



**Transfer of
Substances**

ENVIRONMENTAL RISK MANAGEMENT AUTHORITY
NGĀ KAIWHAKATŪPATO WHAKARARU TAIAO



Summary of Submissions: Group Standards for Metal Industry Products

April 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 metal industry 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 seven group standards for metal industry products on 8 February 2006. Consultation closed on 23 March 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 70 parties who were considered likely to have an interest in this consultation. This included companies who notified products used in the metal industry 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

One submission was received and the submitter did not request a hearing.

The comments made by the submitter are summarised in Section 2, along with the Agency's response.

This summary of submissions has been provided to the party who made a submission, major notifiers of metal industry products and related materials³ and to the Hearings Committee of the Authority.⁴ It is also available from the ERMA New Zealand web site: <http://www.ermanz.govt.nz/hs/groupstandards/standards/metalind.html>. A copy will be provided to any other interested party on request.

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Email NOTS@ermanz.govt.nz and enter "Metal Industry Products 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/metalind.asp>.

³ Notifiers with only a few NOTS have been advised by letter of the availability of this summary of submissions.

⁴ 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 (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@erманz.govt.nz.⁵ 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.

The Hearings Committee is scheduled to consider the group standards for metal industry products on 4 May 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

1.4.1 New Conditions and Amendments to Conditions for Group Standards

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

1. address matters inadvertently omitted from some group standards, particularly with respect to conditions for the 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>.

1.4.2 Additional Group Standards for Metal Industry Products

At the time of the original consultation on the seven group standards for metal industry products, there were insufficient NOTS to warrant the creation of a group standard for a flammable (HSNO 3.1B or C) hazard. Subsequent moving and reclassification of NOTS has meant that a group standard covering this hazard is now necessary. This

⁵ The template and process operate in such a way that requires notifiers to contact ERMA New Zealand. This is to safeguard data confidentiality.

has resulted in the release for consultation of the following additional group standard for metal industry products:

- Hazardous Substances (Metal Industry Products, Flammable) Group Standard Notice 2006

This group standard proposal is available from the ERMA New Zealand web site: <http://www.ermanz.govt.nz/consultations/gs/addmetalind.asp>. The group standard includes the new conditions and amendments to conditions discussed in Section 1.4.1.

As a consequence of undertaking further consultation, including on a new group standard, 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 mid 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 metal industry products 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

Submitter	Submission	Agency response and recommendation	Group standards amended
Tracking			
BOC Ltd	Several welding fluxes now classified as 6.1B which were not previously considered either deadly or dangerous poisons. These products will now require tracking of sales. Concern that this was not the case under previous legislation and suggest that the status quo be maintained and that tracking only apply to 6.1A substances	<p>The tracking of 6.1B substances is consistent with the requirements of the HSNO regulations. For substances with this level of hazard, this condition is appropriate. Keeping a record of sale of dangerous poisons (equivalent to a HSNO 6.1B) was previously required under the Toxic Substances Regulations. If these substances did not previously require record keeping of sales, this suggests the classification may not be correct. We are working with the submitter to review the classifications assigned.</p> <p>Notwithstanding the classification assigned by ERMA New Zealand during the screening of NOTS, notifiers are able to self classify and if necessary assign their product to an alternative group standard (see Section 1.2).</p>	No
Approved Handlers			
BOC Ltd	Seek further clarification over the requirements of approved handlers being present at retail locations. Do the approved handlers have to be present? Or is availability by phone enough?	<p>The group standard condition requires that a 6.1B and 6.1C substance be under the personal control of an approved handler. A substance may be handled by a person who is not an approved handler if an approved handler is present at the place, has provided guidance and is available at all times to provide assistance. The practical realities of this mean that for acutely toxic substances, an approved handler does need to be present at the retail location.</p> <p>We will be providing guidance information on the requirements for approved handlers at retail outlets following transfer on 1 July 2006.</p>	No
	Previous legislation allowed for the storage of deadly or dangerous poisons at > 5L or 5Kg out of reach of unauthorised persons. Standard poisons < 5L or 5Kg could be stored above heights of 1.5m without being required to be locked away. Note that products were not previously considered dangerous or deadly poisons. Suggest that safe storage be allowed by storing at heights above 1.5m and that only 6.1A substances have to be locked and tracked.	<p>Acutely toxic (6.1B and 6.1C) substances only need to be secured if there is no approved handler present. Storing substances at or above a certain height is not an adequate means of security.</p> <p>If these substances did not previously require special provisions for storage, then as noted above, this may suggest incorrect classification. The appropriateness of the classifications assigned will be reviewed.</p>	No

Submitter	Submission	Agency response and recommendation	Group standards amended
Miscellaneous			
BOC Ltd	Request that NOTS be able to be moved between group standards up until the date of transfer. Also request that a list of all group standards be made available along with a list of the companies NOTS allocated to group standards.	<p>NOTS can be moved at any time by the notifier, including after transfer. We have developed an excel tool to assist companies reassign their NOTS. This will be available until 30 June 2006. Following transfer ERMA New Zealand will write to notifiers with a list of their NOTS assigned to each group standard. Notifiers can still move NOTS after this time, but they must keep a record of the basis for why they have assigned a NOTS to a particular group standard.</p> <p>A list of all group standards is currently available from the ERMA New Zealand web site: http://www.ermanz.govt.nz/hs/groupstandards/list.html.</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 products used in the metal industry 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@erманz.govt.nz.