



**Transfer of
Substances**

ENVIRONMENTAL RISK MANAGEMENT AUTHORITY
NGĀ KAIWHAKATŪPATO WHAKARARU TAIAO



Summary of Submissions: Group Standards for Class 4 Substances

June 2006

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1. Introduction

1.1 Background to the Consultation

This document reports on the submissions that were received on proposals to establish group standards for class 4 substances. Group standards are a form of hazardous substances approval under Part 6A of the Hazardous Substance and New Organisms (HSNO) Act 1996.

ERMA New Zealand released for public consultation three group standards for class 4 substances on 13 April 2006. Consultation closed on 29 May 2006. Notification of this consultation was via public notice in the four main metropolitan newspapers and the ERMA New Zealand web site.

The consultation document and proposed group standards, or a letter advising of the availability of these documents, was provided to 80 parties who were considered likely to have an interest in this consultation. This included companies who notified class 4 substances or related products under the Toxic Substances Act 1979, other industry sectors and associations, government departments, enforcement agencies and territorial authorities. The documentation was also available on the 'consultation page' of the ERMA New Zealand website.¹

Four submissions were received, of which one submitter requested to be heard. A hearing was held on 7 June 2006.

The comments made by submitters are summarised in Section 2, along with the Agency's response. Where a submitter's comment resulted in a change to the group standard proposal, this is indicated in the table. Each submitter is identified numerically, and the name of the submitter given at the beginning of the table.

This summary of submissions has been provided to all parties who made a submission on the class 4 substances group standards, major notifiers of class 4 substances² and to the Hearings Committee of the Authority.³ It is also available from the ERMA New Zealand web site at

<http://www.ermanz.govt.nz/hs/groupstandards/standards/class4.html>. A copy will be provided to any other interested party on request.

¹ These documents remain available on the ERMA New Zealand web site:
<http://www.ermanz.govt.nz/consultations/gs/class4.asp>

² Notifiers with only a few NOTS have been advised by letter of the availability of this summary of submissions.

³ The Authority is the decision making body of ERMA New Zealand. It is made up of up to eight members appointed by the Minister for the Environment. The Hearings Committee is made up of selected members of the Authority with relevant experience in the subject area being considered for approval under the HSNO Act.

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Email NOTS@ermanz.govt.nz and enter “Class 4 Substances Summary of Submissions” in the subject line.

1.2 Moving NOTS

When group standards were released for consultation, notifiers were given a list of their products notified under the Toxic Substances Act 1979 (NOTS) associated with each standard. If a NOTS had been incorrectly assigned by ERMA New Zealand to a specific group standard, the notifier is able to reassign it to the appropriate group standard. If a notifier moves a NOTS from one group standard to another (or removes the NOTS from a group standard because they determine it to be non-hazardous) we asked in the consultation document for the notifier to advise us.

To assist notifiers reassign their NOTS, ERMA New Zealand has developed an excel template that can be accessed by emailing us at: NOTS@ermanz.govt.nz.⁴ Once the notifier has recorded on the template the NOTS that need to be moved, they must email the completed template back to us for processing. This template will be available up until 30 June 2006.

Where a submitter requested that a NOTS be moved, this information is not provided in Section 2 because it is specific to that notifier and, in some cases, could result in the disclosure of confidential information. This moving of NOTS is independent of the scope and conditions of a group standard, and consequently has not resulted in any change to any of the group standard proposals.

Where notifiers requested as part of their submission that NOTS be reassigned, we will move them to the group standard(s) they indicated, and they do not need to use the template unless they have further changes to make.

1.3 Approval of Group Standards

The Hearings Committee of the Authority is responsible for considering and approving group standards. Copies of amended group standards will be provided to the Committee for consideration.⁵

As noted earlier, a copy of this summary of submissions has been provided to the Hearings Committee. Although Section 2 of this summary may indicate that an amendment has been made to the group standards as consulted on, it is the Hearings Committee that is the decision maker. That is, the Agency’s recommendation that a group standard be changed as indicated in Section 2 requires final approval by the Authority.

⁴ The template and process operate in such a way that requires notifiers to contact ERMA New Zealand. This is to safeguard data confidentiality.

⁵ Group standards that were consulted on will be amended as indicated in Section 2.

The Hearings Committee is scheduled to consider the group standards for class 4 substances on 7 June 2006. This consideration will follow the public hearing which has been requested by a submitter.⁶ A notice of the Committee's decision will be placed on the ERMA New Zealand web site as soon as practicable after the consideration.

1.4 Gazetting of Group Standards and Staged Implementation

Following final approval by the Authority, group standards will be established by publication of a notice in the *New Zealand Gazette*, and will come into force on 1 July 2006. All NOTS that fit the scope of a group standard will become deemed approved hazardous substances at this time.

A full list of group standard proposals, for class 4 substances and related products, is available from: <http://www.ermanz.govt.nz/hs/groupstandards/list.html>.

Coinciding with the transfer of NOTS will be the commencement of a period of staged implementation. The details of staged implementation are given in Annex 1.

After 1 July 2006, ERMA New Zealand will write to all notifiers with a list of their NOTS that are deemed approved under group standards and the HSNO approval number for each group standard.

⁶ This hearing is scheduled for the morning of 7 June 2006 at the offices of ERMA New Zealand, 666 Great South Road, Auckland.

2. Submitter's Comments and Agency Response and Recommendations

Code to Submitters

No.	Submitter
1	Ciba Speciality Chemicals (NZ) Limited
2	Goldschmidt AG
3	HaS Expertise Ltd
4	3M New Zealand Limited

Submitter	Submission	Agency response and recommendation	Group standards amended
1	Scope – a change to the scope to allow or alternatively clarify the classification for the novel burning behaviours of fine powders, ignite and self extinguish, etc. Please refer to our earlier submission on fine powders.	Dust, like that produced by fine powders, is not a hazard under the HSNO Legislation. It is legislated under the Health and Safety in Employment Act.	No
1	Labelling – a note added to the requirement 8 or beside Table 1 concentration values triggering identification of components on label. We suggest the note read “Different classification and label thresholds may exist”.	Clause 7 states a label must identify an ingredient that would, independently of any other ingredient, give a substance certain HSNO classifications. The thresholds for these classifications are based on the Hazardous Substances (Classification) Regulations 2001. Information on the classification thresholds will be provided in guidance material that will be released following transfer. Clause 8 provides an exception to Clause 7 where the values in table 1 supersede the values in the Regulations for the particular classifications listed.	No
1	Mixture rules – specify clear mixture rules for flammable solids. Please refer to our earlier and confidential masterbatch submission. The submission provides mixture examples and could be used to generate new guidelines.	Guidance material on the classification of substances will be provided following transfer. This guidance material will include information on the mixture rules for class 4 substance.	No

Submitter	Submission	Agency response and recommendation	Group standards amended
2	We have checked your classification of our product and we get the same result.	Noted.	No amendment required
3	<p>The Safety Data Sheet (SDS) clauses in all of the group standards are unnecessarily prescriptive and allow no flexibility to their preparation. There is no benefit to be gained from this inflexibility. In addition, the requirement to comply with a code of practice that is not currently available is not consistent with the consultation process (i.e. how can we comment on the group standard requirements for SDS when we are not able to view one of the compulsory parts of the clauses).</p> <p>We seek changes to the SDS clauses to allow greater flexibility and reference to the code of practice as one option for compliance. To ensure consistency internationally, it would be appropriate to include SDS information in the exemption which allows or labelling and packaging to comply with international standards/legislative requirements. At the minimum, compliance with the HSNO regulations should be equivalent.</p>	<p>The inflexibility referred to by this submitter was in regard to clause 3(5) of the group standard, which required that: <i>“Information required on a safety data sheet must be provided under the following headings”</i>. This has been amended to <i>“... must be provided under the following general headings”</i> (emphasis added).</p> <p>The condition that required a safety data sheet to be consistent with the requirements of a code of practice approved by the Authority has been removed.</p> <p>The group standards set out the requirements for SDS that are consistent with the GHS, which are based on the 16 header format. This format is recognised as international best practice. The HSNO regulations, in contrast, do not stipulate the 16 header format. For this reason, we will not provide an alternative means of compliance by way of the HSNO regulations. ERMA New Zealand wishes to encourage compliance for all SDS on the 16 header format.</p>	Yes
4	3M New Zealand Limited agrees with principles of group standards. Applying group standards, and further sub grouping products (substances) according to their hazard classifications will eliminate the requirement to assess every product individually and make it simpler to ERMA develop a register of “Hazardous Substances”. Group Standards will also reduce the compliance costs to the manufacturer or importer/supplier. We also approve of the modification of to the ecotoxicological controls for those products, triggering ecotoxic degrees of hazard, but are non-pesticidal substances used in industrial, domestic or otherwise contained indoor environments	Support noted.	No amendment required
4	The Labelling requirements are prescriptive. Consideration should be given to accepting the terminology of the Identification Regulations where “an indication” is required to identify that care in use is to be applied and the precautions needed.	One of the intents behind the development of group standards was a recognition of the need to provide more prescriptive information to users of hazardous substances, particularly small to medium sized enterprises. That is, small companies were	No

Submitter	Submission	Agency response and recommendation	Group standards amended
		<p>asking to be told more useful information than leaving it up to them to try and interpret the non-prescriptive HSNO regulations. The labelling provisions of the group standards achieve this purpose.</p> <p>Recognising that some companies would prefer the non-prescriptive approach, the labelling section of the group standards provides a number of alternative means of compliance, including</p> <ul style="list-style-type: none"> ➤ relevant identification provisions of the HSNO Identification, Emergency Management and Disposal Regulations; ➤ an approved Code of Practice, and ➤ the GHS system of classification and labelling of chemicals. 	
4	Section 2, Clause 16, permits “the relevant labelling and packaging requirements of Australia, USA, Canada, the EU, or any other approved country. We believe that this clause should also be included within Part 4, Packaging.	<p>The current packaging provisions of the group standards are aligned with the UN Recommendations on the Transport of Dangerous Goods Model Regulations. Thus, for example, classifications that currently, under the HSNO Packaging Regulations, trigger a PGIII requirement (Class 6.5A, 6.6A, 6.7A, 6.8A, 6.9A and 8.3A) do not trigger this requirement in the group standards, which is consistent with the UN Model Regulations.</p> <p>Therefore, any goods that are imported into New Zealand in accord with the Model Regulations should be compliant with the provisions of the group standards. Consequently, it is not necessary to give any alternative means of compliance of the type put forward by the submitter.</p> <p>See also Section 1.4.2 of the document available at: http://www.ermanz.govt.nz/consultations/gs/addgs.pdf.</p>	No
4	The Disposal conditions set out in Part 7, sections 18 and 19, are not relevant to domestic quantities. Many vehicle polishes and paint refurbishing products are available to retail outlets as opposed to “work places”. A de minimus quantity should apply.	<p>The disposal condition for packaging (Part 7 of the group standard) has been amended by the inclusion of a new subclause that provides for disposal via domestic refuse collections. This subclause states:</p> <p><i>Packaging (that may or may not contain any residual substance) that is lawfully disposed of by householders or other consumers through a public or commercial waste collection service is a means of compliance with subclause (2).</i></p>	Yes

Submitter	Submission	Agency response and recommendation	Group standards amended
		<p>[Subclause (2) being the requirements that are set for disposal]. No such provision is given in the disposal of substance condition as a consumer is unlikely to dispose of the substance other than in the package. The new subclause (above) allows for residual levels of a substance to be in the package.</p> <p>This provision will be applied to all group standards that cover products available to the general public.</p>	
4	Clarification is required whether a polish classified as a flammable solid would be covered by this Group Standard or Surface Coatings and Colourants.	<p>There are no surface coating or colourant group standards that include flammable solids.</p> <p>The current group standards that have been consulted on are the only group standards that cover class 4 substances.</p>	No amendment required
4	6.1E Toxicity has not been universally adopted internationally. The requirement for Child Resistant Closures should be deleted from Clause 12 in Part 4, Packaging.	<p>The group standard condition requiring CRP for class 6.1 substances is based on the HSNO (Packaging) Regulations 2001.</p> <p>The issue of CRP for a class 6.1E hazard has been raised by other submitters on other group standards. A further response on this matter will be provided separately.</p>	No

Annex 1: Staged Implementation for NOTS

All group standards will contain provisions for staged implementation. These provisions will apply to notified toxic substances (NOTS) that are transferred from the transitional provisions to the main framework of the HSNO Act. The purpose of staged implementation is to allow importers, manufacturers and users of class 4 substances a period of time to become familiar with the new group standard conditions, and to progressively implement these conditions.

The key dates for staged implementation are set out in the table below.

1 July 2006	NOTS transferred to HSNO. Six month period commences before any group standard conditions apply. Persons continue to comply with current regulatory requirements
1 January 2007	Approved handler test certificates required (either deemed ¹ or full five year certificate) ² Compliance required with all group standard conditions, with the exception of conditions for: <ul style="list-style-type: none"> ➤ Test certificates for hazardous substance locations² ➤ Stationary bulk container systems ➤ Emergency management² ➤ Signage² ➤ Labelling, safety data sheets and packaging
1 July 2007	Compliance required with emergency management conditions ² (fire extinguishers, response plans and secondary containment)
1 January 2008	Test certificates required for hazardous substance location ²
1 July 2008	Report required from test certifier for existing stationary bulk container systems Compliance required with conditions for: <ul style="list-style-type: none"> ➤ Labelling^{3,4} ➤ Safety data sheets ➤ Signage² ➤ Packaging
1 January 2009	Full 5 year approved handler test certificate required
1 July 2009	Test certificate required for existing stationary bulk container systems
31 December 2010	Product labels are compliant to this date if they comply with the labelling requirements of Europe, Australia, USA or Canada ⁴

1. A person with two years experience in handling hazardous substances can deem themselves as an approved handler to 31 December 2008.
2. Staged implementation provisions may not apply for approved handler test certificates, location test certificates, emergency management and signage if compliance is already required for a similar class of hazardous substance (see section 'If existing HSNO Provisions Apply').
3. Other than for substances that comply with the labelling requirements of Europe, Australia, USA or Canada.
4. A group standard condition proposes that a 4 year period be allowed for compliance with labelling, provided that the product labels comply with the regulatory requirements for labelling that apply in these countries. This provision will apply to new products as well as NOTS.

If Existing HSNO Provisions Apply

Where existing HSNO provisions apply for approved substances (e.g. dangerous goods transferred on 1 April 2004), then there will be no staged implementation for an approved handler test certificate, location test certificate, emergency management or signage if persons are already required to hold test certificates or have emergency management provisions and signage in place for the same class of substance. In this situation, compliance should have already been achieved. Therefore, full compliance for the NOTS is required by 1 January 2007. All other provisions for staged implementation (e.g. labelling, packaging etc) will apply as set out above. Full staged implementation (including for test certificates, emergency management and signage) will apply if **new classes** of substances are transferred as NOTS.

For example, a person who imports or manufacturers a class 3.1 flammable NOTS will not receive staged implementation for test certificates, emergency management or signage if they also store class 3.1 flammables that are already HSNO approved substances and for which they require test certificates, emergency management and signage. If, however, they are manufacturing or storing NOTS that are of a different class (e.g. class 5 oxidising substances), then staged implementation will apply as set out above, but only for that new class.

Further Information

Further details on staged implementation and general compliance requirements will be provided to notifiers in the lead-up to transfer. For other compliance information, you can contact the ERMA New Zealand Hazardous Substance Compliance Line, by:

Phone: 0800 376 234, or

Email dginfo@ermanz.govt.nz.