

8th May 2007

Agsafe response to pre-decision conference.

1. *How does Agsafe justify that an operator who is compliant with the regulations and policies of its State or Territory, can still be sanctioned by Agsafe because it has not undertaken the Agsafe accreditation program?*

Distributors within the agricultural and veterinary chemical industry are required to adhere to a number of regulations. Not all regulation is administered by the same authority, making it an onerous task for the individual to obtain reliable advice or interpret regulation.

The agricultural and veterinary industry is a sector that carries a high risk to the individual, community and environment and bearing this in mind, the industry has taken the initiative with a national program designed to assist all participants to achieve compliance with regulation.

The industry recognises that compliance is not guaranteed merely because the regulation exists and actively strives to ensure that its products are stored and sold in a responsible manner. In effect, the industry has taken responsibility for itself to reduce the number of incidents throughout the supply chain.

A relevant example is that of the NSW Dangerous Goods notification procedure, where any location storing quantities of DGs over a certain threshold is required to notify the local authority. Storage levels under the notification threshold do not require notification to be completed; however, there is still a requirement to comply with other legislation pertaining to other regulators. There is no way for a location under the threshold level to **reliably** meet compliance standards without further assistance. The Guardian program provides this assistance across all States and all regulations.

As an organisation, Agsafe has built relationships with Government on a number of levels, it is clear that it supports the program, and the threat of sanctions. State Governments assisted in the initial publication of the Agsafe Code of Practice and still have ongoing input today which is an undeniable indication of support for the program.

2. *Will it be possible to achieve a government regulated version of Agsafe?*

Agsafe is an excellent example of where Government relies on an industry to monitor itself i.e. co-regulation.

Agsafe has achieved a high level of compliance and has reduced the need for further regulation, an area where the Federal Government is already leading the charge to reduce further burdens.

State Governments are already under pressure to provide broad compliance measures across all industries. Agsafe provides an attention to detail that could not be achieved by the regulator. Regardless of whether a regulatory driven Guardian could be imposed at a State Government level, it is questionable as to how a national approach could be achieved by so many authorities, without adequate time and political "buy in". To date, there is no demonstrated will to create a statutory body that could achieve the results demonstrated by the Guardian program.

3. *Is there an alternative to sanctions?*

In Agsafe's view, there is no substitute to sanctions as an incentive to achieve and maintain compliance. It is more often the threat of sanctions that provides business with the impetus to demonstrate compliance rather than the sanction itself.

Without sanctions, the Guardian program would be unable to achieve the results demonstrated since its inception. Without sanctions, participation in the program would significantly decrease, thus having a detrimental effect on the industry and safety standards as a whole.

Agsafe does not take the ability to sanction businesses lightly and has imposed only one sanction in the past 5 years. Agsafe works in partnership with a business throughout the accreditation process, and uses a system of warning letters to provide reminders and incentives for a business to comply rather than moving straight to sanctions.

4. *How can ACCC be confident that the system is in the public benefit? (past performance is no guarantee of future performance)*

- There is a robust warnings process that is implemented prior to a sanction being levied on any business
- Agsafe has achieved significant results on behalf of the industry in its role as a guide and facilitator, and does not propose to change the methodology behind the program
- There is an appeals process in place
- Under the current authorisation, Agsafe is required to report to an industry monitor that is required to be satisfied with Agsafe's performance on an annual basis. To date the industry monitor has raised no negative issues regarding Agsafe's sanctioning role

5. *Is eighteen months the correct amount of time to allow Guardian to continue?*

Mandating an arrangement similar to the Guardian program would be dependant on all State Governments having interest at the same time, as well as the resources to sustain the program. Given the time that such discussions can take, it is unreasonable to expect any progress in a period of eighteen months. A timeframe as short as eighteen months would also provide no incentive for any government authority to begin to discuss alternatives.

The COAG review of Chemicals of Security Concern, through which PM&C has identified the Guardian program as a tool to help business achieve compliance, is still in the early stages of development. PM&C has stated that it is looking to enhance existing industry arrangements such as the Guardian program, and believes that the program with its sanctions process provides industry safeguards that can be expanded upon.

A period of eighteen months would serve only to send a message to distributors that compliance is discretionary.