



# Methyl Bromide Critical Use Exemptions: *Process, Decisions, and Implementation*

Methyl Bromide Alternatives Agents Training

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North Carolina State University

Raleigh, North Carolina

# FFVA

- Voluntary Agricultural Trade Association
- Represent Producers of Vegetables, Fresh and Processed Citrus, Tropical Fruit, Sugar Cane, and Sod.
- Actively Involved with Issues Surrounding Methyl Bromide Since 1991.

# Methyl Bromide Phaseout – Clean Air Act

- Petition 1991 by NRDC, EDF, and WWF to list Mebr and other compounds as ozone depleters.
- Rule Adopted Dec 10, 1993 regulating Mebr as a Category I Ozone Depleter with an ODP of greater than 0.2.
- Rule set a freeze at the 1991 baseline and set the schedule for phaseout on Jan 1, 2001

# Methyl Bromide Phaseout – Montreal Protocol

- Methyl Bromide Added to Controlled Substance List – 1992, Copenhagen Amendments.
- Meeting of the Parties (MOP) in 1995 set 2010 Phaseout for Industrialized Nations with a Provision for “Critical Use Exemptions”
- MOP 1997– Modified Phaseout Schedule for Industrialized Nations to 2005 with Interim Reductions in 1999, 2001 and 2003.

# Critical Use Exemption

- Montreal Protocol, Article 2H (5) -- Provides that the 2005 phaseout shall not apply “to the extent the Parties decides to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses”.

# Critical Use Exemption

- Clean Air Act (as amended in 1997) --  
“to the extent consistent with the Montreal Protocol,” the Administrator may exempt methyl bromide for critical uses.

# Critical Use Exemption -- Criteria

Criteria for determining critical use exemptions were made as decisions by the Parties to the Montreal Protocol, Decision IX/6 at the 9<sup>th</sup> MOP (November 1997) and Decisions Ex.1/3 and Ex.1/4 at the first Extraordinary Meeting of the Parties (March 1994)

# Montreal Protocol Decision: MOP IX/6

## Review Based on:

- There are no technically and economically feasible alternatives or substitutes available to the use that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination; and,
  1. All technically and feasible steps have been taken to minimize the use and emissions of Mebr,
  2. Mebr is not available in sufficient quantity from existing stocks of banked or recycled Mebr, and
  3. An appropriate effort is in place to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes.

# Montreal Protocol Decision: Ex. 1/3

- Set the Allowable Amounts for Production or Consumption in 2005
  - Annex II A – List of Approved Critical Uses for Each Party
  - Annex II B – Level of Production and Consumption for Parties with Critical Use Exemptions

# Montreal Protocol Decision: Ex. 1/4

- Provided for additional Mebr beyond that approved for production or consumption (difference drawn from existing stocks).
- Limited use for approved critical uses to the total amount approved in aggregate for critical uses by each party.
- Required the Parties to endeavor to allocate Mebr for crops as designated in Annex II A for critical uses.
- Required report to the Parties of the method used to ensure conditions of granting the CUE are followed.

# Critical Use Exemption -- Application Process

- No Specific Guidance
- Each Party Devised Their Individual Process
- US Lead Agency – EPA, Office of Air and Radiation
- Cooperated with EPA OPP

# U. S. Application Process

- EPA Information Request – Requires OMB Approval
- Several Meetings with Stakeholders in 2000 & 2001
- Request for Exemption Application Noticed in FR 67:91, pp 31796-31801 (May 10, 2002) with September Application Deadline

# First Round of U. S. Applications: 2002

- Total of 54 Applications
- Much Variability in Information Provided
- Florida Petitions
  - Tomato
  - Strawberry
  - Solanaceous Crops Other than Tomato (Pepper & Eggplant)

# Application Review Timeline – First Round

- Sept 10, 2002 -- Completed Application submitted to EPA,OAR
- Sept – Dec, 2002 -- Internal U. S. Review
- Feb 2003 – US Nomination to UNEP
- April 2003 – MBTOC Review
- June 2003 – UNEP review of MBTOC/TEAP Recommendation
- November 2003 – Consideration of Recommendations by the meeting of the Parties
- February 2004 – Additional review and recommendations from MBTOC
- March 2004 – First Extraordinary Meeting of the Parties

# U.S. Nomination 2005 – First Round (2003)

- Requested Exemption for 2005 and 2006
- Requested Lump Sum Exemption for 9,921 tonnes (3,783 ODP tonnes)
- Covered 16 Industry Sectors, Including:

Commodity Storage	Orchard Replant
Cucurbits	Ornamental Nursery
Eggplant	Pepper
Food Processing	Strawberry
Forest Tree Seedling Nursery	Strawberry Nursery
Ginger	Sweet Potato
Nursery Seedbed Trays	Tomato
Orchard Nursery	Turfgrass
- Represented 38% of 1991 Baseline

# Second Round of U. S. Applications: 2003

- Included New Applications for 2005 CUE
- New Formats – Additional Information
- FFVA Petition – consolidated into a single petition across the same commodities

# Application Review Timeline – Second Round

- August 8, 2003 – Completed Application submitted to EPA, OAR
- Sept – Dec, 2003 – Internal U. S. Review
- Feb 2004 – US Nomination to UNEP
- April 2004 – MBTOC Review
- July 2004 – UNEP review of MBTOC/TEAP Recommendations
- November 2004 – Consideration of Recommendations by the Meeting of the Parties (Approval of 2005 Supplemental Request)
- April 2005 – Additional review and recommendations from MBTOC on Sectors to be considered at Second Extraordinary Meeting of the Parties
- June 2005 – Second Extraordinary Meeting of the Parties

# U. S. Nomination -- Second Round Nomination (2004)

- Requested Exemption for 2006 and Supplemental Information on 2005 CUE Needs
- 2005 Supplemental Request – 610.665 tonnes
- Commodities:

Dry Commodities – Structures  
Dry Commodities – Processed Food  
Dried Fruits and Nuts  
Eggplant  
Ornamentals

Peppers  
Tomato  
Smokehouse Ham  
Strawberry – Field

# Montreal Protocol Review

- No Concrete Guidelines for Review Process
- In-house Closed Review Process
- Administered by UNEP through MBTOC and TEAP
- Pressure Created by Impossible Timelines
- Review Recommendations Considered for Final Approval (Consensus) at Meetings of the Parties

# 2005 Critical Use Exemptions UNEP Review and Decision Meetings

■	3/03	MBTOC	South Africa	Closed
■	5/03	MBTOC/TEAP	Great Britain	Closed
■	7/03	OEWG	Canada	Open
■	9/03	MBTOC	United States	Closed
■	11/03	MOP	Kenya	Open
■	12/03		Argentina	Closed
■	1/04	MBTOC	United States	Closed
■	3/04	Ex MOP	Canada	Open
■	4/04	MBTOC	Thailand	Closed
■	5/04	MBTOC/TEAP	Portugal	Closed
■	7/04	OEWG	Switzerland	Open
■	11/04	MOP	Czech Republic	Open

# Key Decisions

- Decision Ex.1/3: Sets initial Quantity for 2005 US CUE, Total CUE 35% of 1991 Baseline
  - 30 % 1991 Baseline, Approved for Production and Consumption
  - 5% 1991 Baseline, Approved for CUE use from Available Stocks
- Decision XVI/2: Sets Supplemental Amounts for 2005 CUE, Additional 2 %.

# U. S. Clean Air Act, Allocation Process

- International Decisions Required Prior to Adoption of Final Rule
- Two Parts:
  1. Process Framework for Administration
  2. Quantities to be Exempted have to be identified

# [ Rule Making Process ]

- Very Complex
- Constrained by International Scheduling
- Additional Pressure Created by Political Situation

# Federal Register Notice – Proposed Rule Making, August 25, 2004

- Very Prescriptive
- Huge Fines
- Complex Self-certification Process
- No Definite Identification of “Approved Critical User”
- Penalized CUE Petitioners in Regard to use of Existing Stocks

# Federal Register Notice – Final Rule, December 23, 2004

- Became Effective January 1, 2005
- Sets 2005 CUE Control Period, Jan 1 – Dec 31, 2005
- Provides Criteria for Identification of “Approved Critical User”
- Identifies Quantities and Distribution of Critical Use Allowances
- Identifies Entities with Critical Stocks Allowance
- Provides for Record Keeping and Reporting to Meet the Requirements of the Montreal Protocol and the Clean Air Act.

# Implementation

- Growers Have Responsibility to Certify Prior Purchase of Mebr or Contract for Application Services for Mebr, that they are an “Approved Critical User”.
- Criteria for Meeting Conditions is “reasonable expectation” that Conditions will exist without use of Mebr”
- Conditions of Use for Specific Industry Sectors are Defined in Appendix L to Subpart A of 40 CFR, Part 82.
- Creates a Record Keeping Burden on Distributors, Dealer, and Custom Applicators.

# Issues

- Pre-purchased Materials or Services
- Tracking of Critical Use Allocations Through the Control Period
- Lag Time at the End of the Control Period
- Existing Stocks

# NRDC Rule Challenge

- Requested Administrative Stay of Rule on Dec 23, 2004
- At the Same Time Filed a Request for Judicial Review with the U. S. Court of Appeals for the District of Columbia.
- Filed an Emergency Motion for Stay Pending Review and Expedited Consideration on Jan 24, 2005.

# NRDC Rule Challenge

- Allegations:

- EPA Unlawfully Allows Existing Stocks to be Used for Non-critical Uses.
- EPA Is Unlawfully Allowing Production or Importation of New Methyl Bromide in 2005.

- Requested Actions:

- Stay the Rule to the Extent it Allows Existing Stocks to be Used for Non-critical Uses.
- Stay any Production of Methyl Bromide Pending Review of the Rule.

# What Does the Future Hold?

- More Uncertainty
- Hearing Scheduled by the House Ag Committee on Critical Use Exemption Process, March 10, 2005
- Contentious Debate over the 2006 and 2007 CUE at the International Level.
- More Work for Everybody