

THE [KHYBER PAKHTUNKHWA]
FERTILIZER CONTROL ACT, 1999.

?[KHYBER PAKHTUNKHWA] ACT NO. VI OF 1999)

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THE *[KHYBER PAKHTUNKHWA]
FERTILIZER CONTROL ACT, 1999.

(*[KHYBER PAKHTUNKHWA] ACT NO. VI OF 1999)

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AN
ACT
to regulate the manufacture, sale and distribution of fertilizers.

WHEREAS it is expedient to regulate the manufacture, sale and distribution of fertilizers and for matters ancillary thereto;

It is hereby enacted as follows:

CHAPTER -1
INTRODUCTORY

1. Short title, extent_and_commencement.— (1) This Act may be called the [Khyber Pakhtunkhwa] Fertilizer Control Act, 1999.

(2) It extends to the whole of the *[Province of the Khyber Pakhtunkhwa].
(3) It shall come into force at once.

2. Application of other laws not barred. — The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

3. Definitions In this Act, unless there is anything repugnant in the subject, or context,—

(a) "adulterated" when used with reference to a fertilizer, means any fertilizer to which any other material, including fertilizer of other type, has been added which alters the characteristics of its professed standard of quality expressed on its label or marking under which it is sold as fertilizer;

(b) "advertise" means to make known by publication or distribution of any advertisement, circular or other notice including the use of radio and television media;

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"brand" means the trade name applied by any manufacturer or vendor to the fertilizer, manufactured or offered for sale by him;

"Committee" means the Fertilizer Registration Committee constituted under section 12;

"essential plant nutrient" includes carbon, hydrogen, oxygen, nitrogen, phosphorus, potassium, sulphur, calcium, magnesium, boron, copper, iron, manganese, zinc, molybdenum, chlorine, etc;

"fake fertilizer" means a fertilizer which does not contain the required ingredients according to its specifications both quantitatively and qualitatively;

"fertilizer" means any organic, inorganic or mixture thereof, used to supply one or more of the essential plant nutrient elements for promoting soil fertility;

"fertilizer laboratory" means a fertilizer testing laboratory or a research institute set up or nominated under section 13;

"Government" means the Government of the °[Khyber Pakhtunkhwa];

"Government analyst" means an analyst appointed by Government under section 14;

"grade" means the guaranteed analysis of a fertilizer containing one or more, of the essential plant nutrient elements expressed as percentage Nitrogen(N), available Phosphate (P05) and Potash as KO);

"guarantee" means the statement including the nutrient strength, effectiveness and other qualities of a brand of a fertilizer which a

manufacturer, vendor or person holding stock for sale of brand of fertilizer is required to submit under the rules at the time of applying for the registration of the brand;

"gypsum" means sulphate of calcium;

"ingredient" means any material present in a fertilizer;

"Inspector" means an Inspector appointed under section 15;

"marking" means the written or graphic matter printed on or attached to a fertilizer container, bag or other retail package, if any;

°Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

- (q) "prescribed" means prescribed by rules made under this Act;
- (r) "Registrar" means the Registrar appointed under section 11 and includes an Additional Registrar;
- (s) "registered" means registered under this Act;
- (t) "registration number" means a specific number assigned by the Registrar to each registered brand of fertilizer;
- (u) "rules" mean rules made under this Act;
- (v) "section" means a section of this Act; and
- (w) "worker" means an employee of fertilizer manufacturer, stock holder or seller.

CHAPTER - II

MANUFACTURE, SALE, REGISTRATION AND DISTRIBUTION OF FERTILIZER

4. Fertilizer to be registered.— No person shall manufacture, sell, offer for sale, hold in stock for sale or advertise in any manner, any brand of fertilizer which has not been registered in the manner hereinafter provided.

5. Brand of fertilizer.— (1) Any person intending to manufacture, sell, offer for sale, hold in stock for sale or advertise any brand of fertilizer may apply to Government for registration of the brand under such name as he may indicate in the application.

(2) Where the person making an application under sub-section (1), is not domiciled in Pakistan, the application shall be signed, besides such person, by his agent or representative in Pakistan.

(3) An application under sub-section (1) shall be in such form, be accompanied by such fee and contain such statements and information as may be prescribed.

(4) Upon receipt of an application under sub-section (1), Government shall register a brand of a fertilizer by the name indicated in the application, if it is satisfied that the brand is not such as would tend to deceive or mislead the purchaser with respect to the guarantee relating to the fertilizer or its ingredients or the method of its preparation.

(5) When it registers a brand of a fertilizer on the application of any person, Government shall grant him a certificate of registration in such form as may be prescribed.

6. Effectiveness of registration. The registration of a brand of a fertilizer shall be effective from the date of its registration and shall be valid until it is cancelled under section 7.

7. Cancellation of registration.— If, at any time, after the registration of a brand of a fertilizer, Government is of the opinion that the registration has been secured in violation of any of the provisions of this Act or the rules made there under or that the fertilizer is ineffective or does not achieve the desired end or is dangerous to human, plant or animal life, it may, after giving the person, on whose application it has been registered, an opportunity of being heard, cancel the registration.

8. Prohibition on manufacture, etc— If any fertilizer is found to be adulterated or incorrectly or misleadingly tagged, labelled, marked or named, or its sale in any way contravenes any of the provisions of this Act, Government may, by notification in the official Gazette, prohibit further manufacture or sale of such fertilizer and ban its use.

9. Brand _ or marking of fertilizer— No person shall sell, offer or expose for sale, advertise or hold in stock for sale any fertilizer unless each package containing the fertilizer and tag or label durably attached thereto, is branded or legibly marked in printed character in such form and in such manner as may be prescribed.

10. Condition of sale. — No person shall store or sell any fertilizer, save in accordance with the provision of this Act and the rules made thereunder.

11. Appointment of Registrar.— As soon as may be after the commencement of this Act, Government shall appoint a Registrar and may also appoint as many Additional Registrars as it deems necessary.

12. Fertilizer Registration Committee— (1) Government shall, by notification in the official Gazette, constitute a Committee, to be called the Fertilizer Registration Committee, to advise Government on all matters arising out of the implementation of this Act and to perform any other function assigned to it by or under this Act. The Committee shall have the right to have access to such data and information from any manufacturer, distributor and vendor as the Committee deem necessary for the effective implementation of this Act.

(2) The Committee shall consist of the Registrar and such number of Additional Registrars and other members, being officers of the Agriculture Extension and Research Services and Agricultural Development Authority, the persons representing trade and industry engaged in fertilizer and gypsum business and representative of farmers as Government may deem fit to appoint.

(3) Government shall appoint one of the members of the Committee, being an officer of the Agricultural Development Authority, to be the Secretary of the Committee.

(4) The non-official members of the Committee shall hold office for a term of three years and shall be eligible for re-appointment.

(5) A non-official member of the Committee may, at any time, resign by writing under his hand and address to the Registrar but the seat of such member shall not be deemed to

have fallen vacant unless the registration has been accepted by the Registrar with the previous approval of Government.

(6) A person appointed to fill a vacancy created by the resignation or death of a non-official member shall hold office for the residue of the term of his predecessor.

(7) The Committee shall perform its functions notwithstanding any vacancy in the membership thereof.

(8) The Committee shall have the power to regulate, with the prior approval of Government, the procedure for the conduct of its business.

(9) The Committee may appoint a sub-committee consisting of specialists for the consideration of a particular matter for such period not exceeding three years, as it may consider necessary.

13. Fertilizer_analysis.— (1) As soon as may be after the commencement of this Act, Government shall set up or nominate fertilizer testing laboratories suitably equipped to carry out the functions entrusted to it by or under this Act.

(2) The manner and mode of submission of samples for analysis in the laboratory shall be in such form as may be prescribed and the laboratories shall conduct the analysis accordingly.

(3) The secrecy of the formula of brands of fertilizers, samples of which are submitted to the fertilizer laboratory for analysis or test, shall be duly safeguarded in the manner to be prescribed by rules.

14, Appointment of Government analysts.— Where fertilizer laboratories are set up under this Act, Government may, by notification in the official Gazette, appoint as many persons as it deems fit to be Government analysts, and where it appoints more than one person it shall specify in the notification the local limits within which each one shall perform his functions as Government analyst.

15. Appointment of Inspectors.—Government may by notification, appoint Inspectors from among the staff of Agriculture Extension Service and Agricultural Development Authority for checking and reporting irregularities in fertilizers and gypsum business.

16. Power _of Inspectors.—An Inspector may, within the local limits of his jurisdiction, enter upon any premises where fertilizer or gypsum is kept or stored, whether in bag or in bulk or in any other packing or container by or on behalf of the owner, including premises belonging to bailee, such as railway, shipping company or any other carrier and may take samples therefrom for examination. No compensation shall be paid for the samples so taken.

17. Intimation of purpose.— (1) Where an Inspector takes a sample of fertilizer or gypsum for the purpose of test or analysis under section 16, he shall intimate such purpose, in writing in the prescribed form to the person from whose possession he takes it. The Inspector shall, in the

presence of such person as may choose to be present, divide the sample into three portions and effectively seal and suitably mark it and permit such person to add his own seal and mark to all or any of the portions so sealed and marked.

(2) The Inspector shall restore one portion of the sample so divided to the person from whom it was taken and shall forthwith send one of the remaining two portions to the fertilizer laboratory for testing or analysis and the other portion to the Registrar.

18. Delivery of report.— (1) The fertilizer laboratory, to which a sample of any fertilizer - has been forwarded by an Inspector under sub-section (2) of section 17, shall deliver within two weeks to the Inspector, a signed report of the result of the chemical test or analysis in the prescribed form in triplicate.

(2) The Inspector shall deliver one copy of the report received by him to the person from whose possession the sample was taken and shall send one copy to the Registrar while the third copy of the report shall be retained on his own record.

(3) Any document purporting to be a report signed by the fertilizer laboratory under this Chapter shall be conclusive evidence of the particulars stated therein, unless the person, to whom the report has been delivered under sub-section (2), disputes the correctness of the laboratory test report and, within thirty days of the delivery of the report to him, places before the Registrar evidence which in his opinion controverts the correctness of such report or analysis.

(4) Where the evidence placed before the Registrar under sub-section (3) is such as would, in his opinion, justify further investigation, he may cause the portion of the same sample, sent to him under section 17(2), to be analyzed at another fertilizer laboratory. The result should be received within a period not exceeding two weeks.

(5) After the sample forwarded by the Registrar under sub-section (4) has been analyzed by another fertilizer laboratory, it shall record the result of the analysis in a certificate of analysis and forward it to the Registrar. The result should be received within a period not exceeding two weeks.

(6) A certificate of analysis prepared under sub-section (5) shall be conclusive evidence of the facts stated therein.

19. Application for conducting test of fertilizer. — (1) Any person who has purchased a registered brand of fertilizer which he claims to be adulterated, may apply to the Registrar for an

order directing the fertilizer laboratory to conduct a test or analysis of the fertilizer.

(2) An application under sub-section (1) shall be made in such form and manner and be accompanied by such sample and fee as may be prescribed.

(3) The Registrar upon being satisfied, after such investigation as he deems fit, that the fertilizer has not been tampered with or adulterated after its manufacture, may refer the

application and sample to the fertilizer laboratory.

(4) The fertilizer laboratory, to which a reference is made in accordance with sub-section (3), shall conduct the analysis of the sample and issue to the applicant a report of the test or analysis.

CHAPTER - II

MISCELLANEOUS

20. Sale of fake fertilizer.— Any person who—

(a) sells, offers or exposes for sale, holds in stock for sale or advertises

registered brand of a fertilizer or gypsum which is not of the nutritional strength and purity represented by the brand or mark on the package containing it or, as the case may be, on the tag or label attached thereto; or

(b) falsely represents a fertilizer or gypsum in an advertisement; or

(c) contravenes any of the provision of this Act or the rules, for the contravention of which no other penalty is provided in this Act;

shall be punished for the first offence with fine which shall not be less than twenty five thousand rupees or more than thirty thousand rupees and for every subsequent offence with fine which shall not be less than thirty five thousand rupees or more than fifty thousand rupees and in default of payment of any such fine, the offender may be punished with simple imprisonment for a term which may extend upto two years in the case of first offence and upto three years in the case of every subsequent offence.

21. False warranty.—Whoever gives false warranty to a dealer or purchaser in respect of a fertilizer or fertilizer material that it complies in all respects with the provisions of this Act shall, unless he proves that when he gave the warranty he had good reasons to believe the warranty to be true, be punished with fine which may extend to twenty five thousand rupees or in default of payment of fine with simple imprisonment which may extend upto two years.

22. Unlawful use of registration.—Any person who—

(a) unlawfully uses any registration number assigned under this Act; or

(b) wilfully alters the composition of a fertilizer or gypsum by mixing any other

substance therewith after it has been placed in the market by the manufacturer, importer or vendor; or

(c) wilfully obstructs, hinders, resists, or in any way opposes any Inspector in performing his duties under this Act;

shall be punished with a fine which shall not be less than ten thousand rupees or more than thirty thousand rupees or with imprisonment for a term which may extend to two years.

23. Power to enter and search.—(1) If an Inspector has reasons to believe that an offence punishable under this Act or the rules made thereunder has been, is being or is about to be committed at any time or place, he may enter and search such place and seize any fertilizer, or fertilizers material, article or thing to which the offence relates.

(2) Any fertilizer, article or thing seized under sub-section (1) shall be disposed off in accordance with the decision of the court which tries the offender.

24. Forfeiture of fertilizer.— If any person is convicted of an offence, punishable under this Act, the Court convicting him may further direct that the fertilizer, article or thing be forfeited to Government.

25. Cognizance of offence.—No court inferior to that of a Magistrate of the First Class shall try an offence punishable under this Act.

26. Indemnity.—No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done, or intended to be done under this Act or the rules made thereunder.

27. Power to make rules.—(1) Government may, in consultation with the Committee and after publication in the official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form in which an application for the registration of a brand of fertilizer or gypsum shall be furnished and the fee that shall accompany it;

(b) the procedure for the grant of certificate of registration of brands of fertilizer or gypsum and the form of such certificates;

(c) the language of the tag or label or marking on the containers, bags and

packages containing fertilizer or gypsum and character and location of the printing to be marked on such tag, labels, containers, bags and packages;

(d) the functions of the fertilizer laboratory and the procedure to be followed by it in the performance of such functions, including—

(i) safeguarding of the secrecy of the formula of the brands of

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fertilizer disclosed to it;

(ii) collection of samples of fertilizer and gypsum for test or analysis;

(ii) the form in which its reports of tests or analysis shall be written;

the methods of chemical analysis and other testing to be followed, and the limit of variability to be allowed by the Registrar as between the information marked on the packages or on a label attached thereto or supplied to the purchaser or sold in bulk or retail and the results of the laboratory tests;

the qualification and duties of Government Analyst and the Inspector;

the form in which intimation of the purpose for which a sample is taken by an Inspector to be given by him to the person from whose possession the sample is taken, the instruments to be employed and the quantities to be taken by such an Inspector for laboratory test and the manner in which it should be preserved and sent to the Registrar and the fertilizer laboratory;

the requirements for the safe storage of fertilizer and gypsum; and the quantities of different brands of fertilizer which a person may hold in

stock at one time and the premises in which and the conditions subject to which the same may be held in stock.

28. Delegation of powers.—Government may, by notification in the official Gazette, direct that all or any of its power under this Act or rules framed thereunder shall in such circumstances, and under such conditions, if any, as may be specified in the direction, be exercised by any officer or authority subordinate to it.