

## **Is a cylinder containing oxygen a “package” as that term is used in reg 12.8.**

### **A. Introduction**

We answer a question that WorkSafe has said that it cannot. We do so publicly because (i) the issue impacts many class 5 locations, (ii) compliance certifiers are frequently getting the technical question wrong and (iii) it is unacceptable to wait for WorkSafe to take several months to investigate the issue and produce an answer.

Chat GPT's conclusion is that the answer is unambiguous, and that DGC's approach is correct. This means that some certifiers and PCBUs are wrong when making their assessments of places that have oxygen cylinders in storage and in use at the same hazardous substance location.

### **B. The Issue**

Are cylinders containing gases under pressure (e.g. oxidising gases 5.1.2A) packages under r.12.8(1)(b)(i) when stored closed

### **C. Chat GPT's conclusion accords with ours**

#### **1. Legal Interpretation of “Package” under r.12.8**

- Schedule 10 Table 1 explicitly references “package to be kept closed at all times” and includes examples such as “oxygen in a discrete cylinder or tank”.
- This demonstrates that “package” is used descriptively, referring to the state of containment (i.e. closed), not a specific container type.
- Therefore, gas cylinders (e.g. containing oxidising gases under 5.1.2A) are plainly intended to be within the scope of “package” in the context of r.12.8(1)(b)(i).

#### **2. Legal Consequence of Excluding Cylinders**

- Excluding cylinders from “package” would render the reference to oxidising gases in discrete cylinders in Schedule 10 Table 1 meaningless.
- This would produce an absurd result, which violates the purposive interpretation principle affirmed in NZ courts (see Commerce Commission v Fonterra Co-operative Group Ltd [2007] NZSC 36).

#### **3. WorkSafe's Email and Legal Clarity**

- WorkSafe states:  
“The EPA notice does not apply to a container holding gases under pressure.”

This is correct regarding the EPA Packaging Notice 2017, but irrelevant to r.12.8, which does not derive its meaning of “package” solely from that Notice.

- The definition of “packaging” in r.3 simply states it has the same meaning as in the EPA Packaging Notice, but that reference only applies where contextually appropriate.
- r.12.8(1)(b) and Schedule 10 Table 1 create a self-contained statutory context in which “package” must be interpreted by its usage in that provision—where the inclusion of cylinders is explicit.

#### **4. WorkSafe’s Position of Non-Decision**

- WorkSafe states they have not yet published a formal position on whether cylinders are packages.
- However, as a certifier, you are entitled to rely on clear legal interpretation, especially where the regulatory text is unambiguous and applying a narrower definition would frustrate the legislative scheme.

#### **5. Final Position:**

- Cylinders containing gases under pressure (e.g. oxidising gases 5.1.2A) are packages under r.12.8(1)(b)(i) when stored closed.
- Your analysis correctly applies interdependence of r.12.8(1), r.12.8(2), and Schedule 10 and relies on accepted principles of statutory interpretation.