

Mr Johnathan Mudzunga
Registrar Act 36 of 1947
Private Bag X 343
Pretoria

27th August 2021

By email: MalutaM@dalrrd.gov.za

DRAFT REGULATIONS RELATING TO THE AGRICULTURAL REMEDIES: GNR 541 OF 18 JUNE 2021- UNDER FERTILIZERS, FARM FEEDS AND AGRICULTURAL REMEDIES ACT (36 OF 1947.

Dear Mr Mudzungu

We refer to our submission dated 20th August 2021 in response to the publication of the Draft Regulations relating to agricultural remedies, and your confirmation of receipt.

Our submission highlights major deficiencies from a constitutional perspective in the draft regulations. They fail the test of a “reasonable measure”¹ for the protection of public health and the environment, as envisaged by section 24 of the Constitution. If they are promulgated they stand to be challenged as unconstitutional. In particular they fail to constitute a reasonable measure as a result of the following deficiencies:

- a) There is no provision for public participation in the registration of, and renewal of registration of pesticides and agricultural remedies, contrary to the requirements of the Principles of the National Environmental Management Act²;
- b) no recognition is given to the recommendations of the 2010 Pesticide Management Policy³, particularly regarding measures to prevent pesticide drift into non target areas;
- c) there is a lack of recognition of International developments in the definition of “substances of concern.” Only a very limited group of chemicals is to be excluded under this heading, which also does not include “highly hazardous chemicals.”⁴

¹The SA Constitution states:

Section 24 :Everyone has the right - (a) to an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that - (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure. ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

² Act 107 of 1998 section 2 - Principles

³ Pesticide Management Policy for South Africa - GN 1120 of 2010 published in GG 33 899 on 24 December 2010.

⁴ The draft regulations define these substances too narrowly and must at a minimum include Category IB of the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) presumed toxicants. Category 1A of the GHS, which is the category specified in the draft regulation’s definition of substances of concern from the GHS is extremely narrow, encompassing only ‘known’ toxicants, and does not include the broader categories of ‘presumed’ toxicants.

- d) There is a lack of clear and justiciable criteria for the development of labels which will ensure the proper management of pesticide drift, and other potentially health threatening conduct such as aerial spraying of agricultural chemicals;
- e) No provision is made for education and safe disposal of containers, and ineffective enforcement provisions based on criminal prosecution remain, resulting in a continued lack of deterrent for non compliance with the labels and regulations generally.
- f) No framework is provided for the assessment of risk to public health and/or the environment of granting registration to agricultural remedies or allowing their renewal. Where existing registrations are reviewed the powers of the registrar regarding possible refusal of further registration, are limited by being either unacceptably vague, or where specific, pertain only to the narrowly defined “substances of concern.” This unreasonably fetters the discretion of the Registrar which will make it more difficult and costly for the Department to refuse future renewal of registrations.

CONTEXT

The failure of the draft regulations to address major threats to public health identified in the 2010 Pesticide Management Policy will result in the perpetuation of widespread non-compliance with current label requirements for pesticides and other agricultural chemicals. This policy notes that there is an

“...absence of effective management of pesticides to ensure that pesticides are used in ways that lead to the minimisation of significant adverse effects on human health and the environment is of concern.”⁵

A 2019 study of the Krom, Breede and Hex River catchments⁶ using passive water samplers detected 248 chemicals, including 187 pesticide compounds in river water samples, in a number of typical fruit farming areas in the Western Cape. This depicts the scale of the problem of pesticide drift very clearly.⁷ Many of the chemicals detected are banned in other countries.

The conclusion is inescapable that there is widespread non-compliance with the label requirements that pesticides and other agricultural remedies not be allowed to drift into non target areas and water bodies. Clearly there is a need for reform to bring the labels and

⁵ id section 1.

⁶ Out of the 248 analyzed compounds (187 pesticide compounds and 61 TPs), 34 parent compounds (18% of the analyzed active ingredients) and 19 TPs (31% of the analyzed TP) were detected (Table S4 of the SI). The 34 pesticide compounds detected above LOD consisted of 13 fungicides, 12 herbicides and nine insecticides (Fig. 3). Out of the 96 pesticide compounds that have been reported on the spray records, 35 compounds were covered by the analytical method. These included six out of the eight dominating compounds in the spraying records (Tables S3 and S4 of the SI). Only the fungicide mancozeb and the herbicide glyphosate, which are hardly stable in the environment or require particular analytical methods, were not covered (paragraph 3.2.2)

⁷ Temporal variation of pesticide mixtures in rivers of three agricultural watersheds during a major drought in the Western Cape, South Africa. LouCurchod^{abcd}ChristelleOlttramare^cMarionJunghans^dChristianStamm^eMohamed AqielDalvie^eMartinRöösli^{ab}SamuelFuhrmann^{ef} available: <https://www.sciencedirect.com/science/article/pii/S2589914719300751>

practices of pesticide and herbicide application in line with international best practice, which includes severe restrictions on aerial spraying.

IMPACT OF FAILURE TO PROPERLY MANAGE PESTICIDES AND AGRICULTURAL CHEMICALS

A wide array of health impacts from agricultural remedies due acute and/or long term exposure can include – the risks of developing cancers, endocrine disruption, impacts on neurodevelopment of children, impacts on the immunological system, renal and respiratory effects, development of obesity, dermatological, neurological and cognitive effects. Most at risk of developing these serious medical conditions are the most vulnerable in our society, women, children and farm workers. These persons can least afford the medical costs apart from other impacts on their lives that result from continued chemical exposure.

The Department of Agriculture Land Reform and Rural Development is under a constitutional duty to protect public health and implement its 2010 Pesticide Management Policy, but has unreasonably failed to do so. The promulgation of the Draft Regulations will lead to an unacceptable perpetuation of the *status quo* of widespread pesticide and agricultural chemical contamination.



We call upon you to withdraw the draft regulations within 10 days of receipt of this letter, and to commence a consultative process with civil society and interested and affected parties with a view to promulgating regulations that will protect public health and the environment.










Should you fail to do so our rights to take further action are reserved.

UNPOISON

Per: Anna Shevel,
 Network Co-ordinator
 Director Good Food Network

This letter is supported by the following organisations:

	Biowatch	Vanessa Black	Policy Coordinator
	SAOSO	Colleen Anderson	Secretariat

 PGS SOUTH AFRICA	PGS SA	Matthew Purkiss	Vice-Chair
	Green Times	Elma Pollard	Editor
 <p>School of Public Health and Family Medicine Isikelo Sempilo Yoluntu kunye Namazozo Osiqho Departement Openbare Gesondheid en Huisartskunde</p> 	UCT School of Public Health and Family Medicine	Prof Leslie London	Head of Dept
	South African Food Lab	Scott Drimie	Director
	UCT dept of Environmental Studies	Prof Lesley Green	Director
	Groundwork	Rico Euripidou	Environmental Health Campaigner
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