



24 February 2005
The Manager Regulation Development & Implementation Unit
WorkCover NSW
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Dear Sir

The Australian Environment Business Network (AEBN) welcomes the opportunity to comment on the *Occupational Health and Safety Amendment (Dangerous Goods) Regulation 2005* (OH&SDG Reg).

AEBN is an industry and business representative body specializing in environmental issues, which affect our members. Our membership collectively has a turnover in excess of \$50 billion and employs well over 50,000 employees. Further information about AEBN can be found on our website at www.aebn.com.au

AEBN was represented at the *Dangerous Goods and Explosives Consultative Committee – Industry and Union Group* and participated in the development of the draft regulation.

Overall AEBN is supportive of the uptake of the *National Standard for the Storage and Handling of Workplace Dangerous Goods* (National Standard). Adoption of the National Standard has been effected through the draft OH&SDG Reg and the *Code of Practice: Storage and Handling of Dangerous Goods*. AEBN has only specific issues relating to the consistency of the draft regulation and the code. Most of the issues of inconsistency relate the inclusion of C2 combustible liquids under the regulation.

1. Issues relating to Combustible Liquids

During the discussions and fine-tuning of the draft regulation there was debate about if C2 combustible liquids¹ should be included under the regulation. It appears that C2s have been included in the draft regulation, but as a late *ad hoc* amendment. Consequently there are many drafting errors, of which AEBN has identified some of the major conflicts and inconsistencies.

¹ C1 combustible liquids are defined as having a flash point above Class 3 flammable liquids (60.5°C is one) and do not exceed a flash point of above 150°C. C2 combustible liquids are defined as having a flash point above 150°C.

Under the regulation C1s and C2 combustible liquids are defined as dangerous goods as stated in the following section of the OH&SDG Reg, quote:

174A Meaning of “dangerous goods”

In this Chapter, dangerous goods means:

- (a) substances or articles defined under the ADG Code as:
 - (i) dangerous goods of Class 2, 3, 4, 5, 6.1, 8 or 9, or*
 - (ii) goods too dangerous to be transported, and**
- (b) C1 combustible liquids, and*
- (c) C2 combustible liquids.*

AEBN recommends WorkCover carefully review the inclusion of C2 combustible liquids in both the draft OH&DG Regulation and the Code of Practice: Storage and Handling of Dangerous Goods as there are numerous drafting inconsistencies.

1.1 Placarding

While the inclusion of C2s are not opposed there exists a number of inconsistencies within the regulation where clarification of C1s occurs, but C2s are ingored. For example, consider section 174ZJ:

174ZJ Other placarding requirements

(1) An occupier must ensure that the following are placarded in accordance with this clause:

- (a) any container or other form of storage of dangerous goods in bulk,*
- (b) any storage place of packaged dangerous goods where the dangerous goods exceed the relevant quantity specified in the column headed “Placarding quantity” in the Table to Schedule 5.*

(2) Subclause (1) does not apply to any of the following:..

- (b) C1 combustible liquids in bulk in a quantity not exceeding 10,000 litres that are isolated from other dangerous goods,*
- (c) dangerous goods of Class 2.1 or 3 or C1 combustible liquids, that are stored in an underground tank at a retail service station where the goods are used to refuel vehicles.*

C1s are exempt from placarding if they are isolated from other dangerous goods and or stored in quantities less than 10,000 liters. It appears that storing C1s with C2s would fail this isolation test as C2s are another dangerous good. In addition, C2s have no threshold placarding so any quantity would require to be placarded.

The Victorian regulations do not include C2s as dangerous goods, but Queensland does only if stored with a fire risk dangerous good as is consistent with the National Standard.

AEBN recommends subsection 174ZJ (2)(b) and (2)(c) be replaced respectively by;

(b) C1 and C2 combustible liquids in bulk in a quantity not exceeding 10,000 litres that are isolated from other dangerous goods; and

(c) dangerous goods of Class 2.1 or 3 or C1 combustible liquids or C2 combustible liquids, that are stored in an underground tank at a retail service station where the goods are used to refuel vehicles.

This will mean that C2s will also be required to display the COMBUSTIBLE LIQUID sign. However, the statements :

‘Figure 2—Template for a placard for dangerous goods (other than C1 combustible liquids) in bulk ‘

‘5 Placard for C1 combustible liquids (in bulk and in packages)’

‘A placard for C1 combustible liquids in bulk and in packages must display the words “COMBUSTIBLE LIQUID” as shown in Figure 5 in black letters in the style shown, not less than 100 mm high and on a white or silver background.’

in schedule 5 should be amended to read:

‘Figure 2—Template for a placard for dangerous goods (other than C1 and C2 combustible liquids) in bulk.’

‘5 Placard for C1 and C2 combustible liquids (in bulk and in packages)’

‘A placard for C1 and C2 combustible liquids in bulk and in packages must display the words “COMBUSTIBLE LIQUID” as shown in Figure 5 in black letters in the style shown, not less than 100 mm high and on a white or silver background.’

Also *‘Figure 5—Placard for C1 combustible liquids’* should read *‘Figure 5—Placard for C1 and C2 combustible liquids’*.

1.2 Packaging

As the Australian Dangerous Goods Code does not include packaging requirements for C1s, C2s and goods too dangerous to be transported the OH&SDG Reg fulfils this role by including the following requirements:

174I Restrictions on supply

(2) A person (other than the manufacturer of the combustible liquids or goods too dangerous to be transported) who supplies C1 combustible liquids or goods too dangerous to be transported to another person must, before the liquids or goods are supplied to the other person, ensure that the liquids or goods are packed in packaging that is:

- (a) of a type and in a condition that will retain the liquids or goods and will not react adversely with the liquids or goods, and
- (b) clearly labelled with the product name of the liquids or goods.

Maximum penalty: Level 4.

C2 combustible liquids are not included in this requirement. AEBN considers that it may not be necessary to include C2s in this section, as many other non-dangerous goods products are not required to be penalised if the packaging is incorrect. Environmental legislation is particularly harsh if any substance leaks or spills from a container². Nevertheless, AEBN considers the exemption of C2s from this section is not clear and should be expressly identified as being exempt.

AEBN recommends C2 combustible liquids be specifically exempt from the packaging requirements under section 174I.

1.3 Notification

AEBN does not believe that C2 liquids need to be notified to WorkCover. C2s are not included in schedule 5 for this purpose. However, the regulation is unclear and needs to state that C2s are not included to ensure clarification. This is required as schedule 5 could be interpreted as C2s having no threshold and any quantity requires notification.

AEBN recommends that C2 combustible liquids be specifically exempt from schedule 5.

2 MATERIAL SAFETY DATA SHEETS

AEBN has identified an inconsistency between the MSDS requirement of hazardous substances and dangerous goods.

The inconsistencies are the specific exclusions of food, cosmetic, tobacco and toiletry products that exist under *Occupational Health and Safety Regulation 2001*, specifically section 147.

² Section 116 Protection of the Environment Operations Act 1997 makes leaks and spills subject to a tier 1 (\$1 million maximum fine) liability.

Occupational Health and Safety Regulation 2001

146 Application

- (1) *This Chapter applies (subject to clause 147) to all hazardous substances, to all places of work in which hazardous substances are used, and to all persons who have been, are or may become exposed to hazardous substances in those places of work.*
- (2) *For the purposes of this Chapter, exposure of a person to a hazardous substance includes the absorption, or potential absorption, by the person of the substance by ingestion or inhalation or through the skin or mucous membrane or by any other means.*

147 Exclusion of certain substances

- (1) *This Chapter does not apply to the following substances if their use is not related to a work activity:*
 - (a) *food (within the meaning of the Food Act 1989),*
 - (b) *therapeutic agents,*
 - (c) *cosmetics,*
 - (d) *tobacco and tobacco products,*
 - (e) *toiletries and toilet products*

Under the draft OH&SDG Reg. All dangerous goods require a MSDS to be prepared and made available as per:

Division 2 Material safety data sheets

174J Manufacturer to prepare material safety data sheet

(1) A manufacturer of dangerous goods must prepare a material safety data sheet (MSDS) for the dangerous goods before the dangerous goods are supplied to another person. Maximum penalty: Level 4.

As many food, cosmetics and tobacco and toiletries products will be defined as dangerous goods then the MSDS requirements will be onerous and confusing for industries currently exempt from this requirement. Most inks, edible oils—peanut, canola, sunflower, palm oils, butter, gee, margarine etc, are C2 and C1 combustible liquids and therefore defined as dangerous goods under section 174A of the draft regulation.

AEBN considers that this is not the intent of WorkCover to expand the extent of MSDS coverage to include many of these items because they are included as dangerous goods.

AEBN recommends a new subsection be included under section 174J :

- (7) *This Division does not apply to the following dangerous goods if their use is not related to a work activity:*
 - (a) *food (within the meaning of the Food Act 1989),*
 - (b) *therapeutic agents,*

- (c) cosmetics,*
- (d) tobacco and tobacco products,*
- (e) toiletries and toilet products*

3 SUMMARY

AEBN welcomes the opportunity to assist WorkCover develop a more workable piece of NSW law that adopts the National Standard for dangerous goods. While some differences will exist between states in the uptake of the National Standard, overall the process should generate a similar regulatory regime to progress the management of dangerous goods across Australia.

Please contact me on 02 9924 7575 if you wish to discuss the recommendations and positions made by AEBN.

Yours Sincerely

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AUSTRALIAN ENVIRONMENT BUSINESS NETWORK