

13th September 2021

The Chairperson
Portfolio Committee on Agriculture, Land Reform and Rural Development
Parliament of the Republic of South Africa
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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 Chairperson Mandela,

UnPoison is a civil society movement made up of concerned citizens, educational institutions, and other multi-sector organisations that are united behind the common goals of effecting legislative reform of agrichemical policy, ensuring effective regulation and monitoring of agrichemical use, transparent registration processes, access to product information, and ensuring a healthy, clean, just, and safe South Africa for all.

We refer you to recent draft regulations published for comment under the FERTILIZERS, FARM FEEDS AND AGRICULTURAL REMEDIES ACT¹ (FFFARA) by the Department of Agriculture, Land Reform and Rural Development, which falls under your oversight powers as a parliamentary portfolio committee. These regulations principally relate to the registration and renewal of registration of pesticides and agricultural chemicals under this Act.

We responded to these draft regulations by making extensive submissions that point out that if promulgated the regulations will be unconstitutional. Consequently we asked for their withdrawal, and have not received a response. See our submissions in annexure A hereto.

¹ Act 36 of 1947 – draft regulations published under GNR 541 OF 18 JUNE 2021- UNDER FERTILIZERS, FARM FEEDS AND AGRICULTURAL REMEDIES ACT (36 OF 1947).

Our submission to the Registrar under Act 36 of 1947, dated 20th August 2021 highlighted major deficiencies from a constitutional perspective in the draft regulations. We stated that the draft regulations fail the test of a “reasonable measure”² for the protection of public health and the environment, as envisaged by section 24 of the Constitution and if promulgated they stand to be challenged as unconstitutional.

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.

In particular the draft regulations 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 Act³;
- b) no recognition is given to the recommendations of the 2010 Pesticide Management Policy⁴, 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.”⁵
- 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,

²The 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.

³ Act 107 of 1998 section 2 - Principles

⁴ Pesticide Management Policy for South Africa - GN 1120 of 2010 published in GG 33 899 on 24 December 2010.

⁵ 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.

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 limits the ability of the Registrar to exercise her/his discretion which will make it more difficult and costly for the Department to refuse future renewal of registrations.

One of the most concerning aspects of the regulations is the fact they authorise the renewal and registration of highly hazardous chemicals without providing clear and justiciable criteria to exercise administrative discretion in allowing these products to be used and sold in the Republic of South Africa. As is clear from the Constitutional Court judgment in:

Dawood and Another v Minister of Home Affairs and Others ; Shalabi and Another v Minister of Home Affairs and Others ; Thomas and Another v Minister of Home Affairs and Others (CCT35/99) [2000] ZACC 8; 2000 (3) SA 936; 2000 (8) BCLR 837 (7 June 2000)

Legislation granting the power to infringe a constitutional right must be drafted in such a way that the exercise of administrative discretion that infringes such rights is guided by **clear and justiciable criteria**. A statute granting powers which are vague results in courts having to determine whether the exercise of powers in each case was reasonable and justifiable which is inappropriate, as statutes are required to promote the Bill of Rights and ensure that administrative officials exercise their discretion appropriately and also promote the bill of rights.

A further matter of considerable concern is the fact that these draft regulations make no provision for public participation in the regulation of agricultural chemicals and pesticides notwithstanding their highly hazardous nature and the fact that there is widespread non-compliance with current regulations – leading to a likely significant impact on the most vulnerable of our society, namely farm workers and indigent rural communities, women and children.

Given the oversight role of Parliament which is to scrutinize and oversee executive action in terms of section 42(3) of the constitution, and in so doing

- to prevent illegal and unconstitutional conduct on the part of the government
- to protect the rights and liberties of citizens
- to hold the government answerable for how taxpayers' money is spent
- to make government operations more transparent and increase public trust in the government,⁶

⁶ <https://www.parliament.gov.za/oversight>

we approach you to request your intervention in this matter and to ensure that the Department does not promulgate these unconstitutional regulations.

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.”⁷

A 2019 study of the Krom, Breede and Hex River catchments⁸ 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.⁹ 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 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 to 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,

⁷ id section 1.

⁸ 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).

⁹ Lou Curchod, Christelle Oltramare, Marion Junghans, Christian Stamm, Mohamed Aqiel Dalvie, Martin Rössli and SamuelFuhrimann. 2020. Temporal variation of pesticide mixtures in rivers of three agricultural watersheds during a major drought in the Western Cape, South Africa. Available: <https://www.sciencedirect.com/science/article/pii/S2589914719300751>

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 intervene in terms of your oversight functions as a parliamentary portfolio committee, and require the Department to withdraw the draft regulations and 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 and be constitutionally compliant.

We await your response and welcome your engagement to address the issues raised.




UNPOISON

Per: Anna Shevel
 UnPoison Network Co-ordinator
 Director of Good Food Network

This letter is supported by the following organisations:

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	SAOSO	Colleen Anderson	Secretariat
	PGS SA	Matthew Purkiss	Vice-Chair
	Green Times	Elma Pollard	Editor

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