

Our Ref: A90871 Agsafe
Contact Officer: Cameron Martin
Contact Phone: 02 6243 1107

31 March 2005

Dear

**Application for revocation of authorisation and substitution by
Replacement authorisation lodged by Agsafe Ltd**

The Australian Competition and Consumer Commission (the ACCC) has received an application from Agsafe Ltd (Agsafe) seeking to revoke authorisation A90871 and substitute it with a replacement authorisation.

Authorisation A90871 was granted to Agsafe in 2003 and relates to the collection and recycling of empty agricultural and veterinary chemical containers, funded by an industry levy (currently \$0.04 per litre/kilogram). This arrangement is more commonly known as the *drumMUSTER* program.

Under the proposed substitute authorisation, Agsafe seeks to establish an Industry Waste Reduction Scheme (IWRS), funded through the existing *drumMUSTER* levy arrangements. The IWRS will involve the amalgamation of the *drumMUSTER* and ChemClear programs – ChemClear is the national program for the collection, transport, storage and disposal of unwanted chemical waste.

I note that while the *drumMUSTER* arrangements are currently authorised by the ACCC, no immunity extends to the ChemClear arrangements at this time.

A copy of Agsafe's substitute authorisation is attached for your information.

The purpose of this letter is to seek your comments in relation to the Agsafe proposal as a potentially interested party.

By way of background, the ACCC is the Commonwealth agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive

conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The Act, however, allows the ACCC to grant immunity from the Act for anti-competitive conduct in certain circumstances.

Authorisation is a process whereby the ACCC, in response to an application, has the power to grant immunity from court action for arrangements or conduct which might otherwise be in breach of the Act. In order to grant authorisation the ACCC must be satisfied the public benefit arising from the arrangements outweighs any anti-competitive detriment. The authorisation process is conducted in an open and transparent manner – submissions from applicants and interested parties are generally publicly available from the ACCC's website, as is further general information regarding the authorisation process (www.accc.gov.au).

Request for submissions

To assist the ACCC in assessing this application you are invited to provide comments in relation to the application, in particular your view is sought as to the likely benefits to the public and the potential effect on competition of the proposed arrangement.

In this respect I note that Agsafe has submitted that a number public benefits are likely to flow from the proposed arrangements, including:

1. the implementation of the IWRS will improve the environment by providing for appropriate disposal of unwanted empty containers and for the use of containers which have been flushed, pressure rinsed or triple rinsed according to the Agsafe cleaning standards;
2. the IWRS will encourage manufacturers of veterinarian and agricultural (Agvet) products to sell their products in refillable, water soluble, cardboard or paper containers;
3. the IRWS will help to minimise the accumulation of residual animal health products and chemical waste;
4. the IRWS will promote an interest in and education of waste issues; and
5. the IRWS will result in cost efficiencies gained by reducing separate scheduled meetings.

If you intend to provide a submission in relation to Agsafes's application for revocation and substitution authorisation, I would be grateful if you could do so by **27 April 2005**.

Interim authorisation

Agsafe has requested that the ACCC grant 'interim' authorisation to these arrangements. In particular Agsafe has sought interim authorisation to allow:

1. the formation of a new Memorandum of Understanding (MOU), to be called the Industry Waste Reduction Scheme MOU;
2. the incorporation and amalgamation of the *drumMUSTER* and ChemClear programs, to be administered by a single IWRS Advisory Committee; and
3. the IRWS to be funded under the existing *drumMUSTER* four cents per litre or kilogram (above the first litre/kilogram) levy on non-returnable rigid metal or plastic containers used for agricultural purposes.

In simple terms, interim authorisation allows parties to engage in the proposed conduct while the ACCC considers the substantive merits of the application. The ACCC has previously stated that it is unlikely to grant interim authorisation where to do so would permanently alter the competitive dynamics of the market or inhibit the market from returning to its pre-interim state if authorisation is later denied, unless there are special circumstances.

The ACCC is also seeking comments from interested parties regarding Agsafe's request for interim authorisation. I note that ACCC generally seeks to complete its assessment of an application for interim authorisation within one month of receiving the application. With this in mind, should you plan to make comment on the application for interim authorisation, I would appreciate if you could do so by **11 April 2005**.

General information

The ACCC asks for submissions to be in writing so that they can be made publicly available. Submissions are placed on a public register and may also be placed on the ACCC's website. The ACCC may, where appropriate, supplement written submissions with discussions with relevant parties on a mutually convenient basis.

Should you lodge a submission with the ACCC you may request that information included in the submission be treated as confidential and not placed on the public register or the ACCC's website. The ACCC may take confidential information into account during its assessment of an authorisation application. Guidelines for seeking confidentiality are attached for your information ([attachment B](#))

Should you wish to lodge a submission, please address it to:

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

Submissions can also be lodged by email to adjudication@accc.gov.au, or by facsimile on 02 6243 1211.

Should you have any queries or if you wish to discuss any aspect of this matter please do not hesitate to contact Cameron Martin on 02 6243 1107.

Yours sincerely

Scott Gregson
A/g General Manager
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the Commission assesses applications for authorisation or notification is very public, transparent and consultative. The Trade Practices Act 1974 (the Act) requires the Commission to maintain a public register in respect of authorisation and notification applications.

Applicants and interested parties can request that a submission, or part of a submission, be excluded from the public register.

The Commission is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or process;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

However, even if a document does not meet these technical requirements, the Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

The Commission also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The Commission expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the Commission:

- (a) where the request is that a whole document be excluded, the words "Restriction of Publication Claimed" should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words "Restriction of Publication of Part Claimed" should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the Commission deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

If the Commission denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the Commission will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the Commission will return the original material and destroy all associated copies. The Commission will not consider this material when reaching its decision.

If the Commission does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the Commission pursuant to its powers generally under the Act.

	name	Title	Address
1	Mr Phil Naylor	Chief Executive Officer	Australian Retailers Association
2	Mr Bernard Horsfield	Chief Executive Officer	Australian Veterinary Association
3	Ms Anwen Lovett	Director, Environment	National Farmers Federation
4	Mr WJ Blackhall	Regional Director-Pacific Area Secretary	VIRBAC Australia Pty Ltd
5	Mr D Price		Australian Association Agricultural Consultants
6	Mr Chris Butler	Agricultural Chemicals Retailers Association Executive Director	
7	Mr Robert Schufft		Veterinary Manufacturers & Distributors Association
8	Mr Richard Luke	President	Australian Institute of Agricultural Science and Technology
9	Ms Cathy Zoi	Assistant Director General (Chemicals and Waste)	NSW EPA
10	Mr Peter Raphael	Manager, Quality Assurance and Compliance	Australian Pesticides & Veterinary Medicine
11	Mr Don Henry	Executive Director	Australian Conservation Foundation
12	Ms Bronwyn Capanna	Executive Director	Australian Consumer Specialty Products Association
13	Mr Jon Fowler	President	Small Business Association of Australia
14	Mr Brian Scarsbrick	Chief Executive	Landcare Australia
15	Mr Jonathon McKeown	Chief Executive Officer	NSW Farmers Association
16	Mr Jon Court	Policy Development Officer	SA Farmers Federation
17	Mr Peter Walsh	President	Victorian Farmers Federation
18	Mr Doug Parker	Executive Director	Western Australian Farmers Federation
19	Mr Mike Russell	Senior Environment Protection Officer	Environmental Protection Agency-SA
20	Mr Geoff Wells	Manager	Environmental Planning and Legislation Environment ACT
21	Mr Colin Denston	Managing Director	Rawlinson & Brown Pty Ltd

22	Mr Brett Bartlett	Store Manager	Morwillumbah Branch
23	Mr Adrian Tyler	Manager	Tyers Hardware & Rural Supplies
24	Mr Ken Stenbens	P & H Rural Supplies	PO Box 682
25	Mr Chris Patsalon	Director	NT Stock Feeds
26	Mr David Peters	National Trading Manager	Westfarmers Dalgety
27	Mr John Hughes	Managing Director	Combinded Rural Trader/Town & Country
28	Mr Malcolm Smallacombe	Merchandise Manager	RTC Agribusiness
29	Mr Brian Mabin	Manager	Mabons Pty Ltd
30	Mr David DeForce	Merchandise Manager	Savage Baker & Backhouse Pty Ltd
31	Mr Stephen Ireland	Propretor	Southern Farm Supplies, Bega
32		President	Tasmanian Farmers & Graziers Association
33	Mr Nigel Kimball	Policy Advisor, Environment CEO	Queensland Farmers Federation
34	Mr Michael O'Neill		AgForce Queensland
35	Mr James Purfill	Director-General	Queensland Environmental Protection Agency
36	Dr Walter Cox	Chairman	WA Environmental Protection Authority Environmental Protection Authority
37	Mr Warren Jones	General Manager, Environment	Department of Primary Industries, Water and Environment
38	Mr Brett Struck	Manager, Waste Operations Secretary	Office of Environment and Heritage
39	Ms Joanna Hewitt		Department of Agriculture, Fisheries and Forestry
40	Mr David Borthwick	Secretary	Department of Environment and Heritage
41		General Manager	Avcare Level 2 AMP Tower

42	Mr Tom Fisher	Chief Executive Officer	National Occupational Health and Safety Commission (AGVET) Sydney Office
43		General Manager	Dairy Australia
44		General Manager	NSW Agriculture
45	Mr Neil Summons	President	Veterinary Manufacturers and Distributors Australia
46	Mr Mike Burgess	Chief Executive	Department of Business, Industry and Resource
47	Dr Paul Vogel	Chief Executive	EPA South Australia
48	Mr Paul Tyrrell	Chief Executive	Department of the Chief Minister NT
49	Mr Peter Harris	Secretary	Department of Primary Industries Victoria
50	Mr Jim Varghese	Director-General	Department of Primary Industries Queensland
51	Ms Kim Evans	Secretary	Department of Primary Industries, Water &
52		General Manager	Agriculture WA
53	Mr Derek Carew-Hopkins	Chief Executive	Department of Environment Western Australia
54		General Manager	A & C Chemicals Pty Ltd
55		General Manager	Bayer Australia Ltd
56		General Manager	Boehringer Ingelheim Pty Ltd
57		General Manager	Caltex Australia Ltd
58		General Manager	Agrisearch Services Pty Ltd
59		General Manager	ExxonMobil Chemical Australia Pty Ltd
60		General Manager	Fertilizer Industry Federation of Australia Inc
61		General Manager	DuPont (Australia) Ltd
62		General Manager	GrainCorp Operations Ltd
63		General Manager	Greif Australia Pty Ltd
64		General Manager	Orica Australia Ltd

65	General Manager	Pfizer Australia
66	General Manager	Schering-Plough Ltd.
67	General Manager	United Phosphorus Ltd Australia
68	General Manager	VISY INDUSTRIES
69	Ms Colleen Dobson Project Officer Hazardous Waste	Chesser House