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Thursday, 17 March 2005

General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
PO Box 1199  
DICKSON ACT 2602



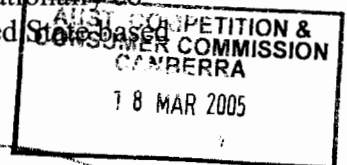
**AGSAFE LIMITED – APPLICATION FOR AUTHORISATION**

**Introduction**

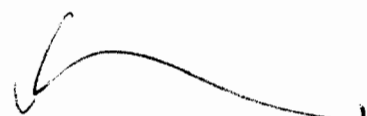
1. On 20 January 2005, Agsafe Limited made an application to the Australian Competition and Consumer Commission (ACCC) seeking a minor variation to authorisation number A90871.
2. The ACCC rejected the application as it took the view that the variation was not minor but material, and therefore a fresh application was required.
3. Although Agsafe Limited does not agree with this view, it has no choice but to make an application for a fresh authorisation.
4. In making this application, we acknowledge that it will be necessary to revoke authorisation A90871 and substitute a fresh authorisation.

**Interim Authorisation**

5. In addition, an interim authorisation, under s.91(2) of the *Trade Practice Act 1974* (the Act”) is also sought to allow the program already approved to continue pending final determination.
6. In a telephone conversation on 11 March 2005, your Siobhan O’Gara advised our Emma Sloan that it was unlikely that an interim authorisation will be considered favourably if: “there is a likelihood that the market would be unable to return to its pre-market authorisation status.”
7. The first point that has to be stressed is that, in truth, there is no nationally co-ordinated market for these programs, though there are some limited State-based initiatives to collect household hazardous waste.



8. The program that was approved under authorisation A90871 is a program by which participants have implemented a plan which overcomes unacceptable environmental consequences of unwanted containers for agricultural and veterinarian use not being collected and recycled for the benefit of the environment and therefore the public at large. This program has filled the void where there is no market, let alone a competitive market.
9. Should an interim authorisation (or indeed final authorisation) not be granted, the ACCC will have to share responsibility for allowing a proliferation of un-recycled waste material littering the environment.
10. Agsafe Limited requests a revocation of A90871 and substitution of it with a new authorisation.
11. Agsafe Limited requests that the new authorisation include the substance of authorisation A90871 (formerly A30194) that authorised the *DrumMUSTER* program and incorporates the *ChemClear* program.
12. In granting authorisation A90871, the ACCC authorised the Industry Waste Reduction Scheme the subject of the Memorandum of Understanding ("MOU") dated 18 March 2003. The MOU made specific reference to the *ChemClear* Program. This application recognises the implementation of the *ChemClear* program.
13. Your attention is drawn to an article: "*The Public Benefits Test in the Trade Practices Act 1974*" by Professor Allan Fels, (immediate past Chairman of the ACCC), dated 12 July 2001. In this article Professor Fels makes reference to a number of factors that the ACCC will take into account when deciding whether or not to grant an authorisation. Professor Fels argued that the Commission may take into account non-economic public benefits.
14. Clearly Professor Fels had in mind circumstances such as those outlined in this application. The Scheme itself has enormous public benefit such as to satisfy the statutory requirements in section 90(6) and (7) of the Act. It is argued that a reference to *economic* public benefit is not appropriate in a case of this type. It is to be remembered and emphasised that there is no competitive market in any event. Without competition it follows that there cannot be any lessening of competition. Consequently to speak of "the public benefit outweighing the detriment to the public" is not applicable in this case. This application is only about non-economic benefit.
15. This application provides empirical data in relation to the non-economic public benefits and achievements of the *DrumMUSTER* and *ChemClear* programs to date. This demonstrates the public benefit of having environmentally responsible, sustainable, cost effective and safe disposal programs for unwanted chemicals and product containers.
16. Because of the outstanding achievements of Agsafe Limited under the *DrumMUSTER* and *ChemClear* programs, it has been approached by the Environmental Protection and Heritage Council to comment on co-regulatory frameworks for product stewardship schemes. We submit this to be a forerunner of a concerted government push to encourage a raft of industries to co-regulate over the next few years.



17. In order to facilitate the ACCC granting authorisation, we **enclose**:
- (a) List of interested parties; and
  - (b) A copy of the new Industry Waste Reduction Scheme (Memorandum of Understanding dated 1 October 2004).

***Recommendation.***

1. In 2005 Australia needs to demonstrate its environmental conscience. The Scheme, the subject of this application, in no small way gives substance to that recognition. Without authorisation, the Scheme cannot continue. That would be to the detriment of the national interest.
2. We therefore recommend that the ACCC:
  - a) grants interim authorisation;
  - b) revokes authorisation A90871; and
  - c) grants this application for authorisation.

Should you have any questions regarding this application, please contact me on the number below.

Sincerely



**DENNIS MARTIN**

Phone: 02 6201 8957

Email: [dmartin@sneddenhall.com.au](mailto:dmartin@sneddenhall.com.au)

**Enclosure(s)** : Application for Authorisation, Public Benefits Report

## INDUSTRY WASTE REDUCTION SCHEME

### Consolidation of Variations to Memorandum of Understanding

**THIS AGREEMENT** is made on the 1<sup>st</sup> day of October 2004

**BETWEEN:** **AVCARE LIMITED** ACN 008 579 048 of Level 2, AMP Building, Canberra City, ACT, 2601 ("**Avcare**")

**AND:** **THE VETERINARY MANUFACTURERS AND DISTRIBUTORS ASSOCIATION INC** ABN 21 819 231 380 of 11 Moores Road, Glenorie, New South Wales ("**VMDA**")

**AND:** **NFF LIMITED** ACN 097 140 166 of 14 Brisbane Avenue, Barton, ACT, 2600 ("**NFF**")

**AND:** **THE AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION** ACN 008 613 876 of 8 Geils Court, Deakin, ACT, 2600 ("**ALGA**")

("the Parties")

### RECITALS

- A. The Parties have agreed to co-operate in an industry waste reduction Scheme marketed under the registered trade names of **drumMUSTER®** and **ChemClear®** for the avoidance, reduction, recycling and responsible disposal of crop protection and on farm animal health products and Containers and entered into Heads of Agreement dated 2 September 1998 to be record that agreement ("the Original Agreement").
- B. By participating in the Scheme the parties wish to carry out the objectives outlined in paragraphs C-I. It is the wish of the parties that one advisory committee be established to implement these objectives.
- C. The overall aim of the Scheme is to reduce the number of non-returnable Containers and minimise the generation and accumulation of unwanted rural chemicals by:
- (i) Reducing the number of Containers entering the distribution scheme;
  - (ii) increasing the re-use of Containers originally intended for single use;
  - (iii) increasing the recycling of Containers for material recovery;
  - (iv) improving occupational health and environmental practices by promoting the adoption of easier to clean and handle packaging, the use of safer emptying and rinsing devices and management of chemical Containers in an environmentally appropriate way;
  - (v) promoting research and development in the new formulations, packaging, recycling and material recovery uses;
  - (vi) educating distributors and farmers to purchase environmentally friendly Returnable Containers and in the appropriate disposal of non-returnable containers; and

- (vii) providing for a collection and disposal of unwanted rural chemicals that achieves a high participation rate of those holding waste and is accessible by all users who may hold those chemicals and is provided at lowest possible cost.
- D. Under the Scheme, Collection Agencies will be paid to receive cleaned Containers under **drumMUSTER** and to send them for recycling or material recovery and Contractors will be paid under ChemClear® to collect and dispose of unwanted rural chemicals.
- E. Avcare has agreed to procure Agsafe to administer the Scheme in consultation with the **IWRS** Advisory Committee.
- F. Funding of the Scheme is by a levy imposed on manufacturers and suppliers of Containers which levy will ultimately be passed onto and paid by farmers and other users of crop protection and on-farm animal health products. The purpose of passing the levy onto end users is to encourage purchase of products that are packaged in Returnable Containers or water soluble bags or boxed containers (which are not subject to the levy). These purchase decisions will in turn encourage better packaging options by the manufacturer.
- G. This levy is set at 4 cents per litre or kilogram above one litre/kilogram of the contained product for Containers plus any relevant taxes.
- H. To increase the effectiveness of the Scheme, an allocation of up to \$150,000 per annum has been made for research and development purposes such as recycling or material recovery uses, the development and testing of safe devices for the emptying and rinsing of Containers, and other areas as determined by the **IWRS** Advisory Committee.
- I. The parties wish to vary the Original Agreement, the Memorandum of Understanding dated 14 August 2002 and the Memorandum of Understanding of 18 March 2003 to reflect that intention.

## AGREEMENT

### 1. Definitions

In this Agreement, including the Annexures:

“**Agsafe**” means Agsafe Limited ACN 057 112 062, a wholly owned subsidiary of Avcare.

“**APVMA**” means Australian Pesticide and Veterinary Medicines Authority.

“**ChemClear®**” means the registered trade mark number 794253 by which is known the national program for the collection of chemical waste, for disposal, transport and storage of chemical waste and treatment of industrial chemical waste including recycling and destruction of such waste.

“**Collection Agency**” means a third party agency accredited by Agsafe and contracted to process Containers collected the Scheme, which processing may include Container inspection, crushing, shredding or granulating including the capacity for removal of processed materials for recycling.

**“Container”** means non-returnable rigid metal or plastic container above 1L/kg in declared content used in the packaging of crop protection and on farm animal health products used for:

- (a) agricultural and on farm animal health production;
- (b) industrial and recreational pest and weed control;
- (c) forestry;
- (d) household pest control operations; and
- (e) similar activities conducted by local, State and Federal Government authorities.

Containers of hazardous products are compulsorily included in the program. The inclusion of non-hazardous products by the supplier/manufacturer participating in the *drumMUSTER* program is voluntary and entirely at the discretion of any manufacturer/supplier participating in the *drumMUSTER* program. These include surfactants, wetting agents, stickers, spreaders, spray markers, dye, foam markers, dairy detergents, farm disinfectants, teat dip, udder wash, foliar fertiliser, spray oils and animal nutrition products.

(Containers of 1L/Kg and less may be accepted by a collection agency if they meet the Agsafe cleanliness standard however they do not attract the levy.)

**“Contractor”** means the entity engaged by Agsafe to collect and dispose of unwanted rural chemicals under the ChemClear® program.

**“drumMUSTER®”** means the registered trade marks numbered 770706 and 770708 by which is known the national program for the collection, reuse, recycling or disposal of empty, cleaned, agricultural and veterinary chemical Containers.

**“IWRS Fund”** means the dedicated account operated by Agsafe which is an account into which all money received under the Scheme is paid and from which money may only be disbursed for the purposes of the Scheme.

**“Management Fee”** means the fees Agsafe proposes to charge annually for the Services.

**“Monthly Fee”** means the monthly invoice for one twelfth of the Management Fees.

**“Returnable Container”** means a returnable container that has a collection system which has been established and or engaged in by the supplier of the finished goods. This collection system provides for the returnable container to be returned by the end user to a distributor/agent and provides a defined route of disposal that meets the objectives of the Scheme. This definition encompasses a refillable container, which is one designed to be refilled by the original supplier of the finished goods.

**“Scheme”** means the national Industry Waster Reduction Scheme (IWRS) marketed under the *drumMUSTER®* registered trade mark for the collection and recycling of empty, cleaned and non-returnable crop protection and animal health chemical containers and the **ChemClear®** registered trade mark for the collection and disposal of currently registered unwanted rural chemicals.

“**Services**” means the services set out in Schedule B or as varied from time to time by the Agsafe Board.

## **2. Obligations of All Parties**

The parties must:

- (a) Participate, or in the case of ALGA encourage participation, in the Scheme;
- (b) Co-operate and encourage their members to co-operate in the Scheme; and
- (c) Encourage non-Avcare/VMDA to co-operate in the Scheme and promote the Scheme.

## **3. Obligations of Individual Parties**

3.1 Avcare must require its manufacturer members to:

- (a) pay a levy of four cents (4c) per litre or kilogram or crop protection and on farm animal health products (“Products”) sold in Containers or such other amount agreed under clause 5.7 (“Levy”);
- (b) show a notice in the terms of Schedule A (or any varied Schedule) on each invoice charging customers for levied Products;
- (c) pass the levy onto Distributors, who in turn pass the levy onto Purchasers by detailing the levy amount on wholesale and retain invoices to ensure the transparency of the Scheme;
- (d) to pay the proceeds of the Levy into the IWRS Fund; and
- (e) to make available for Agsafe’s inspection such books and records as Agsafe reasonably requires to verify that amounts paid to the Agsafe Fund are correct.

3.2. Unless another service provider is appointed under clause 6.7, Avcare must require Agsafe to perform the Services.

3.3. The VMDA must encourage its members to:

- (a) pay a levy of four cents (4c) per litre or kilogram on crop protection and on farm animal health products (“Products”) sold in Containers (“Levy”) above one litre/kilogram;
- (b) show a notice in the terms of Schedule A (or any varied Schedule A) on each invoice charging customers for levied Products;
- (c) pass the levy onto Distributors, who in turn pass the levy onto Purchasers by detailing the levy amount on wholesale and retain invoices to ensure the transparency of the Scheme;
- (d) pay the proceeds of the Levy in the IWRS Fund; and
- (e) make available for Agsafe’s inspection such books and records as Agsafe reasonably requires to verify that amounts paid to the IWRS Fund are correct.

- 3.4. The National Farmer's Federation must actively promote the Scheme to its members so that they will:
- (a) act in support of the Scheme;
  - (b) buy Products that are packaged in Returnable Containers, water soluble bags or boxed containers if the Products are available in those containers; and
  - (c) buy Products on which the Levy has been paid if Products are only available in Containers.
- 3.5. The Australian Local Government Association must encourage the State and Territory Local Government Associations to:
- (a) promote the Scheme to Councils;
  - (b) support Council involved in the Scheme to establish collection agencies in accordance with the criteria and responsibilities as defined by the **IWRS** Advisory Committee from time to time;
  - (c) encourage Councils to:
    - (i) buy Products that are packages in Returnable Containers, water soluble bags or boxed containers if the Products are available in those containers; and
    - (ii) buy Products on which the Levy has been paid if Products are only available in Containers.

#### 4. **IWRS Advisory Committee**

- 4.1. An IWRS Advisory Committee comprised of nine people will oversee the administration of and implement the Scheme under the direction of the Agsafe Board. The chair of the IWRS Advisory Committee will be an NFF nominee.
- 4.2. The NFF may nominate four people, Avcare two people, each other Party one person and Agsafe one person, to serve on the **IWRS** Advisory Committee.
- 4.3. The Parties may by unanimous decision increase or decrease the size of the **IWRS** Advisory Committee and vary its functions.
- 4.4. The **IWRS** Advisory Committee is accountable to the Agsafe Board.
- 4.5. The functions of the IWRS Advisory Committee are to:
- (a) implement direction and strategy as determined by the Agsafe Board;
  - (b) oversee the proper and efficient implementation of the Scheme;
  - (c) clearly identify and manage the separate meeting agendas of the IWRS advisory committee in respect to **drumMUSTER®** and ChemClear® programs;
  - (d) receive and consider reports from Agsafe on the operation of the Scheme;
  - (e) establish and submit for approval by the Agsafe Board business plans and budgets for the Scheme;



- (f) report to the Agsafe Board as determined by the Board;
  - (g) recommend to the Partiers any amendments to the Scheme which are considered necessary for its continued efficient operation;
  - (h) approve expenditure by Agsafe for the purposes of the Scheme;
  - (i) publicise and promote the Scheme;
  - (j) to review and approve proposals for research and development into areas which the **IWRS** Advisory Committee considers will help meet the objectives of the Scheme;
  - (k) take such other actions as are consistent with the Scheme's objectives which are necessary, or desirable to further the Scheme.
- 4.6. The **IWRS** Advisory Committee must receive and duly consider any recommendations from the Agsafe Board on the business plan, budget and general operation of the Scheme and submit revised business plans and budgets for approval by Agsafe Board.
- 4.7. The **IWRS** Advisory Committee:
- (a) will make decisions by majority vote;
  - (b) may recommend to the Agsafe Board to amend the scope and operational detail of the Scheme, except that decisions to change the contents of any part of the levy (payment for collection and processing) must be a unanimous decision based on a full vote by the **IWRS** Advisory Committee.
- 4.8. If a dispute arises as to the operation or a decision of the **IWRS** Advisory Committee, it must be referred for resolution to the Agsafe Board.
- 5. Agsafe Board**
- 5.1. The Agsafe Board will consist of:
- (a) 4 representatives appointed by Avcare;
  - (b) 2 representatives appointed by the NFF;
  - (c) 1 representative appointed by VMDA: and
  - (d) 1 representative appointed by Agsafe Accreditation Advisory Committee.
- 5.2. The Chair of the Agsafe Board will be one of the Avcare nominees.
- 5.3. The Agsafe Board will have full control over the direction and operation of the accreditation and the **IWRS** scheme and ensure that in any deliberations *drum*MUSTER and ChemClear® area dealt with and managed separately.
- 5.4. If a proposed resolution of the Agsafe Board involves the expenditure from the **IWRS** Fund, (other than incidental or immaterial expenditure) the resolution will not be deemed to be passed unless it receives the affirmative vote of the NFF representatives on the Board.
- 5.5. The Agsafe Board must establish the **IWRS** Fund. Interest generated within the account or within interest bearing investments from the account will be retained in the **IWRS** Fund.

- 5.6. If the Scheme ceases, all money remaining in the IWRS Fund will be paid as agreed by the Parties, for use in schemes to improve the rural environment.
- 5.7. The Levy referred to in clause 3.1 may be varied if such variation is approved unanimously by all parties to this agreement.
- 5.8. If an issue arises raising matters of corporate governance or the obligations of directors of the company under the Corporations Act:
- (a) clause 5.4 will not apply; and
  - (b) the Agsafe Board will be responsible for determining the issue.
- 5.9. If a majority of the Agsafe Board determines that an issue falls or does not fall under clause 5.8 and a member of the Board disputes that decision the Agsafe Board must consult Queens or Senior Counsel as to whether clause 5.8 applies and follow the advice given by Counsel.

## **6. Administration of the Scheme**

- 6.1. It is agreed that Agsafe will administer the scheme.
- 6.2. Agsafe is required to:
- (a) administer the scheme in accordance with the directions of the **IWRS** Advisory Committee and Agsafe Board;
  - (b) ensure that *drumMUSTER*® and ChemClear® will be managed and marketed under their trade marks and identities;
  - (c) contract will collection agencies under *drumMUSTER*® and with a collection agency who complies with ISA 14000 standards for ChemClear®;
  - (d) collect the proceeds of the Levy from Manufacturers;
  - (e) deposit all proceeds of the levy and interest earned on invested funds in the **IWRS** Fund for the benefit of the program and related programs;
  - (f) pay collection fees in accordance with criteria determined by the **IWRS** Advisory Committee;
  - (g) implement a training program for collection agency and relevant contractor personnel;
  - (h) minimise liability by ensuring robust environmental and compliance management system;
  - (i) report monthly to the **IWRS** Advisory Committee on all aspects of its operations relating to the Scheme;
  - (j) allow a person appointed by the Agsafe Board on reasonable notice to inspect its records relating to the Scheme; and
  - (k) carry out such other duties reasonably required by the IWRS Advisory Committee in connection with the Scheme.

- 6.3. At the conclusion of each financial year the Agsafe Board must appoint an external auditor approved by the **IWRS** Advisory Committee to audit the **IWRS** Fund and report on whether the funds have been expended in accordance with this Agreement.
- 6.4. Agsafe will advise the **IWRS** Advisory Committee of the amount of the Management Fee and amend those fees, if necessary, to take into account any reasonable changes that the **IWRS** Advisory Committee proposes.
- 6.5. Agsafe will send the Monthly Fee to the **IWRS** Advisory Committee.
- 6.6. The Monthly Fee will be paid to Agsafe from the **IWRS** Funds, after approval by the **IWRS** Advisory Committee of the Management Fee.
- 6.7. If the **IWRS** Advisory Committee reasonably forms the view that a provider other than Agsafe can provide the Services or a component of the Services at the same standard as Agsafe and at a more beneficial price it may request the Agsafe Board to appoint that other provider which request shall not be unreasonably refused.

## **7. Liability**

- 7.1. The Parties provide no express or implied warranties under this agreement or the original agreement or the Memorandum of Understanding of 18 March 2003.
- 7.2. The Parties exclude:
  - (a) from this agreement all conditions, warranties and terms implied by statute, general law or custom;
  - (b) all liability in contract to any Party for consequential or indirect damages arising out of or in connection with this agreement even if:
    - (i) the Parties knew they were possible; or
    - (ii) they were otherwise foreseeable
 including without limitation lost profits and damage suffered as a result of claims by any third person;
  - (c) all liability to any Party in contract for direct or consequential or indirect damages arising out of or in connection with this agreement;
  - (d) all liability to any Party in negligence for acts or omissions of any Party arising out of or in connection with this Agreement; and
  - (e) all liability in respect of expenditure undertaken under the Agreement that has been duly authorised by the **IWRS** Advisory Committee and sanctioned by the Board.
- 7.3. The Parties acknowledge that this Agreement does not exclude any liability that may arise from any branch of the Trade Practices Act other than those authorised under the ACCC authorisation.

## **8. Relationship**

Nothing in this Agreement constitutes any relationship of employer and employee principal and agent or partnership between the Parties.

**9. Term and Termination**

- 9.1. This Agreement begins on the date the Constitution of Agsafe Limited is amended to reflect this Agreement and may be terminated by giving not less than six months notice which may not expire before 31 December 2002, or such lesser period agreed by the Parties.
- 9.2. In January 2006 or such later date that may be agreed, the parties must meet to review the operation of the agreement and consider any changes that may be appropriate.
- 9.3. Clause 7 (Liability) survives the termination of this Agreement.
- 9.4. Despite clause 9.1, this Agreement shall not take effect until it is approved by the Australian Competition and Consumer Commission.

**SCHEDULE A**

Generic Statement to be shown on Invoices

“You have been charged four cents per litre/kilogram on all non-returnable Containers which fall under the Industry Waste Reduction Scheme”.

**SCHEDULE B**

## Services

The Services to be provided are to conduct and administer the Scheme with due care and skill including:

- ensuring that *drum*MUSTER® and ChemClear® programs are managed separately to maintain integrity;
- providing necessary personnel, offices and office equipment and supplies;
- awarding and managing third party contracts;
- collecting levies;
- managing funds and accounting for their use;
- providing company secretarial services;
- taking reasonable steps to provide quality assurance and ensure the integrity of the scheme;
- promoting the scheme;
- providing necessary training;
- conducting travel as necessary;
- attending meetings as necessary;
- managing research and development projects;
- providing reports, including financial management, risk analysis and administration.

**EXECUTED** as an agreement

**SIGNED** for and on behalf of **AVCARE LTD** )  
by an authorised officer in the presence of: )

Signature of Officer \_\_\_\_\_

Signature of Witness \_\_\_\_\_

Name of Officer (print) \_\_\_\_\_

Name of Witness (print) \_\_\_\_\_

Office held \_\_\_\_\_

**SIGNED** for and on behalf of **THE VETERINARY** )  
**MANUFACTURERS AND DISTRIBUTORS** )  
**ASSOCIATION** )  
by an authorised officer in the presence of: )

Signature of Officer \_\_\_\_\_

Signature of Witness \_\_\_\_\_

Name of Officer (print) \_\_\_\_\_

Name of Witness (print) \_\_\_\_\_

Office held \_\_\_\_\_

**SIGNED** for and on behalf **NFF LTD** )  
by an authorised officer in the presence of: )

Signature of Officer \_\_\_\_\_

Signature of Witness \_\_\_\_\_

Name of Officer (print) \_\_\_\_\_

Name of Witness (print) \_\_\_\_\_

Office held \_\_\_\_\_

**SIGNED** for and on behalf of **THE AUSTRALIAN** )  
**LOCAL GOVERNMENT ASSOCIATION** )  
by an authorised officer in the presence of: )

Signature of Officer \_\_\_\_\_

Signature of Witness \_\_\_\_\_

Name of Officer (print) \_\_\_\_\_

Name of Witness (print) \_\_\_\_\_

Office held \_\_\_\_\_

**AGREEMENTS AFFECTING COMPETITION – APPLICATION FOR  
AUTHORISATION**

**COMMONWEALTH OF AUSTRALIA**

**TRADE PRACTICES ACT 1974- SUBSECTION 88(1)**

**TO: AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**

Application is hereby made under Section 88(1) of the *Trade Practices Act 1974 (Cth)* (“the Act”), for authorisation under that Subsection to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose or would have or might have the effect, of substantially lessening competition within the meaning of Section 45 of the Act.

**1(a) Name of applicant:**

AGSAFE LIMITED (ABN 170 571 120 62)

**1(b) Short description of business carried on by applicant:**

Currently Agsafe, through the establishment of the *DrumMUSTER* and *ChemClear* programs, has set up an Industry Waste Reduction Scheme (“IWRS”) in a Memorandum of Understanding (“MOU”) dated 18 March 2003, for the collection and recycling of empty agricultural and veterinary chemical containers, in conjunction with the collection of chemical waste for disposal, transport and storage of chemical waste and treatment of industrial waste including recycling and destruction of waste. The *DrumMUSTER* and *ChemClear* programs are implemented by Agsafe Limited (“Agsafe”), a wholly owned subsidiary of Avcare Limited (ACN 008 579 048).

**1(c) Address in Australia for service of documents on the applicant:**

C/- Dennis Martin  
Snedden Hall & Gallop  
4<sup>th</sup> Floor, 11 London Circuit,  
GPO Box 794  
Canberra City ACT 2601

**2(a) Brief description of contract, arrangement or understanding and, where already made, its date:**

Agsafe has coordinated the creation of a fresh IWRS, as set out in the document entitled IWRS - Consolidation of Variations to Memorandum of Understanding (“new MOU”). The new MOU seeks to vary the MOU, so that both the *DrumMUSTER* program contained in the MOU and the *ChemClear* program contained in both the MOU (see clause 7) and the



document headed *ChemClear* revised Agreement for Management of Unwanted Rural Waste, are administered by Agsafe under the IWRS.

The fresh MOU maintains the IWRS program set up under the MOU, which seeks to achieve the avoidance, reduction, recycling and responsible disposal of unwanted crop protection and on farm animal health products and containers.

Funding of the Scheme is by a levy imposed on manufacturers and suppliers of Containers (as defined in the fresh MOU). The levy will ultimately be passed onto and paid by farmers and other users of crop protection and on-farm animal health products on the user pays principle. Only manufacturers, suppliers and end users are involved.

The purpose of passing the levy onto end users is to encourage purchase of products that are packaged in Returnable Containers (as defined in the fresh MOU) or water-soluble bags or boxed containers (which are not subject to the levy). These purchase decisions will in turn encourage better packaging options by the manufacturer.

**2(b) Names and addresses of other parties to contracts, arrangement or understanding:**

The parties to the fresh MOU are:

- Avcare Limited (ACN 008 579 048) of Level 2, AMP Building, Hobart Place, Canberra City ACT 2601; and
- The Veterinary Manufacturers and Distributors Association Incorporated (ABN 218 192 313 80) of 11 Moores Road, Glenorie, NSW; and
- National Farmers' Federation Limited (ACN 097 140 166) of 14 Brisbane Avenue, Barton ACT 2600; and
- The Australian Local Government Association (ACN 008 613 876) of 8 Geils Court, Deakin ACT 2600

**3 Name and addresses (where known) of parties and other persons on whose behalf application is made:**

AGSAFE LIMITED (ABN 170 571 120 62)  
Level 4, AMP Building  
1 Hobart Place  
Canberra ACT 2601

**4(a) Grounds for Grant of Authorisation**

In Agsafe's submission for the grant of a minor variation to authorisation A90871, Agsafe submitted that the *ChemClear* program had already been authorised by the ACCC under authorisation A90871, because the relevant MOU made reference to and incorporated the *ChemClear* program.

In rejecting the application for a minor variation, the ACCC stated that reference to the *ChemClear* program could not be interpreted as the authorisation of the *ChemClear* program but merely the noting the fact that the *ChemClear* program would be established by funds to be diverted from the *DrumMUSTER* program.

While Agsafe Limited does not accept this interpretation, we submit under this application that the details concerning the *ChemClear* program has previously been supplied to ACCC. It is Agsafe's sub that this application for authorisation is sought more as a formality for public purposes than the provision of new information to the ACCC.

#### **4(b) Facts and Contentions Relied Upon In Support Of Those Grounds**

Pursuant to Section 90(6) and (7) of the Act, the Commission must not make a determination to grant authorisation unless it has resulted or would result, or be likely to result in a benefit to the public and that that benefit would outweigh the detriment to the public.

Agsafe submits that that the creation of the fresh MOU enhances the benefits to the public with no detriment to the public. The fresh MOU restates the objectives of the program, repeating the *DrumMUSTER* program, already authorised and successfully operating, and adding the *ChemClear* program, as a necessary and appropriate addition to the IWRS. As a Scheme, they represent great benefits to the public.

The essence of this submission is that it is sensible and practical to have the IWRS Advisory Committee implement and administer both programs on the basis that it provides a higher standard in environmental health and safety advantages for the public. A single administration will bring efficiencies, uniformity and complementarity to both programs.

#### Proposed Changes

The fresh MOU incorporates both the *DrumMUSTER* and *ChemClear* programs under the IWRS Advisory Committee under Clause 4.1 and Clause 5.3 of the fresh MOU.

1. The objectives in the MOU and fresh MOU are the same. The fresh MOU seeks to administer a scheme for the avoidance, reduction, recycling and responsible disposal of unwanted crop protection and on farm animal health products containers. The only practical difference between the two MOUs is that both programs will be administered by a single IWRS Advisory Committee.
2. The same funding arrangements will be in place to enable Agsafe to implement and administer the IWRS (now incorporating both programs).
3. There have been some minor changes in the formatting and numbering.

4. Clause 6.5 in the MOU has been replaced with a new Clause 5.5 in the fresh MOU. This amendment allows Agsafe, through the establishment of the IWRS Fund to place all monies received under the Scheme and disperse monies for the purposes of the Scheme, being the *DrumMUSTER* or the *ChemClear* programs. The *DrumMUSTER* fund is replaced with the IWRS Fund for the same purposes.
5. Clause 7 of the MOU has been deleted, as the fresh MOU and the establishment of the IWRS Fund will ensure that funds are directed to both the *DrumMUSTER* and *ChemClear* programs. Clause 7 is no longer relevant.
6. Through the common IWRS Fund, the IWRS Advisory Committee will implement and administer both programs while managing them separately, as set out in Clauses 4.5(c) and Clause 5.3 of the fresh MOU.

Benefits to the public:

In an article dated 12 July 2001, entitled “*The Public Benefit Test in the Trade Practices Act 1974*”, Professor Allan Fels, AO (Immediate Past Chairman of ACCC), made reference to a number of factors that the ACCC will take into account when deciding whether or not to grant an authorisation. The article states that the Commission may take into account non-economic public benefits.

Professor Fels made specific reference to the Agsafe authorisation, at footnote 9, page 7, noting that authorisation was granted for the reasons of “promoting public safety by ensuring the safe use of farm chemicals and national uniformity in the storage of farm chemicals”<sup>1</sup>.

Agsafe submits that the fresh MOU, like the previously authorised MOU, promotes the issue of public safety and national uniformity in the avoidance, reduction, recycling and responsible disposal of unwanted crop protection and on farm animal health products and containers. This endeavour is enhanced by the addition of the *ChemClear* program.

Other benefits to the public include:

- (1) Encouraging users of veterinary and agricultural products to buy resealable, water soluble, cardboard or paper containers; and
- (2) Encouraging the manufacturers of veterinary and agricultural products to sell their products in resealable, water soluble, cardboard or paper containers; and
- (3) Implementing a scheme which improves the environment by providing for appropriate disposal of unwanted empty containers for agricultural and veterinary chemical use, and for the use of containers which have

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<sup>1</sup> Professor Allan Fels AO Chairman of ACCC, *The Public Benefit Test In the Trade Practices Act 1974*, 12 July 2001, Melbourne, pp.7

been flushed, pressure rinsed or triple rinsed according to the Agsafe cleaning standard, as are deemed by waste regulations not to be hazardous; and

- (4) Eliminating future stock piles of animal health products and chemical waste; and
- (5) Minimising the accumulation of residual animal health products and chemical waste; and
- (6) Promoting an interest in and education of these issues in the public domain.

For more information regarding the public benefits associated with amalgamating the *DrumMUSTER* and *ChemClear* programs through the IWRS, please see attached documentation under the heading "Public Benefit Claim".

In conclusion, the fresh MOU will result in significant public benefit, which outweighs any public detriment which may result from the arrangements.

While considering this application to grant authorisation, we request the Commission grant interim authorisation under Section 91(2) of the Act.

- 5. This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings, that are or will be in similar terms to the above-mention contract, arrangement or understanding.**

Not applicable

- 6(a) Does this application deal with a matter relating to a joint venture?**

No

- 6(b) If so, are there any applications being made simultaneously with this application in relation to that joint venture?**

Not applicable

- 6(c) If so, by whom or on whose behalf are those other applications being made?**

Not applicable

**7 Name and address of persons authorised by the applicant to provide additional information in relation to this application:**

Dennis Martin & Emma Sloan  
Snedden Hall & Gallop  
4<sup>th</sup> Floor Law Society Building  
11 London Circuit  
GPO BOX 794  
Canberra ACT 2601

Dated....., 2005.

Signed by/on behalf of the applicant

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Signature:

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Full name:

## **PUBLIC INTEREST IMPACT STATEMENT**

### ***DrumMUSTER® and ChemClear® Programs***

#### ***INTRODUCTION***

Given the potential that waste packaging problems pose to the rural industry, the Australian Government identified back in 1990, that container management required industry action. Avcare (National Association for Crop Production and Animal Health), took up the challenge by launching its own Container Management Strategy in 1992, which over time, developed into a full stewardship program, resulting in successful negotiations between four industry stakeholders (Avcare, Veterinary Manufacturers & Distributors Association, National Farmers Federation and Australian Local Government Association) of an Industry Waste Reduction Scheme Memorandum of Understanding to develop and manage a container collection program.

The national container management scheme, ***drumMUSTER*** was developed and implemented to collect and recycle cleaned (triple-rinsed) one-way containers, targeting primarily the 20L container.

In a **second** initiative, the Australian Government sponsored a one-off collection and disposal scheme between 1999-2002, to collect any unwanted chemicals at farm level. This initiative (ChemCollect) resulted in approximately 1700 tonnes of unwanted and deregistered agricultural and veterinary chemical waste being collected by farmers, thereby improving the position of both the health of the eco system and protecting the food chain.

**Finally**, in order to prevent a repeat build-up of chemical waste at farm level over time, the Federal Government obligated industry to manage the future collection and disposal of any unwanted registered rural chemical at regular intervals. As a result, ChemClear® began operating in July 2004 under the extended producer responsibility charter and was launched by industry under an Agreement for the Management of Unwanted Rural Chemicals between Avcare, VMDA and the NFF. The program is funded by Avcare and VMDA members as well as voluntary participant manufacturers and would be cost-recoverable through prices of agvet chemicals. The collection of applicable ChemClear® chemicals is free of charge to the waste holder.

#### ***FUNDING***

Currently ***drumMUSTER*** collects a 4 cent per litre/kilogram levy. This is paid for by the supplier and passed on to the distributor and ultimately onto the end user where funds are utilised for the collection and recycling of cleaned used containers to reduce waste at source.

The **ChemClear®** program is to be paid for as a cost of goods sold by the product manufacturer. This has also been given in-principle support by the ACCC (refer to Clause 5.1 of the Agreement for the Management of Unwanted Rural Chemicals).

### **PROPOSED CHANGES**

The stakeholders to the both the **drumMUSTER** and **ChemClear®** agreements are of the opinion that it would be unwise to introduce another cost regime at this stage given the impost that it may pose to the farming community. Logically, an additional one cent fee implemented by the product manufacturers as a cost of goods sold increases disproportionately as margins from supplier to distributor and onto end user are implemented.

The National Farmers Federation, as the majority stakeholder partner of **drumMUSTER** have given in-principle support to a newly negotiated **Industry Waste Reduction Memorandum of Understanding** which will utilise a proportion of the funding raised under an **Industry Waste Reduction Fund** on the understanding of the following:

- that **drumMUSTER** reserves are to be maintained equivalent to one (1) year's funding. As the collections of drums escalate projections indicate that this would occur during the fourth Year. (Should this occur during the term of the new agreement the manufacturers through their Industry associations Avcare and VMDA will maintain the **drumMUSTER** reserves at \$3.2 million by implementing a top-up fee) ;
- during the term of the new agreement, manufacturer's agree to contribute a management fee for a resource seconded to Agsafe Limited set at \$120,000 annually;
- that the **Industry Waste Reduction Scheme Advisory Committee** will be responsible for running both programs, with minimum cross over of staff functions (which may include administration, financial and reception duties); and,
- all program functions will be segregated from other programs managed by Agsafe Limited and IWRAC meetings for both the **drumMUSTER** and **ChemClear®** programs will be held separately to minimise confusion.

## ***PUBLIC BENEFIT CLAIMS***

There will be an increase in overall benefits to the public under the proposal. In fact if Industry does not run the programs, it is unlikely that anyone else would. The initiative provides high standards for the environment, health and safety providing major advantages for the public and chemical users. There will be an overall reduction in cost to end users in the order of \$500,000 per year.

Benefits include:

- encouraging users of veterinarian and agricultural products to buy refillable, water soluble, cardboard or paper containers;
- encouraging manufacturers of veterinarian and agricultural products to sell their products in refillable, water soluble, cardboard or paper containers;
- the implementation of a scheme to improve the environment by providing for appropriate disposal of unwanted empty containers of agricultural and veterinary chemical containers; and,
- containers which have been flushed, pressure rinsed or triple rinsed according to the Agsafe cleanliness standards are deemed by waste regulation not to be hazardous.

## ***Benefits for Management***

- Cost efficiencies by reducing separate scheduled meetings;
- Time efficiencies for staff in preparing Committee papers;
- Better utilisation of resources in promoting and communicating the combined attributes of both programs; and,
- ChemClear<sup>®</sup> assists in implementing safe rural chemical management by reducing the amount of unwanted rural chemicals remaining stored on properties and will assist in improving on-farm occupational health, safety and environmental practices.

One of the biggest issues in pesticide management from an international perspective is the need to have financially sustainable schemes and managing both programs provides the public with the best possible outcome at this time. In summary the benefits of managing the two programs together provide:

- major cost savings within the supply chain and to end users;
- administrative efficiencies by streamlining under a single management body;
- best utilisation of resources;
- provides a 'complimentary fit' for both recycling used single trip containers and collection and disposal of obsolete rural chemicals which assists in maintaining quality assurance and meeting international best practice guidelines; and,



- fulfils extended producer responsibility & meets Industry's social and environmental responsibilities.

The changes to the IWRS MOU outlines the definitions, steps and arrangements to be undertaken to consolidate both waste management programs utilising existing reserves collected under the levy. Producers, suppliers and regulators need to be aware of the threats of product misuse, dangerous workplace health and safety and undesirable environmental practices to people, environment and trade. Ultimately;

- there is no change in the operations or management of the drumMUSTER and ChemClear® programs as the intention is to restructure the financing to save overall costs;
- ChemClear® will now receive funding from the drumMUSTER program which replaces the administration of two separate programs;
- both programs operate nationally; and,
- the levy will remain the same at 4 cents per litre/kilogram of applicable product currently collected under the drumMUSTER arrangements, with approximately \$500,000 to be utilised for the collection and disposal of currently registered unwanted rural chemical (ChemClear®) per year.

### **THE CLAIMS THAT CAN BE SUBSTANTIATED**

#### ***Reduced weight at source***

- The Avcare 2003 audit found that over the past twelve years there was an overall increase in volume used of 80%. Since the 1999 audit here has been a 7% decrease due largely to drought.
- Correspondingly since 1999 there has been a 40% growth in product being delivered in refillable or bulk containers. With liquids this represents an increase from 21.6% to approximately 35.3% of the total liquid volume. Dry formulations in refillable containers have remained static at to 5%. 6% of dry formulations are delivered in bulk.
- Since 1999 there has been a reduction in non-returnable container sales by approximately 790,000. This represents a decrease of 20% in the volume of packaged liquids.
- Overall sales of dry formulations increased by 15% in 2001 compared to 1999 and remain static.
- Adopting higher concentrations has had a very large impact - an estimated reduction of the equivalent 16 million litres or equal to 13% of the liquid volume. Companies have been changing product formulations to more concentrated forms (e.g. glyphosate concentrations have increased from 360 g/L to over 500 g/L and 500g/L flow-able formulations have been changed to 900g/kg granules).

### ***A Defined Route for Disposal***

- 6 million containers weighing 9,000 tonnes have been collected since program inception February 1999.
- 456 Councils now participate in the program in locations which represents > 97% of where the containers are sold. There are 647 collection sites (some Councils have more than one site), secure compounds have been built at a large number of these. The program intends to seek participation from the remaining 171 Councils as appropriate, however the container sales in most of these are less than 500 annually.
- Alternative methods of collection are being carried out on an as needs basis in remote and outback areas; where mobile collections with a truck and trailer run through outback regions at a cost of approximately \$8.00 each (levy on a 20L drum is 80 cents).
- The containers are collected from the Council/Collection Agency sites by **drumMUSTER** approved processors and are on-sold for recycling. In the case of plastic containers this typically involves a secondary closed system cleaning process and extrusion into pellets or granules which are sold to manufactures of other products. The crushed metal containers are usually sold by **drumMUSTER** approved processors to metal recyclers for shredding and smelting.
- 99% of the **drumMUSTER** plastic packaging is high molecular weight HDPE and the value of this recyclate is increasingly being recognized by the recycling industry. The recycled plastic market has been cyclic, however the value of the **drumMUSTER** material is enhanced by a consistent and reliable flow of material. This has resulted from the economies of scale which are possible through the collection of at least one million drums annually through a defined route.
- Plastic containers collected under the **drumMUSTER** program are not sent for land-fill.
- Examples of products which are manufactured from recycled plastic chemical containers include: posts, trellising, wharf planking, signage, road barriers, outdoor furniture, irrigation channeling, conduit, drainage pipe and reinforcement supports in concrete.

### ***Recovery of chemical containers***

- 31% of drums sold (based on 2003 Avcare Audit) were recovered in 2003/4. The **drumMUSTER** Advisory Committee and Agsafe Limited (the company which implements the **drumMUSTER** program) recognise that whilst this is a creditable performance in the five years

since the program started that there is still much to be done to achieve 67%.

- A farmer market research survey was conducted in 2002. 1000 farmers were interviewed in both high and low **drumMUSTER** participating areas from the five mainland regions. The results demonstrated:
  - A very high level of program awareness,
  - A positive attitude to **drumMUSTER** because it provides a positive image to farming,
  - Having to rinse drums is a concern but not an impediment,
  - In low drum return areas barriers were inconvenience of collection time and venue and lack of notification.
- To improve drum returns more regional field officers are being employed and a series of Council forums being implemented. Appointment of Regional Field Consultants in WA and SA in 1999 was pivotal in addressing initial concerns to the program by Councils in these States. There are now 10 Regional Field Consultants (one each in Western Australia, South Australia, Northern Territory and Tasmania and two in Victoria, NSW and Queensland). A national field officer based in Canberra coordinates all field activities and including urban and remote areas.

### ***Improved occupational health and environmental practices***

35% of the liquid volume now being delivered in refillable or bulk containers means that end users have to dispense the products through closed distribution systems which minimizes occupational exposure.

Similarly, by providing a service for the safe removal and disposal of unwanted chemical from farms we are providing a safer farm workplace and reducing contamination risks to the environment.

### ***Research***

A portion of the **drumMUSTER** levy is used for research whereby **drumMUSTER** aims to acquire the information needed to overcome barriers that prevent program implementation and result in improved safety and environmental practices.

The research priorities are as follows:

- Determine the validity of current recommendations for rinsing of containers by farmers. In particular, establish whether containers approved for **drumMUSTER** collection meet designated recycling criteria.
- Develop validated recommendations for effective rinsing of problem formulations such as suspension concentrates and stench agents and

determine whether their containers warrant separate **drumMUSTER** policies and procedures.

- Establish whether chemical leaching into or through plastic containers represents either an OH&S risk or a barrier to recycling.
- Identify a mechanism for monitoring **drumMUSTER** performance, by LGA, including the number of **drumMUSTER** eligible containers entering the market and the proportion collected and recycled.
- Identify barriers and potential solutions to the greater use of refillable containers by manufacturers.
- Identify barriers and potential solutions to refilling of current 20L steel and/or plastic containers by manufacturers.
- Identify the concerns preventing the adoption of **drumMUSTER** by Councils.
- Identify the reasons more farmers are not returning their containers to collection points.
- Identify the major cost and logistic impediments to the commercially driven collection, return and refilling or recycling of 20L steel and plastic containers.
- Design chemical containers that can be easily and completely emptied, rinsed and dried by farmers without damage to the container or otherwise limiting re-use or recycling.
- Identify systems for rinsing and drying containers on farm.

#### **PARTIAL ACHIEVEMENT OF TARGETS:**

- Decline in re-use of drums (3% versus a target of 15%). Manufacturers have opted for the very successful specially designed refillable containers rather than to purchase reconditioned used containers (re-use). The basic reasons for the decline are the comparative cost of buying a brand new container which is cheaper than the cost of recovering, cleaning and redelivering used 20L containers.

The re-use program was limited to five companies and fifteen products and limiting criteria were the safety of their formulations and their high level of use.

Manufacturers claim that there was an unsatisfactorily high failure rate with reconditioned drums and down time in the fill line changing from new to reconditioned drums. Changes in packaging designs meant that containers collected for re-use were often out of date. Refillable drums have the additional health and safety advantage of having closed distribution systems whereby users are not exposed to chemical whilst drawing liquid from them. Refillable containers can be filled a multiple of times and generally last five years whilst re-use drums cannot be refilled more than three times.

- There has not been as high a conversion of liquid to dry as originally forecast.

- Use of water soluble packaging has not proven to be as large as expected, less than 2% adoption.

## **THE LEVY**

- Farmers and graziers will be required to pay a small levy on relevant containers.
- The fact that end users will pay a levy is not of itself in anti competitive of the Scheme. Without the Scheme, there is no incentive for end users to purchase products packaged in Returnable Containers (as defined)). This is the only environmental Scheme that seeks to achieve waster reduction on a nationally co-ordinated basis. It follows therefore that end users have no other opportunity to purchase products at a cheaper price that achieves the environmental targets embedded in the Scheme.

### 1. The current position on the levy:

It is intended that the 4 cent/L or Kg levy continue to fund the program. There are costs associated with implementation of the program namely reimbursement of councils for construction of compounds, promotion, container inspection costs and for charges by processors to collect the containers. There are also promotion and communication activities conducted by Agsafe Limited.

A survey of 1000 farmers in both low and high **drumMUSTER** participation areas in the five mainland areas of Australia found the levy to be of relatively minor concern. Only 8.8% of farmers ranked the levy as one of three main worst concerns. (the perceived worst things about **drumMUSTER** all related to convenience factors such as infrequent or inconvenient collections or collection centres, the need to return containers and lack of notification of collections).

The NFF requested that the levy be transparent and consequently requested for a generic statement on invoices that states that the purchaser has been charged the levy. It can be argued that competitive forces could result in the levy being absorbed in the distribution chain, however despite this likely occurrence it is an obligation of the participants that the generic levy statement appears on invoices.

### 2. The current position on the scope for Councils to negotiate terms of their contracts.

Agsafe does require Councils to enter into a Services Agreement with Agsafe the main principles of which are non negotiable however dealings with Councils have had to be more flexible than at the inception of the program. Greater flexibility has been introduced in claims processes than at inception of the program.

## SCHEDULE

### SCOPE AND COVERAGE

**drumMUSTER** is the national program for the collection and recycling of empty, cleaned, non returnable crop production and on-farm animal health chemical containers. It is estimated that in excess of 90% of non returnable containers of eligible products (locally manufactured or formulated and imported) are covered by the program which is only limited by the level of participation of manufacturers. The two manufacturer associations Avcare and VMDA are parties to the agreement and all Avcare members (currently 27) are obliged to participate as a condition of their membership. VMDA members are encouraged to participate (currently 4) and there are 24 voluntary participating independent manufacturers (not members of Avcare or VMDA).

Agsafe Limited is an independent subsidiary of Avcare Limited, the National Association for Crop Production and Animal Health and has been contracted by Avcare to implement both the **drumMUSTER** and **ChemClear** programs. Both of which compliment the life cycle approach to stewardship of agricultural and veterinary chemical products.

The **drumMUSTER** program was launched in February 1999 and is funded by a 4 cent/L or kg levy on users. Containers which have been flushed, pressure rinsed or triple rinsed according to the Agsafe cleanliness standards are deemed by waste regulation not to be hazardous.

#### **drumMUSTER Objectives**

The program is underpinned by an Industry Waste Scheme Memorandum of Understanding (IWRS) between ALGA (Australian Local Government Association), Avcare Limited (National Association for Crop Production and Animal Health), NFF (National Farmers Federation) and VMDA (Veterinary Manufacturers and Distributor's Association) dated 18 March 2003 which superseded the original agreement (IWRA) between the four parties in May 1998. The agreement has two major objectives:

- To reduce the amount of packaging at source by encouraging manufacturers to adopt alternative containers such as bulk or refillable packs, new packaging technology such as water soluble sachets and new formulations such as gel packs and granules; and,
- To ensure non-returnable crop production and animal health chemical containers have a defined route for disposal that is socially, economically and environmentally acceptable. **drumMUSTER** has been established to provide this defined route.

The former objective is outside the scope of **drumMUSTER** and is commercially driven by manufacturer's commercial initiatives and receives direction through their associations for example from the Avcare packaging committee (which has VMDA representation). Industry monitoring is achieved

through Avcare's eco-efficiency agreement with the federal department of Environment and Heritage and the biannual Avcare container usage audit.

Other objectives are to;

- reduce the number of non-returnable containers distributed;
- increase the re-use of containers originally intended for single use;
- increase the recycling of containers for material recovery;
- improve occupational health and safety and environmental practices;
- promote research and development into new formulations, packaging, recycling; and
- increase material recovery use.

The Industry Waste Reduction Agreement under which **drumMUSTER** was established; aimed to recover 66% of the chemical containers sold annually and reduce the weight of chemical container waste going to landfill by 68% when compared to the estimate of the weight of packaging in 1990. These claims remain valid, however they are subject to review and normal market conditions. (The claims are supported and qualified by the attached program performance data.)

### ***ChemClear® Objectives***

Under the Agreement for the Management of Unwanted Rural Chemicals the objectives are to:

- minimise accumulated unwanted rural chemicals;
- minimise risks to environment, public health and trade; and,
- provide a collection-to-disposal management system for unwanted registered rural chemicals which:
  - achieves high participation from those holding wastes;
  - is accessible to all chemical holders at the lowest possible cost;
  - works alongside and enhances other initiatives; and,
  - meets all regulatory demands.

### ***drumMUSTER - Product eligibility***

In the IWRS the definition of an eligible container is stated as follows: 'eligible Container' means non-returnable rigid metal and plastic container above 1L/Kg in declared content used in the packaging of crop production and farm animal health products for:

agricultural and livestock production;  
industrial and recreational pest and weed control;  
forestry;  
household pest control operations; and  
similar activities conducted by local, State and Federal Government authorities.

The program provides a path for the disposal of containers that are considered as:

**hazardous** because of the hazards associated with the product they contained. It is an offence under environmental protection legislation in all States to dispose of hazardous waste at a normal Council landfill, or

**non-hazardous.** These were previously not part of the program but from August 24 2001, non-hazardous products were included in the program at the discretion of the product manufacturer or registrant.

***Eligible products***

Insecticides	Nematicides	Plant Growth Regulators
Fungicides	Miticides	Animal Health Products
Seed Dressings	Rodenticides	Paracitocides, internal & external
Defoliant	Anthelmintics	
Herbicides	Lousicides & Vaccines	

Eligible products may also include (at the discretion of the manufacturer or registrant):

- |                |                    |                              |
|----------------|--------------------|------------------------------|
| Surfactants    | Spreaders          | Dairy Detergents             |
| Wetting Agents | Dye                | Teat dip                     |
| Foliar         | Spray Oils         | Animal Nutrition Supplements |
| Fertilisers    |                    |                              |
| Stickers       | Foam Markers       | Udder wash                   |
| Spray Markers  | Farm Disinfectants |                              |

***Historical products***

Historical or containers without a logo were initially covered for the first 12 months of the program and subsequently until after the first successful collection. The latter provision was necessary because it took longer than 12 months for Councils to agree to participate and run collections. Another amnesty was run for the duration of 2003 to allow any chemical user to avail themselves of the service that had not already done so.

***ChemClear® - Product eligibility***

Group 1 crop protection and animal health chemicals (other than vaccines), in whatever physical form, used for:

- (a) agricultural and commercial livestock production;
- (b) pest or weed control on agricultural, public, industrial and recreational land; or
- (c) forestry;



and used by:

- (d) farmers, graziers, pastoralists, horticulturalists, crop growers, local, state and federal government authorities (including the Plague Locust Commission and transport departments); and
- (e) aerial spray operators;

that satisfy all of the following criteria:

- are manufactured only by member companies of Avcare or VMDA or participating non-members;
- are registered agricultural and veterinary products,<sup>11</sup> or products whose registration or permit ceased since the last ChemCollect or ChemClear<sup>®</sup> collection cycle;<sup>12</sup>
- are in the original non-returnable rigid metal, plastic or cardboard containers;
- are identifiably labelled with the original manufacturer's label;
- are not the subject of any other practical routine return program operated by the manufacturer and/or distributors for the product in its original container;
- are not part of a special regulatory or voluntary phase-out campaign agreed to between the APVMA and the manufacturer(s);
- are not the subject of any recall or phase-out as a requirement of the APVMA, where the deadline has expired as communicated by Agsafe;
- are not held by distributors as unwanted inventory;<sup>13</sup> and
- are not more than three tonnes for a single collection.

In addition, unregistered or non-participating companies (Group 2) product enquiries are collated by the contracting organisation who then negotiates with the waste holder to dispose of the product at commercial rates on a fee for service basis. (NB There are no collection costs associated with Group 2 products as ChemClear<sup>®</sup> subsidises the transportation and collection costs.)

## Performance of *drumMUSTER* Program (1999 - 2004)

### 1. Program geographical coverage

Origin of obj.	Targets and objectives	National performance 2003	Comments
dM	Increase the participation of local governments in container inspection, recycling and disposal programs * Priority 1 & 2, 100% and Priority 3 90% signed.	Priority 1, 100% Priority 2, 100% Priority 3, 94%	Recent council amalgamation changes have not been factored in to participation data.  * Priority 1 >10,000 annual container sales Priority 2 5,000 – 10,000 annual container sales Priority 3 2,000 – 5,000 annual container sales Priority 4 500 – 2,000 annual container sales Priority 5 < 500 annual container sales
dM	Priority 4,5 councils signed and run collections when required	Priority 4, 71% Priority 5, 49%	
dM	Remote areas serviced in Qld, NT, WA	On request, 5% participation.	
dM	Urban collection services in Sydney, Brisbane and Melbourne	Mostly in place where required, 16% participation.	Sydney basin and Melbourne service is provided via an agreement with Sims Plastics. Melbourne service needs inspectors to be trained and service promoted. Brisbane launched July 2004.
dM	Collection venues identified and meet user needs	Consider greater than 90% identified.	<b>drumMUSTER</b> Regional Consultants liaise with councils, resellers and farmer groups on an ongoing basis and new collection venues put in place if justified. Moree (>100K drum sales) recently changed from infrequent mobile to fixed bi-monthly established site collections.

**1. Program geographical coverage continued.**

Origin of obj.	Targets and objectives	National performance 2003	Comments
dM	Collection number and timing identified and meets user needs	Mostly achieved to <b>drumMUSTER</b> expectation.	BSS survey, 57% farmers require 1 collection per annum and 84% require 2 collections per annum. <b>drumMUSTER</b> Regional Consultants liaise with councils, resellers and farmer groups on an ongoing basis. Stakeholder Forums implemented in high drum number and low participation areas.

**2. Product redesign based on design for the environment principles**

Origin of obj.	Targets and objectives	National performance 2003	Comments
IWRA 1999	68% reduction in weight of waste of primary containers compared to 1990 benchmark	55%	<p>The net total weight to the environment has reduced from 6,597 to 4,198 tonnes since <b>drumMUSTER</b> commenced in 1999. A reduction of 36% in 4 years. Since 1991, there has been a reduction of 55% in the weight of packaging that would otherwise have ended up in the environment. <b>drumMUSTER</b> has collected 1,717 tonnes (to the end of 2003) and 38 tonnes of containers have been reused.</p> <p>A 1999 study showed a reduction in liquid volume equivalent to 16.5 million litres due to increased concentrations of some formulations and conversion of some concentrate formulations to dry granular formulations.</p>

**2. Product redesign based on design for the environment principles continued.**

Origin of obj.	Targets and objectives	National performance 2003	Comments
----------------	------------------------	---------------------------	----------

IWRA 1999	Increase the total market share of dry chemical formulations to 23%	14%	Limited by farmer acceptability. Some farmers believe that dry formulations have mixing and nozzle blocking problems despite these problems having been resolved with new formulations.
IWRA 1999	Produce 8% of its dry and gel formulations in water soluble packages	1.40%	Packaging is not sufficiently resilient to withstand weather.
IWRA 1999	Percent of dry product delivered in bulk or refillable containers (no target set)	3.50%	
EPA ERG	Product has been manufactured to international environmental best practice standards	See comment.	Products manufactured to standards approved by the APVMA. Packaging, including refillable and bulk containers, meet dangerous goods packaging specifications which are aligned to the UN Recommendations on the transport of dangerous goods.
IWRA 1999	Supply 50% of raw materials in recyclable or returnable packaging	See comment.	Recyclable material not available to be used in raw material packaging due to requirements for dangerous goods packaging

### 3. Collection Results

Origin obj.	Targets and objectives	National performance 2003	Comments
IWRA 1999	Recover 66% of empty clean and rinsed containers	33%*	This target was set at the outset of the Program (1998) and based on the Canadian program, which does not have as rigorous cleanliness standards nor an inspection service. * Based on drum sales calculated from previous years levy income; 2003/04 results – National 44% and NSW 39%
dM	1.1M 2002/03 1.3M 2003/04 (NSW proportion 315,000) 1.45M 2004/05 1.6M 2005/06	1.15M containers, 33% of previous years sales based on levy.	2004 National: 1.19M more data to be received; NSW 310,208 containers collected, equivalent to 39% of the previous years sales based on levy. Estimate National collection will be 1.25M containers when all CFF data has been received.
dM	100% of priority 1,2,3 councils run at least one collection in 2003/04	84%	A number of councils ran collections but have not advised <b>drumMUSTER</b> (particularly in WA).

### 4. Reuse/recycling of end-of-life products/materials/components

Origin obj.	Targets and objectives	National performance 2003	Comments
IWRA 1999	35% of all liquid product sold in bulk or refillables	35%	This has increased from 22% in 1999 (59% increase). Manufacturers based predominately in NSW and VIC and to a lesser extent QLD and WA, each distribute nationally which means that State data is irrelevant.

### 4. Reuse/recycling of end-of-life products/materials/components continued.

Origin obj.	Targets and objectives	National performance 2003	Comments
IWRA 1999	Collect, reprocess and reuse 15% of all 20L plastic	1.70%	Reuse of containers not viable due to filling down time, 5% failure and higher cost than new container and has been

	containers		overtaken by use of refillables and returnable containers
IWRA 1999	Collect, reprocess and reuse 200L containers (no target set)	0.60%	
EPA ERG	Percentage material recovered for same or similar use	Nil	Recyclable material not available to be used in raw material packaging due to requirements for dangerous goods packaging. One company has been trialling a mixture of virgin and recycled plastic. The results of the trial are yet to be published.
IWRA 1999	Promote recycling of other packaging such as cardboard outers, pallet wrapping and strapping	No information	In IWRA but not within <b>drumMUSTER</b> scope.
EPA ERG	Proportion of collected material recycled	100%	Advice received from re-processors is that 100% of all containers collected are reprocessed.
EPA ERG	Amount of material rejected due to contamination	1999/00 - 4.9%, 2003 - 04 - 1.8%	<b>drumMUSTER</b> inspectors do not accept containers at collection if there is any visible residue or if containers are not covered by the scope of the Program i.e. do not have a <b>drumMUSTER</b> logo. User retains them and has the opportunity to re-present them after cleaning.

#### 4. Reuse/recycling of end-of-life products/materials/components continued.

Origin obj.	Targets and objectives	National performance 2003	Comments
EPA ERG	Container re-use by user	16% (2002 survey)	BSS survey (reference no. 2), 16% of single trip containers are estimated to be retained by users for other uses. In the cotton industry, the Best Management Program prevents the re-use of farm chemical containers on farm.
EPA ERG	Uses of recovered material/products	See comment	Estimated 80% is manufactured domestically for agricultural drainage pipe, various types of stakes and posts and electrical conduit. Approximately

		20% is exported, predominately to China.
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### 5. End user participation

Origin of obj.	Targets and objectives	National performance 2003	Comments
EPA ERG	Percentage of end users participating in the Program	2001/2 – 6% 2002/3 – 7% 2003/04 - 8% deliveries from an estimated 136,507 farm chemical users.	Measured in terms of numbers of deliveries as a percentage proportion of numbers of farmers (ABS date). Some single deliveries are from more than one farm. The jump from 5% to 9% can be attributed to reestablishment of the NetWaste contract and limited Moree activity from July 02 until Sept 03 (drought). Delivery records were not reliable before 2001 (only drum nos).
EPA ERG	Extent of end user knowledge/awareness of scheme	93% *	* A 2002 survey of 1,000 farmers nationwide in high and low <i>drumMUSTER</i> participation areas showed awareness to be:  - NSW 98% in high participation areas, 92% in low participation areas. - National 96% in high participation areas, 90% in low participation areas.
EPA ERG	Availability/access of collection points (number/ease of access)	667 (2003/04)	In NSW, 36% of sites are ongoing collections, 39% are on set days either weekly, fortnightly or monthly and 13% are once or twice per year. Generally collections are run during September, October and November in the broad acre areas after the post emergent herbicide is used and before harvest. March, April and May appears to be the next most suitable period.

### 6. Industry participation

Origin of obj.	Targets and objectives	National performance 2003	Comments
dM	Maintain level of participation by companies at 90% of agricultural and	>90%	27 Avcare and VMDA members have products covered by the Program. 24 non Avcare/VMDA members participate, including all major generic companies.

<b>Origin of obj.</b>	<b>Targets and objectives</b>	<b>National performance 2003</b>	<b>Comments</b>
	veterinary products		Manufacturers supply nationally.
dM	Gain participation of major manufacturers of dairy sanitisers (3), liquid fertilisers (2) and surfactants	3	1 liquid fertiliser and 2 specialised surfactant companies participate. The dairy chemical industry, represented primarily by 4 companies is resisting participation, the common response being "there is not enough margin in the industry to carry the costs". Manufacturers supply nationally.
dM	Maintain generic company participation	Ongoing	All known major generic companies participate and supply nationally.
EPA ERG	No. of producers/importers actively using bulk or refillable containers	Estimate 100%	See objective 16
EPA ERG	Negative impact on participants' domestic competitiveness	Insignificant except for IBCs	Overall there is a level playing field and it has not recently been raised as an issue by R&D companies, probably due to the increased participation of generic companies. Distributors encourage all their suppliers to participate. Some importers are selling IBCs with no intention of recovering them, issue being addressed through amended definition of refillable/returnable containers.

## **7. Funding**

<b>Origin of obj.</b>	<b>Targets and objectives</b>	<b>National performance 2003</b>	<b>Comments</b>
dM	Income budgeted annually based on estimated container sales multiplied by 4 cents per L or Kg.	2003 Levy, \$2,143,768	2002/03 Annual Report. Assume NSW allocation 0.29% based on proportion of drums sales. Funding secure whilst IWRA in place and individual agreements with generic companies are honoured.
dM	Expenditure budgeted annually based on assumptions.	2003 Expenditure \$2,169,384	2002/03 Annual Report.

## **8. Data Collection**



Origin of obj.	Targets and objectives	National performance 2003	Comments
dM	Container Sales numbers are entered on levy declaration forms.	60% of industry compliance	Revised levy declaration form with State split awaiting Avcare approval. Compliance improving.
dM	Collection data obtained on Collection Feedback Forms (CFF). CFFs faxed to <b>drumMUSTER</b> within 3 days of collection.	96% (Data not received for 69 out of 1745 collections)	CFF data entry compiled on National database. Most received within 3 months, a small proportion 12 to 18 months 2003/04 result – Nationally 97%, 47 out of 2034 collections without data, NSW 98%, 9 out of 631 collections without data.

### 9. Toxicity levels

Origin of obj.	Targets and objectives	National performance 2003	Comments
EPA ERG	< 0.01% residue deemed to be acceptable as non-hazardous waste.	Only clean inspected drums accepted.  Some odour problems with metal containers.	The Program does not accept containers that have not been triple rinsed according to the Agsafe standard. This rinsing standard removes the active constituent to the standard of acceptability of 99.99%. All containers to be accepted are inspected and have to be free of all visible residue. The inspection process is backed up by an auditable collection manual, regular inspector training coupled with compliance measures.  Metal containers accepted by the Program are usually punctured through the base, improving ventilation and reducing some odour problems that can be associated with this container type. Puncturing metal containers is now a requirement.

### Performance of ChemClear® Program (2003- 2004) For period ending 30 September 2004

State	Group 1 collected (kgs)	G1 bookings not collected (kgs)	Group 2 collected (kgs)	G2 bookings not collected (kgs)
NSW	2673	301	919	602

QLD		2743		1180
NT		15		
SA	416	1907	891	1106
VIC		693		154
WA		434		219
TAS				
<b>TOTALS</b>	<b>3089</b>	<b>6093</b>	<b>1810</b>	<b>*3261</b>

\* It should be noted that where there are enquiries for disposing of Group 2 (unregistered) product, the contractor is not entering into negotiations until the collection route for Group 1 (ChemClear<sup>®</sup>) product has been defined.

#### Rate of end-user participation for Pilot program collections

State	Group 1 bookings (numbers)	Group 2 bookings (numbers)
NSW	21	14
QLD		
NT		
SA	17	12
VIC	1	
WA		
<b>TAS</b>		

Organisation	Address	Suburb	State	PostCode
ACCC	470 Northbourne Avenue Level 2, AMP Tower, 1 Hobart Place	DICKSON	ACT	2602
Avcare	1 Hobart Place	CANBERRA CITY	ACT	2601
Department of Agriculture, Fisheries & Forestry	GPO Box 858	Canberra	ACT	2601
Department of Environment & Heritage	GPO Box 787	Canberra	ACT	2601
National Occupational Health & Safety Commission, Canberra Office	GPO Box 1577	Canberra	ACT	2601
NFF	PO Box E10	Kingston	ACT	2604
Dairy Australia	Suite 14E, Level 14, 44 Market Street PO Box A290	Sydney Sydney South	NSW NSW	2000 1232
EPA, NSW	PO Box A290	Sydney South	NSW	1232
National Occupational Health & Safety Commission (AGVET), Sydney Office	GPO Box 58	Sydney	NSW	2001
NSW Agriculture, Gosford	Locked Bag 26	GOSFORD	NSW	2250
VMDA	Locked Bag 2000	Peakhurst Delivery Centre	NSW	2210
Department of Business, Industry & Resource Development	GPO Box 3000	DARWIN	NT	0801
NT Government	GPO Box 2391	Darwin	NT	0801
Department of Primary Industries, QLD	Level 3, DPI PIB 80 Ann Street	BRISBANE	QLD	4000
EPA, Qld	PO Box 15155	City East	QLD	4002
EPA, SA	Level 7, 77 Grenfell Street	ADELAIDE	SA	5001
Primary Industries SA	GPO Box 1671	ADELAIDE	SA	5001
Department of Environment & Land Management, TAS	GPO Box 44A	Hobart	Tas	7001
Department of Primary Industries, VIC	1 Spring Street	Melbourne	VIC	3000
Agriculture WA	Locked Bag 4 Bentley Delivery Centre		WA	6983
WA Department of Environment	PO Box 6740	East Perth	WA	6892