

PESTICIDES MANAGEMENT ACT, 2017

Date of Assented to 31 October, 2017

Date of commencement: To Be Proclaimed

Arrangement of Sections

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AN ACT to provide for the importation, manufacture, distribution, sale, control and management of pesticides and for matters incidental thereto.

PART I

PRELIMINARY PROVISIONS

Short title and commencement.

1. (1) This Act may be cited as the Pesticides Management Act, 2017 and shall come into force on such a date as the Minister may appoint by notice in the *Gazette*.
(2) The Minister may appoint different dates for the coming into force of different parts and provisions of this Act.

Interpretation.

2. In this Act unless the context otherwise requires —
“active ingredient” means the biologically active part of the pesticide present in a formulation;

“adulterated pesticide” means—

- (a) any commitment of the registered formulation has in whole or in part been omitted or abstracted;
- (b) damage or inferiority has been concealed in any manner;
- (c) any constituent of the registered formulation has been substituted wholly or in part;
- (d) any substance has been added to the registered formulation or mixed or packed with it so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is;
- (e) its nature, substance or quality has deteriorated or has otherwise been injuriously affected so that the pesticide has become ineffective or dangerous; and
- (f) any constituent exceeds the amount on the label or permitted in the applicable legislation.

“advertising” means the promotion of the sale and use of pesticides by print, electronic media, signs, displays, gift, demonstration or word of mouth;

“banned” means a pesticide for which all uses have been prohibited by final government regulatory action, in order to protect human and animal health or the environment. The term includes a pesticide that has been refused approval for first-time use, or has been withdrawn by industry either from the domestic market or from further consideration in the domestic approval process, and where there is clear evidence that such action has been taken in order to protect human health or the environment;

“Board” means the Board established in terms of section 6;

“Committee” means the Pesticides Committee established in terms of section 11;

“common name” means the name assigned to pesticide active ingredient by the International Standards Organization to be used as a generic or non-proprietary name for that particular active ingredient only;

“concentration” means the proportion of active ingredient in a pesticide;

“container” means anything in which or by which pesticides are encased, covered, enclosed, contained or packed, including material in contact with pesticide;

“convention” includes an agreement or other arrangement that the government is party to;

“conveyance” means any ship, vessel, floating craft, hovercraft, fixed or rotary winged aircraft, railway rolling stock, motor vehicle, cart, animal or any other thing used to transport people or other things;

“disposal” means any operation to recycle, neutralize, destroy or isolate pesticide waste used;

“distribution” means the process by which pesticides are supplied through trade channels to local or international markets;

- “efficacy” means the degree of effectiveness at the dose rate, frequency and duration of use, and by the route of administration claimed by the manufacturer;
- “environment” means surroundings, including water, air, soil and their interrelationship as well as all relationships between them and any living organisms;
- “formulation” means the combination of various ingredients designed to render the product useful and effective for the purpose claimed; the form of the pesticide as purchased by users;
- “hazard” means a function of the probability of an adverse health or environmental effect, and the severity of that effect, following exposure to or use of a pesticide;
- “label” means the written, printed or graphic matter on, or attached to, the pesticide or immediate container and also the outside container or wrapper of the retail package of the pesticide;
- “manufacture” means to prepare, compound, formulate, mix, make, or otherwise treat a pesticide with a view to its sale and use;
- “Minister” means the Minister responsible for Agriculture;
- “obsolete pesticide” means a pesticide the registration of which has been cancelled under section 23 or a pesticide that has become unusable due to having degraded or expired;
- “packaging” means the container together with the protective wrapping used to carry pesticide products via wholesale or retail distribution to users;
- “pesticide enforcement officer” means any person appointed or designated under section 43;
- “pest control operator” means a person who applies or who has an employee who applies pesticides for reward on or in any land, premises, conveyance or container in any manner including application from any aircraft;
- “pesticide” means any substance, mixture of substances or a living organism intended for preventing, destroying or controlling any pest, including vectors of human or animal disease, unwanted species of plants or animals causing harm during, or otherwise interfering with the production, processing, storage, transportation of food, agricultural commodity, wood and wood products or animals feedstuffs, or substances which maybe administered to the animals for the control of insects, arachnids or other pests in or on their bodies. The terms include substances intended for as plant growth regulators, defoliants, desiccants or agents for thinning or preventing the premature fall of fruit, and substances applied to crops before or after harvest to protect the crops from deterioration during storage and transport, and it also includes bio pesticides;
- “Registrar” means a person designated to be Registrar of Pesticides in terms of section 4;

“repackaging” means the authorized transfer of a pesticide from any commercial package into any other, usually smaller container for subsequent sale;

“severely restricted” means a pesticide for which virtually all use has been prohibited by final regulatory action in order to protect human and animals health or the environment, but for which certain specific uses remain allowed. It includes a pesticide that has, for virtually all use, been refused for approval or been withdrawn by industry either from the domestic market or from further consideration in the domestic approval process, and where there is clear evidence that such action has been taken in order to protect human health or the environment.

“this Act” includes any Regulation, Orders and Notices made or published under this Act.

“tribunal” means the Pesticides Appeals Tribunal established in terms of section 55 of this Act.

Scope of application.

3. (1) This Act applies to any type of pesticide intended for import into, use in, or export from Eswatini, whether for agricultural, forestry, veterinary, or public health uses.
- (2) This Act applies equally to pesticides in trade and pesticides received as donations.
- (3) This Act shall not apply to household pesticides.

PART II
ADMINISTRATION

Registrar of Pesticides.

4. (1) There shall be a Registrar of Pesticides who shall be appointed by the Civil Service Commission.
- (2) The Registrar shall possess such qualifications as may be prescribed by regulation.

Functions of the Registrar.

5. The functions of the Registrar include the following —
 - (a) registration, cancellation and licensing of pesticides;
 - (b) issuing, variation, suspension and revocation of permits and licences under this Act;
 - (c) taking measures that the Registrar may consider appropriate for the protection of humans, animals and the environment from risks of pollution resulting from pesticides;
 - (d) taking measures to combat pollution created by the use of pesticides;
 - (e) monitoring of trade, use and disposal of pesticides and the collection of statistics in relation thereon;

- (f) collection of any fees and other payments payable to the Government under this Act;
- (g) carrying out, coordinating and encouragement of research into pesticides and their use;
- (h) promoting public awareness relating to the use of pesticides and the dangers involved in such and the safeguards required for their safe use;
- (i) provision of advice concerning pesticides;
- (j) liaising with competent authorities in neighbouring states and international organisations concerning pesticides;
- (k) implementation and administration of all international conventions to which Eswatini is a party;
- (l) giving advice to the Minister on any international or bilateral obligations which relates to pesticides and which binds Eswatini;
- (m) authorisation of any public officer to administer any or all of the powers of the registrar either concurrently with the Registrar or in the absence of the Registrar subject to such conditions including territorial restrictions as he may stipulate;
- (n) keeping and maintaining of registers and inventories in terms of sections 37 and 38 of this Act; and
- (o) performing of such other duties as may be required under this Act.
- (p) advise the Minister on matters of policy.

Pesticides Management Board.

6. (1) There is hereby established a committee to be known as the Pesticides Management Board.

(2) The Board shall be appointed by the Minister and shall consist of the following members —

- (a) the Attorney-General or a representative of the Attorney-General;
- (b) the Principal Secretary for the Ministry or a representative of the Principal Secretary;
- (c) the Principal Secretary for the Ministry responsible for Health or a representative of the Principal Secretary;
- (d) the Principal Secretary for the Ministry responsible for Commerce or a representative of the Principal Secretary;
- (e) the Principal Secretary for the Ministry responsible for Finance or a representative of the Principal Secretary;
- (f) a representative of the Eswatini Environmental Authority;
- (g) a representative of the farming community;
- (h) a representative of the traditional authority; and
- (i) the Registrar who shall be an *ex-officio* member of the Board and shall have no vote.

(3) The Minister shall appoint a chairperson, deputy chairperson and secretary from among the members of the Board.

Operation of the Committee.

7. (1) Subject to section 10 the members of the Board shall serve a term of three years.

(2) A member shall be eligible for re-appointment upon the expiry of the initial term of office.

(3) A member of the Board who has personal or financial interest in any matter which is the subject of proceedings or deliberations of the Board shall disclose such interest to the Board and the Board shall then determine the appropriate action which may include requiring that member to withdraw from participating in proceedings or deliberations of the Board in relation to the matter in question.

(4) A member who has such personal or financial interest in a matter as referred to in subsection (3) shall not vote in respect of that matter.

(5) A member who intentionally fails to comply with subsection (4) commits an offence.

(6) The Board shall take a decision by a majority of votes of members present at voting. In addition to an original vote, in any case in which the voting is equal, the Chairman or the member presiding at the meeting shall have a casting vote.

(7) The Board shall keep full and accurate records of its meetings to ensure institutional memory.

(8) Subject to this Act the Board shall regulate its own procedures.

Functions of the Board.

8. (1) The Board shall advise the Minister on matters relating to pesticide management and implementation of this Act and in particular shall —

- (a) consider and advise on proposals for regulations to be made under section 56;
- (b) consider and advise on proposals for drafting of legislation which regulates the importation, manufacturing, exportation, sale, use, storage and disposal of pesticides;
- (c) submit proposals under paragraphs (a) and (b) of this subsection to the Minister as it may consider appropriate;
- (d) consider any related matters referred to the Board by any member of the Board, the Registrar, Minister, any person or organisation; and
- (e) perform such other functions and duties in connection with this Act as may be prescribed.

(2) The Board shall advise the Registrar on all matters pertaining to registration, cancellation and licensing of pesticides.

Meetings of the Board.

9. (1) The Board shall meet as often as is necessary for the proper discharge of its functions but in any event at least four times a year.

(2) The Chairperson, in consultation with the Registrar, shall determine the times and places for meetings and convene meetings.

(3) In the absence of the Chairperson the members present shall elect from among themselves an acting Chairperson.

(4) The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person who is not entitled to do so took part in the proceedings.

(5) The quorum of the Board shall be constituted by five members holding office at that time, except that when a member has declared an interest in an item that is on the agenda or in a matter before the Board, such member shall not be counted for the purpose of forming a quorum in relation to the item or matter in question.

(6) The decision of the Board shall be by a majority of votes and where there is an equality of votes the chairperson shall have a casting vote in addition to a deliberative vote.

(7) Notwithstanding the foregoing provisions a decision may be made by the Committee on any urgent matter by the circulation of the relevant papers among the members and by the expression in writing of the views of the majority.

(8) The Committee may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Committee but such person shall have no vote.

(9) The Secretary shall keep minutes of proceedings of every meeting of the Committee.

Termination of Office of Members.

10. (1) The Minister may, by notice in the *Gazette*, terminate the appointment of a member of the Board for —

- (a) abuse of office;
- (b) corruption;
- (c) incompetence;
- (d) any physical or mental incapacity that renders a person incapable of performing the duties of that office;
- (e) failure to attend three consecutive scheduled Board meetings without reasonable grounds;
- (f) conviction of a member for an offence involving moral turpitude;
- (g) being adjudged or declared bankrupt; or
- (h) any other reasonable ground.

(2) Any member of the Board may resign from the Board by giving not less than one month's prior notice in writing.

Committee of Technical Experts.

11. (1) The Minister shall, in consultation with the Board establish a Committee of Technical Experts whose function is to provide technical advice and recommendations to the Minister, the Board and the Registrar.

(2) The Committee shall consist of not less than five members who possess the prescribed qualification and expertise and at least one representative from the Ministry responsible for —

- (a) agriculture;
- (b) environment; and
- (c) health.

(3) The Committee shall assess and evaluate any —

- (a) applications for registration of pesticides under section 16;
- (b) applications for renewal of registration under section 24;
- (c) pesticide in terms of section 22;
- (d) potential cancellations and amendments of registration under section 23;
- (e) requests for special permits under section 26;
- (f) applications for import and export permits under section 27; and
- (g) variation, suspension and revocation of commercial licences under section 28.

(4) At the conclusion of every evaluation carried out the Committee shall produce a report in writing containing its recommendations and submit it to the Registrar.

(5) A member of the Committee shall serve a term of three years and shall be eligible for re-appointment upon the expiry of the initial term of office.

Disclosure of Interest.

12. (1) Where a member, close relative, associate of a member or any person who has an influence on a member, has or intends to acquire, direct or indirect personal or financial interest in an application for registration, a licence or a permit or to any other matter which is the subject of proceedings or deliberations, that member shall —

- (a) as soon as possible disclose such interest; and
- (b) not be present or participate in any proceedings or deliberations of the Committee in relation to such matter.

(2) A member who intentionally fails to comply with sub-section (1) commits an offence.

Indemnity of the members.

13. (1) A member shall not be liable for the consequences of actions or omissions committed in good faith in the course of duty.

(2) In this section “member” means a member of the Committee, Board and Pesticides Appeals Tribunal and includes the Registrar and Secretary.

Confidential information.

14. Members of the Committee, Board and Appeals Tribunal shall sign an oath of secrecy with regard to confidential information that they come into contact with in the course of their duties.

PART III

REGISTRATION, LICENSING, IMPORT AND EXPORT

Registration requirements.

15. A person shall not manufacture, formulate, pack, repack, label, import, export, advertise, store, sell, possess, supply or use a pesticide unless that pesticide has been registered in terms of this Act.

Application for registration.

16. (1) An application for registration of a pesticide shall be made to the Registrar in such a manner and form as may be prescribed.

(2) An application under this section shall —

(a) be accompanied by such information and material; and

(b) designate the information to be considered appropriate as may be set out in regulations.

Request for supplementary information.

17. (1) Where an application submitted under section 16 or section 24 is incomplete, the Registrar shall notify the applicant in writing requesting further information within such time as the Registrar may specify.

(2) Where an applicant does not supplement the application with the requested information within the time specified in terms of subsection (1), the application shall be rejected.

(3) The rejection of an application under sub section (2) shall not bar an applicant or any other person from making a subsequent application in relation to the same pesticide.

Evaluation of applications.

18. (1) Where an application for registration meets the requirements of section 16 the Registrar shall convey that application to the Committee for evaluation.

(2) When evaluating applications, the Committee shall consider all relevant factors including —

(a) whether alternative pest management practices could be used instead of that pesticide;

(b) expected environmental impact including persistence and impact on affected non-targeted species;

(c) expected plant, human and animal health hazards;

(d) effectiveness for the purpose for which the pesticide is intended;

(e) quality as measured against specific requirements as may be prescribed;

(f) appropriateness of the proposed label and container;

(g) expected pesticide residues in food, water and soil;

- (h) availability of other products which may be equally or more effective but less hazardous;
- (i) whether the pesticide is banned or severely restricted by an international convention or a treaty or agreement which binds Eswatini;
- (j) status of the pesticide under registration schemes of other countries;
- (k) occupational health and safety risk to users or workers, including available personal protective equipment; or
- (l) any other information as it may be specified by the regulations.

(3) Where the evaluation of the Committee demonstrates that the pesticide is effective for the intended purposes and does not pose an unacceptable risk to human, animal, plant health or the environment it shall approve registration of the pesticide and the Registrar shall register that pesticide.

Decision on application for registration.

19. (1) If the Committee approves registration in accordance with section 18(3) or section 24 (4) the Registrar shall —

- (a) assign a registration number to the pesticide or in the case of renewal re-assign the same pesticide number if possible;
- (b) register the pesticide in the register of pesticides;
- (c) publish the registration in the *Gazette*; and
- (d) issue a registration or re-registration certificate to the applicant;
- (e) categorise, where possible, the pesticide taking into account international standards.

(2) If the Committee approves registration in accordance with section 18(3) or section 24 (4) with conditions, including those regarding duration of registration, manufacture, storage, transport, import, export, packaging, repackaging, labelling, distribution, sale, use, or disposal, the Registrar shall —

- (a) assign a registration number to the pesticide, or in the case of renewal, re-assign the same pesticide number if possible;
- (b) list the pesticide including the conditions in the register of pesticides;
- (c) publish the registration in the *Gazette*; and
- (d) issue to the applicant or an authorised representative or agent of the applicant a registration or re-registration certificate with the conditions.

(3) The Registrar may decline registration of a pesticide notifying the applicant of the reasons for that refusal which may include non-compliance with evaluation criteria under section 18(3).

(4) The Registrar shall not issue a registration or re-registration certificate where registration or re-registration has been declined by the Committee.

Changes regarding registered pesticides.

20. (1) Where there is a change in the trade name, label, container, or use of a registered pesticide the registration certificate holder shall make a written application to the Registrar requiring the Registrar to effect such change in the register of pesticides.

(2) Where the proposed change is not in violation of this Act or other applicable legislation or any international convention or treaty or agreement which binds Eswatini the Registrar shall effect the change in the register of pesticides.

(3) Where necessary the Registrar may issue the applicant with a new certificate which encompasses the changes as indicated by Registrar

(4) Where a change is proposed to the formulation, active ingredient or concentration of a registered pesticide a new application under section 16 shall be made.

Additional information and mandatory reporting.

21. The Registrar may by notice in writing require a registration certificate holder to —

- (a) compile information, conduct tests and monitor performance of the pesticide for the purpose of obtaining additional information with respect to its effects on plant, human or animal health or the environment or with respect to its efficacy or quality; and
- (b) report the additional information to the Registrar within the time and in the form specified in the notice.

Re-evaluation of registration.

22. The Registrar may initiate the re-evaluation of a registered pesticide if —

- (a) in the time since the pesticide was registered, there has been a change in the information required, or in the procedures used for the evaluation of human, animal or plant health hazards, environmental hazards, efficacy, or quality of the pesticide or pesticides of the same class or kind;
- (b) there are reasonable grounds to believe that human, animal, or plant health hazards or environmental hazards of the pesticide have become unacceptable upon consideration of the factors listed in section 18(2) and any other relevant factors, including those relating to aggregate exposure to pesticides and cumulative effects of different pesticides; or
- (c) the re-evaluation is as a result of a recommendation arising from an international organisation, convention or treaty or agreement which binds Eswatini.

Cancellation or amendment of registration.

23. (1) The Registrar may cancel the registration of a pesticide if the Registrar or the Committee determines that —

- (a) the registration was secured as a result of a mistake or through fraudulent means;
- (b) the registration was secured in violation of this Act;

- (c) continued registration is undesirable on the grounds of harm to human, animal or plant health or the environment;
- (d) the pesticide is no longer effective for its intended use;
- (e) the pesticide has been withdrawn from the market;
- (f) any conditions subject to which the registration was granted have been breached; or
- (g) subsequent to the registration the Registrar or the Committee has become aware of new facts Or an unforeseen change in circumstances which, require cancellation.

(2) If the Committee determines that the intended use is no longer desirable on the grounds of harm to plant, human and animal health or the environment, the Registrar may amend the registration of a pesticide to allow for different use.

(3) Before effecting any cancellation under sub-section (1), the Registrar shall give the party to whom the registration was granted thirty days to submit written justification as to why the registration should not be cancelled.

(4) Notice of cancellation of registration under this section shall be published in the *Gazette* and the cancellation shall be effective twenty-one days after the first date of publication and the Registrar shall thereafter subject to sub-section (3) amend the register of pesticides accordingly.

(5) Where necessary the Registrar may issue the registration certificate holder with a new certificate which bears the amendment effected in terms of subsection (2).

Applications for renewal of registration.

24. (1) An application for renewal of registration of a pesticide shall be made to the Registrar at least thirty days before expiry of the validity of the registration.

(2) In an application under this section the Registrar may require the applicant to submit such information and samples as the Registrar may consider appropriate.

(3) Where an application under this section meets the requirements of the Registrar, the registrar shall thereafter convey the application to the Committee for its evaluation.

(4) Where the evaluation of an application by the Committee under this section demonstrates that the pesticide continues to be effective for the intended purposes and does not pose an unacceptable risk to human, animals, plants or the environment, taking into consideration all relevant factors including those —

- (a) listed in section 18(2); and
- (b) relating to aggregate exposure to pesticides and cumulative effects of different pesticides,

the Registrar shall allow the renewal of registration of the concerned pesticide for a further period as prescribed in the regulations.

Recall of pesticides.

25. (1) Where registration of a pesticide is cancelled in terms of section 23 the Registrar, acting on the advice of the Committee, shall order a recall of the pesticide where necessary to protect human, animal, or plant health or the environment.

(2) Where a recall has been ordered the Registrar shall publish that order of recall in the *Gazette* or any local newspaper and electronic media.

(3) A recall order issued in terms of this section may be subject to such conditions as the Registrar may impose.

(4) Where a recall has been ordered in terms of this section, any person in possession of recalled pesticides shall report to the Registrar within seven days from the date of publication of the recall order and comply with any instruction which the Registrar may issue.

(5) A person who, without reasonable cause, fails to comply with a recall order commits an offence.

Special permits.

26. (1) The Registrar may issue a special permit as may be prescribed by the regulations, authorizing a pesticide which has not been registered or has been registered for other uses in Eswatini provided that the pesticide is —

- (a) intended to be used for purposes of scientific research and a special permit has been granted in accordance with this Act; or
- (b) intended to be used for purposes of overriding national interest in the case of an unexpected infestation by harmful pests and a special permit has been granted in accordance with this Act;
- (c) in direct transit through Eswatini and a special permit has been granted in accordance with this Act and has the necessary permits to enter its country of final destination.

(2) Permits issued under this section shall specify —

- (a) the period of validity;
- (b) the maximum quantity of the pesticide covered by the permit;
- (c) storage and disposal of the pesticide and pesticide waste; and
- (d) any other conditions as may be considered appropriate by the Board or the Committee to protect human and animal health and the environment.

(3) A special permit issued under this section, for importing a pesticide, shall only authorize the importation of a single consignment.

Commercial licences.

27. (1) A person shall not manufacture, formulate, pack, repack, label, import, transport, export, store, or sell a pesticide in Eswatini unless that person is licensed in accordance with this Act.

(2) A person shall not act as pest control operator or carry on a business for profit of applying pesticides unless that person is licensed in accordance with this Act.

(3) An application for a licence or renewal of a licence under subsections (1) and (2) shall be made to the Registrar in the prescribed manner and form and shall be accompanied by a fee as prescribed.

- (4) The Registrar acting on the advice of the Committee, shall —
- (a) issue a commercial licence, if the —
 - (i) application complies with subsection (3),
 - (ii) applicant is adequately qualified,
 - (iii) premises or vehicles proposed to be used for the relevant activities are appropriate for the intended purpose and their use will not endanger human, animal or plant health or the environment;
 - (b) refuse the application, notifying the applicant of the reasons for the refusal, which may include that the —
 - (i) application relates to a pesticide which is not currently registered under this Act, or
 - (ii) information contained in the application is incomplete, false or vague in any material aspect,
 - (iii) requirements of subsection (4) (a) have not been complied with, or
 - (iv) the Regulations have not been complied with.

(5) A licence issued under this section may be issued with such conditions as the Registrar may impose.

Variation, suspension or revocation of licences.

28. (1) The Registrar, acting on the advice of the Committee, may modify, suspend or revoke a licence if subsequent to it being granted new facts or an unforeseen change in circumstances emerge or a violation of any condition on which the licence was granted has occurred or is apparent.

(2) Before effecting the provisions of sub-section (1) the Registrar shall give the party to whom the licence was issued thirty days to submit written justification as to why the licence should not be modified, suspended or revoked.

Importation and Exportation of pesticides.

29. (1) A person shall not import or export a pesticide unless that person is permitted in terms of this Act.

(2) An application for an import or export permit shall be made to the Registrar in the prescribed manner and form, and shall be accompanied by the prescribed documentation and fee.

(3) Where an application has been made to the Registrar in terms of sub-section (2), the Registrar shall —

- (a) issue a permit if —
 - (i) the application complies with sub-section (2), and
 - (ii) the proposed import or export is not prohibited under this Act;
- (b) refuse the application and notify the applicant of the reasons for that refusal which may include among others, that the —
 - (i) application does not comply with subsection (2),

- (ii) information contained in the application is incomplete, vague or false in any-material aspect, or
 - (iii) importation or exportation is prohibited under this Act.
- (4) A person shall not import into Eswatini a pesticide unless that —
- (a) pesticide is or has been presented to a pesticide enforcement officer at a designated port of entry for inspection;
 - (b) person has produced to a pesticide enforcement officer all prescribed permits, certificates and other documents;
 - (c) pesticide is imported in accordance with any other requirements of this Act.
- (5) A pesticide that is required to be inspected shall be presented in such manner and under such conditions as a pesticide enforcement officer shall consider necessary.

PART IV

OTHER ASPECTS RELATED TO THE LIFE-CYCLE OF PESTICIDES

Packaging, storage, labelling, etc.

30. (1) A person shall not pack, repack, store, sell, import, export, transport or distribute any pesticide unless that pesticide is in a container which —
- (a) is safe for storage, handling or use of such pesticide and is adequate to prevent harm to human or animal health and to the environment;
 - (b) prominently displays a legible label with at least English or siSwati translations and with internationally recognized pictograms which has been approved by the Committee and which cannot be easily detached or erased; and
 - (c) meets the standards prescribed under this Act.
- (2) If a pesticide is contained in more than one container the requirements of sub-section (1)(b) shall —
- (a) not apply to the inner container in contact with the pesticide where the pesticide could not be sold if it were solely in that inner container;
 - (b) apply to the container which represents the smallest unit of the pesticide which can be sold separately; and
 - (c) apply to a container containing more than one retail unit, where no bill of lading is attached and where a reasonable person would expect such a container to be seen by consumers in Eswatini.
- (3) The label referred to in sub-section (1)(b) shall —
- (a) comply with any conditions of registration of the pesticide as enjoined by section 23;
 - (b) contain a warning against reuse of the container and instructions for its safe disposal or decontamination after use;
 - (c) identify each lot or batch of the pesticide in numbers or letters;
 - (d) clearly display in full the release date of the lot or batch;
 - (e) contain information on the storage stability of the pesticide; and

- (f) comply with any other requirements as may be prescribed by regulations.

Advertising.

31. A person who advertises —

- (a) an unregistered pesticide; or
- (b) any pesticide in a manner that —
 - (i) is false or misleading or is intended to deceive,
 - (ii) employs false or misleading comparisons with other pesticides,
 - (iii) is contrary to approved uses or label instructions and any other conditions of registration of the pesticide, and
 - (iv) is contrary to other conditions as may be prescribed by regulations,

commits an offence.

Pesticide use.

32. A person who uses, recommends to or requires another person to use a pesticide in any manner other than that prescribed or in a manner contrary to the conditions attached to the registration of that pesticide or as prescribed by the regulations, commits an offence.

Pesticide use by employees.

33. (1) An employer who requires or permits an employee to use a pesticide shall —

- (a) ensure that the employee does not use the pesticide in any manner other than the manner prescribed or in a manner contrary to any conditions attached to the registration of that pesticide;
- (b) give such instruction as is necessary to enable the employee to use the pesticide in the safest possible way;
- (c) provide adequate facilities and protective clothing and equipment required for the safe handling of the pesticide and require the employee to use those facilities and clothing; and
- (d) arrange for the employee to undergo such periodic medical check-ups as may be prescribed by the regulations.

(2) The Registrar and the Commissioner of Labour in consultation with the Board shall make every effort to coordinate inspections at every workplace that handles pesticides.

Transport.

34. (1) A person who transports a pesticide or pesticide waste shall transport that pesticide or pesticide waste in accordance with applicable international standards for the transportation of dangerous goods and in accordance with section 27 (1) of this Act.

(2) Except in small non-hazardous quantities for personal use, a person shall not transport a pesticide in the same vehicle as food, feedstuffs, or animals.

(3) A person who transports a container that has previously contained a pesticide shall ensure that the container is physically separated from and does not come into contact with any food, feedstuffs, or animals.

(4) A person who fails to comply with this section commits an offence.

Storage and Disposal.

35. (1) A person shall not —

(a) store a pesticide or pesticide waste in —

(i) a manner that may harm human or animal health or the environment,
and

(ii) premises which are not licensed under this Act;

(b) sell or reuse containers which had previously contained pesticides;

(c) dispose of any pesticide or pesticide waste in a manner that may harm human or animal health or the environment or in a manner other than that prescribed under sub-section (2) of this section, and unless the person has a valid permit.

(2) A person who fails to comply with sub-section (1) of this section commits an offence.

(3) The Minister in cooperation with the Minister responsible for the environment and in consultation with the Committee shall —

(a) make every effort to prevent the accumulation of obsolete or unwanted pesticides and to ensure the disposal of such pesticides and of pesticide containers in an environmentally sound manner;

(b) establish a system for the collection of pesticide containers as well as obsolete or unwanted pesticides;

(c) institute a system for the assessment of a levy on pesticide containers to encourage their return; and

(d) identify appropriate sites for the collection or disposal of obsolete or unwanted pesticides or pesticide containers.

Adulteration of pesticides.

36. A person who adulterates a pesticide or knowingly sells or stores an adulterated pesticide, commits an offence.

PART V

REGISTERS, INVENTORY AND RECORD-KEEPING

Keeping and maintenance of registers.

37. (1) The Registrar shall keep and maintain a register of pesticides, a register of licenses and other registers as may be prescribed in regulations.

(2) The Registrar shall enter in the registers such information as may be prescribed and in particular enter in the register of pesticides the following information on pesticides —

- (a) trade name;
- (b) common name;
- (c) chemical name;
- (d) concentration;
- (e) formulation;
- (f) uses for which registration is granted;
- (g) label of the pesticide;
- (h) name and address of the applicant and any other data as may be prescribed.

(3) The register shall be available for inspection by the public during normal business hours and the Registrar shall on demand by government departments or non-governmental organisations provide a copy of the register save for confidential information.

Registrar to keep an inventory.

38. (1) The Registrar shall keep an inventory of pesticides which shall include such information as the Registrar may consider useful for the purposes of adequate pesticide management in Eswatini.

- (2) The inventory shall also include information on —
- (a) types and quantity of pesticides used in Eswatini;
 - (b) obsolete or unwanted pesticides in any storage facilities or elsewhere in Eswatini including information on the reasons these pesticides have become obsolete; and
 - (c) contaminated sites.

Keeping of records.

39. (1) A person who imports, manufactures, packs, repacks, stores, sells or labels pesticides shall keep records of all the pesticides and quantities of such pesticides so dealt with.

(2) Records kept in accordance with sub-section (1) shall be made available, upon request, to the Registrar or any pesticides enforcement officer.

PART VI

DESIGNATION OF LABORATORIES

Laboratories and Analyst.

40. (1) The Minister may by notice in the *Gazette* appoint a competent person to be a designated pesticides analyst and designate one or more suitable laboratories to be officially utilised for purposes of pesticides analysis under this Act.

(2) Where necessary and due to the complexity of the analysis, samples may be submitted to an internationally recognized laboratory whose analysis shall be deemed official for the purposes of this Act.

Certificates of analysis.

41. (1) A designated pesticides analyst shall issue a certificate of analysis conducted by that analyst in terms of this Act.
- (2) Certificates of analysis issued by a laboratory designated under this Act shall state the methods of analysis used and other information that may be prescribed by regulations.
- (3) Certificates of analysis issued under this section shall be *prima facie* evidence of the facts stated therein in court proceedings.

Taking of samples.

42. All samples taken under this Act shall be taken in the manner prescribed in the regulations.

PART VII
ENFORCEMENT

Pesticides enforcement officers.

43. (1) The Minister, acting on the advice of the Board, shall by notice in the *Gazette* appoint pesticide enforcement officers.
- (2) The pesticides enforcement officers shall consist of —
- (a) officers from the Ministry responsible for phytosanitation;
 - (b) officers from the Ministry responsible for veterinary inspection;
 - (c) police officers;
 - (d) officers from the Eswatini Revenue Authority; and
- (3) The Registrar may also perform the functions of a pesticide enforcement officer.

Powers of pesticides enforcement officers.

44. (1) A pesticides enforcement officer may, during regular business hours, for the purpose of ensuring compliance with this Act, subject to section 54 (2), without a warrant and upon presentation of an identification document of that officer —
- (a) carry out periodic inspections of all establishments which import, export, manufacture, pack, repack, label, store, sell, distribute, use or advertise pesticides, to determine whether the provisions of this Act are being complied with;
 - (b) require production, inspection, examination or copying of certificates, permits, licences, records or any other document relating to the provisions this Act;
 - (c) take samples of any substances to which this Act relates and, as may be prescribed, submit such samples for analysis; and
 - (d) seize any equipment, pesticide, document, record, or other thing which the pesticide enforcement officer believes has been used in, or which appears to afford evidence of a contravention of this Act.

(2) After executing the duties in terms of sub-section (1) paragraph (d), a pesticide enforcement officer shall —

- (a) prepare an inventory in the prescribed form and give a copy of such inventory to the owner or the person in lawful custody of such item; and
- (b) promptly return the seized item to that person after the necessary inquiry or prosecution has been completed and the item has been declared legal.

(3) Pesticides enforcement officers shall be responsible for reporting violations of this Act to the Registrar and the Committee.

(4) The decision of the court in legal proceedings instituted under this Act shall prevail over that of any enforcement officer in regard to the disposition of an item seized under sub-section (1) (d) of this section.

Inspection of private residence.

45. (1) Subject to sub-section (2) a pesticides enforcement officer shall not enter any dwelling except with the consent of the occupier or under the authority of a warrant.

(2) If a pesticides enforcement officer believes on reasonable grounds that the delay in obtaining a search warrant would defeat the object and purpose of the search, the pesticides enforcement officer may enter and search any dwelling and any person or thing found in that private residence.

(3) If it appears to a magistrate on an application by a pesticide enforcement officer that there are reasonable grounds to believe that —

- (a) there is in a dwelling place anything in respect of which this Act applies;
- (b) entry into any dwelling place is necessary for a purpose relating to the administration of this Act; and
- (c) entry to any dwelling place has been refused or there are reasonable grounds to believe that entry will be refused,

the magistrate may at any time sign and issue a warrant authorising any pesticides enforcement officer to enter and search that dwelling place subject to conditions that may be specified in the warrant.

(4) A pesticides enforcement officer may use such force as may be reasonably necessary to execute a warrant under this section.

Inspection of vehicles.

46. (1) In this section, “vehicle” includes a motor vehicle as defined in the Road Traffic Act, 2007, and a vessel, trailer or wagon.

(2) For the purposes of ensuring compliance with this Act and the regulations, a pesticides enforcement officer may —

- (a) require a person operating a vehicle to stop the vehicle; and
- (b) carry out an inspection of that vehicle.

- (3) The operator of a vehicle shall immediately stop that vehicle when requested or signalled to do so by a pesticide enforcement officer who —
- (a) displays the official badge or an identity of being a pesticide enforcement officer; or
 - (b) is in or near a vehicle that is readily identifiable as a government vehicle.
- (4) For the purposes of carrying out an inspection under this section, a pesticides enforcement officer may —
- (a) request that any compartment of the vehicle or a container in or on the vehicle be opened, and
 - (b) exercise any of the powers under section 44.

PART III
OFFENCES, PENALTIES AND PROCEEDINGS

Offences and penalties.

47. (1) A person who —
- (a) obstructs;
 - (b) provides false information to;
 - (c) fails to comply with an order, requisition or direction lawfully made or given by;
 - (d) fails to answer any question reasonably asked by;
 - (e) prevents or attempts to prevent another person from complying with an order, requisition or directions by or from answering any question from,
- a pesticides enforcement officer in pursuance of this Act, commits an offence and is liable on conviction to a fine not exceeding two thousand Emalangeni or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.
- (2) A person who —
- (a) manufactures, packs, repacks, labels, sells, stores, distributes, possesses or uses a pesticide in Eswatini which is not registered in terms of this Act or which has not been given special permit in accordance with section 26;
 - (b) sells or distributes a pesticide —
 - (i) without an approved label attached to it, or
 - (ii) which does not meet the specifications as stated when the product was registered;
 - (c) detaches, alters, defaces or destroys any label on the container of a pesticide product;
 - (d) repacks or transfers the contents of a pesticide product in a container which is not labelled with an approved label and such operation is carried out in un-licensed premises;
 - (e) advertises a pesticide which is either, not registered, or in manner that is misleading or inaccurate;

- (f) supplies a pesticide which is packaged in a container which has deteriorated, or has been damaged such that it is dangerous in storage or transport, or when opened for use;
- (g) uses pesticide in a manner which is not consistent with the conditions on the approved label;
- (h) without a licence, performs a function which a licence is required to perform;
- (i) imports and exports a pesticide without a valid permit;
- (j) fails to comply with any conditions of registration, licence, or permit;
- (k) transports a pesticide or pesticide containers contrary to the provisions of this Act;
- (l) stores or disposes any pesticide or pesticide waste in a manner that may harm human or animal health or the environment or in a manner contrary to this Act; and
- (m) fails to keep records which are required under this Act,

commits an offence and is liable on conviction to a fine not exceeding twenty thousand Emalangeni or to a term of imprisonment not exceeding five years or to both such fine and imprisonment.

(2) A person who intentionally provides false information for the purpose of registration, obtaining a licence or a permit in terms of this Act, commits an offence and is liable on conviction to a fine not exceeding five thousands Emalangeni or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

General penalty and proceedings.

48. (1) A person who commits an offence under this Act for which no penalty is specifically provided shall be liable upon conviction to a fine not exceeding five thousand Emalangeni (E5 000) or imprisonment for a period not exceeding two years or both.

(2) An attempt to commit an offence under this Act shall constitute an offence and may be dealt with in like manner as if the attempted offence had been committed.

(3) A person who aids, abets, counsels or procures an offence under this Act or conspires to commit such an offence commits the offence so aided, counselled or procured or conspired to be committed.

(4) In a prosecution for an offence under this Act a certificate purporting to be signed by the Registrar or any officer authorised by the Registrar for that purpose to the effect that on a day specified in the certificate —

- (a) a pesticide was not registered under this Act; or
- (b) the accused person or any other named person was not the holder of a permit or certificate under this Act,

shall in the absence of evidence to the contrary be sufficient evidence of the issues stated in the certificate.

Additional penalties.

49. Where after convicting a person the court is satisfied that the convict acquired monetary benefits as a result of the commission of the offence, the court may, in addition to the normal sentence —

- (a) order the convict to pay to the Government any such money which the court may impose after considering the monetary benefit acquired by the convict;
- (b) disqualify the convict from holding any licence, certificate or permit; or
- (c) order the Registrar to suspend or cancel, for any period of time, any licence, certificate or permit issued in terms of this Act.

Liability of registered companies, partnerships, associations and firms.

50. If an offence under this Act has been committed by a company or a member of a partnership, firm or business, society or association of persons, every director or officer of that company or any other member of the partnership or association or other person concerned with the management of the partnership, firm or business, society or association of persons shall be liable for that offence unless that person proves to the satisfaction of the court that —

- (a) due diligence to secure compliance with the provisions of this Act was applied by that person; and
- (b) the offence was committed without the knowledge, consent or connivance of that person.

PART IX

ADDITIONAL PENALTIES AND CHARGES

Suspension or cancellation of licence, certificate or permit.

51. A court convicting a person for a second or subsequent offence under this Act may, in addition to any other penalty imposed —

- (a) order the Registrar to suspend or cancel, for any such period of time as the court may determine, any licence, certificate or permit issued under this Act; or
- (b) disqualify the convict, from holding any licence, certificate or permit under this Act, for any such period of time as the court may specify.

Forfeiture.

52. (1) If a person is convicted of an offence under this Act the court may, in addition to any other penalty that it may impose, order that the pesticide or item in relation to which the offence was committed or the proceeds received from its disposal be forfeited to the Government.

(2) The pesticide or item forfeited under subsection (1) shall be disposed of in accordance with section 35 subsections (3) and (4).

(3) If an owner or a person with lawful custody of a pesticide or item that is seized and detained under this Act consents to the forfeiture of that pesticide or item, that pesticide or item shall thereupon be forfeited to the Government and shall be disposed of in accordance with section 34 sub-sections (3) and (4).

Return of seized pesticides or items.

53. Where a pesticide or item has been seized under this Act and no order has been made to forfeit that pesticide or item, the pesticide or item seized or any proceeds shall be returned to its owner or the person having the lawful possession, care or control of the pesticide or item at the time of seizure.

Fees, charges and costs.

54. (1) Without limiting the generality of the foregoing the Government may recover from any person referred to in subsection (1) any prescribed fees or charges and any costs incurred by the Government in relation to any thing required or authorised under this Act including —

- (a) the cost of any laboratory analysis or report in respect of any pesticide for which an application for registration has been made under this Act;
- (b) the inspection, treatment, testing, analysis of any animal, plant or thing or the removal, disposal or return of an animal, plant or thing required or authorised under this Act; and
- (c) the seizure, detention or disposal of a thing under this Act.

(2) The fees, charges and costs are recoverable from the applicant for registration of the pesticide under paragraph (a) of subsection (1) and in respect of paragraphs (b) and (c) of the subsection, from the person having the possession, care and control of the animal, plant or thing immediately before its inspection, treatment, testing or analysis, removal, disposal or return or immediately before its seizure, detention or disposal under this Act.

PART X

APPEALS

Pesticides Appeals Tribunal.

55. (1) There shall be a Pesticides Appeals Tribunal whose functions shall be to hear appeals against the actions and decisions of the Registrar under this Act.

(2) The Tribunal shall be appointed by the Minister and shall consist of —

- (a) a Chairperson who shall be a legal practitioner of not less than ten years experience in the practice of law;
- (b) a deputy Chairperson who shall be a legal practitioner of not less than seven years experience in the practice of law;
- (c) three other members having the necessary and relevant expertise or experience.

(3) The Tribunal shall be duly constituted for its work by the Chairperson, and in the absence of the Chairperson the deputy Chairperson, and two other members.

(4) The Tribunal shall be independent in the performance of its functions and any person who interferes with the functions of the Tribunal in any manner, commits an offence.

(5) The members of the Tribunal shall be appointed for a term of three years and shall be eligible for re-appointment.

(6) The members of the Tribunal shall be removed from office in the same manner as members of the Committee.

(7) The Minister shall designate a person, who is not a member, to serve as secretary to the Tribunal and that person shall serve in that capacity in accordance with the ethical standards appropriate of that office.

(8) A member of the Tribunal may recuse oneself on one's own motion, or on application by any interested person, for any of the reasons for which a judge or magistrate may recuse oneself or may be required to recuse oneself in accordance with the law applicable in Eswatini.

(9) Where a member of the Tribunal becomes aware that a party to the appeal or any person who has an interest in the appeal, is a close relative or associate of the member, or of any person who has an influence on the member has an interest in the appeal or any other matter which is the subject of proceedings or deliberations, that member shall —

(a) as soon as possible disclose that interest; and

(b) not be present or participate in any proceedings or deliberations of the Tribunal in relation to that matter.

(10) A member of the Tribunal who intentionally fails to comply with sub-section (9) of this section commits an offence.

(11) The powers of the Tribunal and the manner and procedure for appeals before the Tribunal shall be prescribed.

PART XI

REGULATIONS AND INDEMNITIES

Regulations.

56. (1) The Minister may make regulations or issue an order or notice to give effect to any of the purposes of this Act.

(2) In particular and without prejudice to the generality of subsection (1) the regulations under this section may prescribe all or any of the following matters —

(a) anything which is to be or may be prescribed under this Act;

(b) the authorization, regulation, control, restriction or prohibition of the —

(i) manufacture,

(ii) alteration,

(iii) decanting,

(iv) repackaging,

(v) import and export,

(vi) storage,

- (vii) transportation,
 - (viii) sale,
 - (ix) use, and
 - (x) dumping and other disposal,
- of any pesticide or class of pesticides;
- (c) ban, restrict or severely restrict the import, export and use of pesticides;
 - (d) the designation of places as port of entry or exit, where pesticides may be presented for inspection and admittance into and exit from Eswatini;
 - (e) the form and content of any application, certificate, licence, permit, authorization, receipt, or other documents under this Act;
 - (f) the information to be considered proprietary information and how this information shall be maintained;
 - (g) the procedures and criteria to be followed by the Registrar and the Committee in considering the grant, review, variation, suspension, renewal and revocation of registration, licences, and any permits under this Act;
 - (h) the period of validity of registration, licence, and permit granted or issued under this Act;
 - (i) the requirements of pesticide containers and labels;
 - (j) the storage and the proper disposal of pesticides and pesticides containers;
 - (k) advertising of pesticides;
 - (l) precautions and work safety measures to be taken for protection from injury, ill health and death of persons exposed to pesticides during their manufacture, transport, storage and use;
 - (m) the maximum residue limits permitted in respect of crops that have been treated before or after harvesting with pesticides or its components or derivatives, or have been gathered from plants that have been so treated;
 - (n) the form, content and manner of keeping and maintaining registers, inventories and records;
 - (o) the notification of cases or suspected cases of poisoning, intoxication, injury, illness and death of persons and animals that have been exposed to pesticides;
 - (p) the duties and responsibilities of persons responsible for any pesticides or for premises on which such pesticides are kept;
 - (q) criteria and requirements for laboratories designated under this Act;
 - (r) the procedures to be followed for submitting samples for analysis under this Act;
 - (t) the procedures to be followed where any equipment, pesticide, document, record, or other thing is seized under this Act;
 - (u) the destruction of pesticides manufactured, modified, imported, stored, transported or used contrary to this Act;

- (v) the payment of fees on applications for registration, permits and licences under this Act, on the carrying out or issue of the same, charges for any analysis required under this Act and any other fees or charges for carrying out the purposes and provisions of this Act and calculation of interest that shall accrue on unpaid fees and charges;
- (w) the provision by applicants for registration under this Act of bonds or other forms of security for securing their compliance with the obligations under the terms and conditions of their registrations or permits or their compliance with provisions of this Act;
- (x) compliance with and the implementation of obligations of Eswatini under bilateral and multilateral treaties, convention or agreements;
- (y) penalties for contravention of regulations, any rules made or any conditions attached to any registrations, licences or permits effected, given or issued under the regulations; and
- (z) the manner of filing an appeal to the Pesticides Appeals Tribunal.

Indemnities of Government and officers.

57. (1) The Government shall not be liable in respect of anything done or omitted to be done in good faith in the exercise of a power or duty under this Act.

(2) An action shall not lie against a pesticides enforcement officer in respect of any act done or omitted in good faith in the purported exercise of any powers under this Act.
