

Martin, Cameron

From: Martin, Cameron
Sent: Thursday, 9 June 2005 5:11 PM
To: 'gm@agsafe.com.au'
Cc: Philp, Susan
Subject: Application for revocation and substitution A90963 lodged by Agsafe Ltd

Dear Mr Ponder,

As discussed, the ACCC is seeking further clarification on the operation of the IWRS top-up fee. In particular the ACCC is seeking responses to the following questions

1. Does Agsafe consider that the possible implementation of IWRS top-up fee may be at risk of contravening section 45 of the Trade Practices Act 1974 and is Agsafe currently seeking immunity for this portion of the IWRS?
2. Can Agsafe identify the sections of the IWRS MOU that relate to the top-up fee?
3. When would the IWRS top-up fee be used?
4. Would it be applied as an increase in the levy, or in some other way?
5. What controls will be in place to ensure that a top-up fee is only used to bring the IWRS's funds up to one year's reserves?
6. What is the likelihood of the IWRS top-up fee being applied over the term of the possible authorisation?
7. Has Agsafe ever needed to apply a top-up fee over the life of the *drumMUSTER* program?

Responses can be sent by reply email

Thank you

Cameron Martin
Adjudication Branch
Australian Competition & Consumer Commission
Ph (02) 6243 1107
Fax (02) 6243 1211

Martin, Cameron

From: General Manager [gm@agsafe.com.au]
Sent: Friday, 10 June 2005 1:26 PM
To: Martin, Cameron
Cc: Emma Sloan
Subject: RE: Application for revocation and substitution A90963 lodged by Agsafe Ltd

Dear Cameron

IWRS top-up fee.

1. Does Agsafe consider that the possible implementation of IWRS top-up fee may be at risk of contravening section 45 of the Trade Practices Act 1974 and is Agsafe currently seeking immunity for this portion of the IWRS? No, primarily because it has been previously determined under the Agreement for the Management of Rural Chemicals, that a fee could be passed on as a cost of goods sold. (I refer you to previous advice received from the ACCC in a letter dated 18 April 2000 Ref# C2000/339 which referred to the imposition of a cost recovery mechanism as a cost of goods sold.) Furthermore, the top-up-fee trigger point of \$3.2m will not be reached within the term of the agreement given that reserves currently stand at approximately seven million dollars. Annual income (not counting variable seasonal conditions) expected over the term of the agreement (3 years) less the required expenditure (allowing for increases in drum collection rates) is expected to result in a net depletion of reserves to the tune of \$800K per annum leaving the program with approximately \$4.5m reserves at the completion of the Agreement.
2. Can Agsafe identify the sections of the IWRS MOU that relate to the top-up fee?
No
3. When would the IWRS top-up fee be used? The fee would only be implemented when reserves fell below \$3.2m and be applicable for participating Avcare/VMDA members as an obligation under the Avcare Code of Conduct. The rate would be set to collect sufficient funds to replenish reserves to the \$3.2m level.
4. Would it be applied as an increase in the levy, or in some other way? There would be no increase in the current 4c per litre/kilogram levy. Should it become apparent over the term of the Agreement (3 years) that an increase in the levy due to increased drum return rates was warranted in the "new Agreement" an application would be duly made to the ACCC.
5. What controls will be in place to ensure that a top-up fee is only used to bring the IWRS's funds up to one year's reserves? A request for additional funds will be made by the IWR Advisory Committee to the Avcare Board. Upon determination of the amount required a letter will be forwarded from the office of the Company Secretary to all Avcare members. The current VMDA members in the scheme have cross membership of Avcare.
6. What is the likelihood of the IWRS top-up fee being applied over the term of the possible authorisation? None – it would need to be re-negotiated between the stakeholders.

7. Has Agsafe ever needed to apply a top-up fee over the life of the *drumMUSTER* program? No

Regards

Sam Ponder

General Manager

Agsafe Limited

Level 4, AMP Tower, 1 Hobart Place, Canberra City, ACT 2601

(GPO Box 816, Canberra City, ACT 2601)

Tel: 02 6230 4799 Mob: 0419 233 002 Fax: 02 6230 6710 Email: gm@agsafe.com.au

Visit us on the web at www.agsafe.com.au

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