



AGRICULTURAL REMEDIES, REGISTRATION HOLDERS, DISTRIBUTORS, AGENTS, END USERS AND THE LAW

The phrase **who is going to pay** is a pain for everyone during the production season. Misguided advice, failure to read and follow labels, and taking shortcuts lead to crop failure and crop damage. This results in an effort to recover costs and the first port of call is usually the registration holder who is targeted with demands to pay damages.

The same question is often also asked by home owners when there is a mishap with home or home garden pesticides.

South Africans are rather uninformed when it comes to the statutes of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies

Act (Act No. 36 of 1947). The Act is clear about the responsibilities of everyone involved in the value chain of pesticides. In this edition of the CLSA Green Bulletin we will illustrate what the Act stipulates and what the pitfalls are.

One should perhaps start by identifying the most important aspect of pesticide use simply because that is where most people fail: reading the label and following label instructions is the alpha and omega of responsible pesticide use.

Any action taken with a pesticide that is not as instructed by the label, is the start of crop failure, crop damage, accusations and civil litigation.

MRLs, PHIs and export

Export commodity producers are at the mercy of the “secondary regulators” or certifying agencies that set certain standards for fresh produce in their own countries.

Maximum Residue Levels are changing according to consumer demands and that means that MRLs for

South Africa may be vastly different from MRLs in European and other foreign countries.

Export producers therefore need to be abreast of all developments around MRLs. It is of utmost importance to check the MRLs for agricultural remedies at the destination BEFORE such prod-

ucts are used in crop production. If there is an MRL then it is critically important to abide by the pre-harvest interval. If the MRL is zero, then it is fatal to apply such a product if the fresh produce is destined for export.



In this issue

Who is accountable?	2
Buyers and users	2
Consultants	2
Registration holders	3
Pest control operators	3
Common contraventions of Act 36	3
Act 36 vs Act 15	4
Distributors, retailers and agents	4

Use the CropLife SA Information Resources

Most problems can be prevented by using the CLSA Compendiums, the CLSA Agricultural Remedies Database at www.croplife.co.za and the Agri-Intel database at www.agri-intel.com. Order Compendiums from 011 805 2000 — fungicides, herbicides and insecticides are available

WHO MUST CONFORM TO ACT NO. 36 OF 1947 IN TERMS OF AGRICULTURAL REMEDIES?

The **registration holder** (this is mostly a company) of any agricultural remedy.

The **distributor** (this is mostly a company) of any agricultural remedy.

The **agent** (who mostly works for a distribution company) who sells agricultural remedies

The **consultant** (who mostly works as a sole operator) who sells his advice to clients.

The **retailer** (who is mostly a company and in the case

of the agricultural sector is a distributor) who sells agricultural remedies in a retail outlet.

The **retailer's staff** (in the case of agricultural sector is an agent) who service the public at the shelf where agricultural remedies are sold.

The **pest control operator** (who may be an aerial applicator or otherwise a normal pest control operator) who applies agricultural remedies in the course of business

The **person buying and applying** agricultural remedies (who can be a farmer, gardener, home owner or any other individual applying his or her own agricultural remedies not as a commercial venture).



Any person who buys and applies his or her own agricultural remedies must:

Only buy and apply **registered** agricultural remedies.

Only apply agricultural remedies for **those purposes** and in **those manners** as **instructed by their labels**.

Only use on **crops, pests and in dosage rates** as instructed by the label.

Only use label instructed application

frequencies and intervals.

Only use label instructed **number of applications** per growth season.

Only use label instructed **tank mixtures**.

Adjust **pH** and **water hardness** with appropriate additives according to label instructions.

Only apply during label instructed **window of application** to ensure that MRL is not exceeded if commodity is harvested strictly after the PHI.

Should there be a **zero level MRL** for a particular active ingredient in export destinations, such an active ingredient must not be applied at all.



Consultants in the agrochemical arena

Consultants are also accountable under Act 36 of 1947. Selling advice is another form of advertising that is adequately covered by the sections and regulations of the Act.

Irrespective of a consultant's train-

ing, experience and affiliation, he or she must:

- only recommend the use of **registered agricultural remedies**.

- only recommend the use of agricultural remedies **according to their label instructions**, *i.e.* for those purposes and in those manners as in-

structed by the product labels.

Consultants are co-accountable for the failure of a product, crop damage, impacts on human health, livestock and the environment with the person who applied an agricultural remedy contrary to label instructions if the consultant advised the client to do so!!

Duties, responsibilities and accountability of the registration holder according to Act No. 36 of 1947

The registration holder (supplier) must ensure that his product:

Is **registered**, irrespective of whether the agricultural remedy is marketed as a synthetic, organic or natural product.

Is of the **chemical and physical properties** as approved for its registration.

Is **effective** as claimed in the registration application.

Is **packaged in the approved container** that doesn't leak and in the **prescribed volume**.

Is supplied with the **approved and original label**.

Does not exceed the local **MRL** or maximum residue limit if applied according to label instructions with special reference to the PHI or pre-harvest interval.

Accountability

The registration cannot be held accountable for the failure of a product to perform as expected, crop damage, human impact or environmental impact caused by the application of the product if it was not applied strictly according to label instructions.

This is due to the fact that the registration holder has no control over the application of their product unless it is done by one of their own staff (which is mostly unlikely to happen).

The registration holder can be held accountable for events as mentioned above if it is proven by chemical analysis that the product is not of the chemical and physical properties as claimed for the registration thereof, and if there is conclusive evidence that the product was applied strictly according to label instructions.



What does Act 36 of 1947 say about the Pest Control Operator?

Must be **registered** as a pest control operator under Act No. 36 of 1947 in order to offer pest control services in the course of business to another person or business.

Must only provide pest control services for the **field** in which he or she has been registered.

Must only apply registered agricultural remedies according to their label instructions.

Aerial applicators must abide by the SANS 10118 standard in terms of aerial application of pesticides.

Must provide the client with an invoice stating the trade name of the agricultural remedy to be applied, the active ingredient of such remedy, the dosage rate of the remedy, the purpose for which it will be applied and any particular safety precautions.

Must provide clients with **safety warnings and precautions** before pesticides are applied in situations where people may be exposed to it.

The pest control operator can be held liable if damage to human health, crops, livestock or the environment is incurred due to wrongful (off-label) application of pesticides.

THE MOST COMMON CONTRAVENTIONS OF ACT NO. 36 OF 1947

Advocating the use of agricultural remedies for purposes other than what they were registered for.

Selling agricultural remedies for purposes other than what they were registered for.

Using agricultural reme-

dies for purposes other than what they were registered for.

Importing unregistered agricultural remedies.

Selling unregistered agricultural remedies.

Selling agricultural reme-

dies after decanting it into unlabeled containers.

Applying agricultural remedies by aerial application if they are not registered for such application.

Selling Schedule IA & B hazardous substances when not licensed to do so.

CROPLIFE SOUTH AFRICA

P.O. Box 1995
Halfway House
1685
Constantia Square Office Park
526 Sixteenth Road
Randjespark
Midrand

Phone: +27-11-805-2000
Fax: +27-11-805-2222
E-mail: info@avcasa.co.za
www.croplife.co.za

CLSA Green Bulletin® is the news bulletin of CropLife South Africa

Editor: Dr Gerhard Verdoorn,
nesh@tiscali.co.za 082-446-8946

The Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act (Act no. 36 of 1947) versus the Hazardous Substances Act (Act no. 15 of 1973)

Act 36 of 1947 regulates all agricultural remedies whereas Act 15 of 1973 regulates all hazardous substances.

Act 36 classifies agricultural remedies according to the WHO guideline as Very Toxic (1A), Toxic (IB), Harmful (II), Caution (III) and unlikely to be of concern (IV).

Act 15 classifies hazardous substances according to Schedules: some of the agricultural remedies are also classified under Act 15 as Schedule IA of IB (not the same as the Act 36 classification).

According to Act 15, anyone selling products listed in Schedule IA or IB must be licensed to do so. They must also keep a poison register to record all sales of Schedule IA and IB products.

IN SHORT IT MEANS THAT SOME AGRICULTURAL REMEDIES ARE COVERED BY BOTH ACTS.

Responsibilities and liabilities of distributors (retailers) and agents according to Act 36 of 1947 and Act 15 of 1973

The distributor must at all times:

Only distribute **registered** agricultural remedies.

Only distribute registered agricultural remedies that are **properly packaged and properly labeled** by the registration holder.

Only distribute agricultural remedies for those **purposes** and to be applied as in those **manners** as instructed by the **labels** of the respective products.

Be **licensed** to sell **Schedule I A & B hazardous substances** according to the Hazardous Substances Act, No. 15 of 1973.

Keep **strict records** of the sale of Schedule I A & B hazardous substances in a poison register.

Only recommend the use of agricultural remedies for those **purposes** and in those **manners** as instructed by their **labels**.

The distributor cannot be held accountable for the failure of a product, crop damage, human impact or environmental impact caused by the product if it was not applied

strictly according to label instructions and advice that was offered in full compliance with label instructions. This is due to the fact that the distributor has no control over the application of their product unless it is done by one of their own staff (which is unlikely to happen unless those staff members are registered pest control operators).

The distributor can be co-accountable with the person who applied the product for the failure of such product; crop damage, human impact or environmental impact caused by the product if it was not applied strictly according to label instructions and if the distributor issued written instructions or offered verbal advice that contradicts the label instructions.

Duties, responsibilities and liabilities of the agent or sales personnel:

Only sell **registered** agricultural remedies.

Only sell registered agricultural remedies that are properly packaged in **original packaging and labeled** by the registration holder.

Only make recommendations for the use of

an agricultural remedy (including giving advice for use) according to its **label instructions** – this includes the purpose for which the remedy is intended and the application method that is intended.

Only sell an agricultural remedy according to the **label instructions** – this includes the purpose for which the remedy is intended and the application method that is intended.

The agent or sales person cannot be held accountable for the failure of a product, crop damage, human impact or environmental impact caused by the product if it was not applied strictly according to label instructions and advice that was offered in full compliance with label instructions.

This is due to the fact that the agent has no control over the application of their product unless it is applied by him.

