



21 September 2010

Mr Richard Chadwick
General Manager
ACCC Adjudication Branch
23 Marcus Clarke Street
CANBERRA ACT 2606

Dear Mr Chadwick

**RE: ACCC Draft Determination concerning Agsafe Limited applications for
Authorisation A191234, A91242-A91244**

We refer to your letter dated 13 September 2010 inviting us to comment on the three submissions made following publication of the ACCC's draft determination.

We welcome the opportunity to respond and assist the ACCC in its finalisation of the draft determination. We will respond to each submission in turn.

Animal Health Alliance

Their response contains no issue with which we would disagree

Bowa Organics Pty Ltd

The matter to which Bowa Organics refers relates to a sanction that was incorrectly applied some years ago in relation to a different Authorisation that Agsafe had at the time. The sanction is no longer current or relevant and the company is not part of the Agsafe Accreditation and Training program and has not been for some years.

ChemCert Training Group Pty Ltd (CTG)

We have read the late submission by CTG and as a general comment we would contend that much of the material contained in CTG's submission appears to be based on inaccurate assumptions as to the nature and purpose of the Agsafe Code of Conduct and the authorisation powers extended to Agsafe by the ACCC.

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We query why the ACCC would entertain a late submission, given that the Draft Determination was made public on 21 August 2010, and that CTG was aware of the certification process some months ago. Further, we note that no other objections of any substance have been received. We believe that the ACCC process was well publicised, thorough in its deliberations, and the reasons for the Draft Determination transparent and well reasoned. We particularly note that CTG in its submission has not addressed the question of Public Benefit, which is disappointing given the importance and relevance of this to the Authorisation application.

By way of background, and to repeat the information provided in our initial application of 28 May 2010, under the Agsafe Code of Conduct, Agsafe Accreditation and Training is an industry co-regulation program introduced by the former Agricultural and Veterinary Chemicals Association, now CropLife Australia Ltd, and administered by an independent subsidiary, Agsafe, to establish and maintain uniformly high safety standards within the industry.

Agsafe Accreditation applies to the storage, handling, transport, sale and provision of advice with regards to agricultural and veterinary chemical products from the point of manufacture through to the point of sale to the end-user.

Unlike CTG and other RTO's, Agsafe does not engage in the training of end-users in the safe handling of chemicals.

As outlined previously, personnel engaged in the selling, recommending, storing or transporting of agricultural and veterinary chemicals undertake courses under the Agsafe Training Program, one of which is currently recognised under the AQTF (Australian Quality Training Framework). The additional combination of online training and workplace assessments enables the industry to confirm competency and the application of practical knowledge and safe procedures. The Agsafe Accreditation and Training program covers more than the two competencies to which CTG refers and which are attached to just one of several courses we offer. Agsafe accreditation provides a whole of business approach resulting in both a legally compliant environment for premises engaged in handling agvet chemicals and a safe working environment for all personnel in those premises.

This is in the public benefit for a multitude of reasons that we have previously demonstrated.

Agsafe is registered as a training organisation through the National Audit and Registration Agency (NARA) and earlier this year, was audited and approved for a further 5 years. NARA registration is subject to continuing compliance with the AQTF Standards in relation to all accredited courses and recognised qualifications contained within Agsafe's scope of registration. The NARA audit process is extensive and thorough in its examination of all aspects of Agsafe's training activities.

The central rationale of the ACCC Authorisation process is the Public Benefit test. We note that in the ACCC Draft Determination, ACCC sought submissions from approximately 150 interested parties in regard to this, including agvet chemical manufacturers, distributors, retailers, State, Territory and Commonwealth agencies and agvet industry associations. It received responses from 20, almost all of which universally supported Agsafe's application. It should be noted that the NSW Farmers Association, who supported the continuation of the ACCC Authorisation, is itself engaged in the training of end users in aspects of chemical handling on farm similar to CTG.

To address your specific queries in respect of the CTG submission:

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1. Agsafe's Accreditation and Training program may not be cost effective and competitively priced (pages 3 and 5)

Agsafe Response: While CTG implies the fees set by Agsafe are not cost effective, they provide no evidence for that assertion, other than to suggest that their course fees for an entirely different course aimed at a different audience, are less. However, as Agsafe has previously stated, its accreditation covers three competencies and in addition to this provides the learner with extensive information on the agvet industry. Since its inception and the beginning of authorisations from the ACCC, Agsafe has maintained the viewpoint that its role within the industry is to provide this particular niche of the industry with specialised training and has not attempted to expand into other markets. We feel that CTG is therefore making a comparison based on a competition that does not exist.

2. Agsafe was established to create a national Code of Conduct and to facilitate training and assessment of personnel at the wholesale and retail levels but not to exclusively provide training and assessment (page 4)

Agsafe Response: Article 3 of the Agsafe Code of Conduct states: Agsafe Accreditation is an industry co-regulation program introduced by the Agricultural and Veterinary Chemicals Association, now CropLife Australia Ltd and administered by an independent subsidiary, Agsafe, to establish and maintain uniformly high safety standards within the industry.

Agsafe Accreditation applies to the storage, handling, transport, sale and provision of advice with regard to agricultural and veterinary chemical products from the point of manufacture through to the point of sale to the end-user.

Both storage premises and personnel are covered by Agsafe Accreditation.

The Code does not mention exclusivity, nor does Agsafe attempt to exclusively provide training and assessment. Under national RTO obligations, Agsafe offers "Recognition of prior learning" (RPL) to ensure that training is not offered on an exclusive basis as asserted. As part of the recent audit, Agsafe provided all information relating to the RPL process to NARA. Agsafe's RPL policy is available on its website and in learner materials.

As part of previous ACCC authorisations, Agsafe also has a similar recognition policy for accreditation of premises.

The ACCC has made an assessment of the Agsafe Training and Accreditation program based on Public Benefit. As the Draft Determination has stated (p ii) "The ACCC considers that the Code is likely to deliver public benefits from increased safety and training in the agvet chemical industry and public detriments from costs to business from compulsory compliance with the Program." We support the conclusion that the public benefits outweigh the public detriments and do not see any evidence in the CTG submission that refutes that position.

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3. Agsafe has not specified the units of competency for which it issues statements of attainment (page 4)

Agsafe Response: Agsafe specifies units of competency on its website and in materials associated with the delivery of those competencies, i.e. course materials & <http://www.agSAFE.com.au/aat/category.php?id=11>. This is in accordance with Agsafe's RTO registration requirements.

4. The Agsafe Code of Conduct unreasonably does not provide for other registered training organisations to deliver the same units of competency under the Agsafe Accreditation and Training Program (page 4)

Agsafe Response: The Agsafe Code of Conduct is authorised by the ACCC and provides the framework in which the accreditation scheme operates. Article 4 of the Code of Conduct stipulates that:

all persons and organisations involved in the storage, handling, transport and distribution of agricultural and veterinary chemicals shall –

- adhere to all Acts, Regulations, Standards, Codes and statutory requirements pertaining to the storage, handling, transport and distribution of agvet chemical products
- ensure that the requirements for Personnel Accreditation and Premises Accreditation are maintained for all staff and premises in their control
- only use contractors or sub-contractors who meet Agsafe Accreditation, where applicable

The Agsafe Personnel Accreditation Course (Basic) currently carries three competencies that are awarded on successful completion of the course. However, and importantly, Agsafe Accreditation itself is not based on these three competencies; rather it is based on the whole course and the wider accreditation scheme that has been developed since the inception of the program over 20 years ago.

During that period the course has contained anything from no competencies to a whole number of competencies; however it has still been valid as accreditation as the objective of the course material has not changed. The Agsafe Code of Conduct makes no comment on competencies and nor should it, as these are an incidental part of completing the course. Appropriate workplace training is a legal requirement and the Agsafe Basic course has been developed to address the specific needs of individual personnel in the agvet chemical industry.

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As a result, the suggestion by CTG that Agsafe does not provide for other registered training organisations to deliver the same units of competency is untenable.

- 5 ***Agsafe does not recognise Statements of Attainment issued by other registered training organisations, despite the Australian Quality Trainign Framework (AQTF) requirement to do so (page 5)***

Agsafe Response: The Agsafe RPL policy is detailed on its website and in associated course materials. The RPL process was deemed acceptable as part of the recent NARA RTO audit.

- 6 ***Agsafe has stated the price of its face to face training is negotiable with clients, despite the AQTF requirement to provide a clear fee structure for clients and fee protection measures from its registering body (page 5)***

Agsafe Response: As part of its previous training model, Agsafe stated that it has a network of trainers around Australia. Due to the difference of costs associated with venue hire and travel, fees for face to face courses were previously set by trainers. Under the new model which has recently been implemented, Agsafe sets the fees for courses. It is submitted that this will further increase the clarity of Agsafe's fee structure. However, as part of the RTO audit undertaken by NARA, both the previous and prospective practices in respect of fee setting were approved.

Agsafe also offers an online training option priced at a lower rate than face to face, and therefore providing a cheaper but acceptable alternative. Approximately 60-65% of Agsafe's training is now delivered online, indicating that it is a practical alternative for trainees.

In respect to other aspects of the CTG submission, we make the following comments:

CTG asserts that "*the Draft Determination sanctions anti-competitive behavior in the training market*" (p3). Agsafe refutes this statement. Agsafe have always provided for Recognition of Prior Learning (RPL) in all courses that offered to deliver under Agsafe Accreditation and Training. Agsafe must provide this under obligations of its NARA registration. This supports the possibility for other providers to train personnel. In any event, we repeat that the public benefit of a regulated accreditation process outweighs any public detriment.

It is important to note that Agsafe are not direct competitors with any RTO, such as CTG. Agsafe was established to deliver an industry stewardship program, one component of which (Basic training), is at this time competency based.

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Conclusion

We believe the ACCC Draft Determination remains the proper and reasonable outcome of our application and the submissions provided to the ACCC from a range of interested agencies and directly affected parties support that conclusion.

We believe we have addressed all the outstanding matters arising from the three recent submissions. However if after reviewing all relevant material, you believe a meeting with CTG is necessary to discuss these points further, we are happy to explore that with you.

Yours sincerely

A handwritten signature in black ink, appearing to read "Sue White".

Sue White
General Manager
AGSAFE LIMITED

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