

# Pest Control Products Act

## CHAPTER P-9

An Act to regulate products used for the control of pests and the organic functions of plants and animals

### SHORT TITLE

#### 1 Short title

1. This Act may be cited as the *Pest Control Products Act*.

R.S., c. P-10, s. 1.

### INTERPRETATION

#### 2 Definitions

2. In this Act,

2 “*advertise*” « *publicité* »

“advertise” includes any representation by any means whatever for the purpose of promoting directly or indirectly the sale or other disposition of a control product;

2 “*analyst*” « *analyste* »

“analyst” means a person designated as an analyst pursuant to subsection 7(1);

2 “*control product*” « *produits antiparasitaires* »

“control product” means any product, device, organism, substance or thing that is manufactured, represented, sold or used as a means for directly or indirectly controlling, preventing, destroying, mitigating, attracting or repelling any pest, and includes

(a) any compound or substance that enhances or modifies or is intended to enhance or modify the physical or chemical characteristics of a control product to which it is added, and

(b) any active ingredient used for the manufacture of a control product;

2 “*inspector*” « *inspecteur* »

“inspector” means a person designated as an inspector pursuant to subsection 7(1);

2 “*label*” « *étiquette* »

“label” includes any legend, word, mark, symbol or design applied or attached to, included in, belonging to or accompanying any control product;

2 “*Minister*” « *ministre* »

“Minister” means the Minister of Agriculture and Agri-Food;

2 “*package*” « *emballage* »

“package” includes any container, wrapping, covering or holder in which any control product or other material is wholly or partly contained, placed or packed;

2 “*pest*” « *parasite* »

“pest” means any injurious, noxious or troublesome insect, fungus, bacterial organism, virus, weed, rodent or other plant or animal pest, and includes any injurious, noxious or troublesome organic function of a plant or animal;

2 “place” « lieu »

“place” includes any vehicle, vessel, railway car or aircraft;

“prescribed” *Version anglaise seulement*

“prescribed” means prescribed by regulation;

2 “sell” « vente »

“sell” includes sell, offer for sale, expose for sale, display or advertise for sale, have in possession for sale and distribute.

R.S., 1985, c. P-9, s. 2; 1994, c. 38, s. 25.

## HER MAJESTY

### 3 Binding on Her Majesty

3. This Act is binding on Her Majesty in right of Canada or a province.

1980-81-82-83, c. 88, s. 1.

## PROHIBITIONS

### 4(1) Manufacture, etc., under unsafe conditions

#### 4.—

(1) No person shall manufacture, store, display, distribute or use any control product under unsafe conditions.

### 4(2) Deception

(2) No person shall package, label or advertise any control product in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety.

### 4(3) Product deemed unsafe

(3) A control product that is not manufactured, stored, displayed, distributed or used as prescribed or that is manufactured, stored, displayed, distributed or used contrary to the regulations shall be deemed to be manufactured, stored, displayed, distributed or used contrary to subsection (1).

### 4(4) Packaging deemed deceptive

(4) A control product that is not packaged, labelled or advertised as prescribed or that is packaged, labelled or advertised contrary to the regulations shall be deemed to be packaged, labelled or advertised contrary to subsection (2).

R.S., c. P-10, s. 3.

## 5(1) Sale and importation of control products

### 5.—

- (1) No person shall sell in or import into Canada any control product unless the product
- (a) has been registered as prescribed;
  - (b) conforms to prescribed standards; and
  - (c) is packaged and labelled as prescribed.

## 5(2) Export and interprovincial movement of control products

- (2) No person shall export out of Canada, or send or convey from one province to another any prescribed control product unless the product was manufactured in an establishment that
- (a) complied with prescribed conditions; and
  - (b) was registered and operated as prescribed.

R.S., c. P-10, s. 4.

## REGULATIONS

### 6(1) Regulations

#### 6.—

- (1) The Governor in Council may make regulations
- (a) prescribing for the purposes of this Act the nomenclature of pests, control products and classes and kinds of pests and control products;
  - (b) prescribing the form in which applications for registration of any pest control product shall be made and the information to be furnished therewith;
  - (c) prescribing any control product for the purposes of subsection 5(2);
  - (d) respecting the registration of control products and of establishments in which any prescribed control products are manufactured and prescribing the fees therefor, and respecting the procedures to be followed for the review of cases involving the refusal, suspension or cancellation of the registration of those products or establishments;
  - (e) respecting the inspection and operation of establishments in which any prescribed control products are manufactured;
  - (f) exempting any control product or any person or any class of control products or persons from the operation of all or any of the provisions of this Act, and prescribing the conditions for exemption;
  - (g) prescribing the form, composition and other standards for control products;
  - (h) respecting the manufacture or treatment of any control product to facilitate its recognition by change in coloration or other means;
  - (i) respecting the standards for efficacy and safety of any control product;
  - (j) respecting the manufacture, storage, distribution, display and use of any control product;
  - (k) respecting the packaging, labelling and advertising of control products and packages of those products;
  - (l) respecting the taking of samples and the making of analyses for the purposes of this Act;
  - (m) prescribing the information and the form of the information that is to be furnished for any control product that is to be imported into Canada;
  - (n) prescribing the circumstances and conditions under which control products that have met the requirements of the *Food and Drugs Act* may be deemed to be registered as prescribed under this Act;

- (o) respecting the detention of any control product seized under section 10, the establishment of procedures for the review of any seizure and detention and the payment of any reasonable costs incidental to the seizure or detention, and for preserving or safeguarding any control product detained;
- (p) respecting the destruction or disposition of any control product forfeited under section 10 and the payment of any reasonable costs incidental to destruction or disposition; and
- (q) generally, for carrying out the purposes and provisions of this Act.

## 6(2) Regulations re NAFTA and WTO Agreement

(2) Without limiting the authority conferred by subsection (1), the Governor in Council may make such regulations as the Governor in Council deems necessary for the purpose of implementing, in relation to control products, Article 1711 of the North American Free Trade Agreement or paragraph 3 of Article 39 of the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex 1C to the World Trade Organization Agreement.

## 6(3) Definitions

(3) In subsection (2),

### 6(3) “North American Free Trade Agreement” « *Accord de libre-échange nord-américain* »

“North American Free Trade Agreement” has the meaning given to the word “Agreement” by subsection 2(1) of the *North American Free Trade Agreement Implementation Act*;

### 6(3) “World Trade Organization Agreement” « *Accord sur l’OMC* »

“World Trade Organization Agreement” has the meaning given to the word “Agreement” by subsection 2(1) of the *World Trade Organization Agreement Implementation Act*.

R.S., 1985, c. P-9, s. 6; 1993, c. 44, s. 200; 1994, c. 47, s. 143.

## ENFORCEMENT

### 7(1) Inspectors and analysts

7.—

(1) The Minister may designate any qualified person as an inspector or analyst for the purposes of this Act.

### 7(2) Certificate to be produced

(2) The Minister shall furnish every inspector with a certificate of his designation as an inspector and on entering any place or premises referred to in subsection 8(1) an inspector shall, if so required, produce the certificate to the person in charge thereof.

R.S., c. P-10, ss. 6, 7.

### 8(1) Powers of inspectors

8.—

(1) Subject to subsection (1.1), an inspector may at any reasonable time

- (a) enter any place or premises for the purpose of carrying into effect any of the provisions of this Act or in which the inspector believes on reasonable grounds a control product to which this Act applies is or has been manufactured, stored, sold or used or in which he believes on reasonable grounds there is any control product to which this Act applies or any material that is contaminated by a control product or that is used or capable of being used in the manufacture of a control product;

(b) examine any such control product or material found therein in bulk or open any package found therein that the inspector believes on reasonable grounds contains any such control product or material and take samples thereof; and

(c) require any person to produce for inspection or for the purpose of obtaining copies thereof or extracts therefrom any books, shipping bills, bills of lading, documents containing instructions, or other documents or papers concerning any matter relevant to the administration of this Act or the regulations.

### **8(1.1) Warrant required to enter dwelling-house**

1.1 Where any place or premises referred to in paragraph (1)(a) is a dwelling-house, an inspector may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant issued under subsection (1.2).

### **8(1.2) Authority to issue warrant**

(1.2) Where on *ex parte* application a justice of the peace is satisfied by information on oath

(a) that entry to a dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and

(b) that entry to the dwelling-house has been refused or that there are reasonable grounds for believing that entry thereto will be refused,

the justice of the peace may issue a warrant under his hand authorizing the inspector named therein to enter that dwelling-house subject to such conditions as may be specified in the warrant.

### **8(1.3) Use of force**

(1.3) In executing a warrant issued under subsection (1.2), the inspector named therein shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

### **8(2) Assistance to inspectors**

(2) The owner or person in charge of any place or premises referred to in subsection (1) and every person found therein shall give an inspector all reasonable assistance to enable the inspector to carry out his duties and functions under this Act and the regulations and shall furnish the inspector with any information he may reasonably require with respect to the administration of this Act and the regulations.

R.S., 1985, c. P-9, s. 8; R.S., 1985, c. 31 (1st Supp.), s. 16.

### **9(1) Obstruction of inspectors**

**9.—**

(1) No person shall obstruct or hinder an inspector in the carrying out of his duties or functions under this Act or the regulations.

### **9(2) False statements**

(2) No person shall make a false or misleading statement either orally or in writing to an inspector or other officer engaged in carrying out his duties or functions under this Act or the regulations.

### **9(3) Breaking of detention**

(3) Except as provided by this Act, no person shall remove from detention any control product seized and detained pursuant to this Act.

R.S., c. P-10, s. 8.

## 10(1) Seizure

### 10.—

(1) Where an inspector believes on reasonable grounds that this Act or the regulations have been contravened, the inspector may seize and detain the control product by means of or in relation to which the inspector believes on reasonable grounds the contravention was committed.

## 10(2) Detention

(2) A control product seized and detained pursuant to subsection (1) shall not be detained after

(a) the provisions of this Act and the regulations have, in the opinion of the inspector, been complied with,

(b) the owner agrees to dispose of the product in a manner satisfactory to the Minister, or

(c) the expiration of six months after the day of the seizure, or such longer period as may be prescribed with respect to any control product,

unless before that time proceedings have been instituted in respect of the contravention in which event the control product may be detained until the proceedings are finally concluded.

## 10(3) Forfeiture

(3) Where a person has been convicted of an offence under this Act, every control product by means of or in relation to which the offence was committed is, on the conviction, in addition to any punishment imposed, forfeited to Her Majesty if the forfeiture is directed by the court.

## 10(4) Disposal with consent

(4) Where an inspector has seized a control product and the owner of the product or the person in whose possession it was at the time of seizure consents in writing to its disposal, the control product is thereupon forfeited to Her Majesty and shall be disposed of, at the expense of the person consenting to the disposal, as the Minister may direct.

R.S., c. P-10, s. 9.

## OFFENCES AND PUNISHMENT

### 11(1) Contravention of Act or regulations

#### 11.—

(1) Every person who, or whose employee or agent, contravenes any provision of this Act or the regulations

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years;

or

(b) is guilty of an offence punishable on summary conviction.

### 11(2) Offence by employee or agent

(2) In a prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.

### 11(3) Limitation period

(3) Proceedings by way of summary conviction in respect of an offence under this Act may be instituted at any time within but not later than one year after the time when the subject-matter of the proceedings arose.

R.S., c. P-10, s. 10.

### 12(1) Certificate of analyst

12.—

(1) Subject to this section, a certificate of an analyst stating that the analyst has analyzed or examined an article or a sample submitted to him by an inspector and stating the result of the examination is admissible in evidence in a prosecution for a contravention of this Act or the regulations and in the absence of any evidence to the contrary is proof of the statements contained in the certificate without proof of the signature or official character of the person appearing to have signed the certificate.

### 12(2) Attendance of analyst

(2) The party against whom a certificate of an analyst is produced pursuant to subsection (1) may, with leave of the court, require the attendance of the analyst for the purposes of cross-examination.

### 12(3) Notice

(3) No certificate shall be admitted in evidence pursuant to subsection (1) unless the party intending to produce it has, before the trial, given to the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the certificate.

R.S., c. P-10, s. 11.

## 13 Venue

13. A complaint or information in respect of an offence under this Act may be heard, tried or determined by a magistrate or a justice if the accused is resident or carrying on business within the territorial jurisdiction of the magistrate or justice, although the matter of the complaint or information did not arise in that territorial jurisdiction.

R.S., c. P-10, s. 12.

## AMENDMENTS NOT IN FORCE

— 1995, c. 40, ss. 72 to 74:

72. Section 2 of the Pest Control Products Act is amended by adding the following in alphabetical order:

“penalty” « *sanction* »

“penalty” means an administrative monetary penalty imposed under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* for a violation;

“Tribunal” « *Commission* »

“Tribunal” means the Review Tribunal continued by subsection 4.1(1) of the *Canada Agricultural Products Act*;

“violation” « *violation* »

“violation” means any contravention of this Act or the regulations that may be proceeded with in accordance with the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.



73. Subsection 10(3) of the Act is replaced by the following:

**Forfeiture**

(3) Where the Tribunal decides that a person has committed a violation, or a person is convicted of an offence under this Act, the Tribunal or the convicting court, as the case may be, may, in addition to any penalty or punishment imposed, order that any control product by means of or in relation to which the violation or offence was committed, be forfeited to Her Majesty in right of Canada.

74. Subsection 11(1) of the Act is replaced by the following:

**Contravention of Act or regulations**

**11.—**

(1) Every person who, or whose employee or agent, contravenes any provision of this Act or the regulations is guilty of

(a) an offence punishable on summary conviction and liable to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding six months, or to both; or

(b) an indictable offence and liable to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding two years, or to both.