



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
Directorate C - Air and Chemicals
ENV.C.4 – Industrial Emissions

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ENV C2 TB/dp D(2005)12531

Mr Marco Gonzalez
Executive Secretary
Ozone Secretariat
PO Box 30552
Nairobi Kenya

Subject: Response to Decision Ex.I/3(5) - European Community procedures put in place for licensing, permitting or authorising methyl bromide for critical uses in 2005, including consideration of available stocks

Dear Executive Secretary Gonzalez,

The Parties decided in paragraph 5 of Decision Ex.I/3:

5) *That each Party which has an agreed critical use should ensure that the criteria in paragraph 1 of decision IX/6 are applied when licensing, permitting or authorizing the use of methyl bromide and that such procedures take into account available stocks. Each Party is requested to report on the implementation of the present paragraph to the Ozone Secretariat;*

Paragraph 1 of Decision IX/6 states:

1. *To apply the following criteria and procedure in assessing a critical methyl bromide use for the purposes of control measures in Article 2 of the Protocol:*
 - (a) *That a use of methyl bromide should qualify as "critical" only if the nominating Party determines that:*
 - (i) *The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption;*
and
 - (ii) *There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination;*

The European Commission advises the Ozone Secretariat in this communication of the license authorisation procedures that the European Community put in place in 2004 for critical uses of methyl bromide used in 2005, pursuant to paragraph 5 of Decision Ex.I/3.

THE MONTREAL PROTOCOL AND EUROPEAN COMMUNITY REGULATION AND

Agreements in the Montreal Protocol are given effect in the European Community through the implementation of Regulation (EC) No. 2037/2000 on “Substances that Deplete the Ozone Layer” which came into force on 1 October 2000 in all Member States. The Regulation is also applicable to 10 new countries that joined the European Union on 1 May 2004. There are now 25 Member States in the European Union.

In applying the criteria relevant to the critical uses of methyl bromide contained in the Montreal Protocol and the Regulation, the Member States and the European Commission were mindful that exemptions for critical uses are intended to be limited derogations to allow a short period of time for the adoption of alternatives.

Articles 3(2)(i)(d) and 4(2)(i)(d) of this Regulation prohibit the production and import respectively of methyl bromide for all uses after 31 December 2004 except, among others, for critical uses in accordance with Article 3(2)(ii) and the criteria set out in Decision IX/6 of the Parties to the Montreal Protocol.

Decision IX/6 states that methyl bromide should qualify as “critical” only if the applicant determines that the lack of availability of methyl bromide for that specific use would result in a significant market disruption; and that there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination. Furthermore, the production and consumption, if any, of methyl bromide for critical uses should be permitted only if all technically and economically feasible steps have been taken to minimise the critical use and any associated emission of methyl bromide. An applicant should also demonstrate that an appropriate effort is being made to evaluate, commercialise and secure national regulatory approval of alternatives and substitutes; and that research programmes are in place to develop and deploy alternatives and substitutes.

ANALYSIS OF REQUESTS FOR CRITICAL USES

In 2004 and following the procedures described in Article 3(2), the Commission received 84 proposals for critical uses of methyl bromide from ten Member States. A total of 4,472,343 kg was requested, comprising 4,111,640 kg (92%) for pre-harvest uses and 360,703 kg (8%) for post-harvest uses of methyl bromide.

The Commission applied the criteria contained within Decision IX/6, Decision Ex.I/3 and Article 3(2)(ii) of Regulation (EC) No. 2037/2000 in order to determine the amount of methyl bromide that is eligible to be licensed for critical uses in 2005.

The Commission analysed each request according to the technical and economic feasibility of chemical and non-chemical control methods, alone and in combination, that were able to substitute for methyl bromide to control pests and pathogens. An assessment was also made of any emission reduction steps that the applicant could take to minimise the use of any uses of methyl bromide considered critical, and the effort of the

applicant to evaluate, commercialise and register alternatives, and plans to develop and deploy alternatives. Each Member State that had requested critical uses was invited to comment on the assessment. The assessments and comments were considered in bilateral discussions held between the Member State and the Commission in order to determine the amount of methyl bromide that could be considered eligible for licensing for 2005.

STOCKS

Decision IX/6 states that production and consumption of methyl bromide for critical uses should be permitted only if methyl bromide is not available from existing stocks of banked or recycled methyl bromide. Article 3(2)(ii) states that production and importation of methyl bromide shall be allowed only if no recycled or reclaimed methyl bromide is available from any of the Parties.

In accordance with Decision IX/6 and Article 3(2)(ii), the Commission determined that 206,675 kg of stocks were available for critical uses. The European Commission has put in place licensing procedures to ensure stocks are used before methyl bromide is authorised for importation or production.

RESULTS

The Commission found that adequate alternatives were available in the Community and had become more prevalent in many Parties to the Montreal Protocol in the period since the critical use proposals were compiled by Member States.

Pursuant to paragraph 4 of Ex.I/3 in which the Parties agreed that “...each Party should endeavour to allocate the quantities of methyl bromide recommended by TEAP as listed in Annex II A to the report of the First Extraordinary Meeting of the Parties”, the EC used similar critical-use categories to those defined in Annex II Table A of the reports of the First Extraordinary Meeting of the Parties to the Montreal Protocol¹, and in Table 1A of Decision XVI/2 at the Sixteenth Meeting of the Parties to the Montreal Protocol².

As a result of the analysis of the proposals and the bilateral discussions, after deduction of stocks the Management Committee, following the procedures described under Article 18 of the Regulation, determined that **2,570,658 kg of methyl bromide could be authorised in 2005 to satisfy critical uses in the European Community. This amount equates to 13.4% of 1991 consumption of methyl bromide in the European Community** and indicates that more than 85% of the methyl bromide has been replaced by alternatives.

IMPLEMENTATION

Article 3(2)(ii) requires the Commission to also determine which users may take advantage of the critical use exemption. As Article 17(2) requires Member States to define the minimum qualification requirements for personnel involved in the application

¹ UNEP/OzL.Pro.ExMP/1/3. First Extraordinary Meeting of the Parties to the Montreal Protocol, held 24-26 March 2004 in Montreal, Canada. www.unep.org/ozone/Meeting_Documents/mop_index.asp

² UNEP/OzL.Pro.16 Dec XVI.2. Sixteenth Meeting of the Parties to the Montreal Protocol, held 22-26 November 2004 in Prague, Czech Republic. www.unep.org/ozone

of methyl bromide, and as fumigation is the only use, the Commission determined that methyl bromide fumigators are the only users proposed by the Member State and authorised by the Commission to use methyl bromide for critical uses. Fumigators are qualified to apply it safely, rather than for example farmers or mill owners that are generally not qualified to apply methyl bromide but who own properties on which it will be applied.

There are currently 47 fumigators that are registered by the Commission and that are authorised to request an import or production licence for the critical uses of methyl bromide. Each fumigator gains access to the ODS-website to draw-down on their quota allocation using a password. The licensing system ensures that each quota operative in each critical use category cannot exceed the amount agreed.

I should be grateful if you would accept this letter as evidence of the manner of implementation between the EC and its Member States of Decision Ex.I/3(5). I would also be grateful if you could post this on the UNEP website at your earliest convenience.

Laurence Graff
Acting Head of Unit

Cc: T. Batchelor, P. Horrocks, M. Wandinger, K. Lewanska
Member State representatives (via CIRCA)