

8th May 2007

Agsafe response to submissions:

Horsfield Trading

Extracts from submission: *We had always held a Victorian Chemical Resellers licence, we sell very little chemical but we do sell fertilizers and some farm products, occasionally picking up chemicals for farmers that aren't available locally. Some of our staff have done chemical courses that were organised by myself through various authorities including the V.F.F. We trust that section 12 be maintained in any act.*

Their communication re sanctions was extremely poor, in fact we would call it an insult.

Response: Horsfield Trading was sanctioned in 1998. Subsequent communications indicate that Horsfield Trading refused to complete a Statutory Declaration stating that they were not involved in the sale or storage of agvet chems. Alan Evered (Agsafe assessor at that time), confirmed after visiting the site that any chemicals appeared to be for their own use only. Sanction was lifted in May 2005.

DEWR

Extracts from submission: *The Agsafe Guardian Program purports to ensure that people that handle agricultural and veterinary chemicals (including those that are workplace hazardous substances and/or Dangerous Goods) fulfil their duty of care obligations and understand the relevant safety and regulatory requirements, and provides a mechanism to provide training to users of workplace chemicals, when these are agricultural or veterinary chemicals. However, employers already have such obligations under existing OHS regulations, and can meet these legal requirements regardless of whether they have Agsafe accreditation. The Guardian Program also links accreditation with supply of chemicals, effectively imposing trading sanctions on businesses that do not purchase accreditation from Agsafe (which is the sole supplier of such accreditation), even if all of the legal occupational health and safety requirements have been met by those businesses.*

The agriculture, forestry and fishing sector is one of the five sectors targeted by the National OHS Strategy to improve its OHS performance. This sector was chosen because it was identified, through data analysis, as having one of the highest incidence rates of workers' compensation claims compared with other industries. The Australian agriculture, forestry and fishing industry employed 365 000 people in 2003-04, representing 4% of the Australian workforce, and strategies to improve safety performance in this sector should be commended. However, the Department would not support the imposition of trading sanctions in the absence of clear evidence that safety performance was improved using such a mechanism. Rather the Department's view is that the relevant legal OHS requirements for chemical use may be met through a range of methods. Employers already have such obligations under existing OHS regulations, and can meet these legal requirements regardless of whether they have Agsafe accreditation.

Response: DEWR/ASCC appears to have mis-interpreted the aim of the Guardian program in stating that the program provides training to **USERS of workplace chemicals** and that OHS requirements for **chemical use** may be met through a range of methods. Clearly, the original Agsafe submission stated that the program applies to the safe storage, handling, transport and recommendation of agricultural and veterinary chemicals.

Agsafe agrees that employers and employees have responsibilities under existing OHS regulations, however disagrees that the regulations are being met without assistance.

According to Agsafe statistics, the first time failure rate for assessment is 73%. That these stores go on to become compliant against the regulation demonstrates that safety performance is improved using the Guardian program as a mechanism.

DEWR/ASCC states that the agricultural, forestry and fishing sector has a high incidence rate and has targeted this sector accordingly to improve OHS performance. This is a large sector and the small area with which Agsafe deals cannot be adequately compared. The Agsafe Guardian program specifically targets the storage, transport and recommendation of agricultural and veterinary chemicals which is a more defined area than that discussed in DEWR's submission.

DEWR/ASCC is of the belief that Agsafe imposes sanctions on businesses that have not purchased accreditation. The Guardian program relates specifically to those retailers who purchase agvet chemicals from members of CropLife Australia and the Animal Health Alliance Australia, and as such have no remit outside of this scope.

WorkSafe Victoria

Extracts from submission: *The submission by Snedden Hall Gallop appears to misunderstand the regulatory role carried out by bodies such as the Victorian Workcover Authority. In particular, paragraph 28 of the submission has no recognition of the range of both pro-active and enforcement activities a modern regulator such as WorkSafe Victoria carries out. Most of these activities are at nil cost or lower cost than the Guardian Program referred to in the submission.*

The training and accreditation appears to target compliance with the relevant Australian Standards, not the appropriate legislation. It is not clear from the submission whether the chemical distributors are cognisant of this.

WorkSafe Victoria does not issue compliance certificates. Inspectors issue an Entry Report at the conclusion of all inspections which annotates powers exercised, observations made and notices issued.

The use of boycotts to drive compliance is not an area that WorkSafe Victoria has had any dealings. However, it is noted that page 12 of 18 of the submission states:

" . . . 80% of premises registered with Agsafe are fully compliant.. . "

For a regulatory role, this would be considered an unsatisfactory level of compliance after a direct intervention.

Response: WorkSafe Victoria provides a number of examples in its submission of advisory and enforcement activities undertaken to ensure compliance. Agsafe contends that any strategies in place do not deal solely with the agricultural and veterinary chemical industry and that a broadbrush OHS approach has limitations in its application.

Whilst Worksafe Victoria offers three hour consultancies at no cost, Agsafe suggests the coverage or take up of such consultancy services would be less than that of the Guardian program. The Guardian program physically visits over 800 premises each year, providing advice on the safe storage, handling, transport and recommendation of agricultural and veterinary chemicals. Advice and assistance given by the Guardian program is designed specifically for distributors of agvet chemicals. A first time non-compliance rate documented by the Agsafe Guardian program of 73% proves that premises who may have access to WorkSafe Victoria's free consultations are still not compliant.

Worksafe Victoria quotes a number of pieces of legislation in its submission – OHS Act 2004, OHS (Hazardous Substances) Regulations, Dangerous Goods Act 2000 and Road Transport (Dangerous Goods) Act 1995. Whilst these are some of the regulations covered under Agsafe’s scope, the Guardian program also allows for provision of advice on Acts and Regulations from the Victorian departments of Health, Environment and Primary Industries, thus providing a macro approach to compliance with relevant legislation.

Agsafe consultations are conducted using the Code of Practice, a document principally based on Australian Standard 2507. The introduction to the 2007 version of the Agsafe Code of Practice acknowledges the following:

“...the validity of using AS 2507 is its status as being acknowledged by regulators as a recognised industry based generic assessment which can be used as a component of this risk management process.”

The Code of Practice takes a national approach to achieve consistency in compliance across distribution whilst acknowledging the relevance of State based regulation.

Regulators around Australia are afforded the opportunity to comment on the content and purpose of the document, and regularly review the Code of Practice as part of Agsafe’s continuous improvement process.

WorkSafe Victoria comments that the compliance rate of 80% is unsatisfactory after direct intervention. This is another misunderstanding. At anyone time, premises contained within the Agsafe database are considered to be either:

1. accredited (has successfully completed accreditation)
2. accrediting (is undertaking or has applied for accreditation)
3. not accredited (has not yet applied or is under enquiry)

The 80% documented refers to the number of premises currently “accredited”, meaning that the remaining 20% are either “accrediting” or “not accredited”. Agsafe members are required to re-accredit every two years, therefore by necessity there will be a percentage of premises that fall into category 2. Additionally, as the industry continues to grow, there will always be a percentage of premises that fall into category 3. Agsafe considers 80% of members accredited to be a significant achievement for the industry.

Agsafe does not view its initial visit as being “direct intervention” as per the statement in the submission, rather the initial visit is to assess the location against the Agsafe Code of Practice and make the owner or manager aware of any non-compliance. Under the Guardian program, business is provided with a consultative approach to compliance and is not left with a list of corrective actions and no advice on how to remedy non-compliant items.

Garrards

Extracts from Submission: *Manufacturers have steadily provided the industry with products that are not classified as Dangerous Goods.*

In fact, I became an Agsafe trainer when I joined Garrards to develop my own courses that mirror Agsafe courses because Garrards staff learning about ‘smut in wheat’ is irrelevant and of no interest therefore results in poor adult learning. Our company training would be more relevant if staff worked toward the nationally recognised competency units in pest management (these are very comprehensive including far more depth than required by Agsafe).

The cost of the Guardian program has greatly increased,

Agsafe allocate a four hour inspection regardless of the time taken to inspect a store – even when the inspection takes less than one hour. The Agsafe Code of Practice should include a reasonable maximum storage limit for exemption from Agsafe.

Last year a facilitator completed his inspection of our Darwin store in less than one hour.

Response: As discussed in the first point above, the amount of products classified as Dangerous Goods has decreased, however the Agsafe Guardian program covers not only Dangerous Goods, but Hazardous Substances and Scheduled Poisons. It also has the ability to provide an holistic approach the safety of each individual business visited, regardless of the amount of chemicals stored.

Guardian fees have increased marginally for the first time in 4 years, however costs to complete training online have decreased in comparison to face to face training. Stores that maintain a level of compliance consistent with the Agsafe Code of Practice (and thus regulation), will be charged less than a store that does not have a good compliance level.

Last year, an Agsafe facilitator spent four hours at the Garrards Winnellie store. It is Agsafe's understanding that the premise manager was happy with the consultation; however, Garrards head office has since disputed the assessment process and fees. Agsafe has attempted to communicate with Garrards to discuss any issues and recover payment for a consultation that was carried out in good faith. To date Garrards have refused to enter into any discussions further to those documented in the submission.

It should be noted that an emailed response to Ashley Garrard included in the submission also contained the line *"Staff can be exempt from training if they do not handle, sell, transport or provide advice on Dangerous Goods, Hazardous substances or Scheduled Poisons."* Again, Garrards have declined to discuss this option further.

Agsafe considers this an operational issue and will take the appropriate steps to recover the fee.