



To:

The Honourable Minister of Agriculture Mr. John Steenhuisen
Agriculture Place, 20 Steve Biko Street, Arcadia, Pretoria, 0002
1st Floor, Room 115, 120 Plein Steer, Cape Town, 8000
Email: MinisterDoA@nda.agri.za
By Email and Courier

And:

The Registrar Act 36 of 1947
Department of Agriculture, Forestry and Fisheries
Attention: Mr. MJ Mudzunga
Email: MalutaM@dalrrd.gov.za

5 December 2024

The African Centre for Biodiversity (ACB) addresses this letter in its name, as well as on behalf of a coalition of farm workers and civil society organisations including the Women on Farms Project (WFP), the Commercial Stevedoring, Agricultural and Allied Workers Union (CSAAWU), Groundwork, Friends of the Earth SA, Khanyisa/Kouga Workers Forum Trust for Community Outreach and Education (TCOE); Professor Leslie London, Professor Andrea Rother, and Dr. Cindy Stephens.

An Annex to this letter contains an overview of the profiles of the organisations and individuals supporting this letter of demand.

Concerning the organophosphate Terbufos

We call upon the Minister of Agriculture, Forestry and Fisheries to exercise his powers in terms of section 7 bis of the Fertilizers; Farm Feeds Agricultural Remedies and Stock Remedies Act (Act 36 of 1947)¹ and forthwith to ban the acquisition, disposal, sale, or use in any form of the registered agricultural remedy known as Terbufos, an organophosphate pesticide used in agriculture. Such banning of Terbufos is in line with the Minister's Constitutional duty to exercise powers in a manner that promotes the rights contained in the Constitution, including the right to life and the right to an environment that is not harmful to their health or well-being, as well as a duty to foster conduct that protects those rights.

1 7bis

Prohibition on acquisition, disposal, sale or use of certain fertilizers, farm feeds, agricultural remedies and stock remedies

(1) The Minister may by notice in the Gazette-

(a) prohibit the acquisition, disposal, sale or use of fertilizers, farm feeds, agricultural remedies or stock remedies; or

(b) prohibit such acquisition, disposal, sale or use, except in accordance with such conditions as may be specified in the notice or except under the authority of and in accordance with such conditions as may be specified in a permit issued by the Registrar, and may in like manner repeal or amend any such notice.

Furthermore, since the burden of Terbufos poisonings has tragically fallen on children in past years, we remind the Minister of the Constitutional imperative that the child's best interests are of paramount importance in every matter concerning the child.

We also remind the Minister that all government Ministries are bound by the National Environmental Management Act (NEMA Act 107 of 1997), which expects that actions of all organs of state that may significantly affect the environment should be compliant with a range of principles, including avoidance of pollution, environmental justice, precaution, open and transparent decision-making, cradle-to-grave responsibilities and the prioritisation of the physical, psychological, developmental, cultural, and social interests of people at the forefront of decision-making.

Concerning highly hazardous pesticides

Currently registered highly hazardous pesticides (HHPs) require urgent attention concerning their expeditious banning, including their import and export, with particular attention being paid to those HHPs that have already been banned in the European Union (EU).

These HHPs include pesticides known to be carcinogenic or fatal in acute poisonings. The EU has banned 57 of the 192 HHPs registered in South Africa (SA) due to their health and environmental risks, rights violations, and harm to the health of farm workers and their families.

The reduction of risks posed by HHPs became a priority issue within international chemicals management policies in 2006 when the Food and Agriculture Organisation (FAO) Council requested specific attention for HHP risk reduction, including consideration of progressive bans. Work continued in this vein, unpacking the risks and challenges of phasing out HHPs, and in 2016 the FAO/ World Health Organisation (WHO) issued specific guidelines to help countries address HHPs, including criteria for identification, steps of risk reduction, and elements of an action plan for reduce the risks posed by HHPs.²

Meanwhile, in South Africa, the Pesticide Management Policy of 2010 took up the issue of reducing pesticides and banning or phasing out those that are particularly dangerous:

"The Policy takes into cognisance the fact that special attention should be given to pesticides that pose an unmanageable risk, with an understanding that such pesticides should be considered for phase-out, sever restriction and bans. Those that will be considered include those with Endocrine Disrupting Properties (EDP), Persistent Organic Pollutants (POPs), carcinogenic and immunologic potential, formulations classified by WHO as Extremely Hazardous (class 1a) and Highly Hazardous (class 1b), as well as pesticides associated with frequent and severe poisoning incidents."³

Furthermore, the policy pointed to the NEMA Act of 1998 and its provisions for cooperative environmental governance by establishing principles for decision-making on matters affecting the environment. Since the 2010 policy was published, only 12 chemicals have been banned or restricted.⁴ Additionally, the Registrar promised in April 2022, to phase out 116 HHPs by June 2024. Ultimately, only 28 were identified for phasing out and the registrar published a derogations procedure for companies to apply to continue using these 28 under special circumstances.

² <https://www.fao.org/pesticide-registration-toolkit/special-topics/highly-hazardous-pesticides-hhp/introduction/en/>

³ NOTICE 1120 OF 2010 No.33899 37 DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES FERTILIZERS, FARM FEEDS, AGRICULTURAL REMEDIES AND STOCK REMEDIES ACT, 1947 (ACT NO. 36 F 1947) ADOPTION OF PESTICIDE MANAGEMENT POLICY FOR SOUTH AFRICA, at page 4 see https://www.gov.za/sites/default/files/gcis_document/201409/338991120.pdf

⁴ <http://www.thedetic.gov.za/wp-content/uploads/Agric-Remedies.pdf>

Moving at this glacial pace means that, on average, South Africa has taken regulatory action on less than one pesticide a year since the policy was published. Given the abundance of evidence regarding HHPs and South Africa's commitment to complying with shifts in global environmental governance, we do not believe this to be sufficiently compliant with its policy direction.

We are of the view that the Minister must issue an immediate ban on Terbufos and a ban on other HHPs with a fixed six months for implementation. The Minister must ensure that there are no delays or loopholes created in any new regulatory framework that allow the ongoing use of chemicals in violation of our Constitutional rights to an environment that is not harmful to health.

We call on the Minister to indicate his willingness to undertake the steps set out in this letter, within 21 days of the date of receipt, failing which we reserve our rights to bring legal action to compel the Minister to take these steps. Failure to do so will result in a Constitutional violation of the right to life and an environment not harmful to health with particularly devastating consequences for children. We trust that it will not be necessary for us to approach the courts to compel the Minister to honour, rather than continue to violate, his Constitutional obligations.

Detailed submissions

1. Terbufos

Terbufos is classified by the WHO as an extremely hazardous class 1a organophosphate pesticide and cholinesterase inhibitor.⁵ Terbufos has neurotoxic effects and is particularly dangerous to children and adolescents. It may be fatal if ingested, inhaled, or had contact with the skin. It has been banned for use in the EU since 2009, although some countries in the EU apply double standards and continue to allow the production and export of Terbufos, especially to developing countries. Terbufos has been banned in the Southern African Development Community (SADC) by Angola, Comoros, the Democratic Republic of the Congo, Madagascar, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, Tanzania, and Zambia. Botswana's ban came into effect on 1st December. Zimbabwe no longer imports Terbufos.

Terbufos is recognised and listed by the Rotterdam Convention as a hazardous chemical requiring prior informed consent from parties to the Convention. This means that as of 21st July 2024 SA, as a Party to the Convention, had to consent to importing Terbufos.

Terbufos has been a "restricted pesticide" in SA since the end of 2023. A restricted pesticide is considered to have a higher potential to harm public health, the environment, wildlife, or other crops compared to other pesticides.

Notably, Terbufos was among the chemicals in the large stockpile at the UPL warehouse in Cornubia that was set alight in July 2021.

2. Terbufos, HHPs, and street poisoning

Terbufos is widely available and can be bought in spaza shops and through street traders – as a so-called 'street pesticide' for domestic use in townships and informal settlements to control rats.⁶ Worse still, two days before the South African government declared a national disaster, environmental health researchers at the University of Cape Town did a quick review of the labels online for Terbufos products

⁵ <https://iris.who.int/bitstream/handle/10665/332193/9789240005662-eng.pdf> – page 21

⁶ Address by President Cyril Ramaphosa on deaths of children due to food-borne illnesses, Union Buildings, Tshwane, 15th November 2024

being sold in SA, and none indicated evidence of “restricted use pesticide” as required by law. In any event, we contend that no amount of traceability and labelling will make a substance designed to kill safe, and there is no ideal real-life situation where these toxins can be deployed safely.

Terbufos has been identified by the Minister of Health to have been the cause of the recent deaths of six children in Naledi, Soweto. Indeed, government toxicology results found that the Naledi children died from ingesting Terbufos. The deaths of more than 20 children who have been exposed to HHPs have been in the news lately, but poisoning from street pesticides is not a new occurrence.⁷ These recent Naledi poisonings have culminated in an investigation that has determined that the Terbufos granules in the children’s stomachs killed them. Since then, the government has conflated these pesticide poisonings with food-borne/food safety-related issues and has scapegoated spaza shops.

South Africa’s townships have long experienced problems with massive pest infestations and the selling of pesticides on streets and in informal markets. Street pesticides are poisonous substances that are legally registered for agricultural uses but are decanted illegally into unlabelled beverage bottles or packets for home use. Or, they might be illegally packaged pesticides imported into SA and not registered for use. Typically, they are acquired from agricultural cooperatives, garden shops, and hardware stores.

There is a long history of research going back to 2008, concerning street pesticides in several townships in Cape Town. Several research papers have been published and evidence presented to the government that children are dying from the ingestion of pesticides, including organophosphates, carbamates, and pyrethroids.⁸ This points to the reality that access to HHPs is a major problem in SA.

In 2023, experts published a paper showing that in one Cape Town mortuary, out of 50 children whose cause of death was suspected to be due to pesticides and for whom toxicological tests were conducted, 29 had died from Terbufos poisoning.⁹ Four others had died from the organophosphates methamidophos and diazinon. Of these deaths, 42.6% were children under five years and 40.7% were adolescents between 15 and 18. We also found that in SA, before the Naledi tragedy, access to comprehensive and quick toxicological results for pesticide deaths was limited. Pesticide mortuary data are not sought by those regulating agricultural pesticides when evaluating evidence in decision-making on pesticides. Government laboratories are also stretched and cannot quickly test the cause of these deaths. This means we do not have a true picture of how many deaths have been linked to pesticides. It could well be in the thousands.

We also draw attention to the long-term consequences of organophosphate poisoning for child development. There is increasing evidence that children surviving organophosphate poisoning suffer significant adverse neurodevelopmental impacts that will be lifelong.

Several factors are involved in child deaths from street pesticides. First, people living in informal areas must contend with high levels of pest infestations – rats, bed bugs, flies, and cockroaches. Because commercially sold legal pesticides have been overused, many pests are developing resistance¹⁰ and so these products are less effective. Thus, there is a market for killing pests with cheap and effective products. Because of their high toxicity, street pesticides are appealing, as there is money to be made from informal vendors who sell them.

⁷ <https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-023-15652-5>

⁸ <https://journals.co.za/doi/abs/10.10520/EJC121291>; <https://link.springer.com/article/10.1186/s12889-023-15652-5>; and <https://www.tandfonline.com/doi/abs/10.1179/107735210799160264>

⁹ <https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-023-15652-5>

¹⁰ <https://www.bbc.com/future/article/20231018-why-are-bed-bugs-so-difficult-to-deal-with>

Parents think they are protecting their families and food sources from pests when buying street pesticides. With no label or verbal warnings, people apply them not knowing how dangerous they are. Children are particularly vulnerable, as they are naturally curious and too young to understand the potential dangers of exposure. Children touch a lot of surfaces, and often have their hands in their mouths, and with their small body size, a small quantity of an HHP can cause severe illness or death.

We also draw attention to the fact that another organophosphate pesticide, Chlorpyrifos, was banned for domestic use in 2010 and for agricultural use on 7th October 2024. Chlorpyrifos is categorised as a moderately hazardous Class I pesticide by the WHO.¹¹ Terbufos is a Class 1a pesticide, a classification of 'Extremely Hazardous', the highest possible classification under the WHO system. It is irrational for the Minister to allow a more toxic organophosphate, Terbufos, to continue to be unbanned.

Pest infestation in SA's townships is a manifestation of socio-economic inequities and the failure of the state to ensure that everyone has access to safe drinking water, sanitation, and essential services, including solid waste removal. These systemic issues cannot be resolved by clamping down on spaza shops and continuing to allow the hopelessly inadequate regulatory system concerning HHPs to continue. We have reached a point of no return: these HHPs require urgent attention, as indicated above.

3. Terbufos, HHPs, and UN Special Rapporteur on Toxic Chemicals 2023 report

Terbufos has been identified as one of the HHPs that should be banned by the United Nations (UN) Special Rapporteur,¹² who stated:

*I also learned that pesticides meant for agricultural use are illegally sold and used to combat rampant rat and cockroach pest infestations that spread in the absence of sanitation services in informal settlements. I was appalled to learn of the many children who were poisoned or died from eating, drinking, or handling hazardous pesticides. ...*¹³

The UN Rapporteur's observations were contextualised by the overall concern regarding the disproportionate impact of toxins and pollution on historically disadvantaged communities, where, he highlighted, "to this day, the legacy of pervasive air, water, and chemical pollution disproportionately impacts marginalised and poor communities." Referring to this legacy of apartheid, he emphasised that pervasive environmental racism still exists despite significant law reform:

The term "environmental racism" describes institutionalised discrimination based on race or colour. In pre-1994 SA, the distribution of environmental risks and harms disproportionately and often deliberately targeted low-income groups and along racial lines. Today, despite the efforts by Government in setting up institutions and laws to address this legacy of environmental racism, pervasive air, water, and chemical pollution still imposes a heavy toll, especially on disadvantaged communities. Overcoming it will require significant additional efforts, including structural, legislative, economic, and environmental changes.

¹¹ <https://iris.who.int/bitstream/handle/10665/332193/9789240005662-eng.pdf?sequence=1>

¹² The UN Rapporteur, Dr Marcos Orellana in a press briefing held in Pretoria on 11 August 2023 after a 10-day exploratory visit to South Africa warned the South African government regarding the rampant use of highly toxic pesticides in the informal sector.

¹³ Orellana's report said regulatory gaps and enforcement shortcomings had led to the emergence of street pesticides, which are widely available in markets, and used in informal settlements to combat rat and other pest infestations, aggravated by the absence of good sanitation services.

"Street pesticides are either legally registered for agricultural use but decanted into unlabelled containers and used illegally for domestic pest control or they are unregistered products, probably imported illegally."

Many children had been poisoned or died after eating, drinking or handling hazardous street pesticides.

In 2022, there were 34 poisoning cases, including five deaths in Gauteng from an organophosphate, "probably Terbufos", the report said.

As one example of this, the rapporteur referred to the rampant use of highly toxic pesticides in the informal sector. Terbufos was specifically mentioned. He noted that:

Despite the scientific evidence of their harms and the fact that they cannot be safely used, many HHPs are still legal and in use in SA. In 2022, there were 34 reported cases of poisoning and five deaths in Gauteng caused by an organophosphate, likely Terbufos. Paraquat is another example of a pesticide that is widely available and responsible for serious health impacts and deaths. These two pesticides, amongst many others, are banned in the EU, yet they are still produced in European countries for export, particularly to developing countries. This practice reproduces long-standing racist and colonial patterns of exploitation. Equally, the South African Government must protect its people and not contribute to reinforcing these double standards.

He then recommended that:

Accordingly, South Africa should ban the import of all highly hazardous pesticides, including those that have been banned for use in their country of origin, without delay. In this regard, I wish to applaud South Africa's decision to ban chlorpyrifos, a hazardous organophosphate pesticide. However, the Government should require immediate safe destruction of existing stockpiles and not allow for the further harm and risks of chlorpyrifos exposures that result from a lengthy, years' long phase-out period.

4. HHPs linked to reduced cognitive function among children living in agricultural areas in the Western Cape

Application rates of pesticides in SA are the highest in sub-Saharan Africa. Over 3,000 different types of pesticide product formulations are registered, including possible neurotoxic and endocrine-disrupting chemicals such as bifenthrin, cypermethrin, and mancozeb. The department also continues to permit the use of glyphosate, labelled a probable carcinogen by the International Agency for Research on Cancer in 2015.

In the Western Cape, a wide range of highly hazardous pesticides have been detected in the environment and in exposed persons, whose modes of uptake and level of toxicity are very different. A study in the Western Cape in 2017 showed that stone fruit, grapes, and wheat farms used up to 96 active ingredients (47 fungicides, 31 insecticides, and 18 herbicides).

In 2020, research was published by scientists at the Centre for Environmental and Occupational Health Research, from the School of Public Health and Family Medicine at the University of Cape Town (UCT) and Swiss Tropical and Public Health Institute, University of Basel, in the *Journal Environment International*.¹⁴ The study is also part of the South African-Swiss Bilateral SARChI Chair in Global Environmental Health of Professors Aqiel Dalvie and Martin Rössli.

The study reports the results from the baseline survey of an ongoing cohort investigation of 1,001 schoolchildren aged 9 to 16 from seven schools in three agricultural areas in the Western Cape. The areas include the Hex River Valley (mainly table grapes), Grabouw (mainly stone fruits), and Piketberg (mainly cereals). The study found that impaired cognitive performance from pesticide exposure is an extremely worrying indicator of long-term adverse health effects among children exposed to pesticides.

According to Professor Dalvie, children are expected to be more vulnerable to environmental exposures than adults as their nervous system is still developing. Children are likely to engage in more hand-to-mouth activities; they have a larger food intake per unit body weight; they breathe in relatively larger

¹⁴ <https://www.sciencedirect.com/science/article/pii/S0160412020321929>

volumes of air; and are more likely to play in hazardous zones. The neurodevelopmental disorders linked to early exposures to pesticides include autism, attention deficit hyperactivity disorder, poorer social behaviour, lower intelligence, and worse behavioural regulation.

A recent study of children surviving acute organophosphate poisoning admitted to Red Cross Hospital over 10 years long-term found they were at increased risk of impaired neurodevelopment because of the poisoning.¹⁵

5. Terbufos, HHPs, and poisoning of farm workers daily

Terbufos and HHPs are used extensively in agriculture production across the country; for example, on wine, maize, wheat, and citrus farms, and sugarcane plantations, to which farm workers and other people working and living in rural areas are exposed. Regarding sugarcane plantations, paraquat is an HHP used to burn off the leaves before harvest in some areas. It has been banned in the EU since 2007. China also banned the domestic use of Paraquat in 2017, followed by India, and Thailand in 2019, and Brazil, Chile, Malaysia, Peru, and Taiwan between 2020 and 2022. While men often do the spraying, women farmworkers are also vulnerable to pesticide exposure, which occurs in multiple ways, including when pesticides are applied while they are working without proper protective clothing and when they are forced to re-enter vineyards soon after pesticides have been sprayed.

Farm bosses often ignore regulations regarding training (mandatory under the Occupational Health and Safety Act and its regulations), access to information, protective gear, re-entry periods, availability of wash stations, and other precautionary measures; and yet, no one is monitoring them. Local clinics lack knowledge of pesticides in use in their vicinity, how to diagnose and treat poisoning, or their obligations to report pesticide poisoning.

Farm workers live under extremely vulnerable and precarious working conditions, including being forced to work with pesticides, and hence have no bargaining power. They receive the barest minimum wage, with little access to health services and when they become too ill to work, they are summarily evicted from farms where they have been working and living all their lives. They do not have the power to refuse work they know to be dangerous.

Farm workers and their children, farm dwellers, and people living adjacent to farms are also exposed to these toxins regularly. Spraying season recently began (November) and those living on and adjacent to farms are experiencing the familiar symptoms of exposure to cocktails of toxic pesticides drifting in the air – asthma, sinus, streaming eyes, mood swings, headaches – and many will know the long-term impacts in their bodies in years to come. Research conducted at a preschool located on a farm near Cape Town showed that endosulfan had drifted onto the school grounds even though adjacent farms were not using the pesticide, indicating the extent of non-target drift when pesticides are applied in rural areas.¹⁶

Minister Steenhuisen, you recently declared in the media that these toxins are beneficial to society. It seems you have not read your policy, which states clearly that “pesticides have potential to cause undesirable side effects,” that the “absence of effective management of pesticides to ensure that pesticides are used in ways that lead to the minimisation of significant adverse effects on human health and the environment is of concern” and that a policy is needed “that aims to eliminate all significant

¹⁵ Mureithi L. Long-term neurodevelopmental effects of acute organophosphate poisoning amongst South African children. M Med Dissertation. University of Cape Town, February 2024.

¹⁶ Dalvie MA, Sosan B, Cairncross E, London L. Environmental monitoring of pesticide residues from farms at a neighbouring primary and pre-school in the Western Cape in South Africa. *Science of the Total Environment* 2014; 466-467C:1078-1084. Doi: 10.1016/j.scitotenv.2013.07.099

risks to human health and environment potentially from pesticides use and also incorporates sound production systems.”

This toxic mode of food production is not inevitable. We reject the well-worn narrative that we cannot achieve food security if we do not spray our food with numerous cocktails of poisons from seed to production to storage. The Department knows this is the case because it issued a policy 14 years ago in which it recognised the need to reduce pesticide usage while maintaining food security.

How long will we allow the chemical industry to sell us this bizarre notion? What will it take for our government to take a serious look into alternative, safe methods of food production? It seems that the tragic deaths of children from Terbufos poisoning have been an opportunity to deflect blame and responsibility rather than implement the very modest recommendations from your own Ministry’s policy, which recommended, 14 years ago, that a “ban or restrictions of these highly toxic pesticides should go along with the promotion of crop protection alternatives to the users.”

6. Adverse environmental impacts from HHPs polluting Western Cape rivers all year round

Two studies have found certain pesticides that are banned in Europe to be present in the Berg, Krom, and Hex rivers throughout the year. Concentrations of these pesticides outside crop spraying and high rainfall months indicate the chemicals may also be in the groundwater.

A study¹⁷ led by Stellenbosch University Department of Earth Sciences lecturer Reynold Chow, of water samples from these three rivers from July 2017 to June 2018, and from April to July 2019, found levels of five pesticides and herbicides exceeding the European Environmental Quality Standards (EQS) at least once between June 2017 and January 2018.

In a paper¹⁸ on the source of the pesticide contamination in these three catchments, a team led by Emma Davies found two of these five chemical compounds – imidacloprid and chlorpyrifos – exceeded EQS levels between February 2022 and March 2023, when there was normal rainfall. Davies’ study also found two additional pesticides – terbuthylazine and spiroxamine – exceeded EQS levels.

Of the 44 pesticides for which Davies tested, 18 were detected in the Berg River, 13 in the Krom River, and eight in the Hex River. Both Chow and Davies noted that imidacloprid was of particular concern, as it was found across all three catchments, and was detected outside periods when pesticides are applied to crops. Davies notes that “the frequent detection” of imidacloprid, a pesticide that attacks the nervous system of insects, in rivers is “concerning”, as it is banned in the EU due to “mounting evidence” that it harms pollinating insects such as bees.¹⁹

Davies and her team found pesticide concentrations in the Hex River occurred in the off-season when spraying generally does not take place. Additionally, the year-round presence of imidacloprid and terbuthylazine indicates a source other than run-off after agricultural application. Previous studies indicate groundwater as a possible source of pesticide pollution.

The four highest pesticide concentrations in the Hex River occurred in March, August, and October. March is during the grape harvesting season (grapes constitute 73% of crop production in the Hex River Valley), and October is during the low rainfall period. In Grabouw, consistently low levels of pesticides in the river during months when little or no pesticides were applied to crops also indicate groundwater as a source. The study notes that the Hex River Valley and Grabouw aquifers do not have an impermeable layer of rock above them. Chemical compounds can therefore enter through leaching

¹⁷ <https://www.sciencedirect.com/science/article/pii/S004896972206884X>

¹⁸ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4797245

¹⁹ <https://npic.orst.edu/factsheets/archive/imidacloprid.html>

from the surface, and then feed into rivers. Davies and her team note that imidacloprid and terbuthylazine have high Groundwater Ubiquity Scores – a greater tendency to enter groundwater. The study also notes that in France, terbuthylazine was detected in groundwater 17 years after being banned. Terbuthylazine is still used in SA. Ongoing contamination of groundwater can lead to compounds exceeding EQS. Based on the scientific evidence, we can look forward to long-term contamination of our groundwater as a result.

Policy

Regulatory failures

Hopelessly outdated legislation – 77 years old

In South Africa, there are legally registered pesticides for home, garden, and agricultural uses. These are regulated under an extremely old law, Act 36 of 1947 – also known as the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act.²⁰ Despite several attempts, Act 36 has not been scrapped and replaced with legislation that truly protects all populations.

A broad range of civil society organisations and academics have been calling for the phase-out of extremely hazardous and highly hazardous pesticides for the last two decades.²¹ This matter was explicitly referred to by the Department of Agriculture, Forestry and Fisheries in its Pesticide Management Policy published in 2010, which stated the Department's intention to phase out certain pesticides:²²

The Policy takes into cognisance the fact that special attention should be given to pesticides that pose an unmanageable risk, with an understanding that such pesticides should be considered for phaseout, severe restriction, and bans. These include those with Endocrine Disrupting Properties (EDP), Persistent Organic Pollutants (POPs), carcinogenic and immunotoxic potential, formulations classified by WHO as Extremely Hazardous (class 1a) and Highly Hazardous (class 1b), as well as pesticides associated with frequent and severe poisoning incidents.

Who knows how many lives may have been saved had the policy been implemented 14 years ago! However, the time for phase-out of the 35 HHPs has long since passed, necessitating immediate bans as outlined above.

None of these measures have been implemented even though the department knows the law is not fit for purpose any longer.

No protection for children

There is no specific legislation aimed at protecting children from pesticide exposure.

Ineffective enforcement

Act 36 enforcement officers are scarce and so the police have to step in to enforce the law. Environmental health practitioners do a good job following up on the cases that are reported, but they lack the capacity and resources and do not have the powers to enforce legislation under DALRDD, now

²⁰ https://www.gov.za/sites/default/files/gcis_document/201505/act-36-1947.pdf

²¹ See for example: https://www.dffe.gov.za/sites/default/files/docs/pesticides_usage_health_consequencesfor_women_0.pdf; <https://www.dailymaverick.co.za/article/2019-08-30-women-farmworkers-demand-an-end-to-use-of-harmful-pesticides/>; <https://www.news24.com/news24/community-newspaper/paarlpost/stop-the-double-standards-20240904>

²² Notice 1120 Of 2010 No.33899 37 Department Of Agriculture, Forestry And Fisheries Fertilizers, Farm Feeds, Agricultural Remedies And Stock Remedies Act, 1947 (Act No. 36 F 1947) Adoption Of Pesticide Management Policy For South Africa, at page 4 see https://www.gov.za/sites/default/files/gcis_document/201409/338991120.pdf

the department of Agriculture. Protecting health from pesticides covers legislation from agriculture, health, labour, and the environment, creating many legislative gaps.²³

No public database

To find out which pesticides are registered or restricted in SA, a member of the public has to pay to access a database run by the pesticide industry, under the auspices of CropLife.²⁴ Previously, the Department of Agriculture housed this database, but it no longer maintains it. This self-regulation by the industry is unlawful as it is manifestly a case of conflict of interest. As a public body, the regulator has abdicated its statutory responsibilities.

To save children's lives, access to these pesticides needs to be eliminated. Industry needs to fund the work of the government through higher taxes and fees. All currently registered HHPs ought to be banned with no phase-out periods. Other countries have shown that eliminating highly hazardous pesticides saves lives without jeopardising agricultural production.²⁵

It is instructive to note that in 2021, the Department of Environment withdrew its regulations to implement SA's obligations under the Rotterdam Convention, arguing that more time for adjustment was needed –17 years after SA ratified the Convention. Further to this, Terbufos was one of the agents imported by UPL at its Cornubia store that went up in flames in 2021 and would have been notifiable under these regulations.

Further, the Registrar promised in April 2022, to phase out 116 HHPs by June 2024 (Terbufos is one of these).²⁶ Ultimately, only 28 were identified for phasing out, but not Terbufos, and to add insult to injury, regulations were even passed to allow the industry to apply for exemptions to continue to use these chemicals under certain circumstances.

There has been an abject failure on the part of the state to fulfill the constitutional duty to exercise powers in a manner that promotes the rights contained in the Constitution, including the right to life and the right to environment, as well as a duty to foster conduct that protects those rights.

Conflict of Interest

The multi-billion-dollar industry that produces these highly hazardous chemicals has a hold over the South African government, as also noted by the UN Special Rapporteur in his July 2024 report. This industry, spearheaded by CropLife, has hindered every attempt to ban HHPs and regulate pesticides in general. Government is complicit, as they have enabled the self-regulation by industry to continue and consistently make decisions in favour of industry over people and environmental health and safety. Industry's audacity and impunity must stop. It must stop now.

Banning of Terbufos and HHPs is in line with the Minister's Constitutional duty to protect the right to life, health, and the environment.

²³ https://health.uct.ac.za/sites/default/files/media/documents/2019.4.16_street_pesticide_policy_brief.pdf

²⁴ <https://www.agri-intel.com/>

²⁵ <https://www.nature.com/articles/nplants20178>

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<https://www.dalrrd.gov.za/images/Branches/AgricProducHealthFoodSafety/InspQuarantineServ/AgricInputsControl/GazetteNotices/Phase%20Out%20of%20Active%20Ingredients%20and%20Formulations%20that%20meet%20the%20criteria%20of%20carcinogenicity.-1.pdf>

The right to the environment guarantees that reasonable measures will protect the environment.²⁷ The banning of Terbufos and HHPs is the most reasonable and only measure that will stem the unlawful distribution of these substances and their exposure to farm workers and dwellers, children, and the public.

It is submitted that the Minister, in the current circumstances, has a constitutional obligation to issue a ban on other HPPs within a fixed six months, for implementation in the public interest and to protect the right to life and right to an environment of unknown numbers of persons who may be exposed to and possibly killed by this chemical if such bans are not implemented. We deal with our legal submissions below.

Constitutional duties

Everyone has the right to life, and to an environment that is not harmful to their health and well-being.²⁸ The State has a constitutional duty to foster these rights.²⁹ Legislation must be interpreted to promote the rights contained in the Constitution's Bill of Rights.³⁰ Section 24(b) of the Constitution mandates the state to take reasonable measures to achieve the protection of public health and the environment. It provides that:

Everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation [and] promote conservation.

Under the National Environmental Management Act 107 of 1997, which is umbrella legislation that applies to all actions of the state that may significantly impact the environment, there is a duty to adopt a precautionary approach.

Act 36 of 1947

The Act in section 7bis makes provision for the Minister to ban pesticides. In terms of this section:

(1) The Minister may by notice in the Gazette-

(a) prohibit the acquisition, disposal, sale, or use of fertilizers, farm feeds, agricultural remedies stock remedies; or

(b) prohibit such acquisition, disposal, sale, or use, except by such conditions as may be specified in the notice or except under the authority of and by such conditions as may be specified in a permit issued by the Registrar, and may in like manner repeal or amend any such notice.

²⁷ Constitution section 24 states: Everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation [and] promote conservation.

²⁸Section 24 Environment

Everyone has the right-

(a) to an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that- (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

²⁹ Section 7(2) of the Constitution of the Republic of South Africa, 1996.

³⁰ The Constitution section 39(2). The Constitutional Court has repeatedly emphasised that constitutional rights must be generously interpreted see *S v Zuma and Others* 1995 (2) SA 642 (CC). See especially para 14 where the Constitutional Court approved the following passage from a judgment of Lord Wilberforce in *Minister of Home Affairs (Bermuda v Fisher)* [1980] AC 319 (PC 328-9: '[A supreme constitution requires] a generous interpretation...suitable to give to individuals the full measure of the fundamental rights and freedoms referred to....' See also *S v Mhlungu* 1995 (3) SA 391 (CC).

One of the factors that the Registrar must take into consideration when deciding whether to grant a registration for an agricultural remedy is that it should not be contrary to the public interest that it be registered. It follows that the Minister may ban a pesticide in the public interest.³¹

Regulations under Act 36 of 1947

In 2023, the then Department of Agriculture, Land Reform and Rural Development (DALRRD) promulgated Regulations Relating to Agricultural Remedies promulgated under Act 36 of 1947³² that make provision for the phase-out of a limited group of pesticides defined as “substances of concern.” These “substances of concern” are limited, without good reason, to chemicals defined by the criteria of carcinogenicity, mutagenicity, or reproductive toxicity in categories 1A or 1B of the Globally Harmonized System of Classification and Labelling of Chemicals (GHS),³³ as well as substances listed under certain provisions of the Stockholm Convention (persistent organic pollutants) and Montreal Protocol (ozone-depleting substances).³⁴

A critical flaw is that these substances do not include the WHO’s Recommended Classification of Pesticides by Hazard; classes 1a and 1b are for pesticides that are highly hazardous or extremely hazardous, respectively, and do, therefore not constitute action on the part of the government give effect to the protection of our constitutional rights.

These provisions are completely inadequate to address the unmanageable risk posed by certain extremely hazardous and highly hazardous pesticides. For example, agricultural remedies recommended by the WHO for classification as 1a (extremely hazardous) and 1b (highly hazardous)³⁵ are not included in the definition of “substances of concern”³⁶ and, therefore, will not be phased out at the end of their three-year periods of registration.³⁷

³¹ Act 37 section 3(2)(a)

³² Promulgated in GN 3812 of 25th August 2023 in GG 49189 - https://www.gov.za/sites/default/files/gcis_document/202308/49189gon3812.pdf

³³ The distinction between categories 1A and 1B is that category 1A refers to substances known to have carcinogenic or mutagenic potential, or are toxic to reproduction, based largely on evidence from humans. Category 1B, on the other hand, involves substances where the harmful effects are presumed, but based primarily on animal studies

³⁴ The definition of “substances of concern” in the 2023 regulations and 2024 draft regulations is “any substance which has an inherent capacity to cause an adverse effect on humans, animals or the environment and is present or is produced in an agricultural remedy in sufficient concentration to present risks of such an effect. Such substances shall comply with the criteria set out in Annexure A.

Annexure A to the regulations identifies substances of concern as follows. This definition is repeated in the 2024 draft amended regulations:

2. Substance of Concern

Agricultural remedy active Ingredients and their formulations fulfils the substance of concern criteria when such agricultural remedy have one or more of the characteristics –

- (i) Criterion 1: agricultural remedy active Ingredients and their formulations that meet the criteria of carcinogenicity Categories 1A or 1B of the GHS or;
- (ii) Criterion 2: agricultural remedy active Ingredients and their formulations that meet the criteria of mutagenicity Categories 1A or 1B of the GHS or;
- (iii) Criterion 3: agricultural remedy active ingredients and their formulations that meet the criteria of reproductive toxicity Categories 1A or 1B of the GHS or;
- (iv) Criterion 4: agricultural remedy active ingredients listed by the Stockholm Convention In its Annexes A and B, and those meeting all the criteria in paragraph 1 of Annex D of the Convention except for dlchloro diphenyl trichloroethane (DDT) used for malaria vector control by the Department of Health; and
- (v) Criterion 5: agricultural remedy active ingredients listed under the Montreal Protocol

³⁵ [https://www.fao.org/pesticide-registration-toolkit/special-topics/highly-hazardous-pesticides-hhp/identification-of-hhp/hhp-criteria-](https://www.fao.org/pesticide-registration-toolkit/special-topics/highly-hazardous-pesticides-hhp/identification-of-hhp/hhp-criteria-1/en/#:~:text=Pesticide%20formulations%20that%20meet%20the,dermal%20toxicity%20of%20the%20pesticide.)

[1/en/#:~:text=Pesticide%20formulations%20that%20meet%20the,dermal%20toxicity%20of%20the%20pesticide.](https://www.fao.org/pesticide-registration-toolkit/special-topics/highly-hazardous-pesticides-hhp/identification-of-hhp/hhp-criteria-1/en/#:~:text=Pesticide%20formulations%20that%20meet%20the,dermal%20toxicity%20of%20the%20pesticide.)

³⁶ The definition of “substances of concern” in the 2023 regulations and 2024 draft regulations is “any substance which has an inherent capacity to cause an adverse effect on humans, animals or the environment and is present or is produced in an agricultural remedy in sufficient concentration to present risks of such an effect. Such substances shall comply with the criteria set out in Annexure A. Annexure A identifies substances of concern, as listed in footnote 31.

³⁷ 2023 Regulations regulation 10 (3)(e); 2024 Draft Regulation 10 (3)(e).

Instead, they are relegated to a second category of hazardous agricultural remedies defined as “restricted agricultural remedies”³⁸ that are not targeted by the regulations for phase-out. They may be registered subject to restricted use, which merely means that additional information needs to be included on their labels, and there are limitations on who may use them.³⁹

As a result of this deficient and unjustifiable regulatory classification, pesticides identified as extremely hazardous and highly hazardous by the WHO recommended classification system,⁴⁰ such as Terbufos, are not aimed to be phased out – only restricted – despite a policy undertaking to do so that has been in existence for almost 15 years. The failure to implement this policy has resulted in untold preventable deaths and suffering, particularly of children.⁴¹

Another shortcoming of these regulations is that it provides that: A person shall not supply a restricted agricultural remedy, or permit a restricted agricultural remedy to be supplied, to a person who is not authorised to use the agricultural remedy under these regulations.” But I have not been able to find what the definition is of ‘authorised’.

A further loophole in the Aug 2023 regulations is that it provides that:

“A person shall not supply a restricted agricultural remedy, or permit a restricted agricultural remedy to be supplied, to a person who is not authorised to use the agricultural remedy under these regulations.”

It’s not clear to us that this applies to an agricultural co-op. The co-op is not a ‘user’ but sells it to users. So, it seems the company can sell to the co-op irrespective, but it’s the co-op’s problem to make sure it does not sell to anyone unauthorised. We fail to see how this amounts to cradle-to-grave responsibility?

It appears that, for example, a farm owner or boss can go into a co-op and purchase these substances without any training or certificate and ask farm workers to use them.

Labels are required to be more detailed regarding safety information and only registered users may purchase them. The state does not, however, regulate these chemicals further by removing them from society, as envisaged by its Pesticide Management Policy and the WHO recommendations.

Unsurprisingly, these chemicals have easily found themselves in the public domain and in food that is consumed in unregulated environments, creating a major health crisis. Extremely hazardous agricultural remedies are simply not being regulated in a constitutionally compliant manner.

To protect the public, the Minister of Agriculture, Forestry, and Fisheries must take steps to prevent Terbufos and HPPs from being substituted by an equally toxic agricultural remedy once they are banned.

³⁸ “[R]estricted agricultural remedy” means an agricultural remedy which the Registrar, out of concern for its human health or environmental risks, has set out additional information to be shown on the label concerning essential conditions in respect of the display, distribution or limitations on use of, or qualifications of persons who may use the agricultural remedy, and such remedy shall comply with the criteria as set out in annexure A

³⁹ 2023 Regulations Regarding Agricultural Remedies, regulation 20.

⁴⁰ <https://www.fao.org/pesticide-registration-toolkit/special-topics/highly-hazardous-pesticides-hhp/identification-of-hhps/hhp-criteria-1/en/#:~:text=Pesticide%20formulations%20that%20meet%20the,dermal%20toxicity%20of%20the%20pesticide.>

⁴¹ Child and adolescent mortality associated with pesticide toxicity in Cape Town, South Africa, 2010–2019: a retrospective case review -Bronwen Davies, Marie Belle Kathrina Mendoza Hlela & Hanna-Andrea Rother: https://bmcpublikealth.biomedcentral.com/articles/10.1186/s12889-023-15652-5#auth-Hanna_Andrea-Rother-Aff3

The free availability, as well as the presence of Terbufos in foods, demonstrates that the State is not able to confine HHPs to registered users. There have been no prosecutions despite over 15 years of dire warnings of the threat posed by this chemical to vulnerable and disadvantaged communities as an HHP.

It has the potential to be fatal if swallowed, breathed in, or on the skin. Its approval as an agricultural chemical has resulted in it becoming a threat to life and to continue to allow it to be used in agriculture would be a violation of the constitutional right to life.

Conclusion

The President has stated that the first intervention is to get hazardous pesticides off the street. It is submitted that this will not be possible without the banning of Terbufos and all other HHPs, as the banning of a single chemical will just result in it being replaced by another equally toxic chemical if such is legally available for sale in SA.

Accordingly, we call on the Minister to indicate his willingness to undertake the steps set out in this letter within 21 days of the date of this letter, failing which we reserve our rights to bring legal action to compel the Minister to take these steps. We trust this will not be necessary.

We look forward to your response.

Yours faithfully,



Mariam Mayet

Executive Director, ACB

On behalf of the coalition of farm workers and civil society organisations, and academics, including the ACB, WFP, CSAAWU, Groundwork, Friends of the Earth SA, Khanyise/Koega Workers Forum; TCOE; Professor Leslie London, Professor Andrea Rother, and Dr Cindy Stephens.

Annex

Individuals supporting:

Professor Leslie London is Head of the Division of Public Health Medicine in the School of Public Health and Family Medicine, University of Cape Town (UCT), and Director of its Health and Human Rights Programme. His research areas include environmental and occupational health, risks from alcohol, and the relationship between public health and human rights, particularly in health policy.

Professor Andrea Rother is the Head of the Environmental Health Division and Professor in the School of Public Health and Family Medicine at UCT. She is also deputy director of the Centre for Environmental and Occupational Health Research (CEOHR) in the University.

As an environmental sociologist and environmental/public health professional, her expertise lies in the areas of chemical/pesticide risk management, risk communication, health literacy, exposure assessment, intervention development and policy analysis. Andrea is extensively involved in national and international policy development around reducing chemical and pesticide health and environmental health risks, an area she has been working in for over 25 years. She led the development of the FAO guidance document on Highly Hazardous Pesticides with FAO staff.

Dr Cindy Stephen is a Medical Officer and the director of the Poisons Information Centre at the Red Cross War Memorial Children's Hospital in Cape Town. Prior to 2015, Cindy worked for many years in Child Health with a focus on developing systems and tools to improve the quality of care received by children in the South African health system. During her years in Pietermaritzburg, KwaZulu-Natal, Cindy became a founder member and co-developer of the Child Healthcare Problem Identification Programme (Child PIP), She continues to serve on the Child PIP Executive Committee and Technical Task Team. Cindy is also a clinical staff member of the Department of Paediatrics and Child Health at the University of Cape Town, and contributes to the development and maintenance of AfriTox, a uniquely South African poisons information database that provides medical practitioners with comprehensive information on managing poisoning in both adults and children, as well as the 24/7 Poisons Information Helpline, available to the public and medical personnel.

Organisations supporting the letter

African Centre for Biodiversity (ACB)

The ACB is research and advocacy organisation working towards food sovereignty and agroecology in Africa, with a focus on biosafety, seed systems and agricultural biodiversity. The ACB is committed to dismantling inequalities and resisting corporate-industrial expansion in Africa's food and agriculture systems.

Initially, its focus was exclusively on genetic modification and biosafety, thus the organisation was established in 2003 as the African Centre for Biosafety. Over the years, this expanded into working on the interconnected issues affecting food sovereignty and biodiversity in Africa, including seed laws, farmer seed systems, agricultural biodiversity, agroecology and corporate expansion in agriculture. The ACB's current geographical focus is mostly Southern, West and East Africa, with extensive continental and global networks.

The ACB strives for a socially just, democratic, and cultural and biological diverse landscapes and food systems in Africa, based on the interconnected and harmonious co-creation between people and nature.

Commercial, Stevedoring, Agricultural, and Allies Workers Union (CSAAWU)

CSAAWU is a trade union established in 2006 to address the appalling working and living conditions faced by farm workers, primarily in the wine lands of the Western Cape. CSAAWU is recognized as one of the most vibrant, caring unions in the agriculture sector. It has gained the respect of trade union federation, the South African Federation of Trade Unions (SAFTU), and is expanding from the Western Cape Province to the Northern Cape Province and other provinces in South Africa.

Groundwork, Friends of the Earth South Africa

GroundWork is a non-profit environmental justice service and developmental organization working primarily in Southern Africa in the areas of Climate & Energy Justice, Coal, Environmental Health, Global Green and Healthy Hospitals, and Waste.

The organisation seeks to improve the quality of life of vulnerable people in South Africa, and increasingly in Southern Africa, through assisting civil society to have a greater impact on environmental governance. GroundWork places particular emphasis on assisting vulnerable and previously disadvantaged people who are most affected by environmental injustices.

GroundWork is guided by the Section 24 of the SA Constitution which provides that everyone has the right:

- (a) to an environment that is not harmful to their health or well-being; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources

while promoting justifiable economic and social development.

Khanyisa Education and Development Trust (Khanyisa) /Kouga Workers Forum

Khanyisa is a land rights NGO whose operation is located in Gqeberha in the Eastern Cape, South Africa. Khanyisa supports the mobilisation and struggles of small-scale farmers and farm workers/dwellers associations in peri-urban areas, and commercial farms in the Nelson Mandela Metro [Kariega,] Sundays River Valley, Kouga, and Ndlambe [Alexandria] municipal regions.

Trust for Community Outreach and Education (TCOE)

TCOE is a national collective of six NGOs established in 1983. TCOE envisages a society where the rural poor, both men and women, have access and rights to land, marine, and other natural resources for food security and the creation of sustainable livelihoods. This society is responsive to the needs of the poor and that recognises and values the potential of all its citizens.

TCOE commits itself to building a mass-based national formation of poor rural people's organisations with strong, democratic, and accountable leadership that can organise, mobilise, and coordinate the struggles of all sectors of the rural and coastal poor, including women, small-scale farmers, commodity groups, fishers, farmer workers, and youth, for control and ownership of natural resources.

Such a formation actively forges links with urban and rural organisations and institutions at local, national, regional and international levels that advocate for basic services, economic rights, social and environmental justice, and an end to poverty.

Women on Farms Project (WFP)

WFP is a feminist organisation operating in the Northern and Western Cape that works with women who live and work on commercial farms. WFP seeks to empower farm women primarily through rights-based capacity building as well as support for their organisation in community-based structures. WFP enables farm women to know and claim their rights. Recent campaigns have targeted Gender Based Violence (GBV), access to proper sanitation facilities on the farms, as well as feminist-centred land redistribution.

WFP strives to strengthen the capacity of women who live and work on farms to claim their rights and fulfill their needs. It does this through socio-economic rights-based and gender education, advocacy and lobbying, casework, and support for the building of local structures of farmwomen. WFP promotes self-reliance, accountability and sustainability of organisations so that women organise themselves, speak for themselves, and mobilise resources to support their needs and dreams. Such self-organisation counteracts the marginalisation, abuse, and vulnerability experienced by women in the workplace, home, and farming community, and ensures their leading role in accessing services and securing employment, land, and housing.