



**Transfer of
Substances**

ENVIRONMENTAL RISK MANAGEMENT AUTHORITY
NGĀ KAIWHAKATŪPATO WHAKARARU TAIAO



Summary of Submissions: Group Standards for Compressed Gases

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 compressed gases. 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 10 group standards for compressed gases on 27 February 2006. Consultation closed on 11 April 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 draft group standards,¹ or a letter advising of the availability of these documents, were provided to approximately 50 parties who were considered likely to have an interest in this consultation. This included companies who notified compressed gases 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.²

Three submissions were received, with none of the submitters requesting a hearing. 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 start of the table.

This summary of submissions has been provided to all parties who made a submission on the compressed gases group standard proposals, all notifiers of compressed gases (whether or not they made a submission) and to the Hearings Committee of the Authority.³ It is also available from the ERMA New Zealand web site:

<http://www.ermanz.govt.nz/consultations/gs/compgas.asp>. A copy will be provided to any other interested party on request. Contact:

Haromi Roberts
ERMA New Zealand
PO Box 131
Wellington
New Zealand

Phone +64 4 918 4871

Email NOTS@ermanz.govt.nz and enter "Compressed Gases Summary of Submissions" in the subject line.

¹ Provided electronically on CD. No paper copies were distributed unless specifically requested.

² These documents remain available on the ERMA New Zealand web site:
<http://www.ermanz.govt.nz/consultations/gs/compgas.asp>

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.

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 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@erманz.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.

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.

The Hearings Committee is scheduled to consider the group standards for compressed gases in June 2006. A notice of their decision will be placed on the ERMA New Zealand web site as soon as practicable after the consideration.

Because we have identified a need to undertake further consultation on key matters concerning group standard proposals, any decision of the Hearings Committee will only be an interim (provisional) decision at this time (see following section).

1.4 Further Consultation Required

Since the release of the original group standard proposals, there was a need for further consultation to:

1. address matters inadvertently omitted from some group standards, particularly with respect to tracking of the most toxic (Class 6.1B) substances and the labelling of hazardous ingredients; and
2. seek further feedback on certain points raised by submitters from the initial consultation.

A copy of this consultation document is available from the ERMA New Zealand web site: <http://www.erманz.govt.nz/consultations/gs/addgs.asp>.

⁴ The template and process operates 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.

As a consequence of undertaking further consultation, there will be a further consideration by the Hearings Committee to address these additional matters and give final approval to the group standards proposed. This consideration is scheduled for June 2006.

1.5 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 compressed gases and other product types, 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	Polychem Marketing Ltd
2	Massey University
3	Checkmate Solutions on behalf of BOC Gases

Submitter	Submission	Agency response and recommendation	Group standards amended
General Comments			
1	Wished to expand the suite of compressed gas Group Standards to include another primary hazard combination.	Further discussion with the submitter resulted in the decision that an additional group standard was not required.	No amendment required
3	Submitted list of gases for inclusion on component list (Schedule 2). The majority of substances identified have already been transferred as Dangerous Goods (all transferred DGs were included at end of the schedule). The following is the new substances for inclusion that were not already part of Schedule 2: Fluorine CAS# 7782-41-4 Hexafluoropropylene CAS# 116-15-4 Krypton CAS# 7439-90-9 Methylacetylene CAS# 74-99-7 Methylbutene CAS# 26760-64-5	A decision has been made to remove Schedule 2 (list of allowable components of gas mixtures) from the group standards. A consequence of this will be the addition of the Inventory of Chemicals into the group standards. This will require new substances to New Zealand after 30 June 2006 to be notified to the Authority.	Yes

Submitter	Submission	Agency response and recommendation	Group standards amended
	Vinylacetylene CAS# 689-97-4 Methylhexane Methylbutene		
1	Has identified an additional gas to be added to the Schedule 2 (list of gas components) – Pentafluoroethane CAS# 354-33-6	See above	Yes
Conditions for labelling			
2	A precautionary statement regarding rapid release of asphyxiant gases needs to be included in controls. Primarily referring to compressed CO2 cylinders which are classified as non hazardous under HSNO. There are a number of reported instances of rapid failure of the bursting disk on CO2 cylinders, usually when the cylinder is warmed by sun or moved to a heated building.	HSNO does not regulate asphyxiant hazards with regards to the rapid failure of the cylinders; therefore it cannot be included in the group standards. The HSE Act should cover the requirements of this.	No amendment required
3	Too much information is asked for on the label, this requirement is not practical. A separate proposal is the subject of a draft Code of Practice or Guide on “Industrial gases” that has been developed.	This proposal needs to be submitted to ERMA as a potential Code of Practice not just as guidelines material. An approved code of practice is a method of compliance of the labelling requirements as outlined in the group standards.	No amendment required
3	Requests disposal information to be excluded from the label and put on the MSDS instead.	This needs to be submitted to ERMA as part of a Code of Practice, on approval it could be used as an alternative method of compliance. A clause stating: Notwithstanding subclause 5 (a) and (b), inclusion on the label a statement saying “Return cylinder to manufacturer when finished” meets requirement of subclause (a) and (b).	No amendment required
3	Believe that many of the hazard and precautionary statements are too long, would prefer a statement to call 111. BOC does not want to encourage customers to approach cylinders in a fire and endeavour to put it out.	Alternative compliance methods for the labelling provisions are supplied in the labelling sections of the group standards. This allows the choice of compliance methods if a company does not wish to follow the guidelines of the Hazard and Precautionary Information document. A statement directing people to call 111 can be included, if it is submitted and approved as a Code of Practice.	No amendment required
3	Relevant standards and codes of practice allow for smaller diamonds on cylinder labels because of the constraints caused by the size and shape of cylinders, and the need to see other	See above	No amendment required

Submitter	Submission	Agency response and recommendation	Group standards amended
	stamped information on gas cylinder shoulders. Cylinder labels should be positioned on the cylinder shoulder without covering the most recent test mark, maximum working pressure, empty weight and serial number.		
Miscellaneous			
3	BOC is concerned at the prohibition on sale or supply to the general public, there are many gas mixtures sold to the public particularly non-hazardous ones. Also wants clarity on the term “general public” – does this include account holders?	This issue was discussed with BOC at a number of meetings and it was agreed that these types of products would not be available to the general public. This exclusion allowed for simplification of the group standards for gases. However we have amended the restriction so that it no longer applies to products covered under the Flammable and the Subsidiary group standards. This restriction still does not apply to non-hazardous gas mixtures.	Yes
3	Question the <i>need</i> for the non-hazardous group standard. The content and intent of this document is covered in the Land Transport Rule as Dangerous Goods and by the Compressed Gases Regulations.	The non-hazardous group standard is required to ensure compliance to the Compressed Gas regulations. The Act was specifically amended in 2004 to allow for prescribing or providing controls on compressed gases whether intrinsically hazardous or not (section 140 (5) of the HSNO Act). A decision has been made as previously mentioned to remove Schedule 2 (list of allowable components of gas mixtures) and instead include an Inventory of Chemicals clause.	No amendment required
3	The sale or supply of non-hazardous gases should be clarified in the group standard with statements saying specifically that these mixtures are allowed to be sold or supplied to the general public. It should also say that a gas mixture of any non-hazardous gas can be made.	There is no need to include a statement allowing the sale to the general public because it is clear from the scope that there is no exclusion. As mentioned above the restriction on sale to the general public has been lifted for flammable and subsidiary mixtures.	No amendment required
3	BOC questions the need to list all components. Should not be necessary to list all ingredients when a gas cannot be used as an ingredient if it is not approved for use in NZ at all. This is particularly relevant for non hazardous gases – if a compressed gas is non hazardous it falls outside the context of HSNO.	As mentioned above Schedule 2 (list of allowable components of gas mixtures) has been removed and the Inventory of Chemicals has now been included.	Yes
3	Suggests more generic product identifications be used in the permissible ingredients list for hydrocarbon molecules. These would be C1-C5 Alkanes, C1-C5 Alkenes, C1-C5 Alkynes, C5+ Alkanes, C5+ Alkenes and C5+ Alkynes.	See above.	Yes

Submitter	Submission	Agency response and recommendation	Group standards amended
3	BOC desires to assess its own gas mixtures to decide in which group standard they fit. This would be under a set methodology which will be audited under BOC ISO 9000 accreditation. BOC believes it is not necessary for each hazard classification to be independently reviewed and does not want this as it would slow down the process and render that aspect of the business inoperable.	Group standards are predicated on industry having the ability to self-classify and assign substances to a group standard, as indicated in the consultation document. There will be no mandatory requirement for self-classifications to be reviewed; however, the group standards contain a condition that will require industry to maintain a record of classification. This record of use is currently being consulted on at http://www.ermanz.govt.nz/consultations/gs/addgs.asp	No amendment required
3	BOC currently renders cylinders unserviceable by piercing the wall of the cylinder with a 20mm spike. While this technique is permitted by the wording of the GS, BOC would like to have this method specifically described so as to avoid confusion at later dates.	The current wording of the disposal section is non-prescriptive and allows for a variety of means of compliance. Therefore it is not necessary to specifically describe this within the group standards. This could be included in guidance material that compliments the group standards following 1 July 2006.	No amendment required
Site and Storage Requirements			
3	Clause 21(1) in the Site and Storage doc – there should be an “or” between (b) (i) and (ii) rather than an “and”. So it should be 21 (1)... (b)... (i)...; or (ii)..... This is so that the requirement is to have an approved handler present, or have the substances locked away. It is impractical to have them locked away all the time, even when the approved handler is available.	This requirement is taken directly from the <i>Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001</i> . The regulation is that the test certification provisions require there to be an approved handler for the flammable gas and that the flammable gas <i>can</i> be secured (or locked up). If an approved handler is not present the requirement would be for the substance to be secured. If the approved handler is present the substance is not required to be secured.	No amendment required
3	Clause 35(2)(b) calls for an upper temperature of 50°C. This limit is inconsistent with the requirements of the reference temperatures laid down by the Compressed Gas Regulations which calls for a max temp of 65°C in regulation 7.	The temperature referred to in the Site and Storage document (50°C) refers to the maximum temperature for an oxidising gas relating to the stability of an oxidising gas. The temperature referred to in the Compressed Gas regulations (65°C) indicates the design of a cylinder and its ability to withstand a maximum pressure rating. These are not comparable values.	No amendment required
3	The calculation detailed in condition 44(2) has been demonstrated as unworkable and therefore meaningless. Suggest that this calculation be rescinded until a meaningful and workable calculation can be included.	We acknowledge that this calculation is problematic. Because the conditions are adapted directly from the regulations, we are retaining the calculation without amendment. Compliance with this calculation will be complemented by guidance material along with a possible relevant Code of Practice.	No amendment required
3	BOC seeks acceptance that compliance with “AS 4332 – the storage and handling of gases in cylinders” be accepted as a code of practice such that it will satisfy the requirements of the	In order for AS 4332 to be accepted as a Code of Practice it must be submitted to ERMA for review and approval.	No amendment required

Submitter	Submission	Agency response and recommendation	Group standards amended
	site and storage conditions for the Compressed Gas group standards.		

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 compressed gases 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 certificates 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 will enable New Zealand to align itself with the implementation of GHS in our major trading markets, currently scheduled for 2010. This proposal has yet to be approved by the Authority. If approved, the 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.