for the hearing to allow participation by those not wishing, or unable, to attend in person. This will also increase public accessibility to the hearing as the hearing will be available to view online. Possible locations and venues should be investigated by the EPA to enable the DMC to give further directions in due course.
34. The DMC discussed invitations from submitters to visit various sites where hydrogen cyanamide is used. Such site visits would provide the DMC with useful background information but must be performed without undue prejudice to any submitters. The DMC will give further directions on possible site visits in due course. The DMC is considering options in respect of this, bearing in mind the current Covid-19 restrictions within New Zealand.

### **Conclusions**

35. The DMC considers that the additional information referred to in this Direction and Minute (WGT003) will provide valuable evidence to the decision-making process and will go some way to ensure that the DMC has sufficient information to close the gaps it currently sees in the information it has in front of it.
36. Therefore, the DMC considers it reasonable to extend the time limit between the close of submissions and the hearing date. The DMC considers it is impractical to request consent of all parties to the reassessment, and instead considers that no party is unduly prejudiced by the extension given that the additional information will inform the DMC's information gathering and robust consideration of the application.
37. The DMC considers that specific dates should be set for submitters to provide the additional information as discussed in this Direction and Minute (WGT003), so that an indicative hearing date can also be set. These dates must allow for sufficient time for the studies to be completed while also allowing time for the EPA to review the new data and ensuring that the hearing proceeds as soon as reasonably practicable thereafter.
38. The DMC considers that holding the hearing at a physical location that is relevant to submitters is important, and a remote access online option must also be provided for those who cannot attend in-person. Further directions concerning the hearing will be provided in due course once the EPA has investigated the logistics around possible hearing venues.
39. The DMC has noted the invitations for site-visits as requested by some submitters but is yet to give directions on these.

## Directions

40. The DMC directs the following:

- a. the time period between the close of submissions and the hearing date under section 59(1)(d) of the HSNO Act is extended; the indicative start date for the hearing is set as **5 December 2022**,
- b. additional reports that do not require further scientific studies should be submitted by **29 April 2022**,
- c. a detailed summary of the planned methodology of any scientific studies that submitters intend to carry out should be submitted, in advance of the study commencing, and no later than **13 May 2022**,
- d. final reports of scientific studies that submitters intend to carry out, should be submitted by **30 September 2022**.

## For the Decision-making Committee:

 <p>Environmental Protection Authority Te Mana Rauhi Taiao</p>	24 February 2022
<b>Dr Louise Malone</b> <b>Chair, Decision-making Committee</b> <b>Environmental Protection Authority</b>	<b>Date</b>