

Pesticides (Control) Act [Cap 226]

LAWS OF THE REPUBLIC OF VANUATU CONSOLIDATED EDITION 2006

Commencement: 16 March 1998

CHAPTER 226 PESTICIDES (CONTROL)

Act 11 of 1993

ARRANGEMENT OF SECTIONS

1. Interpretation
2. Establishment of a Pesticides Committee
3. Registrar of Pesticides
4. Constitution of the Pesticides Committee
5. Meetings of the Committee
6. Functions and duty of the Committee
7. Rules
8. Prohibition of importation, manufacture, formulation, use, distribution, etc., of pesticides
9. Importation of pesticides prohibited without a permit
10. Application for registration or for permit to import
11. Registration
12. Issue of certificate of registration
13. Additional information
14. Registration for restricted use and limited marketing
15. Register to be maintained by persons who import restricted use pesticides
16. Label to be approved before registration
17. Register of pesticide
18. Approved pesticide
19. Alteration in package or composition
20. Approved container or package
21. Permit to import a pesticide
22. Return to be furnished by the permit holder
23. Permit to import a pesticide for research purposes
24. Cancellation and suspension, etc., of certificate or permit

25. Adulterated, decomposed or deteriorated pesticides
26. Storage, transport and sale of pesticides in close juxtaposition with foodstuffs
27. Advertisement of pesticides
28. Storage of pesticides in bulk
29. Harvesting of crops
30. Inspectors and their power and functions
31. Analysis of samples
32. Seizure of articles
33. Procedure in respect of articles seized
34. Cost and expenses of analysis, examination, seizure, detention, destruction, etc.
35. Exemption of pesticides currently sold, offered for sale, etc.
36. Penalty for contravention of this Act
37. Forfeiture
38. Regulations

PESTICIDES (CONTROL)

An Act to make provisions for the regulation and control of the importation, manufacture, sale, distribution and use of pesticides, and for matters connected therewith.

1. Interpretation

In this Act unless the context otherwise requires –

"active ingredient" means the biologically acting part of the pesticide present in the formulation;

"adjuvant" means any product used as an aid to the application or effectiveness of a pesticide and includes stickers, spreaders, emulsifying agents and synergists;

"appointed member" means any member of the Committee appointed under paragraph (b) of subsection (1) of section 4;

"approved container" means the container approved by the Committee under section 20;

"approved label" means a label approved by the Committee under section 16;

"approved package" means a package approved by the Committee under section 20;

"authorized analyst" means any laboratory, institute, organization in Vanuatu or outside Vanuatu approved by the Pesticides Committee;

"authorized user" means any person authorized by the Committee to use a restricted use pesticide;

"certificate" means certificate of registration issued under section 12;

"Committee" means the Pesticides Committee established under section 2;

"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 the likelihood that a pesticide will cause an adverse effect (injury) under the conditions in which it is used;

"label" means the written, printed or graphic matter on, or attached to the pesticide, or the immediate container thereof and the outside container or wrapper of the retail package of the pesticide;

"Minister" means the Minister responsible for agriculture;

"permit" means the permit to import a pesticide issued under section 21;

"permit holder" means the holder of a permit issued under section 21;

"pest" means any organism including any pathogen which is known or suspected or liable to be directly or indirectly harmful to plants, animals or man or is in any other way deemed harmful or objectionable;

"pesticide" means any substance or mixture of substances for preventing, repelling, destroying or controlling any pest, and shall include substances intended for use as an insect growth regulator, a biopesticide, a plant-growth regulator, defoliant, desiccant, or agent for thinning fruit or preventing the premature fall of fruit, and substances applied to crops either before or after harvest to protect the commodity from deterioration during storage and transport;

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

"registered pesticide" means a pesticide which is registered under section 11 and in respect of which a certificate is issued under section 12;

"restricted use pesticide" means any pesticide in respect of which a certificate is issued under section 14, for the restricted use of that pesticide.

2. Establishment of a Pesticides Committee

There is hereby established a Committee to be known as the Pesticides Committee.

3. Registrar of Pesticides

(1) There shall be a Registrar of Pesticides, who shall perform the functions assigned to him under this Act or regulations made thereunder.

(2) The officer who holds the office of the Principal Plant Protection Officer in the Department of Agriculture shall be the Registrar of Pesticides.

4. Constitution of the Pesticides Committee

(1) The Committee shall consist of –

(a) the following ex-officio members namely –

(i) the Director of Agriculture who shall be the Chairman of the Committee;

(ii) the Director of Health;

(iii) the Commissioner of Labour;

(iv) the principal officer – Animal Health and Production;

(v) the Principal Environmental Officer;

(vi) the Registrar of Pesticides appointed under section 3; and

(b) not more than three persons who are experienced in the use of pesticides, or in pest control and related scientific disciplines, who shall be appointed by the Minister;

(c) If an officer mentioned in paragraph (a) of subsection (1) is unable to attend any meeting of the Committee he may authorize any other officer in his department to represent him at such meeting.

(2) Every appointed member shall unless he vacates office by resignation, death or removal hold office for a period of two years from the date of appointment to such office.

(3) The Minister may, if he considers it expedient to do so remove by order published in the Gazette, any appointed member of the Committee.

(4) Any appointed member who vacates office other than by removal shall be eligible for reappointment.

(5) Any appointed member may resign his office by notice in writing addressed to the Minister.

(6) The Committee may discharge its functions notwithstanding any vacancy among its members.

5. Meetings of the Committee

(1) Meetings of the Committee shall be held at least once in every year and at such other times as the Chairman may consider it necessary.

(2) Five members of the Committee shall form a quorum for any meeting of the Committee.

(3) Subject to the provisions of this Act, the Committee may regulate the procedure in regard to the meetings of the Committee and the transaction of business at such meetings.

(4) The Chairman of the Committee shall if present, preside at all meetings of the Committee. In the absence of the Chairman from any such meeting, the members present shall elect one of the members to preside at such meetings.

6. Functions and duty of the Committee

(1) The functions of the Committee shall be –

(a) to assess and evaluate any application for the registration of pesticides or for the import of any pesticide;

(b) to determine the conditions of use of any pesticide;

(c) to promote the efficient, prudent and safe use of pesticides;

(d) to administer the provisions of this Act and the regulations made thereunder.

(2) It shall be the duty of the Committee to advise the Minister on matters arising out of the administration of this Act and to carry out other functions assigned to it under this Act.

7. Rules

The Committee may make rules to provide for the holding of meetings and the procedure to be followed at such meetings.

8. Prohibition on importation, manufacture, formulation, use, distribution, etc., of pesticides

Notwithstanding anything in any other Act, but subject to the provisions of this Act, no person shall import into Vanuatu or manufacture, formulate, pack or distribute, sell, offer for sale or offer as a gift or free sample or deliver within Vanuatu any pesticide unless –

- (a) such pesticide is registered and a certificate of registration is obtained under this Act;
- (b) such pesticide is contained in the original container, or in an approved container or approved package and an approved label is conspicuously fixed on such container or package.

9. Importation of pesticides prohibited without a permit

Notwithstanding anything in any other Act, no person shall import any pesticide into Vanuatu unless –

- (a) such pesticide is a registered pesticide; and
- (b) a permit has been obtained under section 21 in respect of such importation.

10. Application for registration or for permit to import

(1) Every person who wishes to apply for registration of a pesticide, or for a permit to import a registered pesticide, under this Act, shall apply to the Committee for such registration or permit on the appropriate prescribed form.

(2) An application fee of VT 2,000 shall be furnished with every application made under subsection (1).

(3) Every application under subsection (1) for registration of a pesticide shall contain the following particulars –

- (a) the name and address of the applicant;
- (b) the name and address of the manufacturer, producer and supplier of the pesticide in respect of which such application is made;
- (c) the trade name of the pesticide;
- (d) the common chemical name of the active ingredient or ingredients;
- (e) a copy of the draft label which shall be affixed on any container or package in which such pesticide shall be sold;
- (f) samples of the container in which such pesticide shall be distributed or sold;
- (g) a statement of the claim made by the manufacturer or producer of such pesticide as to its uses, potency, shelf-life and effect;
- (h) a statement of the composition of such pesticide, its chemical identity, net weight, its stability in storage, methods of use and date of expiry for usage;
- (i) adequate toxicological data concerning such pesticides and their breakdown products including information on antidotes and environmental impact;
- (j) methods of analysis of the formulated compound;
- (k) methods for the determination of the residue of such pesticide;
- (l) report of official or other experimental stations or laboratory on biological tests concerning the efficacy of such pesticide;
- (m) such other information relating to the efficacy or safety of the pesticide as may be required by the Committee.

11. Registration

(1) Subject to the provisions of this Act, the Pesticide Committee shall on receipt of an application made under subsection (1) of section 10 for registration of a pesticide –

- (a) register the pesticide; or
- (b) register the pesticide subject to such terms and conditions the Committee may consider necessary under this Act; or
- (c) refuse registration of the pesticide and state reasons for such refusal.

- (2) The Committee may refuse registration under paragraph (c) of subsection (1) –
- (a) if the applicant fails to establish that the pesticide is effective;
 - (b) if the Committee is of the opinion that the use of the pesticide is likely to give rise to an unacceptable hazard to the environment or users;
 - (c) if the Committee considers it necessary in the interest of the public to do so; or
 - (d) if the applicant fails to furnish the necessary particulars as required under this Act or regulations made thereunder.

12. Issue of certificate of registration

(1) Upon registration of a pesticide, a certificate of registration in the prescribed form shall be issued by the Committee, in respect of such pesticide.

(2) The certificate issued under subsection (1) –

- (a) shall be valid for such period which shall be not more than 5 years and specified in that certificate and shall be subject to such terms and conditions, if any, subject to which the registration of such pesticide was effected;
- (b) may be renewed by the Committee for a period not exceeding 5 years at a time, on application made to the Committee not less than 30 days before the expiry of the validity period of that certificate.

13. Additional information

The Committee may, if it considers necessary, require any additional information to be attached to and distributed with any registered pesticide.

14. Registration for restricted use and limited marketing

(1) The Committee may on receipt of an application made under subsection (1) of section 10 for registration of a pesticide register that pesticide and issue a certificate of registration for limited marketing and restricted use of that pesticide in accordance with

the terms and conditions specified by the Committee.

(2) No person shall sell, offer for sale, give or distribute a restricted use pesticide to any person other than to an authorized user and no use shall be made of such pesticide other than that approved by the Committee.

15. Register to be maintained by persons who import restricted use pesticides

Every person who imports a restricted use pesticide under this Act shall maintain a register of all imports and a register of all persons to whom the restricted use pesticide was supplied.

16. Label to be approved before registration

(1) The Committee shall not register a pesticide under this Act unless the copy of the label submitted with the application contains the following particulars and is approved by the Committee –

- (a) the trade name of the pesticide;
- (b) the net weight or volume of pesticide;
- (c) the chemical names, common chemical names and percentages of active ingredients or acid equivalents, as appropriate;
- (d) adequate directions concerning the manner in which the pesticide is to be used;
- (e) adequate warning and precautionary symbols and statements including first aid and antidote information;
- (f) any other particulars as may be prescribed under this Act.

(2) Where the registration of a pesticide has been effected under this Act, no change in respect of any matters set out in paragraphs (a) to (f) of subsection (1) of this section shall be made without the prior approval of the Committee.

17. Register of pesticide

(1) It shall be the duty of the Registrar to keep a Register of pesticides, in which shall be entered the trade name of every pesticide registered, its chemical name, the approved common chemical name and percentage of active ingredients or acid equivalents, as appropriate, the name and place of business of the manufacturer and the supplier, and the name and place of business of the importer.

(2) Every pesticide entered in the Register shall be given a number to be known as the registration number.

18. Approved pesticide

(1) When the Committee issues a certificate of registration under subsection (1) of section 12, the Committee shall declare that pesticide to be an approved pesticide.

(2) Every declaration made under subsection (1) shall be approved by the Minister and published in the Gazette.

(3) Where the approved pesticide declared under subsection (1) is a restricted use pesticide, the Committee shall in its declaration specify the authorized persons approved by the Committee to whom such pesticide shall be supplied and the mode and manner of use of such pesticide.

19. Alteration in package or composition

No alteration in package, label or composition of a pesticide shall be made by the holder of a certificate issued in respect of a pesticide unless an application is made in that behalf and approval obtained from the Committee in respect of such intended alteration.

20. Approved container or package

The Committee shall when it approves a pesticide, also approve the container or package

containing such pesticide, if it is satisfied, having regard to the conditions required for safe and effective storage and handling of such pesticide, that such container or package is satisfactory.

21. Permit to import a pesticide

(1) When any application received by the Committee under subsection (1) of section 10 is in respect of a permit to import any pesticide, the Committee may –

- (a) issue such permit; or
- (b) issue such permit subject to such terms and conditions the Committee may consider necessary under this Act; or
- (c) refuse to issue the permit and shall state the reasons for such refusal.

(2) Subject to the provisions of this Act the Committee shall not issue a permit to import a pesticide under subsection (1), unless that pesticide is a registered pesticide.

(3) A copy of every permit issued by the Committee under subsection (1) shall be sent to the Director of Customs within 7 days from the date of issue of such permit.

(4) The Director of Customs shall render to the Minister at the end of every quarter of each calendar year, a return of quantities of each pesticide imported under the permit.

22. Return to be furnished by the permit holder

Every permit holder shall on or before the 31 March in each calendar year, furnish to the Committee a return in the prescribed form, specifying the quantity of pesticide imported by such person during the preceding calendar year and the number, weight and type of containers in which the pesticide was imported and distributed.

23. Permit to import a pesticide for research purposes

Notwithstanding any provision to the contrary in this Act, if the Committee is satisfied

that a pesticide when imported will be used solely for scientific research and evaluation purposes by any research organization, approved by the Committee, the Committee –

(a) may restrict the use of such pesticide for research purposes;

(b) may evaluate and approve the research proposals in respect of the pesticide;

(c) may at its discretion waive all or any of the requirements under any provision of this Act in respect of import of a pesticide;

and grant a permit authorizing the import of any specified quantity of pesticides or pesticide component for such research or evaluation purposes.

24. Cancellation and suspension, etc., of certificate or permit

(1) (a) Where in the opinion of the Committee, the continued use of any registered pesticide is ineffective or it gives rise during normal use to an unacceptable hazard; and

(b) where the Committee considers it necessary in the interest of the public to do so, the Committee may cancel or suspend the registration of that pesticide and the certificate and permit, if any, issued in respect of it.

(2) Where the Committee cancels or suspends the registration and the certificate or permit issued in respect of a pesticide under subsection (1) the Committee shall state the reasons for such cancellation, or suspension, as the case may be.

(3) Where any cancellation or suspension takes place in respect of a pesticide under subsection (1) such pesticide shall cease to be an approved pesticide and the Committee may –

(a) with the approval of the Minister revoke the declaration made in respect of such pesticide under section 18; and

(b) destroy or otherwise dispose of such pesticide in the prescribed manner.

25. Adulterated, decomposed or deteriorated pesticides

No person shall manufacture, pack, distribute, sell or offer for sale or delivery within the country any pesticide which is adulterated or which has decomposed or deteriorated so as

to be ineffective or dangerous or which is packed in containers which have deteriorated or have been damaged as to be dangerous in storage or use.

26. Storage, transport and sale of pesticides in close juxtaposition with foodstuffs

No person shall store, transport, sell or offer for sale any pesticide in close juxtaposition with foodstuffs, apparel or furnishings or in any such manner as would result in the contamination of such foodstuffs, apparel or furnishings.

27. Advertisement of pesticides

(1) Any written, printed or graphic material relating to and accompanying a pesticide when stored, transported, distributed, sold, offered for sale or delivered within the country shall include the substance of the particulars referred to in section 16.

(2) It shall be unlawful to advertise any pesticide in a manner that is false, misleading or deceptive, and not justified by the conditions of its registration.

(3) Any claim for a pesticide contained in any advertisement or device shall be in accordance with the label statements referred to in section 16, and not be contrary to the requirements of subsection (2) of this section.

28. Storage of pesticides in bulk

(1) No person shall store pesticides in bulk other than in a special store kept for that purpose which has been approved by the Committee. The store shall be kept locked when loading or unloading is not in progress.

(2) A notice shall be displayed in a conspicuous position outside the store indicating the hazardous nature of its contents.

29. Harvesting of crops

No person shall harvest or offer for sale any food crops in which pesticides have been used if the minimum period of time as may be specified in the label or prescribed by regulations has not elapsed between such use and harvest, or if the food crops shall contain pesticide residue in excess of levels as may be prescribed.

30. Inspectors and their powers and functions

(1) The Minister shall appoint such number of officers from Government departments who shall be known as inspectors, as may be necessary to carry out the purposes of this Act.

(2) An inspector may –

- (a) ascertain whether any person has contravened any provision of this Act or any regulation made thereunder;
- (b) obtain samples of pesticides for the purpose of determining whether any deterioration, adulteration or decomposition thereof has occurred; and
- (c) do all other acts or things which are connected with or are in furtherance of the exercise, performance and discharge of the powers, duties and functions under this Act.

(3) Any inspector may enter any premises, after sufficient notice during any business house in the discharge of his functions under this Act. Such inspector shall not be liable on account of such entry or on account of anything done in good faith in such premises which is necessary in the exercise, performance and discharge of the powers, duties and functions under this Act.

(4) No person shall obstruct any inspector acting in the exercise of his powers under this Act or any regulations made thereunder.

31. Analysis of samples

(1) An inspector on obtaining a sample of a pesticide shall forthwith inform the seller or his agent of his intention to have the same analysed by an authorized analyst and shall forthwith divide the sample into three equal parts and cause each part to be marked and sealed in such manner as its nature will permit and shall deliver one part each to the seller or his agent, the authorized analyst and the Committee.

(2) In the event of a dispute in respect of the result of an analysis the Committee shall forward such part of the sample as is in his custody to a referee analyst nominated by the Committee.

(3) In any proceedings under this Act the production of a certificate signed by an authorized analyst or a referee analyst with regard to any sample procured for analysis under this section shall be *prima facie* evidence of the facts stated therein.

32. Seizure of articles

(1) An inspector may in the performance of his duties and the exercise of his powers, seize and detain for such time as may be necessary any article by means of or in relation to which he believes any provision of this Act or regulation made thereunder has been contravened.

(2) For the purposes of this section and sections 33, 34 and 38 "article" means

(a) any pesticide;

(b) anything used or capable of being used for the manufacture, preparation, preservation, packaging, or storage of any pesticide;

(c) any labelling, or promotional, or informative material.

33. Procedure in respect of articles seized

(1) Where an article is seized under section 32 by an inspector, such article may be

destroyed or otherwise disposed of in the prescribed manner where the Committee is satisfied that there has been a contravention of any of the provisions of this Act or any regulations made thereunder and where the owner of such article or the person in possession of such articles at the time of seizure agrees in writing to the destruction of such article.

(2) Where the owner or the person in possession of such article does not agree in writing to the destruction of such article, the Committee –

(a) shall release such article if it is satisfied that the provisions of this Act or any regulations made thereunder in respect of such article have not been contravened; or

(b) shall, where it is satisfied that there has been a contravention of any provision of this Act or any regulations made thereunder, forthwith, with notice to such owner or person in possession of the article, inform the Magistrates' Court having jurisdiction over the area in which the offence was committed of the seizure of the article in respect of which the offence was committed.

(3) On information furnished to the court under subsection (2) (b) such court shall –

(a) if, after trial, it finds the owner or person in possession of the article, guilty of contravening any of the provisions of this Act or regulations made thereunder, order that such article be forfeited to the Committee to be disposed of in the prescribed manner: Provided, however, that where the offender is not known or cannot be found such article shall be forfeited to the Committee without the institution of proceedings in respect of such contravention; or

(b) if, after trial, it finds the owner or person in possession of the article not guilty of contravening any of the provisions of this Act or regulations made thereunder, order that such article be released to such owner or person in possession.

34. Cost and expenses of analysis, examination, seizure, detention destruction, etc.

All costs and expenses of any analysis, examination, seizure, detention, destruction or disposal of any article or other dealing with it under this Act shall be borne by the importer, owner or person in possession of such article as appropriate.

35. Exemption of pesticides currently sold, offered for sale, etc.

Any pesticide which is being sold, offered for sale, or distributed in Vanuatu on the date on which this Act comes into force shall be exempted from the requirements relating to registration of pesticide under this Act, for a period of 3 months from that date of coming into force of this Act.

36. Penalty for contravention of this Act

(1) Every person who contravenes or fails to comply with any provision of this Act or any regulations made thereunder shall be guilty of an offence under this Act and shall on conviction be liable to a fine not exceeding VT 1,000,000 or to imprisonment not exceeding 5 years, or to both such fine and imprisonment.

(2) Where an offence under this Act is committed by a body of persons, then –

(a) if that body of persons is a body corporate, every director, manager, secretary or officer of that body corporate; or

(b) if that body of persons is a firm, every partner of that firm,
shall be deemed to be guilty of that offence:

Provided, however, that no such person shall be deemed to be guilty of an offence if he proves that such offence was committed without his knowledge or that he exercised due diligence to prevent the commission of the offence.

37. Forfeiture

The Court which convicts any person of an offence under this Act may impose any of the penalties prescribed under this Act, and may, if it thinks fit, in addition order that all or any article or articles in respect of which the offence was committed be seized and forfeited to the Committee to be disposed in the prescribed manner.

38. Regulations

- (1) The Minister may make regulations in respect of matters required by this Act to be prescribed and in particular in respect of all or any of the following matters –
- (i) setting forth the content, position, size and colouring of the label as well as the system or systems of weights or measures to be stated in the label;
 - (ii) setting forth special provisions with regard to the substances or operations which present a high or unusual degree of hazard, such special provisions may in particular –
 - (a) provide for the laboratory and field evaluation of certain substances;
 - (b) regulate the marketing or distribution of certain substances as may be necessary to safeguard third parties, the environment and wildlife resources other than such noxious plants and animals whose control is desired;
 - (iii) fixing the dates on which the marketing and sale of pesticides registered shall cease and the disposal of such pesticides;
 - (iv) establishing standards or technical competence and equipment used by any person or body of persons engaged in the manufacture, formulation and packing of pesticides;
 - (v) the designation of any product as a pesticide formulation;
 - (vi) the manner of use of pesticides.
 - (vii) the place and manner in which any article shall be destroyed or disposal under this Act; and
 - (viii) any other matters necessary for the better carrying out of the provisions of this Act.