

## **ACT 490**

### **ENVIRONMENTAL PROTECTION AGENCY ACT, 1994**

AN ACT to amend and consolidate the law relating to environmental protection, pesticides control and regulation and for related purposes.

#### PART ONE<sup>2</sup>

##### Environmental Protection

##### Establishment of the Agency

###### 1. Establishment of the Agency

- (1) There is hereby established a body to be known as the Environmental Protection Agency.
- (2) The Agency is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
- (3) The Agency may, in the performance of its functions, acquire and hold movable or immovable property and enter into a contract or any other transaction.

###### 2. Functions

The functions of the Agency are,

- (a) to advise the Minister on the formulation of policies on the environment and in particular to make recommendations for the protection of the environment;
- (b) to co-ordinate the activities of bodies concerned with the technical or practical aspects of the environment and serve as a channel of communication between those bodies and the Ministry;
- (c) to co-ordinate the activities of the relevant bodies for the purposes of controlling the generation, treatment, storage, transportation and disposal of industrial waste;
- (d) to secure by itself or in collaboration with any other person or body the control and prevention of discharge of waste into the environment and the protection and improvement of the quality of the environment;
- (e) to collaborate or co-ordinate with foreign and international agencies for the purposes of this Act;
- (f) to issue environmental permits and pollution abatement notices for controlling the volume, types, constituents and effects of waste discharges, emissions, deposits or any other source of pollutants and of substances which are hazardous or potentially dangerous to the quality of the environment or a segment of the environment;

- (g) to issue notice in the form of directives, procedures or warnings to any other person or body for the purpose of controlling the volume, intensity and quality of noise in the environment;
- (h) to prescribe standards and guidelines relating to the pollution of air, water, land and any other forms of environmental pollution including the discharge of waste and the control of toxic substances;
- (i) to ensure compliance with the laid down environmental impact assessment procedures in the planning and execution of development projects, including compliance in respect of existing projects;
- (j) to act in liaison and co-operation with government agencies, District Assemblies and any other bodies and institutions to control pollution and generally protect the environment;
- (k) to conduct investigations into environmental issues and advise the Minister on these issues;
- (l) to promote studies, research, surveys and analyses for the improvement and protection of the environment and the maintenance of sound ecological systems in the Republic;
- (m) to initiate and pursue formal and non-formal education programmes for the creation of public awareness of the environment and its importance to the economic and social life of the country;
- (n) to promote effective planning in the management of the environment;
- (o) to develop a comprehensive database on the environment and environmental protection for the information of the public;
- (p) to conduct seminars and training programmes and gather and publish reports and information relating to the environment;
- (q) to impose and collect environmental protection levies in accordance with this Act and the Regulations;
- (r) to regulate the import, export, manufacture, distribution, sale and use of pesticides; and
- (s) to perform any other functions conferred on it under this Act or any other enactment.

### 3. Ministerial directions

The Minister may, in the public interest, give directives of a general nature regarding matters of policy to the Agency in the performance of its functions.

### 4. Governing body

(1) The governing body of the Agency is a Board consisting of

- (a) one person knowledgeable in environmental matters as chairman,
- (b) the executive director,

(c) one representative of the Council for Scientific and Industrial Research, not below the rank of Principal Research Officer,

(d) one representative of the Ghana Standards Board, not below the rank of Principal Scientific Officer,

(e) one representative each, not below the rank of director, from the Ministries responsible for the Environment, Local Government, Finance, Health and Education,

(f) one representative of the Association of Ghana industries, and

(g) three other persons knowledgeable in finance or commerce at least one of whom is a woman.

(2) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

(3) The President shall, in making the appointments under this section have regard to the knowledge, expertise and experience of the persons in matters relating to the environment.

#### 5. Tenure of office

(1) A member, other than the executive director,

(a) shall hold office for not more than three years and is eligible for re-appointment;

(b) may at any time by letter addressed to the President resign from office.

(2) A member who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member.

(3) A member may be removed from office by the President for inability to perform the functions of office, for stated misbehaviour or for any other just cause.

(4) The chairman shall, through the Minister, notify the President of vacancies that occur in the membership of the Board within one month of the occurrence of the vacancy.

#### 6. Allowances

The members shall be paid the allowances which the Minister determines in consultation with the Minister responsible for Finance.

#### 7. Meetings of the Board

(1) The Board shall ordinarily meet at least once every three months for the despatch of business at the times and in the places determined by the chairman.

(2) The chairman shall, at the request of not less than one-third of the members, call a special meeting of the Board.

(3) The chairman shall preside at meetings of the Board, and in the absence of the chairman the members present shall elect one of their number to preside.

(4) The quorum at a meeting of the Board shall consist of the executive director or the person acting in that capacity, and six other members, and in respect of an important matter or question relating to policy or finance a greater number determined by the Board.

(5) Subject to subsection (4), questions before the Board shall be decided by a majority of the members present and voting.

(6) The chairman or the person presiding at a meeting of the Board shall, in the event of an equality of votes, have a casting vote.

(7) The Board may request the attendance of a person who is not a member to any of its meetings but that person shall not vote on a matter for decision before the meeting.

(8) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.

(9) Subject to this section, the Board shall determine and regulate its own procedure.

#### 8. Disclosure of interest

(1) A member who has an interest directly or indirectly in a matter for consideration by the Board

(a) shall disclose the nature of that interest, and

(b) shall not take part in the deliberation or decision of the Board with respect to that matter.

(2) A member who fails to disclose interest under subsection (2) ceases to be a member.

#### 9. Committees of the Board

The Board may, in the performance of the functions of the Agency, appoint committees comprising of members of the Board or non-members or both and assign to each committee the functions of the Agency that the Board may determine.

#### 10. Hazardous Chemicals Committee

(1) Without prejudice to section 9, there is hereby established a committee to be known as the Hazardous Chemicals Committee consisting of

(a) the executive director, as chairman,

(b) one representative of

(i) the Ghana Standards Board,

(ii) the Ghana Atomic Energy Commission,

- (iii) the Ghana Cocoa Board,
- (iv) the Crops Services Department of the Ministry of Food and Agriculture,
- (v) the Veterinary Services Department of the Ministry of Food and Agriculture,
- (vi) the Council for Scientific and Industrial Research,
- (c) three officials from the Agency, nominated by the Board, and
- (d) three other persons who have specialised knowledge and experience in toxic chemical management, nominated by the Minister.

(2) The functions of the Hazardous Chemicals Committee are,

- (a) to monitor the use of hazardous chemicals by collecting information on the importation, exportation, manufacture, distribution, sale, use and disposal of those chemicals,
- (b) to advise the Board and the executive director on the regulation and management of hazardous chemicals, and
- (c) to perform any other functions relating to chemicals that the Board or the executive director may direct.

#### 11. Regional and district offices

- (1) The Board shall establish in each regional capital, and in the districts, as determined by the Board, regional and district offices of the Agency.
- (2) A regional or district office shall be provided with the public officers who the Board may, in consultation with the Public Services Commission, determine.
- (3) A regional or district office shall perform the functions delegated to it by the Board.

#### Enforcement and Control

#### 12. Environmental impact assessment

- (1) The Agency may, by notice in writing, require a person responsible for an undertaking which in the opinion of the Board has, or is likely to have, adverse effect on the environment to submit within the period specified in the notice an environmental impact assessment.
- (2) Where the Agency issues a notice under subsection (1), it shall inform the organ or the department of government that has responsibility for the issue of a licence, permit, an approval or a consent in connection with a matter affecting the environment that the notice has been issued, and that organ or department shall not grant the licence, permit, approval or consent unless with the prior approval in writing of the Agency after compliance with the notice.

#### 13. Enforcement notice

(1) The Board shall, where it considers that the activities of an undertaking pose a serious threat to the environment or to public health, serve on the person responsible for the undertaking, an enforcement notice requiring that person to take the steps stipulated by the Board to prevent or stop the activities.

(2) An enforcement notice shall specify

- (a) the offending activity,
- (b) the steps required to be taken,
- (c) the time within which the steps shall be taken, and
- (d) the immediate cessation, where necessary, of the offending activity.

(3) A person who acts contrary to an enforcement notice issued under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units and in default to a term of imprisonment not exceeding one year or to both the fine and the imprisonment.

#### 14. Powers of Minister

(1) Where a person to whom a notice is served under subsection (1) of section 13 fails to comply with the directives contained in the notice within the stipulated time or a further period that the Board may grant, the Minister may, without prejudice to a prosecution under subsection (3) of section 13, take appropriate steps to ensure compliance with the notice.

(2) For the purposes of subsection (1), a police officer, an officer of the Agency or a public officer authorised by the Minister may use the force necessary for ensuring compliance with the enforcement notice.

(3) A person who hinders or obstructs any other person acting under this section commits an offence and is liable on summary conviction to a fine not exceeding two hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.

(4) The amount of money reasonably incurred by the Minister or an institution to prevent or stop the offending activity may be recovered as a civil debt from the person responsible unless a Court otherwise determines.

#### 15. Environment protection inspectors

(1) The Board may, for the purposes of this Act, appoint environment protection inspectors.

(2) An inspector or a person authorised by the Board

(a) may, in addition to the powers specified in section 54, at a reasonable time enter any premises for the purpose of ensuring compliance with this or any other enactment pertaining to the protection of the environment, and

(b) shall, if required to do so by the person in charge of the premises, produce the requisite authority.

(3) A person who assaults or obstructs a duly authorised person acting in the performance of a function under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding two hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.

## National Environment Fund

### 16. Establishment of the Fund

(1) There is hereby established a fund to be known as the National Environment Fund.

(2) The Fund consists of

- (a) grants in aid from the Government for the protection or improvement of the environment,
- (b) levies collected by the Agency in the performance of its functions, and
- (c) donations and gifts to the Agency.

### 17. Objects of the Fund

Moneys of the Fund shall be applied for

- (a) environmental education of the general public,
- (b) research, studies and investigations relating to the functions of the Agency,
- (c) human resource development, and
- (d) any other purpose determined by the Board in consultation with the Minister.

### 18. Management of the Fund

(1) The Fund shall be administered by the Board and the Controller and Accountant-General or two representatives of the Controller and Accountant-General.

(2) The moneys in the Fund shall be paid into a bank account opened by the Board with the approval of the Controller and Accountant-General.

(3) Sections 25 and 26 on accounts and audit and annual report apply to the Fund.

### 19. Functions of the Board

(1) The Board shall, for the purposes of administering the Fund,

- (a) formulate policies to generate money for the Fund,
- (b) determine the allocations to be made towards the objects of the Fund, and
- (c) determine the annual targets of the Fund.

(2) The Board may invest a part of the Fund that it considers appropriate in Government securities or in a manner approved by the Minister in consultation with the Minister responsible for Finance.

(3) Payments issued from the Fund shall be signed by the chairman, the executive director and one other member of the Board.

#### Administration

#### 20. Divisions of the Agency

The Board may create departments or divisions in the Agency necessary for the efficient performance of the functions of the Agency.

#### 21. The executive director

(1) An executive director shall be appointed by the President in accordance with article 195 of the constitution who shall be the chief executive of the Agency.

(2) The executive director shall hold office on the terms and conditions specified in the letter of appointment.

(3) Subject to the general directives of the Board, the executive director is responsible for the direction of the work of the Agency, for the day to day administration of the affairs of the Agency and for ensuring the implementation of the decisions of the Board.

(4) The executive director may, in writing, delegate a function to an officer of the Agency while retaining ultimate responsibility for the performance of a delegated function.

(5) The executive director shall be the secretary to the Fund.

#### 22. Appointment of other staff

(1) The appointment of other officers and employees necessary for the proper and effective performance of the functions of the Agency shall be made by the President acting in accordance with article 195 of the Constitution and on the terms and conditions determined by the President.

(2) Other public officers may be transferred or seconded to the Agency.

(3) The Agency may engage the services of experts and consultants.

#### 23. Delegation of powers

The President may, in accordance with clause (2) of article 195 of the Constitution, delegate the power of appointment of public officers of the Agency.

#### 24. Expenses of the Agency

The Board shall prepare, and submit to the Minister, at least three months before the end of the financial year, the estimates of revenue and expenditure of the Agency for the following financial year for submission to Parliament.

## 25. Accounts and audit

- (1) The Board shall maintain proper books of account and other records in the form determined by the Auditor-General.
- (2) The Board shall, not later than three months after the end of the financial year, submit the books and records of account of the Agency for audit to the Auditor-General.
- (3) The Auditor-General shall, not later than three months after the submission under subsection (2), audit the books and records of the Agency, and submit a copy of the report to the Minister who shall lay the report before Parliament.
- (4) The Auditor-General may, with the prior approval of the Minister, issue instructions regarding the conduct of the audit or conduct a supplementary audit.
- (5) The financial year of the Agency shall be the same as the financial year of the Government.
- (6) The executive director shall prepare budget estimates for each financial year and submit the estimates to the Board for its approval and onward transmission to the Minister in accordance with section 24.

## 26. Annual and other reports

- (1) The Board shall, not later than seven months after the end of the financial year, submit to the Minister an annual report on the activities of the Agency for that year which shall include the report of the Auditor-General.
- (2) The Minister shall within one month, lay the annual report before Parliament, with the statements that the Minister considers necessary.
- (3) The Board shall submit to the Minister any other reports that the Minister may in writing require.

## 27. Request for information

- (1) The executive director or an officer of the Agency authorised by the executive director may request in writing from a person or request a person to attend at a time and place specified in writing to give information which the executive director considers reasonably necessary for the purposes of this Act.
- (2) A person who
  - (a) without reasonable excuse
  - (i) fails to provide information requested under subsection (1), or
  - (ii) refuses or fails to attend as requested under subsection (1), or
  - (b) provides false information or an information which that person does not have a reason to believe is true, or
  - (c) obstructs a public officer in the lawful performance of a function under this Act,

commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment for one year or to both the fine and the imprisonment.

(3) Where a body of persons is convicted of an offence under this Act or the Regulations,

(a) in the case of a body corporate, other than a partnership, every director or officer of that body shall be deemed to have committed that offence;

(b) in the case of a partnership, every partner or officer of the partnership shall be deemed to have committed that offence.

(4) A person shall not be convicted of an offence by virtue of subsection (3) if it is established that the offence was committed without that person's knowledge or connivance and that due care and diligence was exercised to prevent the commission of the offence having regard to the circumstances.

## PART TWO3

### Pesticides Control and Management

#### Registration of Pesticides

#### 28. Registration

(1) A person shall not import, export, manufacture, distribute, advertise, sell or use a pesticide unless the pesticide has been registered by the Agency in accordance with this Act.

(2) Despite subsection (1), the Agency may authorise the importation of an unregistered pesticide

(a) if the pesticide is

(i) meant for experimental or research purposes and not for distribution, or

(ii) for use in the event of national emergency, or

(iii) in direct transit through the Republic and the Board is satisfied that the pesticide is permitted to enter the country of destination, or

(b) if the Minister by legislative instrument so prescribes.

(3) The Agency may authorise the manufacture of an unregistered pesticide for export if

(a) the pesticide would be manufactured in accordance with specifications provided by the importer, and

(b) the specifications satisfy the requirements applicable for the purpose in the country to which it is to be exported.

(4) In determining whether or not to approve the registration of a pesticide and the classification of a registered pesticide, the Board shall consider

- (a) the characteristics of the pesticide formulation, such as the acute dermal, oral or inhalation toxicity;
- (b) the persistence, mobility and susceptibility to biological concentration of the pesticide;
- (c) the experience gained from the use of the pesticide, such as the likelihood of its misuse and any good safety record which is contrary to available laboratory toxicological information;
- (d) the relative hazards of its patterns of use, such as granular soil applications, ultra low volume or dust aerial applications or air blast sprayer applications;
- (e) the extent of the intended use;
- (f) the supporting data and any other technical information that the Agency may request from the applicant or from a public institution; and
- (g) any other matter relevant to the control or management of pesticides.

#### 29. Application for registration

- (1) A person may apply to the Agency for the registration of a pesticide.
- (2) The application shall be in the prescribed form, and shall be supported by the prescribed fee, information, samples and any other material determined by the Agency.

#### 30. Classification of pesticides

- (1) The Agency shall, for the purposes of registration, classify a pesticide as being
  - (a) for general use if, having regard to section 28 (3), it considers that the pesticide when applied for the use for which it is registered will not have an unreasonable adverse effect on the environment;
  - (b) for restricted use or suspended use if it considers that its use in accordance with widespread commonly recognised practice in the absence of additional regulatory restrictions may cause unreasonable adverse effect on people, animals, crops or on the environment; or
  - (c) a banned pesticide.
- (2) Pesticides classified under subsection (1) as restricted, suspended or banned are subject to the prior informed consent procedure defined in section 63.

#### 31. Approval

The Agency may approve a pesticide subject to the prescribed conditions and may only register a pesticide if it is satisfied

- (a) that the pesticide is safe and effective for the use for which it is intended, and
- (b) that the pesticide has been tested for efficacy and safety under local conditions.

### 32. Provisional clearance

(1) Where in respect of an application for registration of a pesticide, the Agency is satisfied

(a) that most of the information required for its registration has been provided to the Agency, and

(b) that the pesticide does not present a toxicological risk to people, animals, crops or the environment,

it may provisionally clear the pesticide for use without the registration, which shall be temporary pending the registration of the pesticide.

(2) A provisional clearance is subject to the conditions specified in writing by the Agency.

(3) The Agency shall cancel a provisional clearance if the application for the registration of the pesticide is refused.

### 33. Duration of provisional clearance

(1) A provisional clearance for a pesticide is valid for a period not exceeding one year as determined by the Board.

(2) The Agency may require

(a) the submission of an information, and

(b) the analysis of a sample,

which appears to the Agency to be necessary to determine whether and under what conditions a provisional clearance shall be granted.

### 34. Refusal to register pesticide

On refusing to register a pesticide the Agency shall, within fourteen days of the decision, inform the applicant in writing of the refusal, and the grounds for the refusal.

### 35. Duration of registration and renewal of registration

(1) A pesticide registration remains valid for a period not exceeding three years from the date of registration.

(2) The Agency may, where it is satisfied that a registered pesticide remains safe and effective for use in the Republic, renew the registration for further periods of three years at a time.

(3) The renewal of a pesticide registration is subject to

(a) the submission of the information, analysis or samples which the Agency may require, and

- (b) any other conditions determined by the Agency.

#### 36. Non-disclosure of confidential information

Information furnished by an applicant in respect of the registration of a pesticide or its renewal which is agreed to by the Agency and the applicant as confidential shall not be disclosed by the Agency unless authorised by law.

#### 37. Power of Agency to amend, ban or suspend pesticides

The Agency, if satisfied that a registered pesticide under the existing conditions of its registration or provisional clearance

- (a) is not effective, or
- (b) may cause hazard to people, animals, crops or the environment,

may by publication in the Gazette amend the classification, suspend or ban the pesticide or cancel the registration or provisional clearance at any time after the registration or during the period of a provisional clearance.

#### 38. Register of pesticides

- (1) The Agency shall maintain a register of pesticides in which the Agency shall record the names and particulars of registered and provisionally cleared pesticides.
- (2) The contents of the register of pesticides shall be reviewed periodically by the Agency.

#### 39. Gazette publication

The Agency shall publish annually in the Gazette

- (a) registered pesticides and their classification,
- (b) provisionally cleared pesticides,
- (c) suspended or banned pesticides, and
- (d) amendments made to the classification of pesticides.

#### Pesticides Dealers

#### 40. Licence to deal in pesticides

- (1) A person shall not import, export, manufacture, distribute, advertise or sell a pesticide except in accordance with a licence issued under this Act.
- (2) A licence issued under this Act is subject to the conditions specified in writing by the Agency.

#### 41. Exemptions

The Agency may, by legislative instrument, exempt from the requirement of a licence under section 40 a pesticide specified in the instrument.

#### 42. Application for dealers licence

An application to import, export, manufacture, distribute, advertise or sell a pesticide shall be made to the Agency in the prescribed form supported by the prescribed fee and information required by the Agency.

#### 43. Issue of dealer's licence

The Agency may issue a licence authorising the applicant to import, export, manufacture, distribute, advertise or sell pesticides if it has reasonable grounds to believe that the applicant will comply with the conditions required under the licence.

#### 44. Safeguards for use of pesticides

(1) A person shall not use or require an employee to use a pesticide in a manner that is inconsistent with this Act or the Regulations.

(2) A person concerned with the use of a pesticide shall inform any other person who uses a pesticide of the dangers involved in the misuse of pesticides.

(3) Where the Regulations require that a pesticide shall be applied by or under the supervision of a person authorised in that behalf by the Agency, a person shall not apply that pesticide unless authorised or supervised.

(4) A person shall not require or permit an employee to handle or use a pesticide in the course of employment without providing and requiring the employee to use the protective facilities and clothing which will permit safe handling of the pesticide.

(5) Where protective facilities and clothing are required as a condition for a licence, an employer whose employees use or handle pesticides to which the licence relates shall provide and require the use of the facilities and clothing.

(6) A person shall not harvest or offer for sale a foodstuff on which pesticides have been used except in compliance with the prescribed practices including the interval between the application of pesticides and the harvest.

#### 45. Suspension, cancellation of licence

The Agency may suspend or cancel a licence

(a) if it has reasonable grounds to believe that the licensee had failed or refused to comply with this Act, the Regulations or any other conditions for the licence, or

(b) if it considers that the cancellation or suspension appears necessary to prevent or remove a hazard to human beings, crops, animals or the environment.

#### 46. Appeals

- (1) A licensee aggrieved by a suspension or cancellation of the licence may appeal to the Minister.
- (2) The Minister shall determine the matter within thirty days after the receipt of a written notification of the grievance.
- (3) A licensee may appeal to the High Court if aggrieved
  - (a) by the failure of the Minister to determine the matter within the thirty days, or
  - (b) by the decision of the Minister.

#### 47. General regulatory power

The Agency may restrict or prohibit the use of a registered pesticide in designated areas during specified periods of time.

#### 48. Conformity to registered pesticides

- (1) A person shall not alter a pesticide so as to change its formulation, composition or usage or alter it in any other manner.
- (2) A person shall not sell a registered or provisionally cleared pesticide or an unregistered pesticide imported under section 28 (2) (b) if because of
  - (a) a fault in manufacture,
  - (b) a deterioration, or
  - (c) an accident or any other cause,

the pesticide fails to meet the conditions of the registration or of the provisional clearance or the conditions of the authorisation.

#### 49. Advertising of registered pesticides

A person shall not advertise a registered or provisionally cleared pesticide in a manner which

- (a) is false,
- (b) is misleading or inconsistent with the information supplied to the Agency at the time of the application, or
- (c) omits warnings prescribed by the Agency.

#### 50. Containers and packaging of pesticides

- (1) The Agency may prescribe the containers, labels and the manner for packaging of pesticides at the wholesale and the retail levels.
- (2) Where a container, label or packaging is prescribed by the Agency for a registered pesticide, a person shall not

(a) manufacture, import, export, distribute, advertise or sell a registered pesticide otherwise than in a package or container prescribed for the pesticide, or

(b) alter the label of a pesticide so as to misrepresent the nature of the pesticide.

#### 51. Records and reporting

A person who imports, exports, manufactures, distributes or sells a pesticide shall make a record of the quantities of pesticides imported, exported, manufactured, distributed or sold by that person and the record shall be

(a) maintained for ten years from the time it is made, and

(b) made available to the Agency at its request at the time and in the manner required by the Agency.

#### 52. Exercise of function by the Board

(1) The functions conferred on the Agency under this Act shall be exercised by the Board.

(2) The Board may delegate any of its functions under this Act to a committee of the Board, a member of the Board or to any other person.

#### 53. The Pesticides Technical Committee

(1) There is hereby established as a committee of the Board the Pesticides Technical Committee consisting of

(a) the chairman appointed by the Board,

(b) the Head of the Chemistry Department of the National Nuclear Research Institute of the Ghana Atomic Energy Commission,

(c) one representative who has expertise in pesticides from the Cocoa Services Division of the Ghana Cocoa Board not below the rank of an executive director,

(d) the director of the Plant Protection and Regulatory Services of the Ministry of Food and Agriculture,

(e) the director of the Veterinary Services Department of the Ministry of Food and Agriculture,

(f) one representative from the Ministry of Health,

(g) one representative of the Ghana Standards Board not below the rank of a senior scientific officer,

(h) one representative from the laboratory of the Customs, Excise and Preventive Service not below the rank of principal collector,

- (i) one representative from the Association of Ghana Industries,
- (j) one representative of the Ghana National Association of Farmers and Fishermen,
- (k) one representative from the Ministry responsible Lands and Forestry,
- (l) one representative from the Agency not below the rank of a senior programme officer who shall be the secretary to the Committee, and
- (m) one representative of the Ministry responsible for the environment.

(2) The Committee shall perform the functions assigned to it by the Board.

(3) The quorum for a meeting of the Committee is seven members.

(4) The Committee shall regulate its own procedure.

#### Enforcement

#### 54. Power of inspectors

(1) A member of the relevant sub-committee of a District Assembly so authorised or an inspector appointed under section 15 may

- (a) inspect an equipment used or to be used in applying pesticides;
- (b) inspect the storage or disposal facilities or areas used for the storage or disposal of pesticides;
- (c) inspect land actually, or reported to be, exposed to pesticides;
- (d) investigate complaints of injury to human beings and animals, or damage to land and pollution of water bodies resulting from the use of pesticides;
- (e) take samples of pesticides applied or to be applied;
- (f) monitor the sale and use of pesticides;
- (g) examine and take copies of a licence or any other documents required by this Act or the Regulations.

(2) An inspector who has reasonable cause to believe that an offence has been committed under this Act or against the Regulations may, without warrant,

- (a) enter and search premises, other than premises used exclusively as a place of residence, in which the inspector believes on reasonable grounds that the offence has been committed or that a pesticide which has been illegally used is being stored;
- (b) stop and search a vehicle which the inspector believes is being used in the commission of the offence;

(c) seize the equipment, pesticide or appliance which the inspector believes on reasonable grounds is being used in the commission of the offence;

(d) arrest a person who the inspector believes on reasonable grounds has committed the offence.

(3) The inspector shall give a written receipt where reasonably practicable, for an article or a thing seized pursuant to subsection (1), and the reasons for the seizure shall be stated in the receipt.

(4) A person arrested under subsection (1) shall be taken before a Court within forty-eight hours.

(5) An inspector shall produce evidence of authority before the inspector enters and searches any premises and in any other case produce it on request.

#### 55. Analysis and certificate

(1) A sample of a pesticide taken for the purpose of analysis shall be submitted to and analysed by an analyst appointed by the Agency.

(2) In proceedings under this Act, the production of a certificate signed by an analyst appointed by the Agency is prima facie evidence of the facts stated in the certificate.

#### 56. Obstruction of inspectors

A person who

(a) obstructs an inspector in the exercise of a power conferred under this Act or the Regulations, or

(b) fails to comply with a lawful enquiry or requirement made by an inspector in accordance with section 54,

commits an offence and is liable on conviction to a fine not exceeding two hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.

#### 57. Other offences and penalties

(1) A person who,

(a) except as provided in section 28 (2) or otherwise exempted, imports, exports, manufactures, distributes, advertises, sells or uses a pesticide which has not been registered,

(b) contrary to section 40 (1), imports, exports, manufactures, distributes, advertises or sells a pesticide without a licence, or

(c) uses a pesticide or requires an employee to use a pesticide contrary to a provision in section 44, or

(d) alters a pesticide so as to change its formulation, composition or usage in a manner contrary to section 48 (1), or

(e) sells contrary to section 48 (2), a registered or provisionally cleared pesticide which by reason of a fault of manufacture, deterioration, accident or any other reason fails to meet the conditions required by this Act, or

(f) contravenes a requirement provided under section 50 (2) for the presentation of pesticides,

commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment to not exceeding two years or to both the fine and the imprisonment, and in the case of a continuing offence, to an additional fine not exceeding twenty-five penalty units in respect of each day during which the offence continues.

(2) A person who contrary to section 49,

(a) advertises a pesticide in a manner which is false, misleading or inconsistent with the information supplied to the Agency at the time of registration, or

(b) includes on the label or accompanying instructions of a pesticide misleading or fictitious claim,

commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year, and in the case of a continuing offence to an additional fine not exceeding ten penalty units in respect of each day during which the offence continues.

(3) A person who

(a) fails or refuses to maintain or submit the contents of records to be maintained, or

(b) deliberately or negligently makes a false record, or

(c) submits a false or a misleading statement,

commits an offence and is liable on conviction to a fine not exceeding two hundred penalty units or to a term of imprisonment not exceeding twelve months, and in the case of a continuing offence, to an additional fine not exceeding ten penalty units in respect of each day during which the offence continues.

(4) A person who discloses, otherwise than as provided by this Act, a proprietary information acquired by that person in the performance of a function under this Act commits an offence and is liable on conviction to a fine not exceeding two hundred penalty units or to a term of imprisonment not exceeding twelve months or to both the fine and the imprisonment.

## 58. Sale of pesticides

It is not a defence for a person charged with the sale of a pesticide contrary to section 28 to plead

(a) that at the time of the sale there was a reasonable belief that the pesticide was registered or did not differ in any way from the purported contents of the container, or

(b) that the pesticide otherwise did not fail to meet the requirements of this Act.

## 59. Offences by body of persons

(1) Where a body of persons is convicted of an offence under this Act,

(a) in the case of a body corporate, other than a partnership, every director or officer of that body shall be deemed to have committed that offence;

(b) in the case of a partnership, every partner or officer of that body shall be deemed to have committed that offence.

(2) A person shall not be convicted of an offence by virtue of subsection (1) if that person proves

(a) lack of knowledge or connivance in the commission of the offence, and

(b) the exercise of due care and diligence to prevent the commission of the offence having regard to the circumstances.

## 60. Forfeiture

Where a person is convicted of an offence under this Act or the Regulations, the Court may, in addition to any other penalty imposed, order that the equipment, pesticide or appliance used in the commission of the offence shall be forfeited to the Republic and that a licence issued under this Act shall be suspended for the period directed by the Court or be cancelled.

## Miscellaneous

### 61. Customs officer

(1) A customs officer

(a) shall assist in the enforcement of this Act, and

(b) shall prevent the importation of a pesticide where the importation is contrary to this Act.

(2) The Agency shall provide the Commissioner of Customs, Excise and Preventive Service with a list of licensed importers and a list of registered and banned pesticides.

(3) The Commissioner shall keep records of imported pesticides and shall, at the regular periods directed by the Agency, submit copies to the Agency.

### 62. Regulations

(1) The Minister may, on the advice of the Board, by legislative instrument, make Regulations for

(a) standards and code of practice relating to the protection, development and rehabilitation of the environment;

(b) the category of undertakings, enterprises, constructions or developments in respect of which environmental impact assessment or environmental management plan is required by the Agency;

(c) the type, quantity, conditions or concentration of substances that may be released into the environment;

(d) the manufacture, importation, use, collection, storage, recycling, recovery or disposal of substances which may be hazardous to the environment;

(e) the disposal of waste generally;

(f) the protection of any particular species of fauna and flora;

(g) matters in respect of which fees are payable and the amount payable;

(h) matters for which permits are required under this Act; and

(i) generally for giving effect to this Act.

(2) Despite section 9 of the Statutory Instruments Act, 1959 (No. 52), Regulations made under this section may impose a penalty not exceeding two hundred and fifty penalty units or a term of imprisonment not exceeding one year or to both the fine and the imprisonment, and in the case of a continuing offence an additional penalty not exceeding ten penalty units in respect of each day during which the offence is continued.

(3) The Minister may, on the advice of the Board and in consultation with Minister responsible for Food and Agriculture, by legislative instrument, make Regulations prescribing matters relating to

(a) the manufacture, importation, exportation, distribution and sale of pesticides;

(b) the reporting of significant pesticide accidents or incidents to a designated person or office and the procedure for the reporting;

(c) the procedure for the storage, transportation and disposal of a pesticide or pesticide container which is considered likely to cause injury to human beings, vegetables, crops, livestock, wildlife or beneficial insects or which is likely to pollute the environment;

(d) the form and contents of pesticide labels;

(e) the method of packaging of registered pesticides;

(f) pesticide containers and their disposal;

(g) the advertising of pesticides;

(h) the purpose for, and the manner in which the pesticide may be used;

(i) the licensing of premises where pesticides are used or dealt in;

(j) the practices, including pre-harvest intervals, for the harvest of crops and the slaughter and milking of animals following exposure to pesticides;

- (k) the application of pesticides that are to be made under the supervision of an authorised person and the provision for the authorisations;
- (l) the analyses of pesticides;
- (m) the facilities and clothing to be used or worn while handling pesticides;
- (n) the disposal of pesticides;
- (o) the records to be maintained by persons importing, manufacturing, formulating, distributing or selling pesticides;
- (p) the aerial application of pesticides;
- (q) pesticide applicators;
- (r) the exemption of the importation of certain specified categories and quantities of pesticides from the requirement of a licence;
- (s) the prescription of fees in respect of the registration of pesticides and the licensing of dealers by the Board; and
- (t) generally for giving effect to this Act.

(4) The Regulations may prescribe in relation to a contravention of a provision in it, penalties not exceeding a fine of two hundred and fifty penalty units or a term of imprisonment not exceeding one year or both the fine and the imprisonment, and for additional penalties not exceeding ten penalty units for each day in respect of a continuing offence.

### 63. Interpretation

In this Act, unless the context otherwise requires,

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

“Agency” means the Environmental Protection Agency established under section 1;

“banned pesticide” means a pesticide for which registered use has been prohibited by the Agency or for which registration has not been granted by the Agency for health or environmental reasons;

“Board” means the governing body provided for under section 4 (1);

“chairman” means the chairman of the Board;

“Committee” means the Pesticides Technical Committee provided for under section 53;

“Court” means court of competent jurisdiction;

“dealer” means a person who imports, exports, manufacturers, distributes, advertises or sells pesticide;

“defoliant” means a substance or mixture of substances which when applied to a plant causes the leaves or foliage to drop from the plant with or without abscission;

“desiccant” means a substance or a mixture of substances which when applied to a plant, accelerates the drying of the tissue of the plant;

“distribute” means to supply commercially, to transport, store or sell;

“District Assembly” includes a Municipal and a Metropolitan Assembly;

“formulation” means the combination of various ingredients designed to render the product useful and effective for the purpose claimed, or the form of pesticide as purchased by users;

“functions” includes powers and duties;

“Fund” means the National Environmental Fund established under section 16;

“inspector” includes a person appointed under section 15 by the Board and a member of the relevant sub-committee of a District Assembly authorised under section 54;

“label” includes a writing, printing or an illustration made on, attached to, included in, belonging to or accompanying a pesticide or its container;

“manufacture” in relation to a pesticide means

(a) to prepare, compound, make the active or other ingredients,

(b) to add substances, mix, formulate, package or re-package, label or otherwise treat the active ingredient with a view to its sale,

but does not include the carrying on of a bona fide research or experiment relating to a pesticide or the doing of an act or a thing that forms part of or is incidental to that research or experiment;

“member” means a member of the Board;

“Minister” means the Minister responsible for the Environment;

“person responsible” includes, in relation to an undertaking, enterprise, a construction or development, a person at whose order or on whose behalf the undertaking, enterprise, construction or development is being done or will be done;

“pest” means an insect, a rodent, bird, fish, mollusc nematode, fungus, weed, micro-organism, virus or any other kind of plant or animal life that is injurious to human or animal health, crops, stored produce, processed foods, wood, cloths, fabrics or any other inanimate objects;

“pesticide” means

(a) a substance or mixture of substances intended for preventing, destroying, repelling or reducing the destructive effects of a pest, or

(b) a substance or mixture of substances intended for use as a plant regulator, defoliant, desiccant or wood preservative;

“plant regulator” means a substance or mixture of substances which, when applied to ornamental or crop plants or to their produce, causes, through physiological action, the acceleration or retardation of the rate of growth or otherwise alters the behaviour of those plants or their produce, but does not include substances intended for use as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amelioration;

“premises” includes a building, land, ship, an aircraft, a caravan, other than a building or place used exclusively as a dwelling house;

“prescribed” means prescribed by the Regulations;

“prior informed consent procedure” means the international operation procedure for exchanging, receiving and handling notification information by the Agency on restricted, suspended and banned pesticides for reasons of health and the environment;

“regional capital” means the administrative capital of the Region;

“Regulations” means the Regulations made under this Act;

“sell” includes to offer for sale and to provide pesticide as part of a service of pest control although the pesticide is described as free or included in the service;

“unreasonable adverse effect on the environment” means an effect which is injurious to human, animal or plant life or which renders the environment unsafe for human, animal or plant life.

#### 64. Repeals and vesting

(1) The Environmental Protection Agency Act, 1994 (Act 490) and the Pesticides Control and Management Act, 1996 (Act 528) are repealed.

(2) Despite the repeal under subsection (1),

(a) an instrument, a permit or an order issued under any of the repealed enactments and in force at the commencement of this Act shall continue in force until altered or revoked under this Act;

(b) the members of the Board established under section 4 of the Environmental Protection Agency Act, 1994 (Act 490) shall continue in office until the expiration of the term of officers specified under section 5 of that Act.

(3) The rights, assets, properties, obligations, liabilities held for or on behalf of the dissolved Environmental Protection Agency and the persons employed for or by that Agency are by this section transferred to the Agency established under this Act.

#### 65. Transitional provisions

After six months from the coming into force of this Act, pesticides shall be registered in compliance with this Act and licences for dealing in pesticides shall be issued in compliance with this Act.