

Submission to Regulation Taskforce

13th November 2005

Industry : Agribusiness

Regulatory Area : Storage and handling of Agricultural Chemicals by Retail outlets

Specific Problem: Duplicated and conflicting regulation from the State authorities and Industry Associations (Commonwealth empowered)

Background

Currently there is a wide range of retail outlets servicing the agricultural industries. Many of these supply a variety of chemicals to their clients. These are generally Herbicides, Insecticides or Fungicides. They can come in quite small sizes such as found in supermarkets up to volumes of thousands of Litres or Kilograms. The Storage and Handling of these chemicals is regulated by State Authorities – notably WorkCover (in NSW). Other authorities usually have a regulatory role – Health Department, EPA, RTA, Local Government, etc. Breaches of the relevant Regulations can incur severe penalties including jail terms and/or large fines. However the State authorities usually take an approach of assisting businesses meet their responsibilities and prosecutions are rare and aimed at those businesses or individuals that consciously flout the rules.

The agricultural retail Industry now finds itself the subject of another layer of regulation. **Agsafe** purports to be an industry body with the power to regulate the storage and handling of agricultural chemicals.

Its power is derived from the Australian Competition and Consumer Commission (Determination May 2002 – for a period of 5 years). Under some circumstances the ACCC will permit Agsafe to notify the Agricultural Chemical industry of Trading Sanctions against a retail outlet that has not complied with its programme of Personnel or Premises accreditation.

The Personnel Accreditation programme is based on completing courses aimed at giving frontline staff knowledge of the principles of the safe handling and storage of agricultural chemicals.

The Premises Accreditation relies on a business complying with Agsafe's standards of chemical storage. Compliance is achieved after an approved consultant visits the Premises and checks against the required standards.

Problem

Agsafe's standards do not match the relevant State regulations.

WorkCover is the primary authorising body for the storage of Chemicals – particularly Dangerous Goods. WorkCover continually revises its regulations – including minimum notifiable quantities and approved storage facilities. It is quite possible and not unusual to be compliant with Agsafe, but be in breach of WorkCover regulations. Or the other way around. This arises because Agsafe is not a responsive body; a poor communicator and hopelessly under-represented in the field.

This creates massive confusion and resentment in the agricultural services industry.

As mentioned, Agsafe's authority is derived from the ACCC when it permits Agsafe to override the usual anti-competitive standards and allows Trading Sanctions to be levied against a business for failing to meet its Accreditation guidelines. However, even the ACCC is ambivalent about the powers it grants Agsafe and there is acknowledgement that there is a default authority other than AgSafe. Under Section 9.166 C12, the ACCC, offers multiple means of achieving accreditation –

“Avcare (the governing body of Agsafe) and its members will only be permitted to deny goods to premises on the basis that they have failed to obtain premises accreditation from Agsafe **either** through

assessment by Agsafe assessors directly, or through assessment by a mutually agreed external assessor, or **through issue of relevant certificates by appropriate State and regulatory authorities.**”

In essence, a business may choose to circumvent Agsafe, comply with the State regulatory bodies and that business will successfully meet its obligations. In my discussions with the General Manager of Agsafe, Mr Sam Ponder accepted that this was the case. However he continued to recommend compliance with Agsafe as in his view, the alternative pathway of meeting State regulations was too complicated. This view is not supported by fact. Aside from the infrequent Premise Accreditation process (every two to three years), Agsafe does not attempt to furnish the industry with current regulatory updates. Agsafe may be ‘simpler’ (and naturally more expensive), but it is not meeting the goal of keeping a business compliant with State laws.²

Aside from the irritation of dated Agsafe standards, there is a real danger the Industry can be lulled into the erroneous belief it has met its obligations (through Agsafe) when the State regulations have changed leaving a business in breach.

The conflicts can be minor such as the size, shape and colour of an Eye Wash sign (Agsafe’s requirements vary with the mood and experience of their Consultants) – WorkCover is specific. To significant differences such as Agsafe requiring bunded storage (again depending on the Consultant) for all DG goods and WorkCover only requiring bunding for certain types and quantities of DG.

Recommendation

Personnel Accreditation is important and to date there is little conflict between Agsafe and State regulations. Whereas Agsafe is deficient in its standards of OH&S – Agsafe has broad principles, but the State of NSW has more specific rules. Agsafe does provide a useful means of raising Industry skills. For example Agsafe covers the principles of Integrated Pest Management and Environmental Protection in its modules of learning. This is not covered by State

regulations, yet it is an important foundation for any participant in the agricultural field. Agsafe should be encouraged and continued to be allowed to have a pivotal role in Personnel Accreditation – including sanctions against non-accredited staff. Agsafe should be required to bring their Training more in alignment with State regulations.

Agsafe' greatest failing is its role in Premises Accreditation and this is the area of most obvious regulatory inefficiency. The duplication and conflict in regulation is too great to ignore and there must be a considerable cost to productivity as businesses attempt to comply with two authorities that are not in alignment.

There are two possible strategies to address the problem.

1/ The ACCC removes the authority of Agsafe in this field, and Agsafe leaves the regulation of Chemical storage and handling to the States.

2/ There is an attempt to standardise regulations across the nation. This would most obviously be achieved through a CoAG and Ministerial Council process. This is possibly the simplest and there are precedents for this regulatory approach. Agsafe may then have a useful role if there was a uniform national approach and the States ceded some of their educational and regulatory powers to a body such as Agsafe.

I also believe there is a national imperative to improving the efficiency of chemical storage and handling regulation. A complex regulatory regime is not conducive to anti-terror preparedness. Frontline agribusiness staff need to be clear to whom they are responsible and fully apprised of current regulations and industry issues. The existing regulatory framework is a barrier to this goal.

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Footnote:

1. When alerting my local Council of changes to our Dangerous Goods inventories, the Council deferred to WorkCover **not** Agsafe (they had no interest or knowledge in Agsafe)
2. During my latest contact with WorkCover in the process of updating my Dangerous Goods Licence (which Agsafe had failed to alert me had changed in its requirements), the Business Assist officer with WorkCover discouraged me from relying on Agsafe. In his words “ they (WorkCover) don’t talk much with Agsafe and their consultants were pretty hopeless”.