

CHAPTER 35:09 AGROCHEMICALS

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Act 18, 1999.

An Act to provide for the registration and licensing of agrochemicals; to control or regulate their importation, manufacture, distribution, use and disposal, so as to prevent pollution to the environment or harm to human, plant or animal life, and to provide for matters incidental and connected to the foregoing.

[Date of Commencement: 1st May, 2000]

PART I

Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Agrochemicals Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"agrochemical" means any organic, inorganic or live biological material intended or offered for sale for purposes of-

- (a) destruction, control, repulsion, attraction or prevention of any undesirable life forms injurious to plant and animal growth; or
- (b) promotion or inhibition of plant growth such as fertilisers, growth regulators, hormones, defoliants or legume inoculants;

"certificate" means an agrochemical registration certificate issued under section 12(5);

"Committee" means the National Agrochemicals Committee appointed by the Minister under section 6(1);

"distribute" means to supply commercially and includes to transport, store and sell;

"inspector" means a person appointed as an inspector of agrochemicals under section 9(1);

"label" includes any writing, printing or illustration made on, or attached to an agrochemical or its container;

"licence" means an agrochemical licence issued under section 18(2);

"manufacture" means, in relation to an agrochemical, to activate, combine or add ingredients or to package or re-package the ingredients separately in the final form;

"Registrar" means the Registrar of Agrochemicals appointed under section 3;

"residues" in relation to an agrochemical, includes any specified substances and any derivatives of an agrochemical such as impurities considered to be of toxicological significance found in food, agricultural remedies or animal feed resulting from the use of the agrochemical;

"restricted agrochemical" means an agrochemical classified as such under section 12(5); and

"sell" includes offer for sale and provision of goods as part of a service for agricultural use, whether or not the goods are described as free or included in the service.

PART II

Regulatory Authority (ss 3-9)

3. Appointment of Registrar

The Minister may, by notice published in the *Gazette*, appoint, subject to the laws governing the public service, any officer to be the Registrar of Agrochemicals, for purposes of this Act.

4. Functions of Registrar

(1) The Registrar, shall subject to the control of the Minister, be responsible for the administration of this Act.

(2) Without derogating from the generality of subsection (1) the functions of the Registrar shall be to-

- (a) establish the appropriate facility of registration of agrochemicals, quality control and the analysis of their residues;
- (b) register agrochemicals in accordance with this Act;
- (c) monitor the sale, use and test residues of agrochemicals;
- (d) collect and maintain statistical and other information concerning the importation, manufacture, distribution, sale, and use of agrochemicals and their residues;
- (e) issue licences to persons for the importation, manufacture, distribution, sale or disposal of agrochemicals;
- (f) produce a code of practice for the management of and dealings in agrochemicals;
- (g) conduct public awareness campaigns on agrochemicals; and
- (h) perform any other function in relation to agrochemicals as the Minister may require.

5. Delegation of duties and powers

The Registrar may, subject to such conditions as he or she may determine, delegate or assign any power or duty assigned to him or her under this Act to an inspector.

6. National Agrochemicals Committee

(1) The Minister shall appoint an advisory and review committee to be known as the National Agrochemicals Committee.

(2) The Committee shall be composed of twelve members consisting of the following or their representatives-

- (a) Director of Crop Production and Forestry who shall be the chairperson;
- (b) Director of Animal Health and Production;
- (c) Director of Agricultural Research;
- (d) Director of Wildlife and National Parks;
- (e) Director of Quality Assurance, Botswana Bureau of Standards;
- (f) Dean of Faculty of Agriculture, Botswana College of Agriculture;
- (g) Government Chemist, Ministry of Health;
- (h) Head of the Chemistry Department, University of Botswana;
- (i) Chief Chemist, Department of Water Affairs;
- (j) Representative of National Conservation Strategy (Coordinating) Agency;
- (k) Representative of the farming community; and
- (l) Representative of the agrochemicals industry.

(3) The Registrar shall be the secretary of the Committee, entitled to attend and take part in the proceedings of every meeting of the Committee but shall have no vote.

(4) Half of the members of the Committee shall hold office for a period of two years and the other half shall hold office for a period of three years as the Minister shall direct.

(5) A member shall be eligible for re-appointment at the expiration of his or her term of office as may be determined in accordance with subregulation (4) .

(6) The Minister may co-opt two other members who, in his or her opinion, have knowledge and experience likely to contribute to the carrying out of the Committee's functions.

(7) A member co-opted under subsection (6) shall be entitled to take part in the proceedings

of the Committee but shall have no vote.

7. Meetings of Committee

(1) Subject to the provisions of this Act, the Committee shall regulate its own procedure.

(2) The Committee shall meet at such times and places as the chairperson, or, if he or she is absent, the vice-chairperson, may determine, provided the Committee shall meet for not less than three times in a year.

(3) The chairperson, or, if he or she is absent, the vice-chairperson, shall preside at all meetings of the Committee and if both the chairperson and vice-chairperson are absent from a meeting, the members present shall elect a person from among themselves to preside at such meeting.

(4) The decision of a majority of the members of the Committee present at a meeting of the Committee shall constitute a decision of the Committee and in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his or her deliberative vote.

(5) Six members of the Committee shall form a quorum.

8. Functions of Committee

The functions of the Committee shall be to-

- (a) do all things as are necessary to control or regulate the importation, distribution, use and disposal of agrochemicals in terms of this Act;
- (b) ensure compliance with the provisions of this Act including to make recommendations to and advise the Registrar, in respect of a certificate or licence sought to be issued in terms of this Act; and
- (c) review the registration and licensing of agrochemicals.

9. Appointment of an agrochemicals inspector

(1) The Minister may, subject to the laws governing the public service, appoint an officer to be an inspector for purposes of this Act.

(2) Every person appointed to be an inspector under subsection (1) shall be furnished with, and shall produce on request, an identity card stating that such person is duly appointed and authorised by the Minister to act as an inspector for purposes of this Act.

(3) Subject to subsection (5), an inspector may, for purposes of this Act, at all reasonable times enter any premises in or upon which there is, or is suspected to be, any agrochemical or its residue, and there may-

- (a) inspect and take samples of any agrochemical or any substance used or likely to be,

or capable of being used in the manufacture, production, processing or treatment of an agrochemical;

- (b) inspect any process or other operation being carried on in such premises, in respect of such agrochemical, or in connection with the manufacture, production, processing or treatment of the agrochemical;
- (c) require from any person the production of a certificate, record, report, licence, label or other document which is in the possession, custody or under the control of such person, or of any other person on such person's behalf, which the inspector, on reasonable grounds, believes to be relevant to any inspection he or she may be carrying out;
- (d) examine and copy any part of any certificate, record, report, licence, label or any other document produced in accordance with paragraph (c) and require any person to give an explanation of any entry therein and may take possession of any such certificate, record, report, licence, label or any other document;
- (e) examine any container, facility or equipment used for agrochemicals and any such container, facility or equipment found in the premises;
- (f) stop and search a motor vehicle used for the transport of agrochemicals; and
- (g) question any person whom he or she finds in or on the premises with regard to any matter to which he or she is investigating.

(4) Any person who is in charge of premises or motor vehicle referred to in subsection (3), shall at all reasonable times furnish such assistance as an inspector may reasonably require in the exercise of his or her powers under this section.

(5) No person shall enter, inspect or seize any agrochemical, its residue or any item in terms of subsection (3) unless such person is an inspector and has obtained-

- (a) the consent in writing of the owner or the occupier of the premises; or
- (b) a search warrant.

(6) Any person who-

- (a) enters, inspects or seizes any agrochemical or its residue without obtaining the written consent of the owner or the occupier or producing a search warrant;
- (b) resists, hinders or obstructs an inspector in the performance of his or her duties under this section;
- (c) wilfully fails to comply with any requirement lawfully made of him or her in accordance with the provisions of this section,

shall be guilty of an offence.

PART III

Register and Registration of Agrochemicals (ss 10-14)

10. Agrochemicals to be registered

No person shall own, use, possess, import, manufacture, advertise, distribute or sell an agrochemical unless such agrochemical is registered under this Act:

Provided that this section shall not apply in the case of an unregistered agrochemical-

- (a) intended to be used for experimental or research purposes; or
- (b) on direct transit to another country and the Registrar is satisfied that the agrochemical will be permitted to enter a country outside Botswana.

11. Register of agrochemicals

(1) The Registrar shall establish and maintain a register containing the names of agrochemicals registered under this Act, the conditions of the certificate and other particulars, as may be prescribed.

(2) Any proprietary information submitted in connection with an application under section 12, shall not be entered in the register referred to under subsection (1), except as provided under this Act or as required by a court of law.

(3) Any person may, upon payment of the prescribed fee, and in accordance with the conditions which may be prescribed, inspect or make a copy of, or obtain an extract from the register referred to in subsection (1).

12. Application for registration

(1) An application for registration of an agrochemical shall be made to the Registrar, in writing, in the prescribed form and shall be accompanied by the following-

- (a) the prescribed fee; and
- (b) information, samples and materials as may be required by the Registrar.

(2) Upon receipt of an application for registration, the Registrar shall examine the application to determine whether an agrochemical for which application is being made, is effective and suitable for use in Botswana or complies with regulations made in pursuance of this Act.

(3) The Registrar may, in considering an application under this section, consult the Committee.

(4) The Registrar may, after examining an application and consulting the Committee-

- (a) register an agrochemical;
- (b) refuse to register the agrochemical;
- (c) defer decision making to require further information; or
- (d) if the agrochemical is registered in another country, register the agrochemical subject to the conduct of further tests to ensure its effectiveness and suitability in Botswana.

(5) Where the Registrar registers an agrochemical, he or she may issue a certificate to the applicant and thereby-

- (a) attach, to the certificate issued such conditions concerning the importation, manufacture, labelling, advertising, distribution, sale and use of the agrochemical to ensure its effectiveness and suitability in Botswana;
- (b) classify the agrochemical as a restricted agrochemical to be handled with particular care so as not to cause pollution to the environment, or harm to human, animal or plant life; or
- (c) require the agrochemical to be used under the supervision of a person authorised by the Registrar.

13. Validity of certificate

(1) A certificate shall be valid for a period of five years.

(2) A certificate may be renewed by the Registrar after consultation with the Committee, if the Registrar is satisfied that the agrochemical remains effective and suitable for use in Botswana and upon payment of such renewal fee as may be prescribed.

(3) The Registrar may in deciding to renew the certificate, require such information as appears necessary to determine the conditions of renewal.

14. Variation or cancellation of certificate

(1) While a certificate issued, by the Registrar is in force, the Registrar may, after consultation with the Committee-

- (a) if he or she is satisfied that a registered agrochemical is not effective or suitable for use in Botswana, serve a notice on the holder modifying the conditions specified therein to ensure its effectiveness and suitability in Botswana; or
- (b) cancel the certificate if it can be shown that the registered agrochemical is no longer effective nor suitable for Botswana.

(2) In subsection (1), "holder" means a holder of a certificate.

PART IV

Licensing of Agrochemicals (ss 15-21)

15. Requirement for a licence

No person shall manufacture, import, distribute, sell or dispose an agrochemical unless he or she is licensed to do so under this Act.

16. Application for licence

An application for a licence shall be made to the Registrar on such form as may be prescribed and accompanied by such fee as may be prescribed.

17. Training course

Before making a decision on the application for a licence, the Registrar may require an applicant to attend and successfully complete a prescribed training course.

18. Assessment and issue of licence

(1) Upon receipt of an application for a licence, the Registrar shall examine the application to determine whether the-

- (a) attendance and successful completion of the prescribed training course has been done by the applicant; and
- (b) agrochemical being applied for is duly registered under this Act.

(2) If the Registrar is satisfied that the applicant has fulfilled the requirements for the grant of the licence under subsection (1), he or she may issue the licence to the applicant.

(3) A licence issued under this section may be issued subject to such conditions as the Registrar considers necessary, which conditions shall be endorsed on such licence.

19. Validity of licence

(1) A licence issued under this part shall be valid for such period as may be stipulated therein and may be subject to renewal at the end of such period.

(2) An application for the renewal of a licence under this Part, accompanied by such fee as may be prescribed, shall be in such form as may be prescribed.

20. Variation of conditions of licence

While a licence issued by the Registrar is in force, the Registrar may modify the conditions specified in the licence to any extent which in the opinion of the Registrar is desirable, without requiring unreasonable expenditure on the licensee.

21. Suspension and revocation of licence

Where a licensee contravenes any provision of this Act or the Registrar is satisfied that the

conditions of a licence are not being adhered to, the Registrar may by notice in writing to the licensee, suspend or revoke the licence.

PART V

Miscellaneous (ss 22-31)

22. Offences

(1) No person shall import, distribute, sell or otherwise dispose of an agrochemical unless a label is part of or securely attached to the container of the agrochemical and clearly and indelibly marked in English with such information as may be prescribed.

(2) No person shall alter the label of a container of an agrochemical, so as to misrepresent the nature of the agrochemical.

(3) No person shall distribute, sell or otherwise dispose of an agrochemical otherwise than in a container that conforms to the conditions and requirements as may be prescribed.

(4) No person shall advertise an agrochemical unless the agrochemical is duly registered in accordance with this Act.

(5) No person shall disclose any proprietary information acquired by him or her in the exercise of any duty or function under the Act.

(6) No person shall harvest any crops or horticultural produce, or slaughter or milk any stock following exposure of the crop, horticultural produce or stock to any agrochemical except under prescribed conditions.

(7) "Stock" in subsection (6), has the meaning assigned to it under the Stock Theft Act.

(8) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding P10, 000 or to imprisonment for a term not exceeding 10 years or to both.

(9) It shall be a defence for any person charged with the sale of an agrochemical in contravention of this Act that he or she purchased it and purported to sell it in a sealed container bearing a label indicating that it was registered and complied with the requirements of this Act and that he or she had no reason to believe at the time of the sale that the agrochemical differed in any way from the purported contents of the container or otherwise failed to meet the requirements of this Act.

23. Precautions to be taken in handling agrochemicals

An employer shall, where a worker handles an agrochemical during the course of his or her employment, provide, to the worker, such facilities and clothing to ensure safe handling or use of the agrochemical.

24. Labelling of agrochemicals

The Minister may, on the recommendation of the Committee, by notice in the *Gazette*, prescribe the requirements for labelling of containers of agrochemicals.

25. Promotion and advertising of agrochemicals

Any publication of an agrochemical advertisement which is intended to promote the sale or use of the agrochemical shall contain-

- (a) such information as may be required to be on labels of containers under section 24; and
- (b) any other condition as may be prescribed.

26. Temporary permit

(1) The Minister may authorise a temporary permit to import, for own use and not for sale, limited quantities of agrochemicals in unopened original containers directly from a country in which such agrochemicals are registered.

(2) The procedure to acquire a temporary permit under subsection (1) shall be as may be prescribed.

(3) In this Part, "temporary permit" means a permit valid for a single import of the agrochemicals authorised under subsection (1).

27. Publication in the *Gazette*

The Registrar shall cause to be published by notice in the *Gazette* every-

- (a) registration, renewal, variation and cancellation of a certificate;
- (b) grant, renewal, variation, suspension and revocation of a licence.

28. Record to be kept by licensee

(1) A licensee shall-

- (a) maintain such records concerning the importation, manufacture, distribution or sale of agrochemicals; and
- (b) after complying with the requirement of subsection (a), make a report, in such form as the Registrar may prescribe, of the contents of such records to the Registrar.

(2) A person may be exempted from maintaining records under subsection (1) if the agrochemical is acquired for own use.

29. Appeal

Any person aggrieved by the-

- (a) refusal to grant a certificate or deferral of decision making to register the agrochemical; or
- (b) variation of a condition of a certificate or cancellation of a licence,

may, within thirty days of the decision of the Registrar, appeal to the Minister in the manner prescribed or to the court on a matter of law.

30. General penalty

Subject to section 22, a person who contravenes any provision of this Act shall be guilty of an offence and liable, on conviction, to a fine not exceeding P8000 or to imprisonment for a term not exceeding eight years or to both.

31. Regulations

The Minister may make Regulations providing for any matter which under this Act is to be provided for by regulations or for the better carrying out of the purposes and provisions of this Act, and without prejudice to the generality of the foregoing, such regulations may make provision for prescribing-

- (a) procedures of manufacturing, importing, distributing, selling or disposing of agrochemicals;
- (b) the forms for applications of a certificate or licence and of fees;
- (c) the form of labelling agrochemical containers;
- (d) the manner of promoting and advertising agrochemicals;
- (e) the manner of keeping records;
- (f) the conditions of certificate and licence;
- (g) procedures of acquiring a temporary permit;
- (h) procedures of handling agrochemicals intended to be used for experimental or research purposes;
- (i) the manner of disposal of wastes derived from agrochemicals;
- (j) procedural requirements in respect of a review process; and
- (k) procedures of importation, handling and use of restricted agrochemicals.