



28 May 2010

Mr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2606

Dear Mr Chadwick

AGSAFE LIMITED – APPLICATION FOR AUTHORISATION

On behalf of Agsafe Limited I make an application for revocation and substitution of Authorisations A910027-A910030 (“Authorisations”) under Section 91c of the *Trade Practices Act 1974* (“Act”).

Introduction

1. On 3 February 1999, Agsafe Limited made an application to the Australian Competition and Consumer Commission (ACCC) for authorisation under Section 88 (1) of the Act for anti-competitive conduct.
2. In particular, your authorisation is sought in relation to Sections 45,45D,45DA,45DB and 47 of the Act.
3. The ACCC approved the application on 22 May 2002. Agsafe then lodged applications for variation on 21 August 2002, 15 December 2002, 28 October 2005 and 18 December 2006, all of which have been approved.
4. On 28 June 2010, the Authorisation will expire.
5. Agsafe limited hereby applies for revocation of the Authorisation, and substitution with fresh authorisation in accordance with this application under Section 91C of the Act.

Application for Authorisation

We hereby enclose the following for your consideration

- (a) Application for Authorisation Form FC Application for Revocation of a Non-Merger Authorisation and Substitution of a New Authorisation
- (b) Correspondence in support of public benefit claims (Attachment A)
- (c) Counter factual arguments (Attachment B)
- (d) Agsafe Accreditation and Training New Model (Attachment C)

Guardian

druMUSTER

ChemClear



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Agsafe Limited requests that the new authorisation include the substance of the Authorisation which authorised the Accreditation and Training Program. That substance remains largely unchanged.

In granting the Authorisation, the ACCC authorised the Agsafe Code of Conduct. This application recognises the implementation of the Code of Conduct.

Interim Authorisation

In addition to the above, an interim authorisation under Section 92(2) of the Act is also sought to allow the Accreditation and Training program already approved to continue, pending final determination, should a Final Determination not be made prior to the expiry of the Authorisation.

Bearing in mind that this is effectively an application to continue the existing Authorisation, we submit that it would be in the public interest to grant an interim authorisation.

I enclose a cheque in favour of the ACCC for two thousand five hundred dollars (\$2500) as advised by your office.

Sincerely

A handwritten signature in black ink, appearing to read 'Sue White', with a long, sweeping underline that extends to the left.

SUE WHITE

General Manager
Agsafe Limited

Form FC

Commonwealth of Australia

Trade Practices Act 1974 — subsection 91C (1)

APPLICATION FOR REVOCATION OF A NON-MERGER AUTHORISATION AND SUBSTITUTION OF A NEW AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Trade Practices Act 1974* for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

1. Applicant

- A91234
- (a) Name of applicant:
Agsafe limited (ABN 179 571 120 62)
 - (b) Description of business carried on by applicant:

Agsafe is a wholly owned, independent subsidiary of CropLife Australia Ltd (ABN 29 009 579 048) ("CropLife").

CropLife Australia was formed to oversee more effectively the complex issues of the agricultural chemical and biotechnology industries. The Animal Health Alliance represents the interests of the Animal Health Industry.

Agsafe was formed to implement the Industry Accreditation Program in accordance with the provisions of the Trade Practices Commission (now ACCC) Authorisation of 1994. The aim of this program is to assist the Agricultural and Veterinary Industry (including CropLife Australia and Animal Health Alliance members) to ensure its future viability through improved safety management and co-regulation with government. CropLife and The Animal Health Alliance actively subscribe to the principles of stewardship to maximise benefit and minimise risk within the industries that they represent.

Agsafe is governed by a Board of Directors who provide the strategic direction for program management activities.

Agsafe Board

Paula Matthewson	Chair	(CEO CropLife Australia Limited)
John Molenaar	CGC Chair	CropLife Rep
Nick Drew		FIFA
Bill Blackhall		VMDA
Dr Neil Cooper		AHAA
Bill Dowdle		(CropLife representative)
Mr Rick Maybury		(CropLife representative)
Mr Daryl Higginson		(CropLife representative)

Graeme Iggo

Observer

Among other functions, Agsafe Limited ("Agsafe") implements the Industry Accreditation program in accordance with the provisions of the Trade Practices Commission (now ACCC) Authorisation of 1994. The aim of this program is to assist the Agricultural and veterinary Industry in ensuring its future viability through improved safety management and co-regulation with government.

Agsafe's Industry Accreditation Program delivers:

- Accreditation of premises through external assessment;
- Face to face and e-learning courses which accredit personnel; and
- Compliance systems to ensure the Industry is operating in accordance with the Agsafe Code of Conduct and the Agsafe Code of Practice by the use of trading sanctions against those who do not meet accreditation obligations.

(c) Address in Australia for service of documents on the applicant:

Mr Bernard Meadley
Company Secretary Agsafe Limited
4th Floor AMP Building
1 Hobart Place
CANBERRA ACT 2600

(GPO Box 816
CANBERRA ACT 2601)

2. Revocation of authorisation

- (a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:

Agsafe currently holds authorisation for the Agsafe Accreditation and Training Program (formerly known as the Guardian program) (A91027-A91030) ("Authorisation").

On 18 December 2006 Agsafe on behalf of its members, lodged an application for revocation of authorisations A90680 and A90681 and their substitution with authorisations A91027-A91030.

On 6 June 2007 the ACCC approved Agsafe's application under Authorisations A91027-A91030 (Public register no: C2007/107). The authorisations related to the 6th edition of the Code of Conduct (Code of Conduct) which includes the ability of Agsafe to impose trading sanctions for a period of 3 years.

The Agsafe Code of Conduct requires persons and premises involved in the storage, handling, transport and distribution of agricultural and veterinary chemicals to be accredited through the industry accreditation program (previously known as the

Guardian program and now known as Agsafe Accreditation and Training Program (The Program).

Under the Agsafe Accreditation and Training program, both the Agricultural and Veterinary Industry and the general community receive significant benefits.

By combining the requirements of personnel qualification and premises compliance with the Agsafe Code of Conduct together with the growing recognition in the industry of the importance of the Code of Conduct, the industry is, through self-regulation, able to demonstrate and enforce a system which has considerable demonstrable public benefit.

Since the inception of the Accreditation Program, the Agricultural and Veterinary chemical industry has not experienced any major incidents that fell under the scope of the Agsafe program. The current Authorisation will expire in June 2010.

Members of Agsafe, CropLife and Animal Health Alliance are also required to be accredited under the Program. The Code of Conduct also provides for the imposition of trading sanctions on businesses that are not accredited under the Program.

The Authorisation provides Agsafe with immunity to engage in conduct which may have the effect or purpose of substantially lessening competition within the meaning of section 45 of the Trade Practices Act ("Act"), conduct which may be considered to be imposing boycotts and secondary boycotts under sections 45D, 45DA and 45DB of the Act and conduct which may constitute exclusive dealings under section 47 of the Act.

Agsafe has applied for variations to the Authorisation on four occasions, which were granted on 3 October 2002, 21 May 2003, 19 April 2006 and 6 June 2007 respectively.

(b) Provide details of the basis upon which revocation is sought:

In June 2010, the existing Authorisations A901027-A901030 will expire.

Agsafe Limited hereby applies for revocation of the Authorisation and substitution with fresh authorisation in accordance with this application under Section 91C of the Act.

3. Substitution of authorisation

(a) Provide a description of the contract, arrangement, understanding or conduct whether proposed or actual, for which substitution of authorisation is sought:

To enable the Agricultural and Veterinary Chemical industry to continue to enforce its commitment to compliance, Agsafe proposes the continued implementation of the program through options such as face-to-face and online training, workplace assessments, Accreditation facilitator time on site and automation of communications associated with compliance.

Joint trading sanctions allow the industry to use self-discipline to enforce regulatory compliance. The imposition of trading sanctions, implemented jointly by Agsafe and industry, as envisaged, would be illegal without an Authorisation from the ACCC.

The current Authorisation expires in June 2010 and Agsafe hereby applies for revocation of that Authorisation, and substitution with a new Authorisation.

Application is hereby made under sections 88(1A)/88(1), 88(7), 88(8) and 91C of the *Trade Practices Act 1974* for authorisation to:

- Make or give effect to a contract, arrangement, or understanding, a provision of which would be or might be a cartel provision within the meaning of Division 1 of Part IV of that Act.
- Make or give effect to a contract, arrangement or understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision or would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act
- In concert with other persons, to engage in conduct that hinders or prevents, or may hinder or prevent, a third person supplying goods to services to, or acquiring goods or services from, a fourth person under section 45D and 45DA of the Act.
- In concert with other persons, engage in conduct for the purpose, and having or likely to have the effect, of preventing or substantially hindering a third person from engaging in trade or commerce involving the movement of goods between Australia and places outside of Australia under section 45DB of the Act.
- Engage in conduct that constitutes, or may constitute the practice of exclusive dealing under section 47 of the Act.

(b) Description of the goods or services to which the contract, arrangement, understanding or conduct (whether proposed or actual) relate:

As outlined in previous applications (A91027-A91030) personnel engaged under the Agsafe Training Program in the selling, recommending, storing or transporting of agricultural and veterinary chemicals undertake courses, one of which is currently recognised under the AQTF (Australian Quality Training Framework), increasing the transferable skill base within Australia. The additional combination of online training and a workplace assessment enables the Industry to confirm competency and the application of practical knowledge and safe procedures.

Under the Agsafe Accreditation Program, premises selling, storing or distributing agricultural and veterinary chemicals are assessed and accredited, currently every two years. By adopting a consultative approach in the Program, the proprietor benefits in the knowledge that having satisfied accreditation standards, he/she has also met the regulatory and, in some cases, quality assurance program criteria, necessary for the facility.

The two elements of the Agsafe Program are Personnel Accreditation and Premises Accreditation.

Personnel Accreditation

The Accreditation and Training Program is devised and implemented to ensure that people who handle agricultural and veterinary chemicals at any stage during the distribution chain (from manufacture to sale including those who advertise, recommend or in any way deal with the chemicals):

- understand the relevant safety and regulatory requirements; and
- can fulfil appropriate duty of care obligations; and
- can provide to end-users appropriate advice on chemical use, consistent with legal obligations and with advice from relevant Government departments.

The Program requires:

- completion of the Personnel Accreditation (Basic) Agsafe training course for those with some experience in the industry (a new Induction Course about to be introduced is targeted at those immediately they are employed)
- a formal commitment to comply with the Code of Conduct which outlines requirements for compliance with the industry accreditation program; and
- completion of at least one training unit every two or three years (depending on the learning method employed) from a current choice of the following training modules:

Face to Face

- Occupational Health and Safety
- Agvet Update
- Chemical Handling, Storage and Transport
- Principles of Pest Management
- AgSAFER: Risk Management

Online

- Occupational Health and Safety, Managers
- Occupational Health and Safety, General
- Chemical Warehousing
- Spray Application Technology: Crop
- 1080 (Victoria only)
- Animal Health
- Agsafe Basic Induction course

Both F2F and online

- Emergency Planning & Response

(b) Premises Accreditation

The premises accreditation program is designed to ensure that all storage premises for Agricultural and Veterinary Chemicals minimise risk to persons, property and the environment by complying with:

- relevant Australian standards; and
- relevant state legislation in areas such as:

- registration and use of agricultural and veterinary chemicals;
- occupational health and safety;
- dangerous goods storage and transport;
- sale and storage of Scheduled Poisons; and
- environmental protection.

Premises accreditation, under Article 4 of the Code of Conduct, requires that premises which store, handle or sell agricultural and veterinary chemicals comply with all relevant Acts, Regulations, Standards, Codes and statutory requirements.

Previous applications have set out the procedure and process involved in businesses applying to Agsafe for accreditation and for the current application, it is not intended to make changes to this arrangement.

However the proposed scheme to be introduced in the next 6-18 months will alter both the frequency and cost of accreditation arrangements, and will recognise and reward those businesses who undertake industry stewardship through reduced audits and reduced fees.

(c) The term for which substitute authorisation of the contract, arrangement or understanding (whether proposed or actual), or conduct, is being sought and grounds supporting this period of authorisation:

We seek a further authorisation for a period of three years. Although we are confident that the new arrangements will be firmly established and supported by industry well within this timeframe, we want to give industry the time necessary to embrace and take ownership of these new arrangements.

The new program being developed is an extension of the existing well established model of training and accreditation. It is based on a greater self awareness of the value of professional personnel training within the agricultural and veterinary industry and an appreciation of the need for, and benefits of, quality assured premises by proprietors. The new arrangements are designed to be entirely self-regulating and voluntary, allowing industry participants to choose to embrace an accreditation and personnel training arrangement without fear of trading sanction or other penalties being applied.

A full description of the proposed Agsafe Accreditation and Training Program is provided at **Attachment C**.

4. Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct:

CROPLIFE AUSTRALIA (ABN 29 008 579 048)
Level 2 1 Hobart Place
Canberra act 2601

AND

ANIMAL HEALTH ALLIANCE (ABN 76 116948344)
Level 2, 1 Hobart Place
CANBERRA ACT 2601

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

AGSAFE LIMITED (ABN 170 571 120 62)
Level 4 AMP Building
1 Hobart Place
CANBERRA ACT 2601

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

not applicable

5. Public benefit claims

- (a) Arguments in support of application for substitution of authorisation:
(b) Facts and evidence relied upon in support of these claims:

Since its inception, the Agsafe Accreditation and Training Program has trained over 11,000 personnel and accredited 2,460 facilities in the proper management, handling, storage, and transport of agricultural and veterinary chemicals.

The current Agsafe accreditation and training program provides benefits to:

- a) The agricultural and veterinary chemical industry
- b) Personnel and premises involved in their sale, distribution, transport and storage
- c) Personnel and premises involved in their sale, distribution, transport and storage
- d) Government Agencies responsible for the regulation and control of the use of agricultural and veterinary chemicals

e) The wider community who can be assured that these products are being managed responsibly

a) The agricultural and veterinary chemical industry

The agricultural and veterinary chemicals industry in Australia, through CropLife Australia and the Animal Health Alliance Australia, embraces a strong culture of industry stewardship.

These organisations are committed to promoting effective stewardship and believe that the appropriate management and use of their members' products helps underpin sustainable agriculture and safeguards the environment and public health.

Agsafe is actively engaged in updating the industry on current regulation.

Examples include:

- Code of Practice updates
- Email to all members or buying distribution groups;
- Newsletters in publications such as Rural Business;
- Web site information;
- Buyer or distributor Intranets;
- Online forums via the Agsafe website; and

b) Personnel and premises involved in sale, distribution, transport and storage

The Agsafe Program provides industry personnel with:

- easier access to more job specific training courses;
- continuous learning opportunities, strengthening an employee's commitment to the Industry;
- onsite workplace assessment to confirm competency and give more meaning to training; and it also results in reduced costs for industry, and ensures:
 - that sales, recommendations and advice for industry chemicals are made only by trained people;
 - the national recognition and acceptance of training qualifications;
 - the regular revision of contemporary information and the ability to disseminate such information;
 - that any proposed unauthorised use is prevented at point of sale;
 - that users are able to receive guidance on product use, rather than just product access/purchase;
 - that additional information on safe use, appropriate protective gear and disposal guidance is available to supplement label advice;
 - the correct use of product according to manufacturers' label directions in order to improve operator safety, minimise environmental effects and maintain minimum residue levels in food to ensure consumer protection

Personnel who are accredited gain a Statement of Attainment which is nationally recognised under the AQF increasing the transferable skill base within Australia. The additional combination of online training and a workplace Assessment enables the industry to confirm competency and the application of practical knowledge and safe procedures.

The benefit of maintaining and continuously upgrading a training program is paramount when one considers the ever changing regulatory environment which demands such programs to be performance based. Performance based regulation, by its very nature, requires a more mature and dedicated approach in its implementation.

There exists a plethora of requirements, regulations, controls and conditions relating to premises which store and sell farm chemicals. The requirements for premises licences and related criteria vary according to the State in which the premises is located. The lack of uniformity of regulations is confusing to the industry and disadvantages:

- the proprietor of the premises;
- the staff employed;
- local residents;
- purchasers of agricultural and veterinary chemicals; and
- the wider community.

Over time, the statutory shift from regulatory burden (i.e. the command and control style) to a more flexible risk management (self assessment) environment has meant that regulations are not as easily interpreted and applied by users as they once were.

Agsafe provides expert advice to bridge this gap, thus eliminating much guesswork. Therefore, consideration should be given to the cost of compliance in the event that Agsafe does not retain the advantages afforded by the Authorisation. In respect to Dangerous Goods and Hazardous Substances, the industry has compliance obligations that are contained in over 100 State and Federal regulations.

The Program provides a regulatory umbrella without which the industry would have increased costs associated with compliance, such as the requirement for numerous specialist consultants (as opposed to a single Facilitator) that may result in increased fees associated with government licensing or certification.

While we are unable to give specific costs, it is axiomatic that without Agsafe, businesses would be required to individually ensure that they comply with State and Federal legislation on their own, without the assistance of a Facilitator.

Agsafe believes it has, through its premises accreditation scheme, been of vital importance to the industry, and will continue to operate in the national interest into the future. A typical example of the appreciation that proprietors have of the program and the facilitation model is evidenced in a quote from a store in Central NSW:

(Of the presence of the facilitator in store) “ It’s like having an OH&S and chemical safety expert on-hand. I like to make sure it’s all done properly and then know the store is safe. ”

While a store owner in Victoria has said:

“ (The facilitator) really understands the industry,” . “If she finds something not right she will rack her brain to try to come up with a cost-effective solution for us.” (The store owner) said that she appreciated the greater awareness that being Agsafe accredited gave you. “You’re always learning something new.”

We conduct premises survey feedback evaluation following every premise audit. In the last financial year our post consultation responses have indicated 89% of people have rated the experience as "excellent" (45%) or "good" (44%) while only 2% have regarded it as "poor" or "very poor".

Currently, approximately 85% of premises registered with Agsafe are fully compliant with the Agsafe Code of Practice, although it should be noted that due to the nature of the business and the ever growing number of premises requesting accreditation that this figure is only approximate.

This demonstrates the value of the Program in improving compliance levels and also indicates that there is a need to ensure that the program continues in order to achieve 100 per cent compliance.

The new model however will recognise and reward this ongoing commitment to excellence in standards of safety and compliance, through reduced frequency of accreditation visits, reflecting a store's ongoing commitment to self-regulation and assessment.

c) The farm sector in which these products are used

The farming industry has the highest incidence of workplace injury in the country and by inculcating best practice and providing high quality advice at point of sale, the Agsafe Program positively influences farmers. It also provides an easy pathway for farmers to meet industry Quality Assurance requirements, by ensuring their farm chemicals are purchased by appropriately accredited stores and trained personnel.

d) Government Agencies responsible for the regulation and control of the use of agricultural and veterinary chemicals

Given the complexity and variation between state regulations, the Agsafe program ensures manufacturers and distributors operating in various states are compliant across all relevant jurisdictions. The on-going training of personnel in the handling, storage and use of chemicals aims to update trainees in their regulatory responsibilities and to familiarise them with all Australian standards.

The consequent reduction in risk of litigation reduces cost to Government, reduces pressure to legislate and also increases community confidence in the farm chemical industry.

State agencies believe that the ability of Agsafe to impose sanctions on non-compliant businesses imposes a significant additional regulatory impact beyond that which is achievable by government agencies. Evidence of this support is provided by a number of state jurisdictions, including, but not limited to:

The Department of Environment & Climate Change NSW
The Department of Employment, Economic Development &
Innovation Queensland
Department of Agriculture and Food, WA
Department of Health, WA
Worksafe, WA

Copies of correspondence from these agencies are **Attachment A**

Regulators have also benefited from being able to use Agsafe to communicate their regulatory changes i.e. APVMA media releases that affect the farm chemical industry

(e) The wider community who can be assured that these products are being managed responsibly

In broad terms, the Agsafe Program is both an environment and consumer protection scheme, and allows the wider community to be satisfied that the industry is continuously operating at a safe and environmentally responsible level.

Summary

The Agsafe Accreditation and Training Program has worked effectively for many years and has been instrumental in raising the standards of safety and knowledge within the farm chemical sector. The proposed new model reflects that growing appreciation of the importance of safety standards and co-regulatory compliance.

We believe the farm chemical industry is close to achieving a sufficiently high level of engagement to be able to embrace a culture of risk self awareness and regulation.

However our belief is that there are still a number of participants who would not be inclined to continue to observe industry standards without risk of penalty through the sanction process.

The provision of a continuing Authorisation will allow industry to transition to self regulation with minimal, if any, loss of safety and knowledge standards within the farm chemical distribution chain. Given the lengthy time it has taken for industry to reach this present quality position, any action that threatens this widespread level of support and engagement should be avoided.

6. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions)

The direct market that represents Agsafe Accreditation and Training is as follows:

- 1670 premises are currently registered with Agsafe for premises accreditation
- It is estimated up to 6000 eligible personnel involved in the sale, recommendation, transport and storage of agricultural and veterinary chemicals are active within the industry at any one time.

As previously identified by the ACCC, the relevant areas of competition affected by the Agsafe Code of Conduct are:

- The supply of agricultural and veterinary chemicals by manufacturers
 - Members companies of CropLife and Animal Health Alliance represent approximately 87% of the Australian farm chemical market in terms of sales
- The retail distribution of agricultural and veterinary chemicals in localised areas
 - The four largest buying groups Elders, Landmark, CRT and IHD , who are presented on the Agsafe Board, make up approximately 80% of retail outlets
- The provision of accreditation and training services for premises and personnel involved in the storage, handling, transport and distribution of agricultural and veterinary chemicals

7. Public detriments

- (a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets:
- (b) Facts and evidence relevant to these detriments:

There are some aspects of the Program, which may be seen as adverse to the public interest. However, we maintain that these are far outweighed by the public interest served by the program.

The detrimental aspects we identify are:

a) Frequency of and access to training

Agsafe recognises that, to some, Personnel Accreditation can be seen as time consuming, expensive and unnecessary. This can result in a less than satisfactory training experience for the individuals and business stakeholders. It is a cost burden on the business owner in both actual cost of the course itself and the cost to the business of the absence of staff while undertaking training. This could lead to cost pressures being placed on business leading to reduced numbers of staff available to provide customer service and/or increased prices or reduced stock.

In response, we are expanding streamlined, web-based training which will enhance the training experience and ensure that it is focussed on delivering results to the individuals. Under our new model we will also provide access to face-to-face learning in more locations. These measures will reduce the need for staff to travel to attend a course and will minimise the disruption of the staff member's absence to the business.

b) Compliance costs

Agsafe recognises there may be some adverse reactions to fees and charges. However the Program is based only on the principle of cost recovery and not-for-profit. In the 2009/2010 financial year the Program will have an approximate annual turnover of \$1.4 million, and absorbing a loss. The 2008-2009 Financial Year had similar negative results.

To monitor this, Agsafe has implemented an online survey that is conducted post consultation. Agsafe has received and can demonstrate positive feedback from members on the current consultation process.

(c) Exclusionary Conduct

Agsafe's Application for Authorisation will allow Agsafe to engage in certain types of conduct which would otherwise be considered exclusionary, and therefore prohibited under the Trade Practices Act Section 45 prohibits a corporation from making a contract, arrangement or other understanding which contains an exclusionary provision. The Agsafe Program clearly acts to exclude certain non-compliant businesses from the Industry. Sections 45D, 45DA and 45DB of the TPA prohibit secondary boycotts.

Once a trading sanction is imposed, Agsafe must advise and inform that fact to all its members and accredited organisations. The purpose of this is to ensure that further supply to businesses which have had a trading sanction applied, or the purchase from such sanctioned businesses, ceases.

Further, Agsafe members, duly notified of a trading sanction, who continue to supply to or purchase from the sanctioned business will themselves risk suspension from Agsafe and the removal of accreditation.

In this context, it is clear that the Program involves Agsafe acting in concert with another person which hinders or prevents a third person supplying goods or services to a fourth person in the broad context of the above boycott provisions of the TPA.

Furthermore, section 47 prohibits exclusive dealings. Again, the Program has elements which fall within the definition of an exclusive dealing as set out in section 47.

As argued in previous applications, the Program is for the public benefit, and those benefits outweigh any anticompetitive detriment resulting from the imposition of sanctions on non-compliant members of the Industry, the accreditation requirements for individuals and premises and ongoing training and possible exclusion of firms from the Industry. As a result, the prohibition on exclusionary conduct contained in sections 45, 45D, 45DA, 45DB and 47 should not apply to Agsafe, and the authorisation should grant the Program the power to administer the environment and consumer protection scheme without risk of breaching those sections.

8. Contracts, arrangements or understandings in similar terms

This application for substitute authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings (whether proposed or actual) that are, or will be, in similar terms to the abovementioned contract, arrangement or understanding

- (a) Is this application to be so expressed?

No

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which substitute authorisation has been sought and those contracts, arrangements or understandings that are stated to be in similar terms:

Not applicable

- (ii) Where the parties to the similar term contract, arrangement or understanding(s) are known - names, addresses and description of business carried on by those other parties:

Not applicable

- (ii) Where the parties to the similar term contract, arrangement or understanding(s) are not known – description of the class of business carried on by those possible parties:

Not applicable

9. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

No

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable

10. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the parties seeking revocation of authorisation and substitution of a replacement authorisation to provide additional information in relation to this application:

Mrs Sue White
General Manager Agsafe Limited
Level 4 1 Hobart Place
CANBERRA ACT 2601
Telephone 02 6230 4799

Dated.....

Signed by/on behalf of the applicant



(Signature)
Susan Lilian White
Agsafe Limited
General Manager



Government of **Western Australia**
Department of **Commerce**

ATTACHMENT A



16 March 2010

COPY

Your Ref:

Our Ref: WS076828-04

Enquiries: John Innes

Ms Sue White
General Manager
Agsafe Ltd
GPO Box 816
CANBERRA ACT 2601

Dear Ms White

Re: Agsafe ACCC re-authorisation

Thank you for your letter dated 24 February 2010, requesting WorkSafe Western Australia's support for an extension to Agsafe's power to administer trade sanctions.

WorkSafe Western Australia administers the *Occupational Safety and Health Act 1984*. This legislation includes a range of obligations on businesses involved in the storage, handling, transport and supply of agricultural and veterinary chemicals.

WorkSafe Western Australia considers that Agsafe's Code of Conduct is in the public interest, and ability to impose trade sanctions is an integral part of the scheme.

WorkSafe encourages industry self regulation in the area of occupational safety and health, and notes Agsafe's power to impose trade sanctions is used infrequently.

The purpose of Agsafe's Code of Practice is to ensure the safety of persons involved with the supply chain and ultimately the end users of chemicals.

Given the known cost in terms of illness and disease, WorkSafe Western Australia continues to support Agsafe's role in this area.

Yours sincerely

Nina Lyhne
WorkSafe Western Australia Commissioner



COPY

Sue White
General Manager
Agsafe Ltd.
GPO Box 816
CANBERRA ACT 2601

Dear Sue

Agsafe ACCC Re-authorisation

I refer to your letter dated 24 February 2010, seeking support from the Department of Agriculture and Food Western Australian (the department) for Agsafe's application to the ACCC for an extension of its approval to impose sanctions on non-accredited businesses.

The department fully supports your application to extend the authorisation, as the ability of Agsafe to impose sanctions on non-compliant businesses imposes a significant additional regulatory impact beyond that which is achievable by government agencies.

The regulatory activities of Agsafe have been very successful, and are excellent examples of industry self-regulation and stewardship.

I am happy to provide clarification or further information if required.

Yours sincerely

Chris Sharpe
State Chemicals Coordinator
Chemical Services
Department of Agriculture and Food Western Australia

13 April 2010

COPY

DOC10/9078

Ms Sue White
General Manager Agsafe Ltd
GPO Box 816
CANBERRA CITY ACT 2601

Dear Ms White

Agsafe ACCC Re-Authorisation

Thank you for your letter of 24 February 2010 regarding Agsafe's intention to seek an extension to its ACCC authorisation. I understand that the ACCC has requested that Agsafe demonstrate support from government agencies who have responsibilities for administering legislation relating the storage and handling of agricultural and veterinary chemicals.

As you are aware, the Pesticides Act 1999 controls the use of pesticides in NSW. The Act aims to reduce the risks associated with the use of pesticides to human health, the environment, property, industry and trade. It also aims to promote collaborative and integrated policies for the use of pesticides. The Department of Environment, Climate Change and Water enforces the proper use of all pesticides in NSW, after the point of sale. This includes pesticide use in agriculture, on public lands and on domestic and commercial premises.

DECCW has previously written to the ACCC in support of the AGsafe program. Please find attached a copy of DECCW's most recent correspondence to the ACCC. DECCW continues to support the Agsafe program and recognises the contribution that the program has made to enhancing the level of competency among chemical resellers and wholesalers.

Yours sincerely



Tony Hodgson
Manager Hazardous Materials and Radiation

9 March 2009



Your reference : C2007/106
Our reference : DOC07/12515
Contact :

COPY

FILE COPY

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

Dear Sir / Madam

**Draft Decision Regarding Agsafe's Application for Revocation and Substitution
A91027-A91030**

Thank you for the opportunity to comment on the draft determination made by the ACCC regarding Agsafe's Guardian Program. The NSW Department of Environment and Conservation (DEC) supports the substitute authorisations (A90680 and A90681) and offers the following comments:

As noted in the draft determination report, the Australian Pesticides and Veterinary Medicines Authority (APVMA) regulates the manufacture and supply of all agricultural and veterinary chemicals in Australia up to and including the point of sale. The DEC regulates the use of pesticides in NSW from the point of sale onwards. Under the Pesticides Act 1999, the term 'use' is defined broadly and includes applying, storing and preparing pesticides.

The DEC recognises the contribution that the Agsafe Guardian Program has made to enhancing the level of competency among chemical resellers and wholesalers. The DEC notes that the Guardian Program is having a very positive leadership influence on the agricultural supply industry and is assisting the maintenance of well coordinated professional and ethical standards within the agricultural chemical supply network.

The Agsafe Guardian program provides an overall benefit to the industry, essentially assisting business to gain compliance with a number of regulations relating to Agricultural and Veterinary Chemicals. The DEC considers the ability for Agsafe to impose sanctions a necessary part of maintaining safety in a high risk environment. In such a high risk industry, the onus is on the business owner to demonstrate compliance with the regulations. Whilst such practices may be considered anti-competitive, the DEC is not aware of any instances where Agsafe has applied sanctions without reason. Agsafe has had the ability to impose sanctions for some years and DEC is not aware of any evidence to suggest that it has ever resulted in a significant public detriment.

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Department of **Environment and Conservation** NSW



The decision by the Australian Competition and Consumer Commission (ACCC) to remove the ability to impose sanctions after 18 months under the new draft authorisation could result in a detriment to the industry, environment and the broader community. Potentially there will be an increased burden on regulators and manufacturers to manage compliance effectively and possible increases in non-compliance and chemical misuse incidents.

The DEC also notes that there are currently a number of reviews being undertaken that are likely to be relevant to the Agsafe Guardian program. The Prime Minister and Cabinet review of Chemicals of Security Concern is some way from being finalised, while the Productivity Commission's review into Chemicals and Plastics Regulation is currently being implemented. There may be benefit in maintaining the status quo until the implications of these initiatives are clearer.

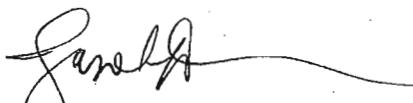
In view of the benefits outlined above and current reviews related to the Agsafe Guardian program, the DEC supports Agsafe's application for revocation and substitution A91027 – A91030. However should the ACCC decide to only allow Agsafe to impose sanctions during a transitional period, DEC proposes that the transitional period be a minimum of three years.

Please note that DEC will be unable to attend the pre-decision conference on 1 May 2007 in Canberra.

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

If you have any queries regarding these issues please contact Andy Hawkins, Manager Chemicals Technical Policy, on tel: 02-9995 5793.

Yours sincerely



JANET DAWSON
Manager Chemicals Policy
Policy and Science Division

24.4.07



Government of **Western Australia**
Department of **Health**

Your ref RSD 4863
Our ref Peter Rutherford 9222 4279
Enquiries

COPY

Sue White
General Manager
Agsafe Ltd
GPO Box 816
CANBERRA CITY ACT 2601

Dear Sue,

Agsafe ACCC Re-authorisation

I refer to your letter of 24 February 2010, seeking support from the Western Australian Department of Health for Agsafe's application to the ACCC for an extension of its approval to impose sanctions on non-accredited businesses.

This response is provided on behalf of the WA Department of Health (DOH), and also the Pesticides Advisory Committee (PeAC), a statutory committee established under the *Health Act 1911* and comprising a number of WA State government agencies that have responsibility for the control of use of pesticides in this State.

Both the DOH and the PeAC fully support your application to extend the authorisation, as the ability of Agsafe to impose sanctions on non-compliant businesses imposes a significant additional regulatory impact beyond that which is achievable by government agencies.

By any measure, the regulatory activities of Agsafe have been very successful, and are excellent examples of industry self-regulation.

I am happy to provide points of clarification or further information.

Yours sincerely

Peter Rutherford
Principal Policy Officer (Legislation), and
Secretary, Pesticides Advisory Committee
Regulatory Support Unit
Public Health Division
Department of Health

8 March 2010

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Reference: 01946/10

15 March 2010

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Department of
**Employment, Economic
Development and Innovation**

Ms Sue White
General Manager
Agsafe Ltd
GPO Box 816
Canberra City ACT 2601

Dear Ms White

Thank you for your letter of 24 February 2010 concerning the proposed Agsafe submission to the Australian Competition and Consumer Commission (ACCC), in which you intend seeking an extension to the current ACCC authorisation regarding Agsafe's Industry Accreditation and Training Program.

Please note that while support was provided to the current ACCC authorisation, we would need to obtain a copy of the proposed Agsafe submission together with ACCC documentation in relation to their determination requirements, before support, or otherwise, can be provided.

As has been the case previously for a number of ACCC determinations/authorisations on Agsafe Ltd submissions, for example, the DrumMuster / ChemClear levy, this department will be in a position to respond directly to the ACCC once associated documentation has been provided by the ACCC.

If you require any further information regarding this matter, please do not hesitate to contact Wayne Thompson of the Department of Employment, Economic Development and Innovation on telephone 07 3227 7668 or email wayne.thompson@deedi.qld.gov.au.

Yours sincerely

Sandra Baxendell
Director
Product Integrity

ATTACHMENT B

THE BENEFITS OF AGSAFE'S ABILITY TO APPLY TRADING SANCTIONS

- Counter factual arguments in support of Agsafe's Application

Currently in Australia there are in excess of 140 State and Federal Acts and regulations which affect the farm chemicals industry. Assessment, registration and control of use of agricultural and veterinary chemicals is managed through the National Registration Scheme. The Scheme is a two tiered partnership between the Commonwealth and state and territory governments. In such an arrangement, as you may expect, these Acts and regulations are not uniform.

On any comparison differences exist in not just text and emphasis in like legislation but suites of related laws in one State do not align with suites in other jurisdictions It should not be assumed that the existence of State regulatory regimes is necessarily adequate.

A recent COAG Discussion paper on a National Scheme for Assessment, Registration and Control of Use of Agricultural and Veterinary Chemicals¹ noted that :

"a good deal of monitoring and enforcement in all jurisdictions is reactive, in the sense that ameliorative or enforcement activity follows some form of adverse report. In some jurisdictions the total resources devoted to control of use are insufficient to allow much more than reactive enforcement."

The effectiveness of compliance is dependent on vigilance and adequate resources, neither of which may be sufficient.

The Agsafe Accreditation and Training Program provides a macro approach for its members. It doesn't concern itself whether a particular regulation has been met. Rather it requires, as a minimum, Australian standards which for some States exceeds their requirements. Though it incorporates a sanction regime to ensure best practice and the highest standards are met, the Program's primary function through its facilitators, is education. This education highlights changes in the various regulatory frameworks but also advises local, national and international trends affecting the industry.

However, without the Agsafe Accreditation and Training Program, no organisation would exist that provides these essential functions to the industry. As a result the industry would be left without national direction. The consequences would be totally unacceptable whether amounting to a disregard for the degradation of chemicals or a total unpreparedness for a national disaster.

In broad terms the Agsafe Program is both an environment and consumer protection scheme and the trading sanctions are the means by which that protection is enforced.

¹ Rose,R & Shepherd N: A National Scheme for the Assessment, Registration and Control of Use of Agricultural and Veterinary Chemicals, Discussion Paper for COAG; December 2009

However, while industry recognises this important role, it is not widely understood or appreciated, despite its obvious value. The Paterson Review² (previously referred to in the main document) said its findings indicated that:

“most stakeholders stressed the importance of Agsafe maintaining strong relationships with regulators. Many supply chain participants see Agsafe as their link to regulators and so rely on Agsafe to remain up to date with regulatory changes, policy developments, etc. There is also an expectation on the part of regulators that Agsafe maintains and cultivates these links on behalf of its members.

That said, without risk of sanction, at this stage there would be inadequate incentive for the industry to comply with the Code of Practice.

The introduction of a new model will further drive the important messages of the current program and the value industry receives through Agsafe services. It will do this through a strategic and targeted marketing and communication program aimed at promoting the value of the existing services and strengthening linkages with QA systems and other learning and training pathways. However we need the full support of industry, as currently provided through a sanction regime, to allow time for these messages to gain traction.

The existing intellectual property embedded in the Agsafe Accreditation and Training program is also at risk. Without Agsafe and the Accreditation and Training Program, the intellectual property behind the system of training, accrediting and ensuring compliance through sanctions at a national level would be lost. This would result in the loss of the proactive approach of preventing problems before they occur, rather than merely fining people after the event.

Agsafe Limited
27 May 2010

² Review of Agsafe Stewardship & Compliance Paterson Consulting Sententia Group Services March 2008