



**Transfer of
Substances**

ENVIRONMENTAL RISK MANAGEMENT AUTHORITY
NGĀ KAIWHAKATŪPATO WHAKARARU TAIAO



Summary of Submissions: Group Standards for Construction Products

May 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 construction products. 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 construction products on 27 March 2006. Consultation closed on 11 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 parties who were considered likely to have an interest in this consultation. This included companies who notified construction materials 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

Two submissions were received on the proposed construction products group standards. Both submissions requested a hearing. The submission of the Cement and Concrete Association was discussed with ERMA New Zealand at a pre-hearing meeting on 17 May 2006 and consensus reached on all matters of concern. The points of concern of the other submitter were also addressed with further consultation. Consequently, no hearing was required.

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 construction products group standard, major notifiers of construction products² 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/construction.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/consult-gs.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 “Construction Products 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 construction products on 25 May 2006. A notice of their decision will be placed on the ERMA New Zealand web site as soon as practicable after the consideration.

In order to allow for completion of the consultation programme for other group standards, each decision on the consultation products group standards will be a *decision in principle*. A further consideration will be held in mid-June, at which time final approval from the Authority will be given. Further information is available at <http://www.ermanz.govt.nz/hs/groupstandards/standards/construction.html>.

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 construction materials 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.

2. Submitter's Comments and Agency Response and Recommendations

Code to Submitters

No.	Submitter
1	3M New Zealand Ltd
2	Cement and Concrete Association of New Zealand

Submitter	Submission	Agency response and recommendation	Group standards amended
1	We agree 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 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
1	The labelling requirements should use less prescriptive wording (that embodies the same intent). The group standards should not prescribe actual wording but provide "an indication" (as written in the Identification regulations) that care is needed, and special restrictions apply.	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 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. Recognising that some companies would prefer the non-prescriptive approach, the labelling section of the group standards provides a	No

Submitter	Submission	Agency response and recommendation	Group standards amended
		<p>number of alternative means of compliance, including</p> <ul style="list-style-type: none"> ➤ relevant identification provisions the HSNO Identification, Emergency Management and Disposal Regulations; ➤ an approved Code of Practice, and ➤ the GHS system of classification and labelling of chemicals. 	
1	<p>Clause 16 of Section 2, which permits “the relevant labelling and packaging requirements of Australia, USA, Canada, the EU, or any other approved country”, should also be included within Part 4, Packaging.</p>	<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 amendment required
1	<p>We require clarification whether fillers, packed in cartridges, and sold to the general public through retail hardware outlets are considered to be child resistant.</p>	<p>The measure of what constitutes a child resistant package is performance based, but effectively requires that 80% of children aged from 42 to 51 months would be unable to gain access to the contents or obtain a toxic dose within a 5 minute period. Cartridges of the type referred to by the submitter typically require the use of a device to dispense the substance (cartridge gun), which of itself effectively makes the cartridge child resistant.</p>	No
1	<p>Seek the flexibility to include fillers in the Adhesives group standards.</p>	<p>The Adhesives Group Standards have been “rolled-up” into a broader category of “Surface Coatings and Colourants”. Refer to http://www.ermanz.govt.nz/consultations/gs/adhesivessubsums.pdf.</p> <p>The Surface Coatings and Colourants Group Standards include, under the definition of adhesives, “gap fillers”. Therefore, fillers can</p>	No amendment required

Submitter	Submission	Agency response and recommendation	Group standards amended
		be placed under either the Construction products Group Standards or the Surface Coatings and Colourants Group Standards.	
2	The approved handler requirements should be removed for the Construction Products Toxic (6.7A) Group Standard. The added costs (to industry, the domestic user, and enforcement agencies) from the approved handler control provision for (respirable silica triggered) carcinogenic are excessive, in light of the limited mitigation of risk and the adequacy of controls imposed under existing health and safety legislation.	<p>The approved handler requirements in the (respirable silica triggered) 6.7A group standards will be removed. We agree that other measures in place under the HSE Act will address risks in the workplace, and risks to the public from use of these materials should be low as a result of the infrequency of exposure.</p> <p>To ensure, however, that information is communicated to end users on the hazards of these materials, the requirement for labelling of products will precautionary statements appropriate for a 6.7A substance will remain.</p>	Yes – remove approved handler requirement
2	A new (or modified) group standard that covers substances with both a 6.7A (respirable silica triggered) and 8.2C HSNO classification (as well as various subsidiary hazards) is required. This is because this hazard profile is not provided for in the current suite of construction products group standards, yet there are likely to be many cement products (e.g. pre-mixes) that would fit this hazard profile.	<p>An additional construction products group standard for substances with an 8.2C and 6.7A (respirable silica triggered) hazard will be developed. This will be in place for a 1 July 2006 transfer.</p> <p>For the reasons noted above, this 8.2C/6.7A group standard will not have the approved handler control.</p>	Yes – additional group standard developed
2	Clarification is sought regarding the status of wet concrete. We believe that it should be deemed an intermediary product, as it is comparable to a two-part isocyanate containing paint. Part A and Part B are classified separately under HSNO. When they are mixed together, the wet paint does not have a separate HSNO classification.	<p>Wet concrete is deemed an intermediary product.</p> <p>Further guidance will be provided on this matter following the transfer of notified substances on 1 July 2006.</p>	No amendment required

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 construction products 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.