
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 790 Session of
2017

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FLYNN, DONATUCCI, KIM AND KAVULICH, MARCH 10, 2017

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
MARCH 10, 2017

AN ACT

1 Regulating controlled plants and noxious weeds; establishing the
2 Controlled Plant and Noxious Weed Committee; providing for
3 powers and duties of the Controlled Plant and Noxious Weed
4 Committee; imposing powers and duties on the Secretary of
5 Agriculture and municipalities; prescribing penalties;
6 establishing a category of controlled plants and providing
7 for the permitting of controlled plants intended to be grown
8 for biomass and biofuel production or for other beneficial
9 purposes; establishing the Plant Pest Management Account
10 within the General Fund; and making a related repeal.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

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27 CHAPTER 1

28 PRELIMINARY PROVISIONS

29 Section 101. Short title.

30 This act shall be known and may be cited as the Controlled

1 Plant and Noxious Weed Act.

2 Section 102. Definitions.

3 The following words and phrases when used in this act shall
4 have the meanings given to them in this section unless the
5 context clearly indicates otherwise:

6 "Class A noxious weed." A weed listed in section 307(a) or a
7 weed that has been determined by the committee to be a Class A
8 noxious weed and that:

9 (1) Is established in this Commonwealth.

10 (2) Is geographically limited.

11 (3) Is intended to be eradicated.

12 "Class B noxious weed." A weed listed in section 307(b) or a
13 weed that has been determined by the committee to be a Class B
14 noxious weed and that:

15 (1) Is widely established in this Commonwealth.

16 (2) Cannot feasibly be eradicated.

17 "Class C noxious weed." A weed listed in section 307(c) or a
18 weed that has been determined by the committee to be a Class C
19 noxious weed and that:

20 (1) Is not known to exist in this Commonwealth.

21 (2) Poses a potential threat if introduced in this
22 Commonwealth.

23 "Committee." The Controlled Plant and Noxious Weed Committee
24 established in section 301.

25 "Control." The management of the population of a noxious
26 weed or controlled plant to an acceptable level, including
27 eradication, as determined by the department.

28 "Control order." A written order issued by the department to
29 a person detailing required treatment measures to control
30 noxious weeds or controlled plants.

1 "Controlled plant." A plant that has been determined by the
2 committee to be a "controlled plant" and is regulated to prevent
3 uncontained growth and to negate undesirable characteristics.

4 "Department." The Department of Agriculture of the
5 Commonwealth.

6 "Designee." A person who is duly authorized or appointed by
7 the secretary to act as the representative of the department.

8 "Distribute or distribution." To barter, consign, exchange,
9 give away, import, in any way transfer, offer for sale, sell or
10 otherwise supply or transport a noxious weed or controlled plant
11 in this Commonwealth.

12 "Eradication." The elimination or removal of a noxious weed
13 or controlled plant so that no further growth occurs for at
14 least three consecutive years.

15 "Established." Either:

16 (1) a plant or plant population found growing in this
17 Commonwealth as a wild population and capable of
18 reproduction; or

19 (2) a plant that has escaped from cultivation and is
20 reproducing.

21 "Federal noxious weed." A weed listed in 7 CFR 360.200
22 (relating to designation of noxious weeds).

23 "General permit." A regional or Statewide permit that is
24 issued by the department for a controlled plant and specifies
25 terms and conditions for distribution, cultivation or
26 propagation of the controlled plant.

27 "Geographically limited." Found in discrete, limited
28 locations of this Commonwealth.

29 "Individual permit." A permit that is issued by the
30 department and includes site-specific terms and conditions for:

1 (1) research, marketing, warehousing, holding,
2 retailing, wholesaling, transporting, distributing,
3 cultivating or propagating of a controlled plant; or

4 (2) for research and educational purposes related to a
5 noxious weed.

6 "Infested." The presence of a noxious weed in any stage of
7 development in a specific geographic area.

8 "Landlord." A person who is the owner of an estate in land
9 or a rental property and has leased it to another person.

10 "Landowner." A person:

11 (1) In whom is vested the ownership, dominion or title
12 of property and in whom one or more interests are vested for
13 his own benefit.

14 (2) Who owns the fee and who has the right to dispose of
15 the property and includes one having a possessory right to
16 land or the person occupying or cultivating it.

17 The term includes a department, board, commission, agency and
18 instrumentality of the Federal Government and the Commonwealth
19 and any of its political subdivisions.

20 "Land tenant." A person actually in possession of land.

21 "Land trust." A trust in which the corpus consists of real
22 estate and of the trustee of which appears to have full powers
23 with the real estate and complete legal and equitable title to
24 the trust property.

25 "Lessee." A person who has entered into a contract granting
26 the person occupation or use of property during a certain period
27 in exchange for a specified rent.

28 "Lessor." A person who grants a lease or rents property to
29 another for a definite or indefinite period of time, by a
30 written or oral lease, irrespective of whether a statute of

1 fraud requires the lease to be in writing.

2 "Noxious weed." Either:

3 (1) a plant part or plant in any stage of development
4 that is determined to be injurious to crops, livestock,
5 agricultural land or other property including forest land and
6 bodies of water; or

7 (2) any weed listed in 7 CFR 360.200 (relating to
8 designation of noxious weeds).

9 "Noxious weed control area." A geographic area of this
10 Commonwealth, including the entire State, municipality or any
11 part or tract of land or body of water where a noxious weed is
12 to be controlled as prescribed under this act.

13 "Noxious weed permit." An individual permit issued by the
14 department that specifies terms and conditions for distribution,
15 cultivation or propagation of a noxious weed for research and
16 educational purposes.

17 "Person." An individual, corporation, association,
18 partnership, municipality or any other entity.

19 "Plant Pest Management Account" or "account." The Plant Pest
20 Management Account established under section 702.

21 "Propagate." To increase, multiply or spread a plant or crop
22 through planting, cultivation or any means of reproduction.

23 "Secretary." The Secretary of Agriculture of the
24 Commonwealth.

25 "Stop-sale order." A written notice, issued by the
26 department to the person in possession of a noxious weed or
27 controlled plant, which prohibits its distribution.

28 "Treatment measure." A method of eradicating, managing,
29 regulating or controlling noxious weeds or controlled plants
30 utilizing biological, chemical or mechanical means or a

1 combination thereof.

2 "Widely established." Growing throughout multiple counties
3 and municipalities of this Commonwealth.

4 CHAPTER 3
5 REGULATION AND ADMINISTRATION

6 Section 301. Designation of noxious weeds and controlled
7 plants.

8 (a) Controlled Plant and Noxious Weed Committee.--

9 (1) The Controlled Plant and Noxious Weed Committee
10 shall have the powers of a departmental administrative board
11 in the department.

12 (2) The committee shall be composed of:

13 (i) the secretary, who shall be the chairperson of
14 the committee;

15 (ii) the Secretary of Conservation and Natural
16 Resources;

17 (iii) the Secretary of Environmental Protection;

18 (iv) the Secretary of Transportation;

19 (v) the Executive Director of the Fish and Boat
20 Commission and the Executive Director of the Game
21 Commission;

22 (vi) the chairperson and minority chairperson of the
23 Agriculture and Rural Affairs Committee of the Senate and
24 the chairperson and minority chairperson of the
25 Agriculture and Rural Affairs Committee of the House of
26 Representatives;

27 (vii) three persons, to be appointed by the
28 secretary, who must represent the interests and concerns
29 of the following groups, organizations or industries:

30 (A) One member of a Statewide general farm

1 organization.

2 (B) One member representing the ornamental, turf
3 and horticultural industry.

4 (C) One member from an institution of higher
5 education within this Commonwealth.

6 (3) Except for appointed members, who may be represented
7 by designees selected by the secretary, members may be
8 represented by a designee selected by the member.

9 (4) The appointed members shall serve four-year terms
10 except that such terms shall initially be staggered with one
11 of the three members serving a two-year term.

12 (5) Successors to fill expired terms of appointed
13 members shall be appointed by the secretary. The secretary
14 may appoint the same member to successive terms.

15 (6) An appointed member may continue to hold the
16 position after his term has expired and until a successor has
17 been appointed, but in no case, may such time period be
18 longer than six months beyond the member's original term of
19 office.

20 (b) Powers and duties of committee.--

21 (1) A majority of the committee shall constitute a
22 quorum. A quorum of the committee shall be required to take
23 any action. All actions of the committee shall be by a
24 majority vote.

25 (2) Prior to taking any action, the committee shall be
26 required to convene a public meeting to elicit comments from
27 the regulated community and other interested parties. The
28 notice and agenda for a meeting of the committee shall
29 contain a list of the plants to be considered for addition to
30 or deletion from the noxious weed list or controlled plant

1 list. The notice and agenda for a meeting shall be published
2 in the Pennsylvania Bulletin at least one week prior to the
3 meeting, except in the case of a special meeting or
4 rescheduled meeting as allowed under 65 Pa.C.S. § 709(a)
5 (relating to public notice). All meetings shall be open to
6 the public and shall comply with the requirements of 65
7 Pa.C.S. Ch. 7 (relating to open meetings).

8 (3) The committee shall have the following powers and
9 duties:

10 (i) To establish a noxious weed list inclusive of
11 the list set forth under section 307. The committee may
12 add weeds to or delete weeds from the noxious weed list,
13 or move noxious weeds to the controlled plant list, in
14 accordance with the provisions of this act.

15 (ii) To establish a controlled plant list and to add
16 plants to or delete plants from the controlled plant list
17 in accordance with the provisions of this act. A
18 controlled plant, upon approval of the committee, may be
19 moved from the controlled plant list to the noxious weed
20 list.

21 (iii) To propose the addition or deletion of plants
22 to or from the noxious weed list or controlled plant
23 list. The committee may request that the department
24 perform a study and risk assessment related to any plant
25 the committee may consider for addition to or deletion
26 from the noxious weed list or controlled plant list.

27 (iv) To publish the noxious weed list and the
28 controlled plant list and any additions or deletions or
29 changes thereto as a notice in the Pennsylvania Bulletin.
30 Any additions to or deletions from the noxious weed list

1 or the controlled plant list shall become effective 60
2 days from publication.

3 (c) Prohibitions.--

4 (1) The growth, propagation or existence of a Class A
5 noxious weed, Class B noxious weed or Class C noxious weed on
6 any land or water or in any vessel or carrier within this
7 Commonwealth, except for permitted research or educational
8 purposes, is strictly prohibited.

9 (2) Any person, including a landowner, municipality,
10 landlord, land tenant, land trust, lessor or lessee of
11 property where these weeds are introduced or exist may be
12 subject to a control order.

13 (3) An individual permit shall be required for research
14 and educational purposes.

15 (d) Noxious weed and controlled plant seeds.--

16 (1) Upon the determination of the committee that a plant
17 falls within the classification of a noxious weed or
18 controlled plant, the seed of that plant shall fall within
19 that same classification under 3 Pa.C.S. Ch. 71 (relating to
20 seed) and relevant regulations.

21 (2) If no regulatory criteria exist for controlled plant
22 seeds, the department may regulate controlled plant seeds
23 through permit, for a period of two years from the effective
24 date of this section, at which time the department shall
25 promulgate regulatory standards.

26 Section 302. Permits.

27 (a) General rule.--The following permitting rules apply with
28 regard to noxious weeds for research or educational purposes and
29 to controlled plants for research or marketing purposes,
30 cultivation, propagation, growing, storing, warehousing or

1 display, and for retail, wholesale or production or
2 distribution.

3 (1) For noxious weeds, the department may issue
4 individual permits. The permits may allow for the cultivation
5 and propagation of a noxious weed for research and
6 educational purposes only. The department shall establish the
7 criteria for a noxious weed individual permit through the
8 issuance of a temporary order, as set forth in paragraph (4).

9 (2) For controlled plants, the department may issue
10 individual permits or general permits. The permits shall be
11 required for research, marketing, retail, wholesale or
12 production, growth, cultivation or propagation of a
13 controlled plant and the storage, warehousing, display or
14 distribution of any controlled plant.

15 (3) General permits may be issued for the research,
16 marketing, retail, wholesale, production, growth, storage,
17 warehousing, display, distribution, cultivation or
18 propagation of controlled plants under the following
19 circumstances:

20 (i) General permits may be issued on a regional or
21 Statewide basis for controlled plants where the
22 controlled plants have similar characteristics and are
23 capable of being cultivated, propagated, processed and
24 controlled or eradicated in a similar fashion. Where
25 possible, the department shall issue general permits for
26 controlled plants for research purposes and those being
27 marketed, cultivated, propagated or distributed for the
28 purpose of biofuel production.

29 (ii) General permits shall be published in the
30 Pennsylvania Bulletin effective upon publication.

1 (4) Individual permits may be issued for research or the
2 marketing, distribution, cultivation or propagation of
3 controlled plants under the following circumstances:

4 (i) Individual permits may be issued for any
5 controlled plant where:

6 (A) The controlled plant has such individual
7 characteristics as to make it difficult or impossible
8 for the department to govern or contain its
9 cultivation, propagation, control or eradication
10 through a general set of requirements.

11 (B) The land or area on which the controlled
12 plant will be cultivated has such characteristics as
13 would make it difficult or impossible for the
14 department to govern, contain, control or eradicate
15 the controlled plant.

16 (C) The controlled plant is highly regulated or
17 requires additional scrutiny because of a
18 characteristic of the plant that would be hard to
19 control under a general permit or where Federal law
20 preempts and requires such permitting.

21 (ii) Individual permits shall be issued in writing
22 to the specific permit holder, contain the temporary
23 order or reference the regulations establishing the
24 requirements of the individual permit and be published in
25 the Pennsylvania Bulletin and effective as enumerated in
26 paragraph (6).

27 (5) The department may establish through regulation or a
28 temporary order, as set forth in paragraph (6), standards and
29 requirements addressing the issuance and criteria of an
30 individual permit for noxious weeds and controlled plants.

1 (6) For each noxious weed, the department shall issue a
2 temporary order establishing the criteria for the individual
3 permit to be issued. For a controlled plant, upon determining
4 that a set of characteristics or circumstances requires the
5 issuance of an individual permit, the department shall issue
6 a temporary order establishing the criteria for the
7 individual permit to be issued. The following shall apply:

8 (i) Through the temporary order, the department may
9 establish restrictions, standards, including bonding
10 requirements, and penalties as the department determines
11 are necessary to:

12 (A) Identify the specific characteristics of the
13 noxious weed or controlled plant or the circumstances
14 including Federal laws, regulations or orders, that
15 require the issuance of the individual permit.

16 (B) Assure the permit holder institutes proper
17 containment, remediation and eradication criteria to
18 protect the interests of the public, the native plant
19 and animal populations in this Commonwealth and this
20 Commonwealth's flora, fauna and natural resources.

21 (C) Assure the permit holder is responsible for
22 and has the means to cover any costs of remediation,
23 containment or eradication.

24 (D) Assure that the permit holder does not
25 abandon the permitted site prior to notifying the
26 department and taking such remediation, containment
27 or eradication measures as the department may
28 determine are necessary.

29 (ii) The department shall publish the temporary
30 order as a notice in the Pennsylvania Bulletin. A copy of

1 the order shall also be delivered to the person seeking
2 to research, market, plant or cultivate the noxious weed
3 or to research, market, plant, cultivate, warehouse,
4 store, display, grow, produce, hold, distribute, retail,
5 wholesale or propagate the controlled plant under the
6 individual permit.

7 (iii) The provisions of the temporary order shall be
8 applicable as of the date of actual or constructive
9 notice of the temporary order or any later date specified
10 in the temporary order. Publication of the temporary
11 order in the Pennsylvania Bulletin shall be constructive
12 notice.

13 (iv) The temporary order shall remain in effect for
14 a period not to exceed the length of time for which the
15 individual permit was issued, unless the permit is
16 reissued or extended, or until the criteria stated in the
17 temporary order are established in regulation, whichever
18 occurs first.

19 (b) Permit required.--

20 (1) No person may conduct research, market, distribute,
21 transport, cultivate, hold, retail, wholesale, propagate or
22 reproduce a noxious weed or controlled plant without first
23 obtaining a permit from the department in accordance with the
24 provisions of this act.

25 (2) Noxious weeds may not be distributed, transported,
26 cultivated, propagated or reproduced by any manner, except
27 for research and educational purposes. A person proposing to
28 distribute, transport, cultivate, propagate or reproduce
29 noxious weeds for research or educational purposes shall
30 apply for and receive an individual permit, for each location

1 at which the research or educational classes will be
2 conducted, from the department prior to undertaking the
3 activities.

4 (3) Controlled plants may not be utilized in research,
5 marketed, retailed, wholesaled, distributed, transported or
6 produced, cultivated, propagated or reproduced by any manner
7 without a permit issued by the department. The following
8 provisions shall apply:

9 (i) Any person who seeks to conduct research on,
10 market, retail, wholesale, distribute, transport or
11 produce, cultivate, propagate or reproduce a controlled
12 plant for which an individual permit is required shall
13 apply for and receive an individual permit from the
14 department, for each location at which research will be
15 conducted or a controlled plant will be marketed,
16 retailed, wholesaled, distributed, transported from or
17 produced, cultivated, propagated or reproduced, prior to
18 undertaking the activity.

19 (ii) Where the department has established a general
20 permit requirement for a controlled plant, a person
21 seeking to conduct research on, market, retail,
22 wholesale, produce, distribute, transport, cultivate,
23 propagate or reproduce the controlled plant shall, prior
24 to undertaking the activity, inform the department of the
25 intent and complete an application for approval to
26 operate under the general permit requirements. The
27 application shall include a plan establishing the
28 practices and methods the applicant will utilize in order
29 to assure compliance with the general permit requirements
30 established by the department. In addition to the written

1 plan, the application shall state, at a minimum, all of
2 the information required in subsection (c) (1), (2), (3),
3 (4), (5), (6), (7) and (8).

4 (4) Prior to the approval and issuance of an individual
5 permit or authorization to begin research, marketing,
6 distribution, transportation, retailing, wholesaling,
7 production, cultivation, propagation or reproduction of a
8 controlled plant under a general permit, the department may
9 enter onto and inspect the land and premises and all areas of
10 the land and premises, including buildings and conveyances,
11 that will be utilized for or where the permitted activity
12 will be conducted. The inspection shall be limited to normal
13 business hours and to the areas where the permitted
14 activities will be or are occurring.

15 (c) Individual permit application.--A written application
16 for an individual permit shall meet the criteria established by
17 the department through a temporary order or regulation as
18 authorized by this act, be made on a form and a manner
19 prescribed by the department and shall contain at least the
20 following:

21 (1) Legal name, address and daytime and evening
22 telephone numbers of the applicant.

23 (2) Physical location, including a detailed plot map and
24 description of the site to be planted or site at which the
25 noxious weed or controlled plant will be propagated,
26 cultivated, stored or distributed. The description of the
27 location shall also include the county, municipality and the
28 name of the road or roads bordering the physical location.
29 The plot map shall be attached to the application and shall
30 state the GPS coordinates outlining the boundaries of the

1 site and other important landmarks.

2 (3) For any seller, distributor, holder or depository of
3 propagation material, the name and address and the applicable
4 Federal or Commonwealth license or certification number or
5 both, where applicable.

6 (4) The United States Department of Agriculture Plants
7 Database scientific and common names of the noxious weed or
8 controlled plant that the applicant desires to propagate,
9 possess, import, introduce, purchase or transport, including
10 classification of species by sterile biotype, cultivar,
11 variety F1 parent, variety F2 parent or other name.

12 (5) Identity of the intended plant parts to be used and
13 the stage of development at planting, including seed, rhizome
14 and cutting.

15 (6) Attestation that the plant materials have been
16 selected from apparently disease-free and pest-free sources.

17 (7) A description of the packaging and biosecurity
18 safeguards to be utilized. Plant material shall be packaged
19 and safeguarded sufficiently to maintain isolation from the
20 domestic environment during transportation.

21 (8) An attestation by the permit holder stating the
22 permit holder shall continue to comply with the permit
23 requirements for the duration of time the plant materials are
24 in the permit holder's possession and that the permit holder
25 understands and agrees to the following:

26 (i) If the permit holder intends to transfer
27 possession or ownership of the noxious weed or controlled
28 plant, the permit holder shall, prior to the transfer of
29 possession or ownership, notify the department and assure
30 the person to whom the noxious weed or controlled plant

1 will be transferred or sold that the permit holder has
2 obtained the required individual permit.

3 (ii) If the permit holder intends to stop growing or
4 cultivating the noxious weed or controlled plant, the
5 permit holder shall notify the department and implement
6 all measures ordered by the department to destroy the
7 noxious weed or controlled plant, unless another person
8 assumes responsibility for the noxious weed or
9 controlled plant and submits a new permit.

10 (iii) If the permit holder abandons, relinquishes
11 possession or ownership of, control over or
12 responsibility for the noxious weed or controlled plant,
13 in a manner inconsistent with the provisions of this act,
14 all plant material regulated by the permit shall be
15 destroyed in a manner approved by the department. The
16 original permit holder shall continue to be responsible
17 for the noxious weed or controlled plant, the cost of
18 destruction and eradication of the noxious weed or
19 controlled plant and any plant material associated
20 therewith. The original permit holder shall continue to
21 be subject to any and all penalty provisions established
22 under this act.

23 (9) Identify the use of the noxious weed or controlled
24 plant to be permitted, including ornamental landscape,
25 agricultural crop, feed crop, research, education, biofuel,
26 biomass, further sale or distribution or any other particular
27 use.

28 (10) Detailed description of the activity, including the
29 intended size of area to be planted and the intended date of
30 planting.

1 (11) Whether the noxious weed or controlled plant will
2 be further distributed, sold, transported, replanted, used
3 for seed or other purposes. If so, the permit shall include
4 the name and address of the persons and locations to which
5 the noxious weed or controlled plant will be distributed,
6 sold or transported. If sold or distributed for further
7 propagation, the permit shall include the information
8 required by paragraphs (1) and (2) and the name and address
9 of the person to which the noxious weed or controlled plant
10 was sold or distributed for such use.

11 (12) A written contingency plan for each site for
12 eradication or recapture in the event of an unauthorized
13 escape or introduction of the controlled plant.

14 (13) An attestation that the applicant shall comply with
15 all terms and conditions contained in the permit.

16 (d) Additional information.--The secretary may request
17 additional information from the applicant in writing after the
18 application is received, if necessary, to evaluate the potential
19 risk to the Commonwealth.

20 (e) Expiration date and renewal.--

21 (1) An individual noxious weed and controlled plant
22 permit shall expire on December 31 of each year, unless
23 otherwise specified in the permit. An application for renewal
24 of a permit must be made by October 1 of the year the permit
25 expires. An application for renewal shall describe any change
26 to the required information previously submitted. Failure to
27 renew an individual permit shall be a violation of this act.

28 (2) Information regarding general permit compliance
29 shall be updated on a calendar year basis. Updated
30 information shall be submitted to the department no later

1 than January 10 of each new calendar year. Failure to submit
2 the required information within the time period established
3 in this paragraph shall be a violation of this act.

4 (f) Notice of closing, change of name or moving location.--

5 (1) Any person who holds a permit or is required to hold
6 a permit under this act shall notify the department, in
7 writing, prior to any change of status related to the permit,
8 including:

9 (i) Intent to close, sell or change the name of the
10 business or entity holding the permit.

11 (ii) Intent to move the location of the business or
12 entity or the location of the activity specifically
13 authorized by the permit.

14 (iii) Intent to discontinue the activities
15 specifically authorized by the permit.

16 (2) Upon notification, the department, in performance of
17 its duties to protect the interests of the public, the native
18 plant and animal populations and natural resources in this
19 Commonwealth, may enter onto the land and premises, including
20 buildings and conveyances that were utilized for or where the
21 permitted activity of the person holding or required to hold
22 a permit under this act took or are taking place, and to
23 conduct such inspections of the premises as are necessary to
24 determine what remedial, eradication or containment practices
25 are necessary prior to the closure or other change of status
26 occurring.

27 (3) Failure to notify the department or otherwise comply
28 with the provisions of this subsection shall be a violation
29 of this act.

30 (g) Revocation or suspension.--Within 30 days of receipt of

1 a notice of revocation, the permit holder may apply for an
2 amendment to the permit or request a hearing as outlined in
3 section 312. The secretary may revoke or suspend all or part of
4 a permit issued under this section when:

5 (1) The secretary determines that a permittee has failed
6 to comply with the requirements of this act.

7 (2) It is necessary to protect the interests of the
8 public, to protect native plant and animal populations in
9 this Commonwealth, or to otherwise protect this
10 Commonwealth's natural resources.

11 Section 303. Prohibited acts.

12 (a) General compliance.--It shall be a violation of this act
13 to fail to comply with any provision of this act or any
14 regulation, permit requirement or order established under this
15 act.

16 (b) Noxious weeds.--Except as established in an individual
17 permit allowing educational or research purposes, it shall be a
18 violation of this act to distribute, cultivate or propagate any
19 noxious weed within this Commonwealth.

20 (c) Controlled plants.--It shall be a violation of this act
21 to conduct research, market, hold, warehouse, retail, wholesale,
22 produce, distribute, cultivate or propagate a controlled plant
23 without a permit issued by the department.

24 (d) Abandonment.--It shall be a violation of this act for a
25 person holding or required to hold or comply with a permit
26 requirement of this act to abandon a noxious weed or controlled
27 plant site or premises without first notifying the department
28 and taking such actions as are necessary or ordered by the
29 department to remediate the site.

30 (e) Concealment or misrepresentation.--It shall be unlawful

1 for a person to:

2 (1) conceal a noxious weed or controlled plant from
3 inspection; or

4 (2) make a false declaration of acreage, square footage
5 or any other information required to comply with the permit
6 requirements of this act.

7 (f) Noncompliance with permit requirements.--It shall be a
8 violation of this act to fail to comply with any of the
9 requirements established in a general or individual permit.

10 Section 304. Noxious weed control areas.

11 (a) General rule.--The department may establish a noxious
12 weed control area through a noxious weed control order issued by
13 the department. The order shall be published in the Pennsylvania
14 Bulletin and disseminated to persons in the noxious weed control
15 area that will be affected by the order. A noxious weed control
16 order shall remain in effect until such time as it is rescinded
17 by the department or until the criteria set forth in the noxious
18 weed control order are established by regulation. The purpose of
19 a noxious weed control order shall be to prevent the
20 dissemination of noxious weeds within this Commonwealth.

21 (b) Notice.--The department shall give notice of the
22 establishment of a noxious weed control area and the noxious
23 weed control order. Within the noxious weed control area, the
24 department may prohibit, without inspection, the movement,
25 shipment or transportation of any noxious weed or other material
26 capable of carrying the noxious weed from the area under the
27 noxious weed control order.

28 (c) Compliance.--The department shall require an affected
29 landowner or lessee or other person within the noxious weed
30 control area to comply with the provisions of the noxious weed

1 control order within the time frame indicated in the order. A
2 noxious weed control order may require treatment measures,
3 including remedial, containment and eradication requirements,
4 for the noxious weeds to be implemented by the landowner, lessee
5 or other affected person.

6 (d) Publication.--Every designated noxious weed control area
7 and any accompanying noxious weed control order created under
8 this section shall be published in the Pennsylvania Bulletin
9 pursuant to the act of July 31, 1968 (P.L.769, No.240), referred
10 to as the Commonwealth Documents Law.

11 Section 305. Control orders.

12 (a) Noxious weeds.--

13 (1) The department may issue a control order requiring
14 any person to implement treatment measures for noxious weeds.
15 The control order shall state the general factual and legal
16 basis for the action and shall advise the affected person
17 that, within 15 days of receipt of the control order, the
18 affected person may file with the department a written
19 request for an administrative hearing. The hearing shall be
20 conducted in accordance with 2 Pa.C.S. (relating to
21 administrative law and procedure).

22 (2) The written control order of the department shall be
23 served upon the affected person by personal service or by
24 registered or certified mail, return receipt requested.

25 (3) The control order shall become final upon the
26 expiration of the 15-day period for requesting an
27 administrative hearing, unless a timely request for a hearing
28 has been filed with the department.

29 (b) Controlled plants.--

30 (1) The department may issue a control order requiring a

1 controlled plant permit holder or a person required to have
2 such permit to implement treatment measures for a controlled
3 plant. The department may issue a control order requiring a
4 person to implement treatment measures for controlled plants
5 if the department finds that a controlled plant is growing on
6 any premises or property without a valid permit. The order
7 shall state the general factual and legal basis for the
8 action and advise the affected person that within 15 days of
9 receipt of the order, the affected person may file with the
10 department a written request for an administrative hearing.
11 The hearing shall be conducted in accordance with 2 Pa.C.S.

12 (2) The written control order of the department shall be
13 served upon the affected person by personal service or by
14 registered or certified mail, return receipt requested.

15 (3) The control order shall become final upon the
16 expiration of the 15-day period for requesting an
17 administrative hearing, unless a timely request for a hearing
18 has been filed with the department.

19 (c) Description of situation in order.--The control order
20 shall describe the noxious weed or controlled plant situation
21 that exists and prescribe the required remediation, control,
22 eradication or treatment measures and the date by which such
23 measures must be completed.

24 Section 306. Compliance with orders.

25 (a) General rule.--The person subject to a control order
26 issued under section 305 shall comply with the control order
27 within the time frame specified in the control order or, if
28 appealed, the time frame established in the final adjudication
29 of the secretary. The cost of the remediation, control,
30 eradication or treatment measures shall be borne by the person

1 subject to the control order.

2 (b) Notice and duty of municipality.--

3 (1) If the person subject to the control order fails to
4 comply with the control order, the department shall notify
5 that person and the municipality within which the person
6 resides or where the person's property is located by
7 certified mail. After receipt of the notice, the appropriate
8 officials of the municipality shall take the necessary steps
9 to carry out the measures established in the control order
10 within the time frame specified in the notification by the
11 department.

12 (2) A municipality which acts to control a noxious weed
13 or controlled plant on a noncomplying person's property may
14 recover the expenses and costs incurred by the municipality
15 in carrying out the measures established in the control order
16 from the person who was the subject of the department's
17 control order.

18 Section 307. Noxious weed list.

19 (a) Class A noxious weeds.--The following are Class A
20 noxious weeds:

21 (1) *Amaranthus palmeri* S. Watson (commonly known as
22 Palmer amaranth).

23 (2) *Amaranthus rudis* (commonly known as common
24 waterhemp).

25 (3) *Amaranthus tuberculatus* (commonly known as tall
26 waterhemp).

27 (4) *Avena sterilis* L. (commonly known as animated oat).

28 (5) *Cuscuta* L. (commonly known as dodder).

29 (6) *Galega officinalis* L. (commonly known as goatsrue).

30 (7) *Heracleum mantegazzianum* Sommier & Levier (commonly

1 known as giant hogweed).

2 (8) *Hydrilla verticillata* (L.f.) Royle (commonly known
3 as hydrilla).

4 (9) *Oplismenus hirtellus* (L.) P. Beauv. Subsp.
5 *undulatifolius* (commonly known as Wavyleaf basketgrass).

6 (10) *Orobanche* L. (commonly known as broomrape).

7 (11) *Pueraria* DC. (commonly known as kudzu).

8 (b) Class B noxious weeds.--The following are Class B
9 noxious weeds:

10 (1) *Carduus nutans* L. (commonly known as musk thistle).

11 (2) *Cirsium arvense* L. (commonly known as Canada
12 thistle).

13 (3) *Cirsium vulgare* L. (commonly known as bull thistle).

14 (4) Exotic *Lythrum* species, including *Lythrum salicaria*
15 L. (commonly known as purple loosestrife), the *Lythrum*
16 *salicaria* complex and *Lythrum virgatum* L. (commonly known as
17 European wand loosestrife), their cultivars and any
18 combination thereof.

19 (5) *Persicaria perfoliata* (L.) H. Grass (formerly known
20 as *Polygonum perfoliatum* L.) (commonly known as mile-a-minute
21 weed).

22 (6) *Rosa multiflora* L. (commonly known as multiflora
23 rose).

24 (7) *Sorghum bicolor* L. Moench (commonly known as
25 shattercane).

26 (8) *Sorghum halepense* (L.) Pers. (commonly known as
27 Johnson grass).

28 (c) Class C noxious weeds.--Class C noxious weeds are any
29 Federal noxious weeds listed in 7 CFR 360.200 (relating to
30 designation of noxious weeds) not established in this

1 Commonwealth which are not referenced above.

2 (d) Committee determination.--Any plant or weed designated
3 as a noxious weed as authorized by section 301.

4 Section 308. Fees.

5 (a) General rule.--The following fees, which shall be
6 deposited into the account are established:

7 (1) General permit, \$150 per permit with a \$50 annual
8 renewal fee.

9 (2) Individual permit, \$250 per permit with a \$100
10 annual renewal fee.

11 (3) Inspection fees for field locations - \$50 minimum
12 inspection fee for up to 10 acres, with a \$5 per acre fee for
13 each additional acre up to a maximum fee of \$500.

14 (4) Inspection fees for greenhouses - Greenhouse
15 locations shall be assessed a fee based on square footage as
16 follows:

17 (i) \$50 for less than 5,000 square feet.

18 (ii) \$100 for 5,000-25,000 square feet.

19 (iii) \$150 if greater than 25,000 square feet.

20 (5) Plant identification - \$40 per sample.

21 (6) Laboratory testing - Fees as established in 3
22 Pa.C.S. Ch. 71 (relating to seed).

23 (b) Adjustment of fees.--The department may fix, adjust,
24 assess and collect, or cause to be collected, fees as
25 established in this act. The fees shall be large enough to meet
26 the reasonable expenses incurred by the department or its agents
27 in administering this act, including issuing permits, conducting
28 inspections and carrying out necessary testing. If the secretary
29 determines that money derived from all authorized fees are
30 either greater or less than that required to administer this

1 act, the secretary may reduce or increase the fees so as to
2 maintain revenues sufficient to administer this act.

3 (c) Notice of fee adjustment.--The secretary shall announce
4 the adjustment of fees by publishing a notice in the
5 Pennsylvania Bulletin. The adjusted fees shall take effect 60
6 days after publication of such notice in the Pennsylvania
7 Bulletin.

8 (d) Payment of fees.--Fees shall be paid by check or money
9 order made payable to the Commonwealth of Pennsylvania. Failure
10 to pay a fee on time shall be a violation of this act. A late
11 fee of \$25 shall be assessed for every month that a fee is past
12 due.

13 Section 309. Powers and duties of the secretary and department.

14 (a) General rule.--The secretary shall enforce this act and
15 may employ all proper means for the enforcement of this act,
16 including issuing notices of violation and orders, filing
17 violations for criminal prosecution, seeking injunctive relief,
18 imposing civil penalties and entering into consent agreements.

19 (b) General powers and duties of department.--The
20 department, in carrying out the provisions of this act and in
21 addition to all other authority granted to the secretary and the
22 department by this act, shall have the authority to:

23 (1) Enter upon any public or private premises or
24 carriers during regular business hours in order to have
25 access to noxious weeds and controlled plants subject to
26 provisions of this act and the records relating to this act.

27 (2) Enter upon any public or private premises or carrier
28 for the purpose of controlling noxious weeds or controlled
29 plants and enforcing the provisions of this act.

30 (3) Issue and enforce a written control order to any

1 person in possession of a noxious weed or controlled plant.

2 (4) Issue and enforce written permits and permit
3 requirements to any person who wishes to conduct research on,
4 market, hold, warehouse, retail, wholesale, produce,
5 propagate, transport, cultivate or distribute a controlled
6 plant under such terms and conditions as are reasonably
7 required to carry out the provisions of this act.

8 (5) When utilizing any enforcement tool authorized by
9 this act to control, remediate, contain or eradicate a
10 noxious weed or controlled plant, and to recover, from the
11 noncomplying person or landowner, expenses and costs incurred
12 in such enforcement and compliance actions. The department
13 may impose additional civil or criminal penalties for failure
14 to comply. Such penalties shall include the reasonable cost
15 of eradication and compliance expenses incurred by the
16 department.

17 (6) If the department is denied access to any building,
18 conveyance, equipment, land or vehicle where such access was
19 sought for the purposes and under the authority set forth in
20 this act, the secretary may apply to any issuing authority
21 for a search warrant authorizing access to such building,
22 conveyance, equipment, land or vehicle for that purpose. The
23 court may upon application by the department, issue the
24 search warrant for the purposes requested.

25 (c) Right of entry and inspection.--

26 (1) In the performance of the duties required by this
27 act, the department and its inspectors, employees and agents
28 shall have free access, during reasonable hours, to any land
29 or premises on which noxious weeds or controlled plants are
30 present or found or where there is reasonable suspicion to be

1 present.

2 (2) The department may enter onto and inspect the land
3 and premises and any areas of the land and premises,
4 including buildings and conveyances, that are or will be
5 utilized for such activities or where the permitted
6 activities are or will be conducted.

7 (d) Refusal of entry.--It shall be unlawful for a person to
8 refuse or delay access to the inspector, employee or agent of
9 the department; to hinder, thwart or defeat inspection by
10 misrepresentation or concealment of regulated articles, facts or
11 conditions; to prevent an inspector, employee or agent from
12 gaining entry through an act of omission; or to interfere with
13 an inspector, employee or agent as specified under section 502.

14 (e) Search warrants.--

15 (1) If an inspector, employee or agent of the department
16 has probable cause to believe a noxious weed or controlled
17 plant exists on a property or premises or if access or entry
18 as described in subsections (b), (c) and (d) is denied or
19 hindered, the department's inspector, employee or agent may,
20 upon oath or affirmation, declare before a court of competent
21 jurisdiction that the inspector, employee or agent has
22 probable cause to believe that noxious weeds or controlled
23 plants exist on the land or premises.

24 (2) Upon review of such declaration, the court may issue
25 a search warrant for the property or premises. The search
26 warrant shall describe the property or premises, which may be
27 searched under authority of the search warrant, but need not
28 describe the exact or all possible noxious weeds or
29 controlled plants that exist or may exist on the property or
30 premises.

1 (3) An inspector, employee or agent of the department
2 possessing such search warrant shall have all the authority
3 of a constable or peace officer in the execution of the
4 warrant.

5 (4) It shall be sufficient probable cause to show either
6 of the following:

7 (i) That in cases involving a person who holds or is
8 required to hold an individual or general permit under
9 this act, the inspector, employee or agent has been
10 refused or delayed entry for the purpose of inspection.

11 (ii) The inspector, employee or agent has reasonable
12 grounds to believe that a violation of this act or
13 regulations promulgated or orders issued under the
14 authority of this act has been or is occurring.

15 (f) Inspections and sampling authority.--

16 (1) The department, through its inspectors, employees
17 and agents, may inspect any land, premises, buildings,
18 vehicles, vessels, articles, locations, machinery,
19 conveyances or other places of a person holding or required
20 to hold a permit under this act.

21 (2) The department may inspect any records required to
22 be kept under the individual or general permitting
23 requirements of this act and its attendant orders and
24 regulations.

25 (3) The department may collect samples and take pictures
26 of any noxious weeds or controlled plants. The department and
27 its inspectors, employees and agents may enter onto the land
28 or premises of a person where noxious weeds or controlled
29 plants are viewed or found for the purpose of this act.

30 (g) Delegation.--The secretary may delegate any power or

1 duty under this act to an agent acting on behalf of the
2 department, with the exception of the powers and duties of the
3 committee.

4 Section 310. Stop-sale orders.

5 (a) General rule.--The department may issue and enforce a
6 stop-sale order to any person holding or required to hold a
7 permit under this act or to any person where a noxious weed or
8 controlled plant exists. The stop-sale order shall require a
9 person to hold, at a designated place, any noxious weed or
10 controlled plant. Noxious weeds or controlled plants under a
11 stop-sale order issued under the authority of this subsection
12 shall continue to be held at the designated place until the
13 department is notified by the person to whom the stop-sale order
14 was directed that the prescribed treatment or action has been
15 taken and a reinspection of the premises indicates the treatment
16 has been completed and was effective.

17 (b) Official marking of noxious weeds and controlled plants
18 under a stop-sale order.--

19 (1) Noxious weeds and controlled plants under a stop-
20 sale order shall be clearly identified and, where
21 practicable, conspicuously marked.

22 (2) It shall be unlawful for a person to remove markings
23 placed by the department for this purpose unless instructed
24 by the department to do so.

25 (c) Violation of a stop-sale order.--It shall be unlawful to
26 violate a stop-sale order issued under this section. The
27 department may impose any and all penalties authorized under
28 this act for a violation of such order.

29 Section 311. Seizure and condemnation.

30 (a) General rule.--Where the distribution, transportation,

1 cultivation, propagation, reproduction, research or educational
2 practices of a noxious weed or controlled plant is not in
3 compliance with the provisions of this act or any regulation
4 promulgated or order issued under this act, the department, in
5 addition to any other action allowed under this act, may file a
6 complaint before a court of competent jurisdiction in the area
7 in which the noxious weed or controlled plant is located, or
8 before the Commonwealth Court, requesting such injunctive relief
9 as necessary to prevent harm and requesting an order of seizure
10 and condemnation be issued.

11 (b) Relief.--In the event that the court finds the noxious
12 weed or controlled plant to be in violation of this act, or any
13 regulation promulgated or order issued under this act, the court
14 shall order the condemnation of the noxious weed or controlled
15 plant. Upon execution of such court order, the condemned noxious
16 weed or controlled plant shall be disposed of in any manner
17 consistent with the laws of this Commonwealth.

18 Section 312. Appeal process.

19 An administrative appeal shall be taken and hearing conducted
20 in accordance with the provisions of 2 Pa.C.S. Chs. 5 Subch. A
21 (relating to practice and procedure of Commonwealth agencies)
22 and 7 Subch. A (relating to judicial review of Commonwealth
23 agency action). A person must file an appeal of an enforcement
24 action by the department within 15 days of the date of the
25 enforcement action.

26 Section 313. Cooperation with other entities.

27 The department may cooperate and enter into agreements with
28 any individual, person, organization or Federal, State, county,
29 or municipal agency for the purpose of implementing the
30 provisions of this act. The department may assist in the

1 enforcement of any Federal noxious weed quarantine established
2 under Federal act or regulations.

3 Section 314. Rules and regulations.

4 The department may promulgate rules and regulations and
5 establish and enforce orders necessary for administration and
6 implementation of this act.

7 CHAPTER 5

8 ENFORCEMENT

9 Section 501. Unlawful conduct.

10 It shall be unlawful for a person to fail to comply with or
11 to cause or assist in the violation of an order or provision of
12 this act.

13 Section 502. Interference with inspector, agent or employee of
14 department.

15 A person who willfully or intentionally interferes with an
16 inspector, employee or agent of the department in the
17 performance of the inspector's, employee's or agent's duties or
18 activities authorized under this act commits a misdemeanor of
19 the third degree and shall, upon conviction, be subject to a
20 term of imprisonment of not more than one year or a fine of not
21 more than \$2,500, or both.

22 Section 503. Enforcement and penalties.

23 (a) Criminal penalties.--Unless otherwise specified, a
24 person who violates a provision of this act or a rule or
25 regulation adopted under this act or any order issued under this
26 act:

27 (1) For the first offense, commits a summary offense and
28 may, upon conviction, be sentenced for each offense to pay a
29 fine of not less than \$100 and costs of prosecution or to
30 undergo imprisonment for a term which shall be fixed at not

1 more than 90 days, or both.

2 (2) For a subsequent offense committed within three
3 years of a prior conviction for a violation of this act or a
4 rule, regulation or order made under this act, commits a
5 misdemeanor of the second degree and shall, upon conviction,
6 be sentenced to pay a fine of not less than \$500 and costs of
7 prosecution or to imprisonment for not more than two years,
8 or both.

9 (b) Civil penalties.--

10 (1) In addition to any other remedy available at law or
11 in equity for a violation of this act, the department may
12 assess a civil penalty of not more than \$10,000, plus cost of
13 remediation, containment or eradication, upon a person for
14 each violation of this act or a regulation promulgated or
15 order issued under authority of this act. The civil penalty
16 assessed shall be payable to the department for deposit into
17 the account. The penalty amount shall be collectible in any
18 manner provided by law for the collection of debt, including
19 referring any collection matter to the Office of Attorney
20 General, which shall recover such amount by action in the
21 appropriate court.

22 (2) No civil penalty shall be assessed unless the person
23 assessed the penalty has been given notice and an opportunity
24 for a hearing on the assessment in accordance with the
25 provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice
26 and procedure of Commonwealth agencies) and 7 Subch. A
27 (relating to judicial review of Commonwealth agency action).
28 Section 504. Injunctive relief.

29 In addition to any other remedies provided for in this act,
30 the Attorney General, at the request of the secretary, may

1 initiate, in the Commonwealth Court or the court of common pleas
2 of the county in which the defendant resides or has his place of
3 business, an action in equity for an injunction to restrain any
4 and all violations of this act or the rules and regulations
5 promulgated under this act.

6 Section 505. De minimis violations.

7 Nothing in this act shall be construed as requiring the
8 department to report a violation or to institute seizure
9 proceedings or other enforcement actions under this act as a
10 result of de minimis violations of this act if the department
11 concludes that the public interest will be best served by a
12 suitable notice of violation or warning in writing.

13 CHAPTER 7

14 MISCELLANEOUS PROVISIONS

15 Section 701. Transfer.

16 The amount of \$300,000 shall be transferred from the General
17 Fund to the account to be utilized for the purposes enumerated
18 under this act.

19 Section 702. Disposition of funds.

20 (a) Plant Pest Management Account.--Money received from
21 permitting fees, control work reimbursement, fines and penalties
22 under this act shall be paid into a special nonlapsing
23 restricted account in the General Fund, to be known as the Plant
24 Pest Management Account.

25 (b) Supplements.--The account may be supplemented by money
26 received from the following sources:

27 (1) Federal funds appropriated to the department for
28 purposes of this act.

29 (2) State funds appropriated to the department for
30 purposes of this act.

1 (3) Gifts and other contributions from public or private
2 sources for purposes of this act.

3 Section 703. Preemption.

4 All local laws contrary to this act are preempted.

5 Section 704. Abrogation.

6 The regulations under 7 Pa. Code §§ 111.22 (relating to
7 prohibited noxious weed seeds) and 111.23 (relating to
8 restricted noxious weed seeds) are abrogated insofar as they are
9 inconsistent with this act.

10 Section 705. Repeals.

11 Repeals are as follows:

12 (1) The General Assembly declares that the repeals under
13 paragraphs (2) and (3) are necessary to effectuate this act.

14 (2) The act of April 7, 1982 (P.L.228, No.74), known as
15 the Noxious Weed Control Law, is repealed.

16 (3) 3 Pa.C.S. Ch. 71 is repealed insofar as it is
17 inconsistent with this act.

18 Section 706. Effective date.

19 This act shall take effect in 60 days.