

**Director's decision:
Proposal to vary particulars on AICS in relation to lead in industrial surface
coatings and inks**

1. Background

Section 11(1) of the *Industrial Chemicals (Notification and Assessment) Act 1989* (the Act) provides that the Director of NICNAS (the Director) must keep an inventory known as the Australian Inventory of Chemical Substances (the AICS).

If a chemical is included on the AICS, the chemical may be imported into Australia, or manufactured in Australia, without obtaining a certificate or permit (subsection 11(3)).

The Director has the power to include, or vary, certain particulars on the AICS (section 13). Specifically, the Director may impose conditions, including conditions of use, to which the importation or manufacture of a chemical is subject (paragraphs 13(1)(a) and (b) and sub-section 11(4)).

On 5 June 2007 the Director published a notice in the *Chemical Gazette* (refer Attachment A) proposing to vary the particulars recorded on the AICS for certain lead compounds for use in industrial surface coatings and inks

In a letter dated 3 July 2007 the Plastics and Chemicals Industries Association (PACIA) gave the Director a statement of reasons as to why the proposed variation should not be made. On 3 July 2007, ACCORD also wrote to the Director of NICNAS noting that they shared the concerns raised by PACIA.

For the reasons set out below, the Director rejects the statements by PACIA and ACCORD and gives PACIA and ACCORD notice of that decision under section 13A(6) of the Act.

2. The formulation of the reasons for the Director's proposal to vary the particulars on the AICS

The Director's proposal to vary the particulars recorded on AICS followed an extensive period of information gathering, chemical assessment and consultation.

By notice issued in the *Chemical Gazette* on 3 January 2006, certain lead compounds, in industrial surface coatings and inks, were declared 'Priority existing chemicals' for health risk assessment. Such an assessment involves determining the risk of adverse health, safety or environmental effects that could be caused by the importation, manufacture, use, storage, handling or disposal of the chemical (section 60A of the Act).

Under section 60B, an assessment report for Priority existing chemicals may also make recommendations as to the precautions and restrictions to be observed during the importation, manufacture, handling, storage, use or disposal of a chemical.

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NICNAS prepared a draft assessment Report, titled 'Lead in Industrial Surface Coatings and Inks', (the draft Report) in respect of the declared lead compounds.

The draft Report detailed the health effects of exposure to lead, the risk of exposure associated with the use of lead compounds in industrial surface coatings and inks, and recommendations for mitigating risk.

Based on exposure modelling and overseas data, the draft Report concluded that current conditions of use may lead to unacceptable levels of lead exposure which can in turn have significant health impacts. Lead is known to have diverse effects on multiple body systems including neurological, gastrointestinal, reproductive and cardiovascular systems.

The Report contained a number of recommendations to address the health and safety concerns detailed in the draft Report, one of which was that a variation be made to the particulars on AICS to impose conditions of use.

On 13 February 2007, the draft Report was sent to the applicants, being the 23 companies that applied for assessment and provided information on the properties, import quantities and uses of the chemical. Consistent with the requirements of the Act, the applicants were provided 28 days to check the report for any errors and notify NICNAS. Applicants were given the opportunity to discuss the draft report with NICNAS at meetings in Sydney and Melbourne during this 28 day period. No errors were notified to NICNAS.

On 1 April 2007, NICNAS re-sent the draft Report to the applicants and a notice was published in the *Chemical Gazette* indicating that the draft Report was publicly available. Applicants were again given the opportunity to meet with NICNAS if they wished to discuss the draft report. NICNAS also wrote to the members of the Industry Government Consultative Committee (which included PACIA and ACCORD) to advise that the draft Report was available for public comment.

Comments on the draft Report were received from two stakeholders (Victoria Work Cover and Wagon Paints (Aust) Pty Limited). The issues raised were addressed by NICNAS through minor revisions to the draft Report. No comments were received from PACIA or ACCORD and nor were any comments received objecting to the recommended regulatory action by NICNAS.

On 5 June 2007, the Director published a notice in the *Chemical Gazette* proposing to vary the particulars on the AICS, consistent with the recommendation in the draft Report (Attachment A).

On 20 September 2007, NICNAS published the final assessment Report (the final Report) and placed a notice advising of the publication in the *Chemical Gazette* of 2 October 2007.

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3. Specific issues raised by PACIA and ACCORD

In response to the *Chemical Gazette* notice detailing the proposal to annotate the AICS, PACIA gave the Director a statement of reasons why the proposed variation should not be made. In summary, the PACIA reasons are that the proposed variation of the particulars on the AICS:

- is inconsistent with the Final Report and Recommendations of the Existing Chemicals Program Review (December 2006). Recommendation 1 is “That any proposals for reform to the NICNAS EC Program that are outside the policy mandate of NICNAS be referred to the COAG Ministerial Taskforce on Chemicals and Plastics for broader consideration”. Recommendation 7 states “Consistent with Recommendation 1 of this Report, that NICNAS refer the range of issues raised in relation to the suggestion for NICNAS to be able to ban, severely restrict and/or control certain chemicals, to the COAG Ministerial Taskforce on Chemicals and Plastics.” As the proposal uses AICS to restrict the manufacture and importation of certain lead compounds for certain uses, PACIA considered that this was a matter which cannot be progressed by NICNAS and must be referred to the COAG Ministerial Taskforce;
- adds regulatory complexity. PACIA noted that chemicals are banned or severely restricted via a schedule of the National Model Regulations on Control of Workplace Hazardous Substances and expressed concern that the proposed use of AICS (in addition to the Schedule in Hazardous Substances regulations) would add to the complexity of the regulatory framework; and
- is not supported by a Regulatory Impact Assessment. PACIA expressed concern that the proposal was developed in the absence of a Regulatory Impact Assessment being carried out.

ACCORD also wrote to the Director of NICNAS noting that they shared the concerns raised by PACIA and while both organisations were committed to finding timely outcomes which met the agreed public and occupational health and safety objectives, concerns were expressed with the proposed means of dealing with this matter.

4. The Director’s decision regarding the PACIA reasons

Section 13A(4) of the Act provides that if a statement of reasons is received, the Director must reconsider the proposed inclusion or variation in light of the statement.

The Director has reconsidered the proposed variation in the light of the statements received by PACIA (as supported by ACCORD). For the reasons set out below, the Director rejects the reasons why the particulars should not be included as proposed in the notice in the *Chemical Gazette* on 5 June 2007.

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Having regard to the objects and purposes of the Act, the Director has weighed all of the material relating to the health and safety effects of the chemicals concerned against the statements by PACIA and ACCORD.

First, the Director considers that the proposal to vary the particulars on the AICS properly falls within the scope of the Director's functions under the Act and are matters which can be progressed at this time.

The Director notes that amendments made to the Act in 2004 introduced greater controls over the use of chemicals and accompanying enforcement provision, including provisions enabling the imposition of conditions of use through annotations to the AICS. The Director therefore considers that the proposed variation to the particulars on the AICS is consistent with the underlying policy of the Act.

Secondly, the current proposal to vary particulars on the AICS has been developed in accordance with the requirements of section 13 and section 13A. The Director considers that the proposed regulatory action:

- is consistent with the objects of the Act;
- has been proposed after detailed assessment of the risks to occupational health and safety and to public health (as reflected in Priority Existing Chemical Assessment Report No 29 Lead Compounds in Industrial Surface Coatings and Inks);
- is proportionate to the relevant health and safety risks. As noted above, exposure modelling and overseas data indicates that current conditions of use may lead to unacceptable levels of lead exposure which is known to have adverse health impacts. The proposed conditions of use appropriately address the health, safety and environment concerns detailed in the Report;
- is compatible with restrictions on lead compounds in domestic paints. The *Uniform Paint Standard* currently prohibits the sale of surface coatings with a lead level greater than 0.1% to consumers. This maximum has been in place since 1994; and
- has been subject to extensive public consultation and consultation with the surface coatings and inks industries;

Thirdly, the Director notes that PACIA considers that the inclusion of particulars on the AICS adds regulatory complexity. The Director has considered this objection but does not consider that this is the case or that, in any event, this is a sufficient reason as to why the particulars should not be varied on the AICS in the manner proposed.

In this respect, the Director notes that:

- the regulatory framework for industrial chemicals is determined by the Parliament (including the policy and regulatory boundaries within which the

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Director must operate). In this case, the Director is proposing to act within the authority of the Act, as reflected in sections 13 and 13A. Under the current arrangements, lead is subject to the regulatory requirements of more than one regulatory body. Rather than creating duplication, the proposed AICS annotation assists in providing complete regulatory coverage (consistent with the policy underlying the amendments to the Act in 2004, which increased the Director's power to impose conditions of use on chemicals in the AICS); and

- annotating the AICS in the manner proposed does not prohibit the use of lead compounds in industrial surface coatings and inks. Rather, it means that a person may import (or manufacture) such compounds without specific approval from NICNAS provided that they comply with the conditions of use. If a person wishes to import or manufacture the compound other than in accordance with the condition of use annotated on the AICS they must apply to the Director for a certificate or permit and this application is assessed by NICNAS.

Finally, the Director acknowledges that no Regulation Impact Assessment was undertaken in relation to the proposal to vary the AICS. NICNAS has however consulted closely with industry (and other stakeholders) throughout the process that has given rise to the proposed variation of the particulars on AICS and there is broad stakeholder support for moving away from the use of lead compounds in industrial surface coatings and inks.

NOTICE OF PROPOSED VARIATIONS TO THE AUSTRALIAN INVENTORY OF CHEMICAL SUBSTANCES (AICS) FOR CERTAIN LEAD COMPOUNDS IN INDUSTRIAL SURFACE COATINGS AND INKS

In accordance with section 13A(1) of the *Industrial Chemicals (Notification and Assessment) Act* 1989, notice is hereby given that the Director proposes to vary the particulars recorded in the AICS for certain lead compounds following the findings of the priority existing chemical assessment on lead compounds in industrial surface coatings and inks. Pursuant to section 13 of the *Industrial Chemicals (Notification and Assessment) Act* 1989 the manufacture and importation of certain lead compounds for use in industrial surface coatings and inks and importation of industrial surface coatings and inks containing these compounds will be restricted. The relevant chemicals are listed in Table 1.

Table 1

Chemical Name	CAS Number
Lead monoxide	1317-36-8
Lead chromate	7758-97-6
Lead sulfate	7446-14-2
Lead molybdate	10190-55-3
Lead sulfo-chromate	1344-37-2
Lead chromate molybdate sulfate red	12656-85-8
Lead chromate oxide	18454-12-1
Lead octanoate	7319-86-0
Lead 2-ethylhexanoate	301-08-6
Lead oxide	1314-41-6
Lead nitrate	10099-74-8
Lead naphthenate	61790-14-5
Lead peroxide	1309-60-0
Lead carbonate (white lead)	1319-46-6

The AICS will be varied in two stages. Particulars of the proposed variations are:

Stage 1

From 1 April 2008, [chemical name and CAS number] must not be imported or manufactured for use in any industrial surface coating or as a component of industrial surface coatings at concentrations greater than 0.1%, EXCEPT for use in industrial surface coatings or in any components of industrial surface coatings for the following industrial applications:

- Auto refinish car collision repairs;*
- Commercial vehicle and component building;*
- Commercial vehicle refurbishing and repairs;*

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*Aviation building (heavy, general and light); and
Aviation refurbishing and repairs.*

From 1 April 2008, [insert chemical name and CAS number] must not be imported or manufactured for use in any ink or as a component of inks at concentrations greater than 0.1%, when intended for industrial uses.

Stage 2

From 1 January 2009, [chemical name and CAS number] must not be imported or manufactured for use in any industrial surface coating or as a component of industrial surface coatings at concentrations greater than 0.1%.

The individual AICS entries for each chemical listed in Table 1 will be amended by inclusion of the above particulars.

Under S 15A of the Act it is an offence to import or manufacture [insert chemical name and CAS number] for any of the specified purposes.

Persons breaching S 15A are liable to a penalty of 120 penalty units.

In accordance with section 13A(2)(d) of the *Industrial Chemicals (Notification and Assessment) Act 1989*, any person may give a statement to the Director by 3 JULY 2007, giving reasons why the particulars should not be included in the AICS.

The statement may be forwarded to: The Director, NICNAS, PO Box 58, Sydney NSW 2001.