



New South Wales

FILE No:
DOC:
MARS/PRISM:

DEPARTMENT OF PRIMARY INDUSTRIES

DF07/15

16 MAR 2007

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

Dear Mr Gregson

Thank you for your letter of 5 January 2007 seeking consultation with interested parties in relation to the application by Agsafe for revocation of expiring authorisations and their substitution with authorisations A91027 and A91028.

The main involvement of the NSW Department of Primary Industries (NSW DPI) in the regulation of the supply and distribution of agricultural and veterinary chemicals is in the administration of the *Stock Medicines Act 1989*. NSW DPI also runs SMARTtrain® chemical use training courses.

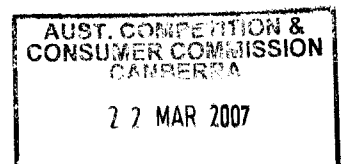
NSW DPI has no direct experience with the Agsafe Guardian program and can only provide a response on the basis of occasional anecdotal comments it has received from individuals attending NSW DPI chemical use training programs. These comments are detailed in the enclosed responses to questions in Attachment A.

I trust this material is of assistance to the Commission in dealing with this application. If any further assistance is required please direct your enquiries to Mr Roger Toffolon, Manager Biological and Chemical Risk Management, at Orange on telephone (02) 6391 3727.

Yours sincerely

B D BUFFIER
DIRECTOR-GENERAL

Encl



ATTACHMENT 1 RESPONSES

1. Could you please identify the relevant legislation and provisions that your agency may administer which regulate the storage handling, transport and sale of agricultural and veterinary chemicals? What type of businesses does this legislation apply to? For example, manufacturers, distributors, retailers or consumers of agricultural and veterinary chemicals.

NSW DPI administers the *Stock Medicines Act 1989* which operates in conjunction with the *Agricultural and Veterinary Chemicals Code Act 1994* (Agvet Code) of the Commonwealth. Under the Act 'stock medicines' has the same meaning as 'veterinary chemical product' under the Agvet Code. The Act applies to:

- sale of stock medicines;
- advertising of stock medicines;
- veterinary practitioners;
- users of 'stock medicines; and
- circumstances where a use control is applied by a Director-General Order under Section 46.

2. How does the agency ensure that businesses comply with this legislation? For example, are there audits or inspections conducted by the agency?

The Act provides for the authorisation of inspectors by the Director-General. The advertising provisions are enforced following public complaints and staff observation of various media. Director-General Orders are only enforced in situations of perceived higher risk. Only one Order, dealing with supply of anabolic steroids by veterinarians, is routinely audited. Anabolic steroids are not available to the public except through veterinarians.

3. Is there a requirement in the legislation, regulations or practice of the agency that businesses must obtain accreditation through the Agsafe Guardian Program as a means of demonstrating compliance with the legislation?

No.

4. Does the legislation provide for sanctions to be imposed on businesses who fail to meet the legislative requirements? If yes, could you please explain what sanctions are available?

Offences relating to sale or advertising of stock medicines result in a sanction of up to 200 penalty units or, for an offence by a corporation, 400 penalty units.

5. Does the agency issue compliance certificates, or any other mechanism, to certify that a business has complied with the relevant legislative requirements?

Offences relating to sale or advertising of stock medicines or of non-compliance with a Director-General Order provide for a sanction of up to 200 penalty units or, for an offence by a corporation, 400 penalty units.

6. Does the agency receive complaints about businesses who may not be complying with the legislative requirements? If yes, what happens to these complaints and who lodges these complaints?

Occasionally, but only in relation to those areas identified above. These may be made by members of the public, competitor businesses (in relation to advertising) or other agencies (such as the Police) in relation to anabolic steroids.

7. Does the agency receive complaints about Agsafe's Guardian Program? If yes, please outline the nature of the complaints.

NSW DPI has received a small number of complaints about Agsafe's Guardian Program in the form of comments received from attendees at NSW DPI chemical user training courses and comments received from other training providers. These comments have related to:

- non-compliance by Agsafe members with specific legislation (e.g. the failure of a business to supply a Material Safety Data Sheet (MSDS) when supplying a chemical - in this case the complainant was referred to the Workcover Authority).
 - Agsafe not allowing its training to be provided by other training providers with the result that there is no comparable program against which to assess them and no external agency to oversight the Agsafe auditors.
8. Does the agency support the ability for Agsafe and its members to boycott (through the imposition of trading sanctions) any business involved in the storage, handling, transport and distribution of agricultural and veterinary chemicals that has not been accredited under the Guardian Program? Please explain why or why not.

Yes although the effectiveness of the Guardian Program may be compromised by the number of retailers and manufacturers in the sector that are not members of Agsafe and are therefore not subject to Agsafe oversight. Such non-members are usually manufacturers of generic chemical products and such manufacturers appear to be common. Sanctions imposed by Agsafe may be of little effect in cases where the member retailers can obtain chemicals from non-Agsafe sources.

9. The accreditation scheme administered by Agsafe has been in operation for a number of years. What has been the agency's experience with the Agsafe accreditation scheme? Does the agency have any comments about the benefits of the Agsafe accreditation scheme?

DPI experiences are outlined above.

NSW DPI acknowledges the scheme's potential benefit in facilitating compliance by chemical retailers with the range of legislative obligations applying to the industry. The comments received by NSW DPI reflect the following concerns in the community:

- the level of compliance by Agsafe accredited members with all the legislative requirements, particularly the supply of Material Safety Data Sheets (MSDSs);
- the quality control issues surrounding the fact that Agsafe is the sole provider of Agsafe training (with the exception of the option for businesses to obtain accreditation independently and then have this reviewed by Agsafe); and
- the effectiveness of a scheme that covers only some, not all (and perhaps not even a majority of) retailers, especially when retailers are able to obtain products from non-Agsafe sources.