NOTICE 499 OF 2006 DEPARTMENT OF AGRICULTURE

FERTILIZER, FARM FEEDS, AGRICULTURAL REMEDIES AND STOCK REMEDIES ACT, 1947 (ACT NO. 36 OF 1947)

PUBLICATION OF PESTICIDE MANAGEMENT POLICY FOR PUBLIC COMMENTS

I, Angela Thoko Didiza, Minister of Agriculture hereby publish the pesticide management policy for comments by the general public. Comments must be submitted in writing within 30 days of publication of this notice to:

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DEPARTMENT: AGRICULTURE

DRAFT PESTICIDE MANAGEMENT POLICY FOR SOUTH AFRICA

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PESTICIDE MANAGEMENT POLICY FOR SOUTH AFRICA

■ INTRODUCTION

Pesticides contribute importantly to our health and quality of **life.** For example, they enable crops to be produced more efficiently, reduce the contamination of food by toxic fungi, and are used to control insects that spread human, animals and plant diseases. Owing to the fact that they are designed to be biologically active, pesticides also have the potential to harm humans and other species that are not their intended target. Moreover, by their action on a target organism, they may alter the broader "ecological" balance of nature in ways that are undesirable. It is therefore, important to control the use of pesticides, by carefully weighing the benefits that they confer against any possible adverse effects.

The Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, which governs amongst other things, pesticides and their use was passed by Parliament in **1947.** Although the Act has been amended on several occasions since then, it has never been systematically revised. The activities of the Department of Agriculture, the body that administers the Act have not been publicly scrutinised since the inception of the Act. In addition, of the more than 3000 pesticides approved for use in South Africa, many have not been re-evaluated for years. Their safety therefore, has not been reassessed to bring them in line with today's more stringent standards of risk assessment.

The absence of an 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. Scientific and medical journals increasingly report the risks posed to human health by pesticides, including links between pesticides and diseases such as cancer and hormone disruption. The mounting evidence of the negative impacts of pesticides on wildlife and the environment has prompted South Africans to register their disapproval of pesticides and take action to reduce their use. Consumer perception nationally as well as in developed countries demanded a move from a production-centred system purely based on quantity parameter towards more quality oriented production methods and also residue-free agricultural produce.

In the light of these developments, a change in the methodology in pesticide management **is** needed based on a policy, which will take into account the necessary reduction of possible risks as well **as** sound production systems. Human health, environmental quality and economic

development depend on effective systems that enable South Africans to use pesticides safely and sustainably. Effective systems are those that identify the potential risks of pesticide exposure to the environment and human health and provide government, industry and the community with the right tools to reduce and manage those risks. Thus, the premise of this Policy is that sustainable development, built on balanced economic growth, equitable access and long-term environmental sustainability, is fundamental to poverty alleviation. The Policy acknowledges that good environmental management contributes to global competitiveness.

This Policy will serve as an information document – as well as a guideline to support the legislation and regulations. It provides decision- makers with direction and sets out a framework to ensure improvements that aim to ensure that pesticides are produced, used and disposed of throughout their full life- cycle in ways that lead to the minimisation of significant adverse effects on health and the environment.

2. PROBLEM STATEMENT

The Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, **1947** (Act No. 36 of **1947**) is almost 58 years old. Changes to the context within which pesticides are managed have taken place and have led to a need to consider reviewing the current Act to improve efficiency and effectiveness of pesticides management in South Africa. The review yielded a number of concerns, including, *inter alia*:

- The Act does not adequately address Constitutional requirements in relation to Bill of Rights, Access to Information, openness and transparency in decision- making and also just administration action;
- The Act does not adequately incorporate international obligations and agreements which South Africa is Party to;
- Under the current Act, any one who contravenes a provision of the Act or the regulations is guilty of an offence and will be summarily convicted and liable to a fine not exceeding R1000, and such penalties have limited deterrent effect;
- There is no requirement for review of registered pesticides
- Lack of establishment of pesticide use surveillance and monitoring systems to gather information on common conditions of use and their impact on health and environment are promoted;
- Lack of capacity for research on alternative pest control and crop production measures
- Lack of awareness raising, education and training appropriate to the public and the user

- Does not adequately encourage registration that favour lower risk products and reduced reliance on pesticides overall
- The Act does not adequately address the problem of obsolete stockpiles pesticide and their disposal
- The Act does not adequately address the issue of pesticide container management
- Inadequate integration across government departments and complementing other legislations; and
- Vulnerable sub-populations, which are not adequately protected

3. OBJECTIVES

The objectives of this policy are:

- To minimise the hazards and risks to health and the environment
- To improve legislative framework to control the use and distribution of pesticides
- To encourage the development and use of alternative products and techniques and reduce dependence on chemical plant protection products
- To integrate international agreements and other government departments imitative
- Increased transparency and information about pesticides and timely access to new, safer pesticides.

These objectives can only be achieved effectively through partnerships between Government, the agro-chemical industry, farmers and other stakeholders nationally and through international initiatives.

5. POLICY TO ADDRESS THE PROBLEM

The objectives of the policy will be achieved through the application of relevant and existing international agreements, policies and regulatory frameworks, with particular reference to the following-

(i) Protection of human health and promotion of non-toxic environment

The stage for the development of a cohesive body of law has been set by the inclusion of an environmental clause in South Africa's Constitution (the Constitution of the Republic of South Africa, Act No. 108 of 1996). Section **24** of the Constitution of the Republic of South Africa specifically imposes a duty on the State to promulgate legislation that ensures that the environment is not harmful to the health or well being of its inhabitants; as well as the need to have the environment protected for future generations. **Also**, section 33 (Just Administrative Action) of the Constitution grants the right to fair, lawful, reasonable and procedurally fair administrative action and provides that where administrative action has adversely affected rights, written reasons must be given. This right is important, for example, where regulatory decision authorised in terms of pesticide legislation is refused.

To fulfil the environmental rights, the Department Agriculture shall endeavour to use sound scientific criteria that are generally consistent worldwide, and this must be the cornerstone of our regulatory decision- making, and should be central to the responsibility that South Africans have entrusted us with; that is, to safeguard their health and environment. Thus, regulatory decisions will be made, using a risk management approach that will involve risk assessment. The evaluation process will focus on whether the health and environmental risks posed by a pesticide, when used as directed, are likely to be acceptable, and whether the product offers a worthwhile contribution to pest management. The Policy takes into cognisance the fact that special attention should be given to pesticides that pose unmanageable risk, with an understanding that such pesticides should be considered for phase-out, severe restriction and bans. Those that will be considered include those with Endocrine Disrupting Properties (EDP), Persistent Organic Pollutants (POPs), 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.

Furthermore, the National Environmental Management Act (NEMA), 1998 (Act No. 107 of 1998) provides for cooperative environmental governance by establishing principles for decision-making on matters affecting **the** environment. To further these goals, the Department **of**

Agriculture shall develop and implement comprehensive pesticide reduction strategies that would apply to all of its activities, including the registration process. The pesticide reduction strategies will include the incorporation of an appropriate application of the "substitution principles" **as** an important tool to promote the replacement of pesticides with less toxic products and non-chemical alternatives. The substitution principle requires or encourages phasing out the use of harmful substances when less harmful substances or methods can be identified to achieve the same or similar level. Also, the Department of Agriculture shall incorporate the requirements of review of existing registered pesticide in the new legislation. The review shall be done if there is new evidence that indicates that they (pesticides) might carry a significant risk of harm to human health, safety or the environment or that the product is no longer efficacious.

Protection of Biodiversity: Another key issue for pesticides is the effect they might have on biodiversity. The National Environmental Management: Biodiversity **Act (NEMBA) 2004, (Act** No. 10 of 2004) provides for the management and conservation of South Africa's biodiversity within the framework of the NEMA; the protection of species and ecosystem that warrant protection; and the sustainable use of indigenous biological resources.

Considering how prevalent the use of pesticide is in ecosystems where endangered species are at risk, the Department of Agriculture shall give explicit protection for such species. However, the approval system will not eliminate non-target species' effect altogether, and it will be difficult to reduce environmental effects from the use of pesticides to the low level desired, owing to the fact that much of the environmental impact from approved pesticides is attributed to indirect effects - for example, affecting bird chick survival rates by reducing insect populations at critical times. These indirect effects often result from products acting as intended and could sometimes be tackled through major changes to agronomic practice - which may not be practical - or through mitigation. Examples of mitigation measures might include the requirement for the use of certain pesticides or prescribing use only at a specific time.

Protection of water quality: National Water Act, 1998 (Act No. 36 of 1998) makes provision for the protection of water resources, including the prevention of pollution. Part 4 deals with the prevention of pollution, and in particular the situation where pollution of a water resource occurs or might occur as a result of activities on land.

The Department of Water Affairs and Forestry (DWAF) has initiated the National Toxicity Monitoring Programme, which will monitor the levels of a number of pesticides in groundwater and surface water to ensure that water pollution from pesticides **does** not threaten compliance with National Water Act, 1998 (Act No. 36 of 1998). An effective approach to reducing pollution of water by pesticides would be, first, to release fewer pesticides and/or less toxic pesticides into the environment and, second, to use practices that minimize the movement of pesticides to surface water and groundwater. Where necessary, the DoA, through the regulatory system, shall place requirements or restrictions on users to limit the movement of pesticides to water.

Food Safety: Efforts to maintain and enhance the safety of the nation's food supply are critical as established in the Foodstuffs, Cosmetics and Disinfectants Act **(FCDA)**, 1972 (Act No. **54** of 1972). The FCDA Regulations make provision to establish Maximum limits for pesticide residues that may be present in foodstuffs to ensure that food is safe to eat. To regulate the safety of food, the Department of Agriculture's regulatory systems shall ensure that pesticides are properly labeled, and the producers apply those pesticides in accordance with the label. To ensure compliance with FCDA, monitoring of residues on food is important.

Worker Protection: The Occupational Health and Safety Act (OHSA), 1993 (Act No. 85 of 1993) regulate health and safety at the workplace for all workers. This Act places the onus on employers to maintain a safe workplace. The regulation makes provision for various mandatory safety measures to protect the health of workers handing hazardous chemicals, such as risk assessment, safety training, safe practices, and medical, biological and environmental monitoring of all workplaces.

The Department of Agriculture shall, in accordance with OHSA Act, engage with employers and employees to institute awareness raising, educational and training programmes appropriate to the public and users. Training and information programmes should include all sectors handling and using pesticides. Aside from farmers, pesticide retail store-owners and attendants, government technicians and extension workers, pest control operators, and even medical doctors, nurses and paramedics should also be trained on the safe use of pesticides.

Furthermore, the Department of Agriculture shall ensure that pesticides are properly labelled to ensure that information necessary to ensure their safe use is prominently displayed. Information should be presented in such a way that it enables a person to understand the risks and develop a sense of proportion in order to make a judgement on the acceptability of those risks. The

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Policy on Labelling would be consistent with the new Globally Harmonised System (GHS) of Classification and Labelling of Chemicals.

(ii) International obligation and agreements

Contributing to the safe use of chemicals at a global level: Over the past decade, there has been growing international concern over the state of the global environment and the complex linkages with human and environment health as well as economic and social development.

The recognition of human health and environment, the efforts of countries to improve chemicals (including pesticides) management at international level over the past few decades have resulted in improvements in information and knowledge and the construction of principles, processes (formal and informal), institutions, and legally binding and non-binding agreements that now constitute the prevailing international regime for chemicals management. Internationally a number of bodies, which impose specific requirement on South Africa, have been created to address aspects of chemicals management. The recommendation in this Policy will fit into international programmes and make a major contribution to achieving safer use of pesticides at a global level.

Compliance with the Rotterdam Convention on the Prior Informed Consent Procedure (PIC) for Certain Hazardous Chemicals and Pesticide in international trade: The Rotterdam Convention on Prior Informed Consent (PIC) for certain hazardous industrial chemicals and pesticides obliges an exporter of such chemicals to obtain consent of the receiving country before delivery. This Convection was adopted in 1998 after the realisation that trade and environmental policies should be mutually supportive with a view to achieving sustainable development.

This policy supports the use of international instruments such as PIC that address the international trade (import and export) of pesticides developed to protect human health and the environment from the potential harmful effects of certain hazardous pesticides. As a Party to the PIC procedure, South Africa has to comply with the procedure that international shipment of pesticides that are banned or severely restricted to protect human health or the environment should not proceed without the agreement, or contrary to the decision, of the participating country. This policy however, supports the notion that the ban or restrictions of these highly toxic pesticides should go along with the promotion of crop protection alternatives to the users.

Furthermore, the policy considers prohibiting the export of a particular product to other countries, unless the importing countries have given their consent. In addition, imported pesticides, which do not meet the quality requirements and regulations and certain minimal product labeling requirements should be refused entry into South Africa.

Compliance with the Vienna Convention on the Protection of the Ozone Layer and the Montreal Protocol on Substances That Deplete the Ozone Layer: Vienna Convention and the Montreal Protocol were adopted in 1985 and 1992, respectively. These substances include methyl bromide, which is a form of a pesticide. As Party to this Convention and Protocol, South Africa has to take the necessary steps and action to control the use of methyl bromide. South Africa has reduced the use of methyl bromide by restricting the quantity imported. It is also exploring possible substances as substitutes. South Africa is expected to implement a total ban by 2015, as stipulated in the provisions of the Protocol. South Africa therefore, is under obligations to set clear targets for action by formulating a definite plan of action for the reduction and total ban on methyl bromide. To ensure that the use of methyl bromide in South Africa conforms to the international requirements with minimal domestic impacts, either of an environmental, social or economic nature, the policy considers the following:

- Raising awareness about the phasing out of methyl bromide and conducting research and studies on possible substitutes;
- Reduce the use of methyl bromide to a complete ban by 2015

Compliance with the Stockholm Convention on Persistent Organic Pollutants (POPs):

This convention was adopted in 2001. Its overall objective is to protect human health and the environment from POPs. With the exception of Dichloride Diphenyl Trichloroethane (DDT), South Africa has already banned all the POPs listed under this Convention. South Africa will work with international communities to prevent the production and use of substances with POPs characteristics.

Conformity with international obligations under the World Trade Organisation (WTO): South Africa should conform with Article 2.1 of the WTO's Technical Barrier to trade, which sets out that imported products shall be accorded treatment no less favourable than that accorded to products on national origin. To comply with the above, the import of pesticides shall be based on scientific risk assessments.

(iii) Surveillance and monitoring

Many pesticides are known to accumulate in the environment and to have detrimental effects on human health and the environment. Long-term monitoring programmes and targeted research are essential in order to evaluate these impacts. Without adequate and reliable data, it would be

impossible for the Government to assure South Africans that pesticides in current use are not posing such a risk to wildlife and people.

Monitoring will help to identify changes in pesticide pollution, danger spots, and particularly problematic pesticides. Furthermore, socio-economic studies need to be conducted to better assess the impact of pesticides on public health, the environment, and on farming practices that may be used in a particular area. A formal process is required for monitoring the effects of pesticides registered in South Africa and for ensuring all adverse effects are centrally reported. Without adequate and reliable data, reviews of registered products will be very difficult to undertake, and it would be impossible for the Government to assure South Africans that pesticides that are currently used are not posing such a risk to wildlife and people, owing to the fact that pesticides are not regularly reviewed.

The Policy proposes that the pesticide industry should be required to report factual information that indicates that a particular pesticide may be causing unreasonable adverse effects on human health, safety or the environment

(iv) Pesticide disposal and container management

The disposal of cancelled, banned or unwanted agricultural and commercial pesticides poses a significant challenge to producers of agricultural products and other pesticide users, owing to its high cost. The proper disposal **of** waste pesticides eliminates a potential threat to health and the environment.

South Africa has enacted several laws in an attempt to ensure that toxic wastes are disposed of, without becoming a danger to people or the environment. These legislation includes the Hazardous Substance Act, 1973 (Act No. 15 of 1973), the Environmental Conservation Act, 1989 (Act 73 of 1989), the Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965), and the National Environmental Management Act, 1998 (Act 107 of 1998. South Africa is also a signatory of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. The Convention main objectives are as follows:

- To ensure that the generation of hazardous waste is reduced to a minimum.
- To dispose as much as possible, hazardous wastes within the country of their generation.
- To establish enhanced controls on exports and imports of hazardous waste.

- To prohibit the shipments of hazardous wastes to countries that lack the legal, administrative and technical capacity to manage and dispose them of in an environmentally sound manner; and
- To cooperate on the exchange of information, transfer of technology, and the harmonization of standards, codes and guidelines

This Policy considers that programmes to collect old, out-of-date or otherwise unusable pesticides to avoid the build up of obsolete pesticide used by farmers and other users must be instituted by the Department of Agriculture. The programmes should also be expanded to include recovery and recycle of plastic pesticide containers used by farmers. Special levies should be introduced to the pesticide industry to cover the cost of recycling the containers. The Policy proposes that such levies would have to be done in terms of the Treasury Regulations as issued in terms of the Public Finance Management Act, 1999 (Act No 1 of 1999).

(v) Support for alternatives product and/or methods

Given that farmers need support to make a transition to pest management systems that reduce reliance **on** pesticides makes sense ecologically and economically. The Policy proposes that the Government should support research, extension and education on alternatives to pesticide use (e.g. integrated pest management, organic agriculture, plants which have been genetically modified etc).

Training and technical advice for farmers is essential in introducing alternatives, owing to the fact that most alternatives may require different **skills** from those needed. Thus, Government should support the idea that making a transition to pest management systems that reduce reliance on pesticides makes sense ecologically and economically.

Furthermore, environmental levies on pesticides (proportional to the potential damage to human health and the environment) would have to be introduced. Such levies would encourage users to look for alternatives, and therefore, make non-chemical methods more competitive and could contribute to additional funds needed to cover the cost of compliance with legislation, monitoring and research for better assessing the impact on public health and the environment. The Policy proposes that such levies would have to be done in terms of the Treasury Regulations as issued in terms of the Public Finance ManagementAct, 1999 (Act No 1 of 1999).

(vi) Increasing transparency

According to section 32, (Access to Information), of the Constitution of Republic of South Africa, Act No. 108 of 1986, the public has a right to access to information on pesticides to which they are exposed.

To ensure transparency and access to information, the Department of Agriculture shall incorporate all aspects of regulatory system and also opportunity for public, involvement in the development of new aspects of the regulatory decision in the new legislation. Information must be presented in such a way that it enables a person to understand the risks and develop a sense of proportion in order to make a judgement on the acceptability of those risks. This will enable them to make informed choices and avoid products containing harmful pesticides, and put pressure on industry to develop safer substitutes. However, commercial sensitive information will be suitably protected. The Department of Agriculture shall ensure **the** establishment of an information Centre that would provide rapid information on the health, safety and environmental impacts of a particular product.

(v) Enforcement

The effectiveness of pesticide regulation depends on the practical implementation and enforcement of the law. Compliance with legislation will be achieved through education and enforcement. The primary goal of compliance programmes will be to ensure that registered products are used safely.

The Policy proposes that the national government, together with local and provincial governments should be responsible for the enforcement of the new legislation to ensure that pesticides are used in compliance with conditions of registration. The proposed new legislation will allow for increased penalties (including **jail** term and not only fine) to act **as** a deterrent to offenders.

The Policy proposes that offenders should be prosecuted under the Environmental Courts established by Department of Environmental Affairs and Tourism. This will speed up the process of prosecution.

6. ORGANISATION AND ADMINISTRATION

The department of Agriculture **will** be the primary authority that will deaf with the registration and control of pesticide. However, the responsibility of making decisions will not only be vested with the Department of Agriculture, but is collectively made in consultation with other relevant government departments, owing to the fact that effective and efficient management of pesticides is a concerted effort that requires technical expertise from a range of team players. The Department of Agriculture, together with Departments of Health, Water Affairs and Forestry and Environmental Affairs and Tourism will be responsible for pesticide legislation and *its* regulation, conducting human health, safety and efficacy assessment, and establishing Maximum Residue Limits pesticide product, surveillance and monitoring, as well as compliance and enforcement. The Department of Agriculture and the above-mentioned government departments will develop interdepartmental Memoranda of Understanding (MOU) in relation to pesticides management issues. These MOUs are intended *to* foster a strong working relationship between the parties by delineating their respective responsibilities and identifying areas of mutual interest.

Furthermore, this policy considers that the formation of Advisory Committee(s) may be advantageous in order that views of all sectors on pesticides are taken into account. The functions of this Advisory Committee(s) will range from policy-making to review the technical aspects of applications for registration. Membership will comprise of government and non-governmental organisations, which will include experts from various fields such as agricultural researchers, toxicologist, chemists and environmentalist.

This Policy considers the possibility of giving local and provincial Governments the legislative mandate to investigate the use, sale and importation of products; perform on-site inspection of the usage and storage of products, and educate individuals, local officials and grower groups.

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- World Summit on Sustainable Development, 2002.

A. ANNEXURE1

DEFINITIONS/GLOSSARY OF TERMS

active ingredient means the biologically active part of the pesticide present in a

formulation.

advisory committee means the committee that advises the Registrar on any matter pertaining

to pesticide registration and control.

banned means a pesticide for which all registered uses have been prohibited by

final government regulatory action, or for which all requests for

registration or equivalent action for all uses have, for health and

environmental reasons, not been granted.

disposal means an act of eliminating wastes or discarded objects or material, of

industrial waste or product, which could be extremely hazardous, or

highly toxic, or even endangering life and environment.

environment means surroundings, including water, air, soil and their inter-relationship

as well as all their relationship with any living organisms

export means dispatching goods or products outside the country for commercial

gains.

export means to take out or send chemicals from the Republic to a country or

territory outside the Republic.

formulation means the combination of various ingredients designed to render the

product useful and effective for the purpose claimed; the form of pesticide

as purchased users.

import means a transaction of which goods and/or products are ordered from

another country for consumption or application in the country

label

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

manufacture

means the production, by a corporation or other entity in the public or private sector or any individual engaged in the business or function (whether directly or through an agent or through an entity controlled by or under contract with it), of a pesticide active ingredient or preparation of its formulation or product.

pesticide industry

means all those organisations and individuals engaged in manufacturing, formulating or marketing pesticides and pesticide products.

pesticide

means any substance or mixture of substances intended to preventing, destroy or control any pest, including vectors of human or animal disease, unwanted species of plants or animals causing harm during or otherwise interfering with the production, processing, storage, transport, or marketing of food, agricultural commodities, wood and wood products, or animal feedstuffs, or which may be administered to animals for the control of insects, arachnids or other pests in or on their bodies. The term includes substances intended for use as a plant growth regulator, defoliant, desiccant, or agent for thinning fruit or preventing the premature fall of fruit, and substances applied to crops either before or after harvest to protect the commodity from deterioration during storage and transport.

registrar

means the person appointed by the responsible Minister to administer the pesticide legislation.

registration

means the process whereby the responsible national government authority approves the sale and use of a pesticide following the evaluation of comprehensive scientific data demonstrating that the product is effective for the purposes intended and not unduly hazardous to human or animal health or the environment.

residue

means any specified substances in food, agricultural commodities, animal feed resulting from the use of a pesticide. The term includes any derivatives of a pesticide, such as conversion products, metabolites, reaction products, and impurities considered to be of toxicological

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significance. The "term pesticide residue" includes residues from unknown or unavoidable sources (e.g. environmental) as well as known used of the chemical.

responsible authority

Means the government agency or agencies responsible for regulating the the manufacture, distribution, or use of pesticide and more generally for implementing pesticide legislation.

risk

means the expected frequency and/ or magnitude of undesirable effects of exposure to pesticide.

severely restricted means a pesticide for which virtually all registered uses have been prohibited by final government regulatory action but certain specific registered use or uses remain authorised.

B. **ANNEXURE2**

ACRONYMS

DDT Dichlorodiphenyltrichloroethane

Endocrine Disrupting Properties EDP

FAO **Food and Agriculture Organisation**

MOU Inter-Departmental Memoranda of Understanding

Maximum Residue Limits MRLs

POPS Persistent Organic Pollutants

PIC **Prior Informed Consent**

WHO **World Health Organisation**

WTO World Trade Organisation