

FILE No:
DOC:
MARS/PRISM:

Your reference : A91027 & A91028  
Our reference : ED07/36  
Contact : Alan Ritchie (02) 9995 5944 Fax: (02) 9995 6603

Mr Scott Gregson  
Adjudication Branch  
Australian Competition and Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

Dear Mr Gregson

**Agsafe application for revocation and substitution of A91027 and A91028**

I refer to your letter of 5 January 2007 inviting comments from the Department of Environment and Conservation NSW on the Agsafe Guardian Program.

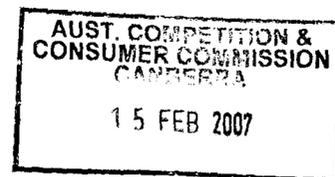
A response to the questions outlined in Attachment A of your letter, is attached.

Please note that the Department of Environment and Conservation exercises certain statutory functions and powers in the name of the Environment Protection Authority (EPA).

Yours sincerely

*Simon A Y Smith 9/2/07*

**SIMON A Y SMITH**  
Deputy Director General  
Environment Protection and Regulation Division



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Department of **Environment and Conservation** NSW

## Attachment A

1. The relevant legislation administered by DEC in relation to the storage, handling, transport and sale of agricultural and veterinary chemicals is the NSW Road and Rail Transport (Dangerous Goods) Act 1997, the Pesticides Act 1999 and the Protection of the Environment Operations (POEO) Act 1997. DEC regulates the proper use of all pesticides in NSW, after the point of sale (the Australian Pesticides and Veterinary Medicines Authority regulates pesticides up to and at the point of sale). The NSW Road and Rail Transport (Dangerous Goods) Act applies to the transport of those pesticides which are dangerous goods. The Pesticides Act applies to persons or businesses who use pesticides in NSW – this includes pesticide use in agriculture, on public lands, and on domestic and commercial premises. The POEO Act has some important provisions relating to protection of waters which are relevant to the storage and handling of pesticides (eg s120). These provisions also apply widely to both licensed and unlicensed premises. Licensed premises are those which fall within Schedule 1 of the Act.
2. DEC seeks to obtain compliance with the above legislation through compliance and enforcement action by officers in the Department's Environment Protection and Regulation Division, who operate across NSW.
3. There is no requirement in the above legislation or agency practice for businesses to obtain accreditation through the Agsafe Guardian program.
4. POEO, Pesticides and Dangerous Goods transport legislation all include a comprehensive array of sanctions for failure to comply with relevant legislative provisions. Under the Pesticides Act the maximum fine for a breach of the Act is \$120,000 for an individual, or \$250,000 for a corporation. The maximum fine for non-compliance with dangerous goods transport legislation is \$50,000 and/or 2 years imprisonment for an individual and \$250,000 for a corporation. Section 45 of the Road and Rail Transport (Dangerous Goods) Act allows a court to prohibit a person from involvement in the road or rail transport of dangerous goods.
5. DEC does not issue compliance certificates and does not otherwise seek to certify that a business is complying with any of the legislation. Our focus is on education, licensing, and enforcement in the case of breaches.
6. DEC has a 24 hour complaints telephone line – Environment Line. All complaints received are logged onto a database, and referred to the appropriate area for follow up. DEC has a procedure for following up complaints. Complaints are received from a wide spectrum of the community and can include industry self-reporting of pollution incidents.
7. DEC has not received any complaints regarding the Agsafe program.
8. DEC supports the ability for Agsafe and its members to boycott any business involved in the storage, handling, transport and distribution of agricultural and veterinary chemicals that has not been accredited under the Guardian program. DEC is aware that poor practices by some members of this industry sector strongly influence community attitude to the industry as a whole and its products. DEC recognises that the program is designed to establish and maintain uniformly high standards across the chemical supply industry. The program addresses a clear need for a cooperative effort between governments and the agricultural and veterinary chemical industry (including the supply chain and providers of advice) to promote practices which ensure efficient and safe use of ag and vet chemical products.
9. DEC notes that Agsafe conducts training programs on the safe handling and storage of chemical products and has participated on occasions in relation to the transport of dangerous goods. In principle, DEC supports training as a valuable strategy for improving environmental performance. DEC understands that the Agsafe program is accredited and that a number of the Agsafe training programs have a strong emphasis on environmental risk management and are likely to have contributed to improved management of chemicals in the community.