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THE PEST CONTROL PRODUCTS BILL, 2022

A Bill for

AN ACT of Parliament to regulate the importation, exportation, manufacture, acquisition, distribution, advertising, use and disposal of products used for the control of pests and for the organic function of plants , to establish the Pest Control Products Authority, and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I – PRELIMINARY	
Short title	1. This Act may be cited as the Pest Control Products Act, 2022.
Interpretation	2. In this Act, unless the context otherwise requires – “accident” means an unplanned incident involving loss of life or injuries inside or outside premises, vehicle, plane, ship or release of toxic chemicals or explosion or fire or spillage of pest control products resulting in on-site or off-site emergencies or damage to equipment leading to stoppage of process or adverse effects to the environment; “active ingredient” means the part of the product that provides pesticidal action; “adulteration” means the unlawful and deliberate addition of any substance or thing to a pest control product so as to change or alter its character, value, quality, composition, merit, efficacy and safety; ‘advertisement’ means any visual or oral communication, representation, reference or notification of any kind which: is intended to promote or persuade the sale, or use of any pest control product; or appeals for, promotes or persuades the support of pest control product; promotional content of display material, labels, brochures, pamphlets, and packaging; advertisement also applies to published advertising wherever it may appear. “analyst” means a person appointed under section 18; “Authority” means the Pest Control Products Authority established under section 6; “Board” means the board of directors established under Section 9. “Cabinet Secretary” means the Cabinet Secretary for the time being

	responsible for matters relating to pest control products; “commercial training” in relation to pest control products means training or coaching for imparting skill or knowledge or lessons on pest control or related fields, with or without issuance of a certificate, and includes coaching or tutorial classes, but does not include government extension services, preschool coaching and or training offered at any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force; “committee” means a committee appointed under section 24(5); “counterfeit” means a pest control product, label or package which is similar or substantially indistinguishable from one legally authorized under this Act and which is likely to cause confusion or mistake or to deceive or pass off as being a genuine pest control product, label or package of the registrant of that particular product, and “counterfeit goods” shall be construed accordingly; “disposal” means any operation to recycle, neutralize, destroy or isolate pest control product waste, used containers or contaminated materials; “distribution” means the process through which pest control products are supplied through trade channels in local or international markets; “environment” means surroundings, including water, air, soil and their interrelationship as well as all relationships between them and any living organisms; “expired pest control product” means a pest control product whose shelf life as indicated on the label has lapsed. "Hazard" means Inherent property of a substance, agent or situation having the potential to cause undesirable consequences “inspector” means a person appointed as an inspector under section 18; “label” includes a legend, word, mark, symbol, pictogram or design applied or attached to, included in, belonging to or accompanying any pest control product; “Managing Director” means the Managing Director of the Authority appointed under section 16; “manufacture” includes any process carried out in the course of making a pest control product and includes synthesis of active ingredients, formulation, blending, mixing, distillation, processing, changing of form or application of any chemical or physical process in the preparation of a
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	pest control product and packaging; “Maximum Residue Limit (MRL)” means the maximum concentration of a residue that is legally permitted or recognized as acceptable in or on a food, agricultural commodity or feedstuff; “Obsolete pest control products” means pest control product that can no longer be used for their original purpose or any other purpose and therefore require proper disposal. A product is declared obsolete if it has deteriorated as a result of improper or prolonged storage and can no longer be used according to its label specifications and use instructions, nor can it be reformulated to become usable again. “package” includes any container, wrapping, covering or holder in which any pest control product or material is wholly or partly contained, placed or packed; “pest” means any injurious, noxious or troublesome insect, fungus, nematodes, bacterial organism, virus, weed, rodent, or other troublesome animal or other plant pest; pests of plant products, materials or environments and includes any injurious, noxious or troublesome condition or organic function of a plant or regulating plant growth; and pests and vectors of parasites or pathogens of human causing public health nuisance. “pest control product” means a product, device, organism, substance or thing that is manufactured, represented, sold or used as a means for directly or indirectly controlling, preventing, destroying, attracting or repelling any pest and includes – (a) any compound or substance that enhances or modifies or is intended to enhance or modify the physical or chemical characteristics of a pest control product to which it is added; (b) any active ingredient used for the manufacture of a pest control product; (c) plant growth regulators; and (d) public health pests including mosquitoes, fleas, mites, bugs (e) any other pest of public concern “place” includes any site, building, vehicle, vessel, railway carriage or aircraft; “personal protective equipment” means any clothes, materials, or devices that are designed to provide protection from pest control
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	products during the handling or application of; “premises” means a building, structure, enclosure or open space on which a pest control product business is located; “registrant” means a person issued with a certificate of registration under this Act in respect of a pest control product; “Registrar” means the Registrar of Pest Control Products referred to in section 23; “registration” means the process whereby the Authority approves the sale and use of a pest control product under this Act; “repackaging” means the transfer of a pest control product from any commercial package into any other, usually smaller, container for subsequent sale; “residue” means any specified substances in food, agricultural commodities, or animal feeds resulting from the use of a pest control product, and includes a conversion product metabolite reaction product or other derivatives thereof; "risk" means probability and severity of an adverse health or environmental effect occurring as a function of a hazard and the likelihood and the extent of exposure to a pesticide “sell” includes barter, exchange, export for or in pursuance of sale, agree to sell, or to offer, advertise, keep, expose, transmit, convey, deliver or manufacture for sale or to exchange or to dispose of to any person in any manner for any consideration whatever, or to transmit, convey or deliver in pursuance of a sale, exchange or disposal as aforesaid; and ‘sale’ shall be construed accordingly; “toxicity” means a physiological or biological property which determines the capacity of a pest control product to do harm or to occasion injury to a living organism by other than mechanical means.
Scope	3 (1) This Act shall apply to the following: a) Pest control products for use in plants and plant products, forestry, construction, paint and wood b) Pest control products for control of public health pests c) any compound or substance that enhances or modifies or is intended to enhance or modify the physical or chemical characteristics of a pest control product to which it is added d) Technical grade active ingredient used for the manufacture of a pest control product

	e) plant growth regulators and defoliators f) Biocides g) Pest control products used in paints h) Any other pest control products and devices not covered by any other law i) Importers, exporters, manufacturers, formulators, repackers, wholesalers, distributors, retailers, local agents, users, commercial trainers on pest control products, spray service providers and other persons dealing with pest control products, j) Premises dealing with pest control products and disposal of pest control product waste, used containers or contaminated materials k) Research on unregistered pest control products l) Persons conducting preregistration trials on pest control products m) Transportation of pest control products n) Monitoring and surveillance of formulated products and residues in food and environmental samples (2) This act shall not apply to pest control products regulated under the Veterinary Surgeons and Veterinary Paraprofessionals act of 2011.
Object and purpose of the Act.	4. The purpose for this Act is to— (a) safeguard human health and the environment from risks associated with pest control products; (b) provide for the issuance, suspension and cancellation of licenses and permits; (c) facilitate research into pest control products; and and (d) regulate all matters related to pest control products covered under this Act.
Guiding principles.	5. The guiding principles for the implementation of this Act shall be— (a) the national values and principles of governance set out by Article 10 of the Constitution; (b) the values and principles of public service set out by Article 232 of the Constitution; and (c) the principles of leadership and integrity set out in Chapter Six of the Constitution.
	PART II – ESTABLISHMENT, POWERS AND FUNCTIONS OF THE AUTHORITY
Establishment of the	6. (1) There is hereby established an Authority to be known as the Pest Control Products Authority.

Authority.	(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of— (a) suing and being sued; (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; (c) borrowing and lending money; (d) entering into contracts and; (e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act, which may be lawfully done by a body corporate.
Headquarters of the Authority.	7. The Headquarters of the Authority shall be in Nairobi, but the Authority may establish branches in the Country.
Functions of the Authority.	8. The functions of the Authority shall be to— (a) assess and evaluate pest control products in accordance with the provisions of this Act and regulations made there under; (b) receive, examine and approve applications for registration of pest control products; (c) safeguard human health from risks associated with pest control products by, inter alia— (d) advising on maximum residue limits for pest control products in line with international standards; (e) establishing minimum intervals between the application of pest control products and harvest in respect of various commodities; (f) monitor and enforce the provisions of this Act and the regulations for quality compliance to set standards; (g) promote Integrated Pest Management, good agricultural practices and other practices on matters related to pest control products; (h) disseminate information and conduct training and awareness creation on matters relating to pest control products; (i) implement ratified international treaties and conventions relating to pest control products; (j) safeguard the environment from risks associated with pest control products; (k) periodically review registered pest control products; (l) regulate the handling of pest control products by issuing licenses and permits; and (m) Advice on international conventions or treaties relating to

	pest control products (n) Undertake sampling and analysis of pest control products, residues in produce and environmental samples (o) Monitoring and surveillance of pest control products, and residues in food commodities and the environment (p) Conduct research on pest control products and related articles regulated under this Act. (q) Develop guidelines relating to pest control products; (r) Oversee and supervise disposal of obsolete and expired pest control products, pest control product wastes and empty pest control product containers (s) Carry out such other functions as are related to any of the functions conferred by the Act and the regulations.
Composition of Board.	9. (1) The Board shall consist of: (a) a non-executive chairperson appointed by the President; (b) the Principal Secretary for the time being responsible for matters relating to Agriculture; (c) the Principal Secretary responsible for National Treasury; (d) the Principal Secretary for the time being responsible for health matters (e) Director General of National environment Management Authority (NEMA). (f) Managing Director, Kenya Bureau of Standards (KEBS) (g) three persons appointed by the cabinet secretary as follows: i. One person nominated by the Agrochemicals Association of Kenya; ii. One person nominated by a registered national organization, recognized by the Ministry of Agriculture, representing farmers engaged in crop farming. iii. One person nominated by a registered national organization, recognized by the Ministry of Agriculture, representing persons trading in agricultural produce (h) Managing Director of the Authority (2) The Board may co-opt one person in charge of agriculture from the Council of Governors.
Qualification for appointment of chairperson.	10. A person shall be qualified for appointment as the chairperson of the Board if such person holds a degree from a university recognized in Kenya and has at least ten years' experience in a relevant scientific field.
Appointment of the Board	11. (1) Every appointment under section 9 shall be by name and by notice in the Gazette. (2) A person appointed as the chairperson or a member of the

	Board shall hold office for a term of three years and shall be eligible for reappointment for one further term. (3) The office of the chairperson or a member of the Board shall become vacant if the Chairperson or member- (a) resigns by notice in writing to the President or the Cabinet Secretary, as the case may be; (b) is absent from three consecutive meetings without the permission of the chairperson of the Board; (c) ceases to be a member of the organization nominating such person to the Board; (d) conducts himself in a manner deemed by the Cabinet Secretary, in consultation with the State Corporations Advisory Committee, to be inconsistent with membership of the Board; (e) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board; (f) is convicted of criminal offence and sentenced to imprisonment for a term exceeding six months; (g) is adjudged or otherwise declared bankrupt under any written law; or (h) is otherwise unable or unfit to continue as a member of the Authority.
Powers of the Authority.	12. (1) The Authority shall have all powers necessary for the proper performance of its functions under this Act, and in particular, and without prejudice to the generality of the foregoing, the Authority shall have powers to – (a) formulate, with approval of the Cabinet Secretary, policies pertaining to the organization, management and implementation of the objects of the Authority; (b) suspend or cancel licenses or permits issued under this Act; (c) control, supervise and utilize the assets of the Authority in such manner as best promotes the purposes for which the Authority is established; (d) determine the provisions to be made for capital and recurrent expenditure and for reserves for the Authority; (e) receive grants, gifts, donations or endowments and make legitimate disbursement therefrom; (f) enter into association with such other bodies or organizations within or outside Kenya as the Authority may consider desirable or appropriate and in furtherance of the purposes for which the Authority is established; (g) open a banking account or banking accounts for the funds of the Authority; (h) invest any funds of the Authority not immediately required for its purposes in such a manner as Treasury may approve from time to time;

	(i) establish such committees as it may deem appropriate, to perform such functions and responsibilities as it may determine and such committees may consist partly or wholly of members of the Authority; (j) delegate to any committee of the Authority or to any member, officer, employee or agent of the Authority the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act; and (k) charge fees for services rendered by the Authority; (l) advise the Cabinet Secretary on all matters relating to the enforcement of the provisions of this Act and the Regulations; and (m) coordinate the implementation of the provisions of this Act and the regulations related to its functions at the national and county levels.
The common seal of the Authority.	13. (1) The common seal of the Authority shall be kept in such custody as the Board may direct and shall not be used except upon the direction of the Board. (2) The common seal of the Authority shall be authenticated by the signatures of the Managing Director together with any other person duly authorized by the Board. (3) The common seal of the Authority when fixed to any document and duly authenticated shall be judicially and officially noticed, and unless and until the contrary is proved, any order or authorization by the Board under this paragraph shall be presumed to have been duly given. (4) All documents other than those required by law to be under seal, made on behalf of the Board and all decisions of the Board may be signed under the hand of the Managing Director or any other person duly authorized by the Board.
First Schedule to apply.	14. The First Schedule shall apply to the conduct of the business and affairs of the Board.
Remuneration of Board of Directors	15. The Authority shall pay its Board of directors such remuneration or allowances for expenses as it may, in consultation with the Salaries and Remuneration Commission.
Appointment of the Managing Director.	16. (1) There shall be a Managing Director of the Authority who shall be appointed by the Board on such terms and conditions of service as may be determined by the Board in the instrument of appointment or otherwise in writing from time to time. (2) A person shall be qualified for appointment under this section if such person has –

	(a) at least a Masters' degree from a university recognized in Kenya in any relevant discipline relating to the functions of the Authority; (b) at least ten years of relevant experience; and (c) has served in a senior management position for at least five years. (3) The Managing Director shall be the chief executive officer of the Authority and responsible to the Board for the day-to-day management of the affairs of the Authority. (4) The Managing Director shall be an ex-official member of the Board and shall have no right to vote at any meeting of the Board. (5) The Managing Director shall hold office for a term not exceeding three years and shall be eligible for reappointment for one more term. (6) The Board may terminate the term of the Managing Director for: (a) breach of Code of Conduct, (b) inability to perform to perform functions of his office for reasons of mental and physical infirmity (c) conviction of criminal offence (d) any other sufficient cause to the satisfaction of the Board
Employment of staff of the Authority.	17. The Authority may appoint such other officers and staff of the Authority, as may be necessary for the performance of its functions under this Act.
Appointment and designation of inspectors and analysts	18. (1) The Authority may appoint inspectors and analysts, as may be necessary for the performance of its functions under this Act. (2) The county government may nominate qualified persons for designation by the authority as inspectors for purposes of this Act. (3) The Cabinet Secretary shall by regulations specify qualifications and duties of inspectors under this Act.
Powers of inspectors of the Authority.	19. (1) An inspector appointed under this Act may, at all reasonable times in the performance of the functions under this Act – (a) enter and inspect any premises – (i) in which he reasonably believes a pest control product to which this Act applies is or has been manufactured, stored, sold or used; (ii) in which he reasonably believes there is material that is contaminated by a pest control product; or (iii) which is or are being used in the manufacture of a pest control product; (b) examine any pest control product or material found in any place or premises, or open any package found therein that he has reason to believe contains any pest control product or material and

	take samples thereof; (c) require any person to produce for inspection or for the purpose of obtaining copies thereof or extracts therefrom, any books, shipping bills, bills of lading, documents containing instructions, or other documents or papers concerning any matter relevant to the administration of this Act or any regulations made thereunder. (d) issue a premises or business license upon compliance with licensing of premises and business regulations under this Act; (e) order any person to present any pest control product or other thing for inspection in any manner and under any conditions that the inspector considers necessary to conduct an inspection. (f) issue a stop order and or recommend withdrawal of a premise license to any person operating any business in Pest control product where there is a violation of this Act (2) An inspector shall be issued with a certificate of appointment as an inspector, and shall on entering any place or premises referred to in subsection (1), if so required by the person in charge thereof, produce the certificate as proof of identification. (3) The owner or person in charge of any place or premises referred to in subsection (2) and every person found therein shall give an inspector all reasonable assistance to enable the inspector to carry out his duties and functions under this Act and the regulations, and shall furnish the inspector with such information with respect to enforcement of the provisions of this Act and regulations made thereunder as he may reasonably require. (4) Any person who- (a) willfully refuses entry to an inspector acting under this section; (b) knowingly obstructs an inspector in making an entry or making an inspection commits an offence. Any person who contravenes subsections (4) (a) and (b) above or obstructs or impedes an officer or other employee or an agent of the Authority in the exercise of any of the powers, or the performance of any of the functions conferred or imposed upon him by this Act commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or to both. (5) Any person who without reasonable excuse, fails to produce any pest control product or material for examination, any document the production of which is required of him under this section, commits an offence and is liable on conviction to a fine not less than fifty thousand shillings and not exceeding two hundred and fifty thousand shillings or imprisonment of a term not
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	exceeding six months or both.
Role of County Governments	20. (1) The County Governments shall in collaboration with the Authority undertake the following functions relating to pest control products; (a) Promoting good agricultural practices among farmers (b) Training and awareness creation of agro-dealers, farmers and the public on responsible use of pest control products; and, (c) Designating and establishing Pest Control Products waste collection and disposal sites in collaboration with The National Environment Management Authority (NEMA); and
Role of county inspectors	21. (1) A County inspector for the purposes of enforcing provision of this Act in consultation with the Authority shall: - (a) Report cases of suspected counterfeit Pest Control Products and other nonconforming products to the Authority; (b) Map out and maintain a record of pest control products premises within their counties; (c) Monitor the collection and management of empty pesticide container collection sites and disposal of pest control products wastes; (d) Train, advise and create awareness to agro dealers and farmers on responsible use of pest control products (e) At all reasonable times and upon producing his identification, enter premises for evaluation and take samples of suspected illegal products and report to the Authority for further action; (f) Stop and inspect any consignment containing suspected illegal Pest Control Products within the County and report to the Authority for further action; (g) Stop the sale of Pest Control Products in open markets and any other unauthorized places; (2) Without prejudice to subsection (1) above, the County Inspectors shall not exercise powers of an inspector that relate to— (a) Seizing of non-complying Pest Control Products; (b) Recommending and issuing of Pest Control Products premises/ Business licenses (c) Any other activities under this Act that are outside the jurisdiction of their counties;

Seizure, forfeiture and disposal of pest control products	22.(1) Whenever an inspector believes, on reasonable grounds, that this Act or the regulations has or have been contravened, he may seize and detain the pest control product in relation to which he reasonably believes the contravention was committed. (2) Any pest control product seized and detained pursuant to subsection (1) shall not be detained- (a) after such time, exceeding fourteen days, as in the opinion of the inspector, the provisions of this Act and the regulations have been complied with; or (b) after the expiration of six months from the date of seizure, or such longer period as may be prescribed with respect to any pest control product, Unless, before that time, proceedings have been instituted in respect of the contravention, in which case the pest control product may be detained until the proceedings are finally concluded. (3) A court convicting a person for an offence under this section or the regulations may- (a) order that any pest control product in relation to which the offence was committed shall be forfeited to the Government; and (b) make such order as the court may deem proper as to the payment by the defendant of any fees and other expenses incidental to the analysis and disposal of pest control product in respect of which the conviction is obtained. (4) Where an inspector seizes a pest control product, and the person in whose possession the pest control product was at the time of the seizure consents in writing to the disposal thereof, the pest control product shall thereupon be forfeited to the Government and shall be disposed of in such manner as may be prescribed by this Act and the regulations. (5) Any cost incurred by the Authority in connection with the disposal of any pest control product under subsection (4) shall be recovered from the owner or importer thereof. (6) Any person who willfully hinders or obstructs an inspector acting in exercise of his powers under this section commits an offence.
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	PART III - REGISTRATION OF PEST CONTROL PRODUCTS
Designation of a Registrar.	23. (1) The Managing Director shall be the Registrar of Pest Control Products. (2) Any power function or duty of the Registrar under this Act may be exercised, performed or carried out by an officer under a delegation from or under the control or direction of the Registrar. (3) Any decision made or instruction issued by any officer under subsection (2) shall be deemed to have been made or given by the Registrar unless such decision or instruction is withdrawn or amended by the Registrar prior to the making of such decision.
Registration of Pest Control Products	24(1) All Pest Control Products intended for use in Kenya must be registered by the Authority (2) An application for registration of the Pest Control Products shall be made in accordance with regulations under this Act (3) Any person applying for registration under subsection (1) shall supply or make available to the Registrar at the headquarters of the Authority within working hours, such samples and particulars of the pest control product as the Registrar may require. (4) If, after consideration of any application and after such investigation and enquiry as he may deem necessary, the Registrar is satisfied that— (a) the pest control product in respect of which the application is made is- (i) safe to human health and environment (ii) suitable and sufficiently effective for the purposes for which it is intended; (iii) complies with such requirements as may be prescribed; and (b) the establishment where it is manufactured is suitable for such manufacture; the Registrar shall register and publish the registration of such pest control product: Provided that the Registrar may refuse an application for registration of a pest control product if any previous registration of such a pest control product has been suspended or cancelled under this Act. (5) The Authority shall appoint a technical advisory committee to work with the Registrar in the consideration of applications made under this section.

	(6) Any registration under this section shall be subject to the prescribed conditions and any additional conditions determined by the Registrar, and shall be valid for such period as may be specified. (7) The Registrar shall upon evaluation of the toxicity and intended use of a pest control product assign a class for the product as: (i) Severely restricted (ii) Restricted (iii) Commercial and agricultural use (iv) Domestic (v) Any other class as may be determined (8) The Registrar shall assign a registration number and a certificate of registration to the pest control product upon payment of prescribed fee by the applicant. (9) The Authority may assign a mark of quality to registered pest control products. (10) Any registration under this section may be renewed at least one month before the lapse of the period specified under subsection (5). (11) Late renewal of certificate of registration of a pest control product, three months after expiry shall attract a penalty as prescribed in the regulations under this Act. (12) The provisions of subsections (1), (2) and (3) shall apply <i>mutatis mutandis</i> to the application for renewal of registration. (13) Such registration shall take into account EAC guidelines on registration of Pest Control Products and EAC Council of Ministers Decisions issued from time to time. (14) The Authority may initiate the re-evaluation of an already registered pest control product as shall be provided for under regulations in this Act (15) A person who sells or uses Pest Control Products which are not registered commits an offence and shall upon conviction be liable to a fine not exceeding one million Kenya shillings or to a term of imprisonment not exceeding two years or both. (16) A person who provides the Authority with false or misleading information under subsection (3) above commits an offence, and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or to both. (17) Any trader or other person who, in the course of a trade or
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	business in connection with the supply or use of pest control products or services, falsely represents that any pest control product is registered, commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand shillings or imprisonment for a term not exceeding two years or to both.
Cancellation of registration.	25. (1)The Registrar may suspend or cancel the registration of a certificate of registration at any time if satisfied that- (a) the registrant has in connection with the registration concerned, contravened or failed to comply with any provision of this Act; (b) the registrant has contravened or failed to comply with a condition to which the certificate is subject (c) where the registrant by notice applies for voluntary withdrawal of the pest control product; or (d) new scientific evidence demonstrates that the registered pest control product no longer fulfills the conditions of registration. (2) a registrant whose registration certificate has been cancelled under this Section may apply for re-registration upon satisfactorily addressing conditions under this Act (3) A holder of a registration certificate who fails to comply with the conditions of registration commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months or to both.
Registrar to give reasons.	26. (1) The Registrar shall, in writing, furnish the applicant or the registrant as the case may be, with reasons for- (a) refusal to issue a certificate of registration; (b) suspension or cancellation of accreditation of an institution; or (c) suspension or cancellation of a certificate of registration, within a period of thirty days from the date of the decision to undertake such suspension or cancellation, and shall give the person adversely affected an opportunity to be heard.
Banned and severely restricted products.	27. (1)The Authority may ban the use of a pest control product, where; (a) An active substance or formulation has been reported under any convention relating to pest control products ratified by Kenya to have severe, adverse effects on human and or the environment (b) Scientific risk evaluation by the Authority demonstrates that the exposure to an active ingredient or formulation in Kenya poses unacceptable risk to humans and environment while considering; (i) weight of scientific evidence (ii) availability of safer alternatives (iii) previous application of mitigation measures did not reduce the risk

	(iv) the risk does not arise from intentional misuse of the product (2) The Authority may list a product or formulation as severely restricted, where; (a) the product or formulation has been listed in international conventions relating to pest control products such as Rotterdam Convention Annex III, to have adverse effects on humans and the environment. (b) The Authority has determined from its evaluation process taking into account weight of evidence and effect on the socio-economic interest that the exposure to adverse effects from certain uses of a product cannot be mitigated in Kenya. (3) The procedures and conditions for listing severely restricted products and formulations, their use, the persons handling and their availability in the market shall be in accordance with the provisions of this Act and regulations made thereunder.
Control of Counterfeit Products.	28. (1) No person shall adulterate, counterfeit, or offer for sale any pest control product or label or packages for pest control products. (2) No person shall reuse a label or container or package of a registered product without authority from registrant. (3) Any person who adulterates or counterfeits or is found in possession of adulterated or counterfeit pest control products, labels or packages commits an offence and shall, on conviction, be liable to a fine of not less than two million shillings, and not exceeding ten million shillings, or a fine equal to five times the value of the counterfeited product, whichever is higher, or to imprisonment for a term not exceeding seven years.
Designation of competent persons.	29. (1) The Authority shall, through the Technical Advisory Committee referred to in Section 24 (5) assess and designate competent institutions or researchers to conduct studies on pest control products, and shall publish the list of the institutions or researchers so designated in the Gazette. (2) The Authority may suspend or cancel the designation of any institution or researcher which has contravened or failed to comply with any provision of this Act. (3) A suspension or cancellation of persons designated under subsection (2) shall be published in the Gazette. (4) The procedures for designation of persons, their responsibilities, rights and obligations and fees payable to the Authority shall be prescribed in the regulations under this Act (5) Designations of such persons shall take into account the approved EAC guidelines on official recognition.

**PART IV – IMPORTATION, EXPORTATION, MANUFACTURE,
RESEARCH, TRANSPORT AND DISPOSAL OF PEST CONTROL
PRODUCTS**

Control of imports and exports.	30. (1) No person shall import into, or sell any pest control product in Kenya unless that product has been registered, packaged and labeled in accordance with the regulations. (2) No person shall import any expired or obsolete pest control product (3) No person shall export or re-export out of Kenya any pest control product unless he has complied with the relevant requirements specified in the regulations. (4) Every person taking pest control products in transit shall cause such products to be declared at the port of entry and exit. (5) Any person who imports a pest control product which is not registered under this Act commits an offence and is liable on conviction to a fine of not less than one million shillings, and not exceeding five million Kenya shillings, or to imprisonment for a term not exceeding two years, or both. (6) Any person who imports a registered pest control product, expired or obsolete pest control product, exports, re-exports or fails to declare pest control product on transit in contravention of the provisions of this Act and the regulations therein commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand shillings or imprisonment for a term not exceeding two years or both.
Control of manufacture, Distribution, sale, & Use. of pest control products.	31. (1) No person shall- (a) manufacture or formulate; (b) store, distribute, use, display or sell; (c) transport, or possess; or (d) advertise, package or label, any pest control products except in accordance with conditions prescribed in regulations under this Act. (2) No person shall package, repackage, label or advertise any pest control product in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quality, composition, merit or safety. (3) No person shall distribute, offer or display for sale or use any expired, unregistered or obsolete pest control product (4) Any person who manufactures a pest control product which is not registered under this Act commits an offence and is liable on conviction to a fine of not less than one million shillings, and not exceeding five million Kenya shillings, or to imprisonment for a term not exceeding two years, or both.

	(5) Any person who possesses, handles, stores, transports, distributes or uses a pest control product which is not registered under this Act commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand shillings or imprisonment of a term not exceeding two years or to both. (6) Any person who uses a pest control product contrary to the label instructions commits an offense and is liable on a conviction to a fine not exceeding fifty thousand Kenya shillings or imprisonment of a term not exceeding six months, or both. (7) Any person who contravenes subsection (2) and (3) above or the regulations under this Act commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand shillings or to imprisonment for a term not exceeding six months or to both.
Authorization for Research.	32. (1) A person who wishes to conduct research on an unregistered pest control product shall apply to the Authority for authorization for such research. (2) An application for authorization under subsection (1) shall include any information required by the Authority, and shall be accompanied by all of the following- (a) a copy of the proposed experimental label; (b) a copy of the research protocol; (c) information on any health and environmental risks likely to be posed by the proposed research; and (d) any other information that the Authority may require. (3) If the Authority considers that health and environmental risks identified under subsection (2) are manageable, the Authority may authorize the use of the pest control product to conduct the research. (4) Where the Authority authorizes the use of a pest control product to conduct research, the Authority shall issue a research authorization certificate subject to such conditions as it may deem necessary. (5) The requirements in clause 32 (1) does not apply to research on an active ingredient or active agent derived from or isolated in Kenya for basic research. (6) The Authority shall put in place measures to encourage and recognize local innovation on the development and management of pest control products. (7) Any person who undertakes research on an unregistered pest control product without authorization in accordance with this Act and the regulations commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months, or both.
Transportation of pest	33. (1) No person shall transport, offer to transport or handle any pest control product unless it complies with the regulations made

control products.	under this Act. (2) Any person who transports a pest control product, a mixture containing a pest control product, contaminated soil or a container that has been used to hold a pest control product in a manner other than the manner prescribed in the regulations commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or to both.
Control of disposal of pest control products	34. (1) Every licensed agro dealer shall be required to declare to the Authority stocks of obsolete and expired pest control products by 31st December every year in accordance with regulations under this Act (2) The Authority shall supervise proper disposal of the obsolete and expired pest control products in accordance with regulations under this Act. (3) Any person who fails to declare stocks of obsolete and expired pest control products pursuant to sub section (1) above commits an offence under this Act and is liable on conviction to a fine not exceeding two hundred and fifty thousand shillings, or to imprisonment for a term not exceeding six years, or both.
PART V – LICENSES	
Classification of Licenses.	35. (1) No person shall manufacture, formulate, repack, distribute, retail, wholesale, sell, store, dispose, provide commercial spray service, offer pest control services, be an agent of, without a license issued by the Authority. (2) The following licenses shall be issued under this Act and its regulations. (a) Manufacturing (b) Formulator (b) Re-packing (c) Distributor (d) Retailers (e) Warehousing (f) Disposal (g) Pest control services (h) Commercial training (i) Commercial spray service providers (j) Agency (k) Wholesaler (l) Storage and Use (3) Any person who makes an application to be licensed under this section shall be required to meet the minimum

	requirements specified in the regulations under this Act. (4) The Authority shall establish and maintain a record of licensed dealers listed in (2) above. (5) Any person who contravenes provisions of this section commits an offence.
Application for licensing.	36. An application for a license shall be made in accordance with the regulations under this Act and upon payment of a prescribed fee.
Premises not to be used unless licensed.	37. (1) No person shall use any, or any premises, or, being the owner or occupier thereof, permit or allow the premises to be used for the purposes of manufacturing, formulating, packaging, selling or storing pest control products unless that person is in possession of a license issued under this Act and regulations therein in respect of those premises. (2) No person shall offer online platform for selling, advertising or marketing pest control products unless that person ensures that traders using the platform are duly licensed and the products are duly registered according to provisions of this Act and regulations. (3) Any person who, in the course of a trade or business, operates premises or any business not licensed for pest control products under this Act, commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months or both. (4) Any person who contravenes Section 37(2) above, commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding six months or both.
Commercial training in pest control products.	38. (1) No person shall undertake commercial training in relation to pest control products except with a license from the Authority in accordance with conditions prescribed by regulations made under this Act. (2) Any person who contravenes provisions of this section commits an offence.
Issue and expiry of license.	39. (1) Every license issued under this Act shall expire on the 31st December following the date of issue and shall be renewable annually. (2) A license issued under this Act shall not be transferrable from one person to another or one premises to another. (3) Any application for renewal submitted to the Authority later than 31st March of each year shall attract a late fee as provided for

	in regulations.
Suspension and revocation of a license	40 (1) The Authority may suspend or revoke a license at any time if satisfied that the holder thereof has contravened or failed to comply with any provision of this Act or any condition to which the license is subject. (2) a licensee whose license has been suspended or revoked under this Section may apply for re-licensing upon satisfactorily addressing conditions under this Act
Stock Record	41. Every person licensed under this Section shall keep proper records as prescribed in regulations under this Act
	PART VI – LABORATORY ANALYTICAL SERVICES
Establishment, Designation and Authorization of laboratories and of persons to undertake analytical services on pest control products	42. (1) The Authority shall establish laboratories to undertake analysis of pest control products, residues in produce and environmental samples, monitor product quality for compliance and other analysis necessary for its functions under this Act. (2) The laboratories may be used to conduct research on pest control products and related articles regulated under this Act. (3) The Authority laboratories shall be the designated laboratories to undertake analysis and testing for the performance of its functions under this Act. (4) The Authority may charge some fees for the services offered in the analytical laboratory (5) For the purposes of this Act, The Authority may authorize public and or private persons to undertake analytical services on behalf of The Authority. (5) The person authorized in subsection (4) above shall provide upon request all relevant information related to authorized analytical activities.
	PART VII — FINANCIAL PROVISIONS
Funds of the Authority.	43. (1) The Pest Control Products Authority is not an income generating entity but may charge some fees for services offered. (2) The funds of the Authority shall consist of— (a) Funds appropriated by parliament (b) Funds provided for the purposes of the Authority;

	(c) such monies as may be payable to the Authority pursuant to this Act or any other written law; (d) such monies or assets as may accrue to the Authority in the course of the exercise of its powers or the performance of its functions under this Act; and (e) all monies from any other lawful source provided or donated or lent to the Authority. (3) The receipts, earnings or accruals of the Authority and the surplus balances at the end of each financial year shall be retained for the purposes for which the Authority is established. (4) The Authority may invest any funds not immediately required for its purposes in such a manner as National Treasury may approve from time to time.
Borrowing powers.	44.(1) Subject to subsection (2), the Authority may, with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for finance, borrow money required for the exercise of its functions and for meeting its obligations. (2) The approval under subsection (1) may be either general or limited to a particular transaction and may be either conditional or unconditional.
Financial year.	45. The financial year of the Authority shall be the period of twelve months ending on the thirtieth of June in every year.
Annual estimates.	46. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year. (2) The annual estimates shall make provision for all the estimated expenditure of the Authority for the financial year concerned and in particular shall provide for the— (a) payment for the infrastructural developments and provision of services; (b) payment of salaries, allowances and other charges in respect of the staff of the Authority and the Board of Directors; (c) payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Authority; (d) acquisition, maintenance, repair and replacement of the equipment and other movable property of the Authority; and creation of such funds to meet future or contingent liabilities in respect of benefits, insurance and the replacement of buildings or

	equipment. (3) The annual estimates shall be approved by the Board at least two months before commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for presentation before the National Assembly.
Accounts and Audit.	47. (1) The Authority shall keep proper books of account of the income, expenditure, assets and liabilities of the Authority, and shall in this regard be subject to the provisions of the law regulating State Corporations. (2) The annual accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act.
Expenditure outside the budget.	48. Any activity outside the approved budget shall only be undertaken with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for finance.
Principles of operation.	49. The Authority shall perform its functions in accordance with sound financial principles and shall ensure, as far as reasonably practicable, that its expenditure is properly chargeable to its revenue.
Financial and annual Reports.	50. (1) The Authority shall ensure that its financial statements are prepared in accordance with the— (a) State Corporations Act; and (b) Public Finance Management Act. (2) The Authority shall prepare an annual report for each financial year. (3) The report of the Authority under subsection (1) shall, in respect of the financial year to which it relates, contain- (a) the financial statements of the Authority; (b) a description of the activities of the Authority; (c) such other statistical information as the Authority considers appropriate relating to the Authority's functions; and (d) any other information relating to its functions that the Authority considers necessary. (4) The Authority shall publish and publicize the annual report in such accessible manner as it may consider appropriate.

	PART VIII– MISCELLANEOUS PROVISIONS
Dispute Resolution	51. (1) In case of a dispute arising during implementation of this Act the dispute will at first instance be resolved internally through a Committee in the Authority. (2) Where amicable resolution fails in subsection (1) above, the dispute may be referred to arbitration. (3) Notwithstanding the provisions of (1) and (2) above, where parties have deposited binding agreement in accordance to this Act and Regulations thereof. The Authority may use provisions of the agreement and other relevant documents to make a determination. Provided that parties shall not have any recourse against the Authority.
Protection from personal liability.	52. No matter or thing done by a member of the Board of the Authority or any officer, employee or agent of the Authority shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Authority, render the member, officer, employee or agent or any person acting on his directions personally liable to any action, claim or demand whatsoever.
Secrecy of information	53. Any person who is or has been engaged in the endorsement of the provisions of this Act who discloses, except for the purpose of the exercise of his functions or when required to do so by a court or under any written law, any exercise of his functions under this Act to any other person shall be guilty of an offence.
Passing confidential Information without Authorization.	54. Any person, under this Act, who— (a) being in possession of confidential information, however obtained— (i) divulges such information; or (ii) attempts, offers or threatens to divulge it; or (b) willfully obtains or seeks to obtain confidential information to which he is not entitled,

	commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand shillings or to imprisonment for a term not exceeding two years or to both.
Liability of the Authority for damages.	55. The provisions of section 52 shall not relieve the Authority of the liability to pay compensation or damages to any person for an injury to him his property or any of his interest caused by the exercise of the powers conferred on the Authority by this Act or by any other written law or by the failure, whether wholly or partially, of any works.
Vicarious liability.	56. In any prosecution for an offence under this Act, it shall be sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.
Contravention causing risk or harm.	57. (1) Any person who, in undertaking any activity involving a pest control product, causes a risk of imminent death or bodily harm to another person or animals or harm to the environment by; (a) transporting, handling or storing pest control products in contravention to the provisions of this Act and Regulations made under this Act; (b) using the pest control products for purposes and the manner not prescribed in the label; (c) disposing of pest control products in contravention of provisions of this Act and Regulations made under this Act; and, (d) knowingly or unknowingly exposing other persons, animals or the environment; commits an offence. (2) Any person who commits an offence under subsection (1) is liable on conviction to a fine of not exceeding five hundred thousand shillings or to imprisonment for a term of not exceeding two years, or both.
General penalty	58. A person who contravenes any provision of this Act, or commits an offence for

	which no penalty is prescribed, shall be liable, on conviction, to a fine not exceeding thirty thousand shillings, or to imprisonment for a period not exceeding one year, or to both
Regulations.	59(1) The Cabinet Secretary may make regulations for the better carrying out of the purposes of this Act. (2) Without prejudice to the generality of the foregoing, the Cabinet Secretary may make regulations- (a) prescribing the forms in which applications for licensing shall be made, premises in which any pest control products are handled by manufacturers or dealers, the information to be provided and conditions to be furnished therewith; (b) prescribing the form in which application for registration and re-registration of pest control products and information to be provided and conditions furnished thereof; (c) procedures for suspension and revocation of licenses and registration certificates; (d) prescribing fees to be paid under this Act (e) procedures for appointment, membership, roles and responsibilities of the technical advisory committee. (f) prescribing conditions for banning and restricting pest control products; (g) relating to the management of accidents involving pest control products and their wastes; (h) prescribing the conditions for licensing commercial spray service providers and pest control operators (i) prescribing the conditions for licensing commercial trainers on pest control products (i) relating to notification of poisoning associated with pest control products; (j) relating to the manufacture, storage, distribution, transportation, display and use of any pest control product; (k) prescribing the form, composition, and all other standards relating to the safe use of pest control products, including toxic residue effects; (l) relating to the manufacture, denaturation or testing of any pest control product to facilitate its recognition by change in colouration or other means; (m) prescribing the standards for efficacy and safety of any pest control product; (n) relating to the packaging, labelling and advertising of pest control products; (o) relating to the disposal of pest control products and associated waste; (p) relating to the taking of samples and the making analyses for the purposes and provisions of this Act;

	(q) prescribing the conditions under which pest control products maybe imported, exported or re-exported; (r) prescribing the circumstances and manner of trans-boundary movement of hazardous wastes of pest control products; (s) relating to the transit and value addition of pest control products for export; (t) prescribing data protection and intellectual property rights with respect to pest control products. (u) prescribing any other regulation for the better enforcement of this Act
	PART IX- REPEALS AND SAVINGS
Repeal of Cap 346	60. (1) The Pest Products Control Act, is repealed. (2) Notwithstanding subsection (1) the transitional and savings provisions set out in the Second Schedule shall have effect upon the commencement of this Act.
Cessation of the application of Community law Cap. 4, E.A. Cap 3	61. (1) Notwithstanding the Treaty for East African Co-operation Act (Cap. 4), as from the date of commencement of this Act, the Control of Pesticides Act (E.A. Cap. 3) of the Community shall cease to have the force of law in Kenya (2) Notwithstanding subsection (1), any proceedings under the Control of Pesticides Act (E.A. Cap. 3) of the Community ongoing before the commencement of this Act may be continued and concluded in accordance with that Act as though it still had the force of law in Kenya.
Cessation of Application of provisions Cap 244 No. 29 of 2011.	62. Notwithstanding the provisions of the Pharmacy and Poisons Act, and Veterinary Surgeons and the Veterinary Para-professionals Act, 2011 relating to pest control products, all matters relating to pest control products shall be administered under this Act.
Savings.	63. All licenses, permits, certificates and other authorizations in force immediately before the commencement of this Act shall upon such commencement continue in operation until their expiry, and shall thereafter be renewed in accordance with this Act.

FIRST SCHEDULE (S.12) CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD OF THE AUTHORITY	
Meetings of the Board	1. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting. (2) Notwithstanding subparagraph (1), the Chairperson may, or on requisition in writing by at least five members, convene a special meeting of the Board at any time for the transaction of the business of the Board. (3) Unless three quarters of the total members of the Board otherwise agree, at least ten days' written notice of every meeting of the Board shall be given to every member of the Board.
Quorum.	2. The quorum for a meeting of the Board shall be five persons.
Chairperson to preside.	3. The Chairperson shall preside over all meetings of the Board at which he is present, but in his absence the members present may elect one of their members to act as Chairperson for purposes of the meeting.
Conflict of interest.	4. (1) No member of the Board shall take part in the discussion of or taking a decision on any matter in which that member or any of the member's relations has an interest. (2) In any meeting where subsection (1) of this section applies, every member referred to therein shall inform the meeting of any person or other direct interest, and to the extent that the discussion or decision concerns any matter in which such member has an interest, such member shall be excluded from further attendance at that meeting.
Voting.	5. The decisions of the Board shall be carried by a majority of the members present and voting and in the case of a tie the Chairperson or person presiding shall have a casting vote.
Procedure	6. The procedure for the Board shall be guided by Mwongozo code of Governance for state corporations or any other approved code of conduct issued by the government from time to time.

SECOND SCHEDULE TRANSITIONAL AND SAVING PROVISIONS	
Cap. 346	1. In the Schedule - “former Act” means the Pest control Products Act repealed by section 60 of this Act; “former office” means the Pest Control Board’s Office existing immediately before the commencement of this act. 2. Where a Pest Control Product was registered in Kenya under the former Act or where it was saved under that Act, and the privileges and rights conferred by the registration were effective immediately before the commencement of this Act, then, subject to this Schedule – (a) the registration of such Pest Control Product shall be treated in Kenya as if it had been granted under this Act; (b) the privileges and rights attending such registration shall expire at the time they would have expired if this Act had not been enacted; (c) registration of such a Pest Control Product may be revoked or invalidated only where those privileges and rights could be declared as not having been acquired in Kenya if this Act had not been enacted. (d) the certificate of registration, or a certified copy of registration of such pest control product, shall be admissible as <i>prima facie</i> evidence of the date and the fact of registration; and (e) an action for infringement of such Pest Control Product shall lie under this Act only if the alleged infringement occurred on or after the commencement of this Act, and in other cases may be instituted and disposed of as if this Act had not been enacted. 3. As far as is necessary for the purposes of paragraph 2, the Register of Pest Control Product under the former Act shall continue to be maintained and shall be deemed to be part of the register established under this Act. 4. Applications for registration of Pest Control Products in Kenya between the date of the commencement of the former Act and the date of the commencement of this Act, shall be processed in accordance with the provisions of this Act and shall retain or be accorded the filing date or validly claimed priority date which was or would have been accorded under the former Act. 5. All the funds, assets and other property, movable and

	immovable, which immediately before the coming into operation of this Act, were held by the Government on behalf of the former Office shall, by virtue of this paragraph and without further assurance, vest in the Authority. 6. Every public officer having the power or duty to effect or amend any entry in register relating to registering of a pest control product, or to issue or amend any certificate or other document effecting or evidencing title to registering of a pest control product, shall, without payment of any fee or other charge and upon request by or on behalf of the Authority, do all such things as are by law necessary to give final effect to the transfer of any property mentioned in paragraph 5 to the Authority. 7. All rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before the coming into operation of this Act were vested in, imposed on or enforceable by or against the Government in respect of the former Office shall by virtue of this paragraph, be transferred to, vested in, imposed on, or be enforceable by or against the Authority. 8. On and after the coming into operation of this Act, all actions, suits or legal proceedings by or against the Government pending in respect of the former Office shall be carried on or prosecuted by or against the Authority and no such suit, action on legal proceedings shall abate or be affected by the coming into operation of this Act. 9. The annual estimates approved for the former Office in respect of the financial year in which this Act comes into operation shall be deemed to be annual estimates of the Authority for the remainder of the financial year but those estimates may be varied by the Authority in such manner as the Cabinet Secretary and the treasury may approve. 10. (1) Any person who is an officer or employee of the former office immediately before coming into operation of this Act shall be deemed to be an officer or employee of the Authority: (2) Any officer or employee who does not exercise his option under this subparagraph (1) shall be deemed to have been seconded to the Authority for a further period of twelve months at expiry of which such officer or employee may exercise the option as provided or be redeployed elsewhere in the Public Service. (3) The terms and conditions of the contract referred to in subparagraph (1) shall not be to the disadvantage of the employee exercising the option.
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CABINET MEMORANDUM ON THE PROPOSED PEST CONTROL PRODUCTS BILL 2022

1. Purpose of the Memorandum

The purpose of this Memorandum is to request the Cabinet to consider and approve the Pest Control Products Bill 2022. The object of this Bill is to repeal and replace the Pest Control Products Act (Chapter 346 of the Laws of Kenya of 1982) in order to address legal gaps and emerging issues in the pesticide industry. The Pest Control Products Bill is annexed to the memorandum to provide necessary details.

2. Background and Justification

Pest control products are regulated through the Pest Control Products Act CAP 346 and regulations made thereunder. The PCP Act, Cap. 346 was enacted in 1982 to regulate the importation, exportation, manufacture, distribution and use of products used for the control of pests in crops and public health and of the organic function of plants and related issues.

Pest control products (PCPs) are agents/devices used to control agricultural, domestic and industrial pests. Pest control products may be synthetic such as Organochlorines, Organophates, Pyrethroids, and Carbamates); Biological such as Natural plant extracts, Macrobia, Microbial, Semiochemicals and Growth regulators/hormones) or devices (traps). Access to high quality inputs is critical in increasing agricultural productivity Pesticides are a major input in the control and management of both field and post-harvest pests and diseases thereby contributing significantly to a country's food security.

PCPs have a significant economic importance, as at the end of 2020, the volume of pest control product imported into Kenya was estimated to stand at 19,932 metric tons. The number of inspected business entities dealing in PCPs along the product supply chain stood at over 7,000 with a total number of locally registered pesticide products for use in Kenya totaling 2,200 as at August 2021. These products cover; agriculture (crops), public health and technical grade material for manufacturing and industrial use. PCPs contribute to the economy by;

- i) Improving agricultural productivity and food security;

- ii) Creating employment in the following areas; transport sector, local filler material and packaging material production, formulation, repacking and other associated facilities, distribution network and,
- iii) Technology transfer.

PCPs are however potentially toxic and their regulation is essential to mitigate against potential risks inherent in the handling and use. These risks include residues in food (food safety) and toxicity to man and environment. Regulation aims at ensuring that management of the pest control products supply chain and their use for intended purposes are effective thus contributing to food security while minimizing their potential adverse effect on man and environment. In addition from time to time, due to advances in pesticides science , safer and more effective alternative pest control product have been invented and those hitherto in common use found to be chronically or acutely injurious to human health and environment withdrawn. This regularly calls for stricter regulation and may include banning of the use of certain products. In Kenya alone, 39 of such products have been banned as at August 2021.

A robust legal and regulatory framework and effective regulation of the pesticide industry is critical to contributing to a clean and secure environment for Kenyans to live and work in as envisaged in Vision 2030 and Article 42 of the Constitution. In addition, the regulatory measures arising from effective regulation and development of new innovations in the pesticide industry will contribute to the following Global Sustainable Development Goals (SDG);

- Goal 2 to ensure food security,
- Goal 3 to ensure healthy lives and promote wellbeing,
- Goal 12 to ensure sustainable consumption and production patterns and,
- Goal 15 to Protect, restore and promote sustainable use of terrestrial ecosystems.

3. Analysis of the Problem

The current Kenyan law on pest control products, Pest Control Products Act CAP 346 is weak in addressing emerging modern practices along the pesticide distribution and utilization chain (importation, exportation, manufacture, acquisition, distribution, advertising, use and disposal of products). In particular, the

Act is weak on domestic consumer, environmental protection and in facilitating export market access for Kenya's agricultural produce.

This scenario has led to less effective regulation of the pesticide industry with causes and consequences such as:

- i) A Pest Control Products Board without requisite statutory powers ordinarily granted to State Corporations as a Body Corporate. This has limited the performance of the current Board's regulatory role;
- ii) Inadequate provisions on powers to control registrations of pesticide products;
- iii) Limitations on the scope of powers that can be exercised on importation, exportation re-exportation, research, transport and disposal of pesticides; this include, for example, certain technical grades of pesticide material brought into the country for research or industrial use;
- iv) Inadequate deterrent penalties to check abuses like adulteration, misrepresentation, misuse and disposal of pesticide products and materials;
- v) Overlaps in mandate with other institutions that require streamlining.
- vi) Inconsistence with Article 108 of the Treaty for the establishment of the East African Community on Plant and animal Disease Control that states: Partners states shall:
 - a) Harmonize policies, legislation and regulation for enforcement of pest and disease control, b) Harmonize and strengthen regulatory institutions and ,e) Adopt common mechanism to ensure safety, efficacy and potency of agricultural inputs including chemicals, drugs and vaccines etc

Past efforts in introducing changes to the current statute have been piecemeal and none-substantive due to limitations associated with amendments. These past efforts resulted in amendment to enhance penalties for industry malpractices but could not address institutional changes at the Board such as membership, functions and powers. The Ministry was advised that such substantive changes required a repeal of the current Act, Cap 346 and enactment of a more comprehensive law.

4. Options on the Way forward

The principle object of the Bill is to establish the Pest Control Products Authority, to regulate the importation, exportation, manufacture, acquisition, distribution,

advertising, use and disposal of products used for the control of pests and of the organic function of plants, and for connected purposes.

Specifically, the Bill seeks to address the following weaknesses inherent in the current law;

- (a) Addressing Article 42 of The Constitution of Kenya, 2010 on protection of the environment and other articles, focusing on consumer protection;
- (b) Increasing agricultural production by ensuring access to safe and efficacious pest control products and thus contributing to food security;
- (c) Conforming to various multilateral environmental agreements on matters of pest control products which Kenya has ratified and signed. PCPB will need to effectively prevent the introduction of banned or highly hazardous pesticides into the Kenya market.
- (d) Addressing overlaps in the Pharmacy and Poisons Act Cap 244, the Food, Drugs and Chemical Substances Act Cap. 254, the Veterinary Surgeons and Veterinary Para-Professionals Act No. 29 of 2011.
- (e) Alignment with the State Corporations Act. Cap 447 and Mwongozo code of conduct;
- (f) domesticate the harmonized guidelines on Pesticides approved by The EAC Council of Ministers
- (g) Facilitating export market access for Kenya's agricultural produce: The international markets access for Kenya's horticultural produce requires adherence to strict food safety standards, and Maximum Residue Limits (MRL).
- (h) Clearly stipulating the powers of the Board. The current Act does not differentiate the powers of the Board and functions of the institution.
- (i) Enhance penalties to be deterrent to ensure compliance.

5. Financial Implications

The enactment of the Bill will not occasion any additional expenditure of public funds over and above the normal budgetary allocation that the current Board gets. The enactment of the Bill is targeted at strengthening the institutional and regulatory framework governing the industry and will in effect give greater regulatory power to the Authority to effect its legal mandate. It is expected that the new Authority will also generate additional funding for some of its operations through improved internal revenue collection, licensing and issuance of permits from the expanded scope of industry actors.

6. Recommendations

The Cabinet is invited to note the content of this memorandum and to:

- (a) approve the content of the Pest Control Products Bill, 2022 annexed to this memorandum; and
- (b) Direct the Attorney-General to submit the Bill to the National Assembly for publication.

Sign.....

Date.....

**Mr. Peter Munya, MGH
Cabinet Secretary,
Ministry of Agriculture, Livestock,
Fisheries and Co-Operatives**

Sign.....Date.....

**Hon. (Amb.) Ukur K. Yatani, EGH
Cabinet Secretary,
The National Treasury and Planning**