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Registered for GST

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Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 3131
Canberra ACT 2601

Attention **The General Manager**

Dear Sir,

Re: The Agsafe Limited application for revocation and substitution of Authorisations

We, Elizabeth Hak and David Rose, are currently contracted to Agsafe Limited as “accreditation facilitators” under the Agsafe Accreditation and Training Program. As such we are responsible for the accreditation of approximately 170 facilities in Victoria and over a period of two years will visit and report on them all. Whilst many of the operators are conscientious and diligent there are some that are either unaware of their obligations or choose to ignore them. This applies across the board to large and small operators alike. Without the Agsafe’s authorisation to sanction, many operators would choose not to be Agsafe Accredited and would, in many cases, not be compliant with their various legislative requirements

Agsafe Limited is an arm’s length body set up by the industry to provide stewardship over the supply chain of Agricultural and Veterinary Chemicals across Australia. It promotes safe practices and legislative compliance on behalf of the industry, from manufacture to delivery to the end user.

The Accreditation and Training Program, with its requirement for adequate and appropriate training of persons involved in the handling of the products, **is a guarantee to the public** that premises that are accredited have appropriate systems in place, and personnel that are trained and competent, to store and handle agricultural and veterinary chemicals safely and according to the relevant legislation. Without such accreditation there is no means for members of the public to judge the competency of the operators. Untrained people with no or limited knowledge of their legal and social responsibilities will be able to operate in an industry that uses large quantities of hazardous and dangerous materials, and expose the public and the environment to risk.

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The Agsafe Code of Practice has been developed over many years and incorporates interpretations of the various State and Federal Acts and Regulations that are applicable to the industry. It puts in one place all the items that the facilitators must audit the stores against and provides the store operators with checklists of acceptable criteria. Without this collection of information, store personnel would need to be familiar with, amongst other requirements, the

Occupational Health and Safety Act and Regulations

Dangerous Goods Storage and Handling Regulations

Environment Protection Regulations

Drugs, Poisons and Controlled Substances Regulations

in order to ensure legislative compliance. The Code of Practice provides a "shortcut" to compliance and the Agsafe Facilitators are contactable at any time for additional advice relating to compliance.

Several times over the past few years we have encountered circumstances which, if not corrected, would have continued to put the community at risk. One involved the storage of six (6) tonnes of aluminium phosphide in a Victorian country town. This material (a grain fumigant) was stored in a shipping container and in no way complied with the storage requirements of the Dangerous Goods Code. There was no labelling or placarding of the storage, no notification to Worksafe and the local emergency services, and furthermore, the material was not considered in the facility's emergency procedures. Discussion with the site operator corrected the situation at this site and also at other sites managed by the same company. Without the facilitator's visit and diligent inspection, this potentially hazardous situation would not have been discovered nor corrected.

A similar situation to the aluminium phosphide incident was discovered late last year. A grain handler at Donald in northwest Victoria was audited, and during the audit several cylinders of Profume, a toxic gas used for grain fumigation were found. The method of storage was non-compliant, there was no signage and the material was not included in the dangerous goods manifest. Without the Agsafe visit these potentially dangerous storage conditions would not have been corrected.

A third event involved the storage of sixty (60) tonnes of the fumigant gas methyl bromide in a residential area in one of Melbourne's eastern suburbs. Again this was discovered by a facilitator and the quantity reduced immediately to the approved low level that the facility had been built to contain. Although the facility had complied with the formal dangerous goods notification for the product, the amount stored significantly exceeded the notified quantity. In fact, the 60 tonnes of material stored brought the site under the requirements of the **Major Hazards Facility Regulations**. Again, without the facilitator's visit this potentially hazardous situation would not have been discovered or corrected. The operator was unaware of the MHF Regulations and his obligations of notification and compliance with them.

Recently in Euroa in central Victoria, Agsafe was advised of an operator selling agricultural chemicals from his house in a residential zone in the town. Agsafe established who his supplier was, and after being contacted by Agsafe both the supplier and the operator agreed to change their practices and operate within the Agsafe Code of Practice.

These are examples of OHS and Dangerous Goods regulatory non-compliance, and the operators believed that they “complied” until visited by the Agsafe facilitator and the actual quantities and nature of the chemicals that they were holding had been established. These storage quantity breaches by the operators had just “slipped through”.

Without the ability to sanction those operators who do not comply, there will be no incentive to comply with regulations, and the safety standards that Agsafe has been instrumental in achieving, will be compromised as non-compliance is simpler and cheaper and risk of detection without Agsafe will be very low. Sanctions by suppliers will not happen as they will have no way of knowing whether or not a store operator complies with the appropriate standards.

Emergency services such as fire brigades and police rely on the accuracy of information placarded at the entrances to operator’s sites and supplied in the site’s manifest, to provide appropriate response to emergency situations. Agsafe’s audit of a facility ensures that this information is current, allowing the emergency services personnel to develop an accurate assessment of the potential hazards, so that control of the emergency can be achieved without subjecting the personnel to undue risk. Inaccurate or no information may put the personnel and the community in jeopardy.

Some of the items we often identify and correct as a result of facilitator’s visits are as follows:

- Unloading of hazardous chemicals in a public street,
- Storage of environmentally hazardous materials (glyphosate and liquid fertilisers particularly) in unbunded areas,
- Inappropriate storage of “swap and go” change over barbecue gas cylinders,
- No traffic management plans,
- No risk assessments for operating plant and forklifts, and the
- Storage of incompatible materials together such as swimming pool chlorine and pH adjusting acids.

Not all these items are directly related to the Ag and Vet chemical business but as more businesses take on “hardware store” additions then there will be more exposure of the community to the hazards of the overall business. The Agsafe facilitators can assist in minimising the risks associated with these hazards and in some cases assist in complying with legal obligations.

As recently as last month, the Victorian Workcover Authority (Worksafe) was conducting compliance inspections in several towns in northern Victoria. Three Agsafe accredited stores were visited (Tongala, Kyabram and Girgarre) and no breaches of compliance were found, although in each town, other businesses were issued with many improvement notices.

Without compulsory Agsafe compliance, including appropriate record keeping, the regular training of personnel and premises inspection, there will be no incentive for operators to maintain the high standards of safety that have been achieved. Government regulatory agencies do not always have active inspectorates so the likelihood of detection of regulatory breaches is low and will usually only occur if there has been an incident. This is too late.

Another aspect of Agsafe is the advice given to industry participants, both old and new, by Agsafe in order for them to set up a complying operation. Agsafe personnel can advise directly and also refer enquiries to specialists in planning, occupational health and safety, dangerous goods and environmental matters as required. Applicants are usually not familiar with the planning, design and legal requirements to set up an operation and without Agsafe there is no "one stop shop" from which to obtain direction to the requirements necessary to be legislatively compliant.

1080 bait for vermin control (e.g. rabbits and foxes) is a Schedule 7 Dangerous Poison and its use is controlled by the Victorian Department of Primary Industry (DPI) and the Victorian Department of Human Services (DHS). Until recently in Victoria, 1080 baits were only available from DPI regional offices at very limited times. Farming groups and other users of 1080 applied pressure to the Government for easier access to the product. After much negotiation, 1080 is now available from appropriately certified stores across Victoria. At present Agsafe is the certifying body. The DPI requirements for certification are as follows:

- The store *must* have current Agsafe accreditation

- The store *must* have 1080 accreditation from Agsafe

- The persons handling 1080 *must* have current Agsafe 1080 training

Agsafe facilitators audit these requirements on behalf of the DPI.

If these criteria are met, the store is listed on the Agsafe website as an approved 1080 outlet and can then be supplied with the 1080 for sale. If not listed, the manufacturer is not permitted by the DPI to supply the outlet. If the industry lost its power to sanction premises, there is a risk that it could compromise the DPI's recognition of Agsafe as the certifying body. The consequence of this could be a return to a restricted access policy for 1080 with negative impact on the farming community.

The **APVMA** is the Federal body that registers all agricultural and veterinary chemicals used in Australia. From time to time there are changes to product registrations and conditions of use and Agsafe field-staff are sometimes used to disseminate these changes. Details of changes are also posted on the Agsafe website. If Agsafe compliance is not mandatory, then not all chemical outlets will be visited by the field-staff.

It is imperative for the industry to maintain its credibility by actively promoting safety and regulatory compliance and this can best be done by strengthening the Accreditation and Training Program, not by removing the requirement for compliance and ability to sanction those who do not comply.

If the Authorisations are not granted, we believe there will be an immediate loss of at least twenty to thirty percent of stores participating in the program and the loss of more with time. This will lead to non-compliant, and possibly dangerous, storage and handling of chemicals, and, over time, the loss of trained personnel with subsequent poor advice being offered to customers.

We do not believe that an incentive based scheme will be successful in the longer term. With no sanction provisions, many stores will not participate. An incentive based scheme may be supported by the more responsible businesses and the corporate end of town, leaving the less responsible and risky members of the industry that really need assistance to be compliant, outside the scope of the compliance monitoring mechanism. Anecdotally, this has been the experience of PACIA (Plastics and Chemical Industries Association) Responsible Care Program for the chemical industry. Some perceive the Responsible Care Program to be “motherhood”, and without any compliance substance.

Sanctions are an important mechanism for achieving industry wide compliance. However, it is interesting to note that although Agsafe has the power to sanction, **Agsafe, on behalf of the Ag and Vet Industry, has only used this power once over the past six and a half years.** The Industry’s knowledge that the power to sanction is there, seems to be enough to ensure active participation in, and compliance with Agsafe’s programs.

We support Agsafe’s application for interim authorisation to continue to enforce the Agsafe Code of Practice, and their application for revocation and substitution of authorisation for enforcement for a further three years.

David Rose is a chemical engineer and farmer and has had 40 years experience in the chemical industry, the last 28 years involved with Occupational Health and Safety in the petrochemical industry.

Elizabeth Hak is an industrial chemist and farmer with 30 years experience in the chemical industry.

If you deem it useful, we would be pleased to discuss our experiences of the Agsafe program with you, and elaborate further on any of the examples listed above.

Yours sincerely



David Rose and Elizabeth Hak