

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1523 Session of
1985

INTRODUCED BY LESCOVITZ, JUNE 27, 1985

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, JUNE 27, 1985

AN ACT

1 Providing for the control of pesticides.

2 TABLE OF CONTENTS

3 Section 1. Short title.

4 Section 2. Legislative intent.

5 Section 3. Definitions.

6 Section 4. Registration, production, storage and sales.

7 Section 5. Restricted-use pesticides; review of data; testing.

8 Section 6. Refusal to register; cancellation; suspension; legal
9 recourse.

10 Section 7. Registration of warehouse.

11 Section 8. Pesticide dealer license.

12 Section 9. Prohibited acts.

13 Section 10. Records.

14 Section 11. "Stop sale, use or removal" order.

15 Section 12. Judicial action after "stop sale, use or removal"
16 order.

17 Section 13. Pesticide Control Commission.

1 Section 14. Powers and duties of commission.
2 Section 15. Powers and duties of Environmental Quality
3 Board.
4 Section 16. Powers and duties of department.
5 Section 17. Licensing, classification, certification,
6 examination, fees, applications, issue of license,
7 nonresident licensee.
8 Section 18. Governmental agencies.
9 Section 19. License renewals; penalty; recertification.
10 Section 20. Grounds for disciplinary action; penalties.
11 Section 21. Duties of licensee with respect to unlicensed
12 applicators and mixer-loaders and field workers.
13 Section 22. Damage or injury to property, animal or person;
14 mandatory report of damage or injury; time for
15 filing; failure to file.
16 Section 23. Records; annual report.
17 Section 24. Public operators.
18 Section 25. Public utilities.
19 Section 26. Criminal penalties.
20 Section 27. Civil penalties.
21 Section 28. Civil remedy.
22 Section 29. Concurrent remedies.
23 Section 30. Pesticides registered under prior law.
24 Section 31. Applicators certified or licensed.
25 Section 32. Transfers.
26 Section 33. Existing liability.
27 Section 34. Pesticide Control Account.
28 Section 35. Repeals.
29 Section 36. Effective date.

30 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Short title.

3 This act shall be known and may be cited as the Pesticide
4 Control Act.

5 Section 2. Legislative intent.

6 The General Assembly hereby finds that, although pesticides
7 can be valuable in agricultural production and the protection of
8 the health and well-being of the citizens and environment of the
9 Commonwealth, it is essential for the public health and welfare
10 that the pesticides be regulated. The improper application, use,
11 storage or disposal of pesticides can endanger not only the
12 current generation of Pennsylvanians, but also future
13 generations, by despoiling water supplies and the soil. The
14 purpose of this act is to control, in the public interest, the
15 labeling, distribution, storage, transportation, use,
16 application and disposal of pesticides, and to provide accurate
17 scientific and public health information on the use of any
18 pesticide.

19 Section 3. Definitions.

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

23 "Active ingredient."

24 (1) In the case of a pesticide other than a plant
25 regulator, defoliant or desiccant, an ingredient which will
26 prevent, destroy, repel or mitigate insects, nematodes,
27 fungi, rodents, weeds or their pests.

28 (2) In the case of a plant regulator, an ingredient
29 which, through physiological action, will accelerate or
30 retard the rate of growth or rate of maturation, or otherwise

1 alter the behavior, of ornamental or crop plants or the
2 produce thereof.

3 (3) In the case of a defoliant, an ingredient which will
4 cause the leaves or foliage to drop from a plant.

5 (4) In the case of a desiccant, an ingredient which will
6 artificially accelerate the drying of plant tissue.

7 "Added ingredient." Any plant nutrient or plant regulator
8 added to the mixture which is not an active pesticidal
9 ingredient, but which the manufacturer wishes to show on the
10 label.

11 "Adulterated." Any pesticide if its strength or purity falls
12 below or is in excess of the professed standard of quality as
13 expressed on labeling or under which it is sold, if any
14 substance has been substituted wholly or in part for the
15 pesticide or if any valuable constituent of the pesticide has
16 been wholly or in part abstracted.

17 "Advertisement." All representations disseminated in any
18 manner or by any means other than by labeling, for the purpose
19 of inducing, or which are likely to induce, directly or
20 indirectly, the purchase of pesticides.

21 "Animal." All vertebrate and invertebrate species,
22 including, but not limited to, man and other mammals, birds,
23 fish and shellfish.

24 "Antidote." The most practical immediate treatment for
25 poisoning which includes first aid treatment.

26 "Antisiphon device." A safety device used to prevent the
27 backflow of a mixture of water and chemicals into the water
28 supply.

29 "Applicators." A certified applicator, private applicator,
30 commercial applicator, public operator, or a competent person

1 under the direct supervision of a certified applicator.

2 "Batch" or "lot." A quantity of pesticide produced or
3 packaged and readily identified by numbers, letters or other
4 symbols.

5 "Beneficial insects." Those insects which, during their life
6 cycle, are effective pollinators of plants, parasites or
7 predators of pests, or are otherwise beneficial.

8 "Brand." The name, number, trademark or any other
9 designation which distinguishes one pesticide product from
10 another.

11 "Certified applicator." Any person 18 years of age or older
12 who is licensed to use or supervise the use of any restricted-
13 use pesticide covered by his license.

14 "Chemical." Any substance which is intentionally added to
15 water for agricultural purposes.

16 "Commercial applicator." A certified applicator (whether or
17 not he is a private applicator with respect to some uses) who
18 uses or supervises the use of any pesticide which is classified
19 for restricted use for any purpose or on any property other than
20 as provided by this act.

21 "Commission." The Pennsylvania Pesticide Control Commission.

22 "Dealer." Any person, other than the manufacturer or
23 distributor, who offers for sale, sells, barter or supplies
24 pesticides to the ultimate user or consumer.

25 "Deficiency." The amount of an active ingredient of a
26 pesticide by which it fails to come up to its guaranteed
27 analysis when analyzed.

28 "Defoliant." Any substance or mixture of substances intended
29 for causing the leaves or foliage to drop from a plant, with or
30 without causing abscission.

1 "Department." The Department of Environmental Resources of
2 the Commonwealth.

3 "Desiccant." Any substance or mixture of substances intended
4 for artificially accelerating the drying of plant tissues.

5 "Device." Any instrument or contrivance, other than a
6 firearm, which is intended for trapping, destroying, repelling
7 or mitigating, any pest or other form of plant or animal life,
8 other than man and other than bacteria, virus or other
9 microorganism on or in living man or other living animals. The
10 term does not include equipment used for the application of
11 pesticides when sold separately therefrom.

12 "Distribute." To offer for sale, hold for sale, sell, barter
13 or supply pesticides in this Commonwealth.

14 "Distributor." Any person who offers for sale, holds for
15 sale, sells, barter, or supplies pesticides in this
16 Commonwealth.

17 "Emergency exemption." An exemption as authorized in section
18 18 of the Federal Insecticide, Fungicide, and Rodenticide Act
19 (61 Stat. 163, 7 U.S.C. § 136p).

20 "Environment." Water, air, land and all plants, persons and
21 animals living therein and the interrelationships which exist
22 among them.

23 "Environmental Hearing Board." The board established under
24 section 1921-A of the act of April 9, 1929 (P.L.177, No.175),
25 known as The Administrative Code of 1929, for the purposes set
26 forth in that section.

27 "Environmental Quality Board." The board established under
28 section 1920-A of the act of April 9, 1929 (P.L.177, No.175),
29 known as The Administrative Code of 1929, for the purposes set
30 forth in that section.

1 "Equipment." Any type of ground, water or aerial equipment
2 or contrivance using motorized, mechanical or pressurized power
3 used to apply any pesticide on land and on anything that may be
4 growing, habitating or stored on or in such land, not including
5 any pressurized hand-sized household apparatus used to apply any
6 pesticide, equipment or contrivance of which the person who is
7 applying the pesticide is the source of power or energy in
8 making such pesticide application.

9 "Excess." The amount of an active ingredient of a pesticide
10 by which it exceeds its guaranteed analysis when analyzed.

11 "Experimental use permit." A permit issued by the department
12 or by the United States Environmental Protection Agency as
13 authorized in section 5 of the Federal Insecticide, Fungicide,
14 and Rodenticide Act (61 Stat. 163, 7 U.S.C. § 136c).

15 "Fungi." All nonchlorophyll-bearing thallophytes; all
16 nonchlorophyll-bearing plants of a lower order than mosses and
17 liverworts such as rusts, smuts, mildews, molds, yeasts and
18 bacteria, except those on or in living man or other animals.

19 "Fungicide." Any substance or mixture of substances intended
20 for preventing, destroying, repelling or mitigating any fungi,
21 except those on or in living man or other animals.

22 "Governmental agency." Any municipality, municipal
23 authority, political subdivision or agency of Federal or State
24 government.

25 "Herbicide." Any substance or mixture of substances intended
26 for preventing, destroying, repelling or mitigating any weed.

27 "Highly toxic." Any highly toxic or poisonous pesticide as
28 determined by the rules and regulations promulgated pursuant to
29 this act.

30 "Imminent hazard." A situation which exists when the

1 continued use of a pesticide during the time required for
2 cancellation proceedings would be likely to result in
3 unreasonable adverse effects on the environment or will involve
4 unreasonable hazard to the survival of a species declared
5 endangered.

6 "Ineffective." Pesticides such as bacteriostats,
7 disinfectants, germicides, sanitizers and like products which
8 fail to meet microbiological claims when tested in the
9 laboratory utilizing the officially approved procedures of the
10 Association of Official Analytical Chemists or such other
11 methods or procedures as the department may find necessary.

12 "Inert ingredient." An ingredient which is not an active
13 ingredient.

14 "Ingredient statement." A statement of the name and
15 percentage by weight of each active ingredient, together with
16 the total percentage of the inert ingredients in the pesticides.
17 When the pesticide contains arsenic in any form, a statement
18 which also includes percentages of total and water-soluble
19 arsenic, each calculated as elemental arsenic.

20 "Insect." Any of the numerous small invertebrate animals
21 generally having the body more or less obviously segmented, for
22 the most part belonging to the class insecta, comprising six
23 legs, usually in winged form, such as beetles, bugs, bees and
24 flies, and to other allied classes and arthropods whose members
25 are wingless and usually have more than six legs such as
26 spiders, mites, ticks, centipedes and wood lice.

27 "Insecticide." Any substance or mixture of substances
28 intended for preventing, destroying, repelling or mitigating any
29 insects which may be present in any environment.

30 "Label." The written, printed or graphic matter on or

1 attached to a pesticide or device or immediate and outside
2 container or wrapper of the pesticide or device.

3 "Labeling." All labels and other written, printed or graphic
4 matter upon the pesticide or device or any of the containers or
5 wrappers accompanying the pesticide or device at any time. The
6 term does not include accurate, nonmisleading references to
7 current official publications of the United States Departments
8 of Agriculture or Interior, the Environmental Protection Agency,
9 the United States Public Health Service, State experiment
10 stations, State agricultural colleges or similar Federal
11 institutions or official agencies of this Commonwealth or other
12 states authorized by law to conduct research in the field of
13 pesticides.

14 "Land." All land and water areas, including airspace,
15 plants, structures, buildings, contrivances and machinery
16 appurtenant thereto.

17 "Licensed applicator." Any individual who is licensed
18 pursuant to this act to use, apply or supervise the use or
19 application of a pesticide.

20 "Manufacturer." A person engaged in the business of
21 importing, producing, preparing, mixing or processing
22 pesticides.

23 "Misbranded."

24 (1) Any pesticide or device if its labeling bears any
25 statement, design or graphic representation relative thereto
26 or to its ingredients which is false or misleading in any
27 particular.

28 (2) Any pesticide:

29 (i) If it is an imitation of, or is offered for sale
30 under the name of, another pesticide.

1 (ii) If its labeling bears any reference to
2 registration.

3 (iii) If the labeling accompanying it does not
4 contain instructions for use which are necessary and, if
5 complied with, adequate for the protection of the public.

6 (iv) If the label does not contain a warning or
7 caution statement which may be necessary and, if complied
8 with, adequate to prevent injury to living man and other
9 vertebrate animals.

10 (v) If the label does not bear an ingredient
11 statement on that part of the immediate container, and on
12 the outside container or wrapper, through which the
13 ingredient statement on the immediate container cannot be
14 clearly read, of the retail package which is presented or
15 displayed under customary conditions of purchase.

16 (vi) If any word, statement or other information
17 required by or under authority of this law to appear on
18 the labeling is not prominently placed thereon with such
19 conspicuousness, as compared with other words,
20 statements, designs or graphic matter in the labeling,
21 and in such terms as to render it likely to be read and
22 understood by the ordinary individual under customary
23 conditions of purchase and use.

24 (vii) If, in the case of an insecticide, nematocide,
25 fungicide or herbicide, when used as directed or in
26 accordance with commonly recognized practice, it is
27 injurious to living man or other vertebrate animals or
28 vegetation, except weeds, to which it is applied, or to
29 the person applying such pesticide.

30 (viii) If, in the case of a plant regulator,

defoliant or desiccant, when used as directed, it is injurious to living man or other vertebrate animals, or vegetation, to which it is applied, or to the person applying such pesticide. However, physical or physiological effects on plants or parts thereof shall not be deemed to be injury when this is the purpose for which the plant regulator, defoliant, or desiccant was applied in accordance with the label claims and recommendations.

(ix) If any ingredient which is present in amounts which are not likely to be effective when used according to directions is given undue prominence or conspicuousness, as compared with ingredients which are present in effective amounts, in its labeling. Such ingredients shall appear only in the ingredient statement.

(x) When it is found to be ineffective when tested in the laboratory.

(xi) When it is found by the department to be of short measure.

"Mixer-loader." Any person who prepares, processes or dilutes pesticides for the purpose of loading them into application equipment.

"Nematocide." Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes.

"Nematode." Invertebrate animals of the phylum Nemathelminthes and class Nematoda (that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle and inhabiting soil, water, plants, or plant parts),

1 which may also be known as nemas or eelworms.

2 "Official sample." Any sample of a pesticide taken by the
3 department in accordance with the provisions of this act or
4 rules adopted hereunder and designated as official by the
5 department.

6 "Percent." One one-hundredth part by weight or volume.

7 "Persistent pesticide." A pesticide which will persist in
8 the environment beyond one year from the date of application.

9 "Person." Any individual, partnership, association,
10 corporation or organized group of persons whether incorporated
11 or not.

12 "Pest." All insects, fungi, bacteria, weeds, rodents,
13 predatory animals, or any other form of plant or animal life,
14 including viruses which may infest or be detrimental to
15 vegetation, man, animals or households, except viruses, bacteria
16 or fungi on or in living man or other animals, present in any
17 environment where not desired, or which may be declared to be a
18 pest by the department.

19 "Pesticide" or "economic poison." Any substance or mixture
20 of substances intended for preventing, destroying, repelling or
21 mitigating any insects, rodents, nematodes, fungi, weeds or
22 other forms of plant or animal life or viruses, except viruses,
23 bacteria or fungi on or in living man or other animals, which
24 the department declares to be a pest, and any substance or
25 mixture of substances intended for use as a plant regulator,
26 defoliant, or desiccant. However, the term "pesticide" does not
27 include any article that:

28 (1) is a "new animal drug" within the meaning of section
29 201(w) of the Federal Food, Drug, and Cosmetic Act (52 Stat.
30 1040, 21 U.S.C. § 321(w));

1 (2) has been determined by the Secretary of the United
2 States Department of Health and Human Services not to be a
3 new animal drug by a regulation establishing conditions of
4 use for the article; or

5 (3) is an animal feed within the meaning of section
6 201(x) of the Federal Food, Drug, and Cosmetic Act (52 Stat.
7 1040, 21 U.S.C. § 321(x)).

8 "Plant nutrient." Any ingredient that furnishes nourishment
9 to the plant or promotes its growth in a normal manner.

10 "Plant regulator." Any substance or mixture of substances
11 intended, through physiological action, for accelerating or
12 retarding the rate of growth or maturation, or for otherwise
13 altering the behavior of ornamental or crop plants or the
14 produce thereof, not including substances intended as plant
15 nutrients, trace elements, nutritional chemicals, plant
16 inoculants or soil amendments.

17 "Private applicator." A certified applicator who uses or
18 supervises the use of any pesticide which is classified for
19 restricted use for purposes of producing any agricultural
20 commodity on property owned or rented by him or his employer or
21 (if applied without compensation other than trading of personal
22 services between producers of agricultural commodities) on the
23 property of another person.

24 "Produce." Manufacture, prepare, compound, propagate or
25 process any pesticide or device.

26 "Producer." A person who manufactures, prepares, compounds,
27 propagates or processes any pesticide or device.

28 "Public operator." Any individual who applies pesticides as
29 an employee of a State agency, municipal corporation, or other
30 governmental agency. This term does not include employees who

1 work only under direct on-the-job supervision of a certified
2 public operator.

3 "Registrant." The person registering any pesticide pursuant
4 to the provisions of this act.

5 "Restricted-use pesticide." A pesticide which, when applied
6 in accordance with its directions for use, warnings and cautions
7 and for uses for which it is registered or for one or more such
8 uses, or in accordance with a widespread and commonly recognized
9 practice, may generally cause, without additional regulatory
10 restrictions, unreasonable adverse effects on the environment,
11 or injury to the applicator or other persons, and which has been
12 classified as a restricted-use pesticide by the department or
13 the administrator of the United States Environmental Protection
14 Agency.

15 "Rodenticide." Any substance or mixture of substances
16 intended for preventing, destroying, repelling or mitigating
17 rodents or any other vertebrate animal, in any environment which
18 the department declares to be a pest.

19 "Secretary." The Secretary of Environmental Resources of the
20 Commonwealth.

21 "Sell" or "sale." Includes exchanges.

22 "Special local need registration." A State registration
23 issued by the department as authorized in section 24(c) of the
24 Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat.
25 163, 7 U.S.C. § 136v(c)).

26 "Tolerance." The deviation from the guaranteed analysis
27 permitted by law.

28 "Transportation of pesticides in bulk." The movement of
29 pesticides received from a producer or distributor in a
30 nonpackaged form on roads within this Commonwealth.

1 "Under the direct supervision of a certified applicator."
2 Unless otherwise prescribed by its labeling, an application of
3 certain pesticides by a competent person acting under the
4 instructions and control of a certified applicator who is
5 available if and when needed, even though such certified
6 applicator is not physically present at the time and place the
7 pesticide is applied. For purposes of making applications, by
8 commercial applicators of aldrin, chlordane, chlorpyrifos,
9 dieldrin, heptachlor, lindane or pentachlorophenol in or around
10 any residential dwelling, tenement, apartment complex or other
11 living area not associated with agricultural production, the
12 term shall mean only applications made by a competent person
13 under the direct control and supervision of a certified
14 applicator actually present on the site at the time of the
15 application of the pesticide.

16 "Unreasonable adverse effects on the environment." Any
17 unreasonable risk to man or the environment, taking into account
18 the economic, social and environmental costs and benefits of the
19 use of any pesticide.

20 "Warehouse." A facility or a portion thereof used to store
21 pesticide prior to or after production or prior to sale.

22 "Weed." Any plant which grows where not wanted.

23 "Wildlife." All living things that are neither human nor
24 domesticated nor pests, including, but not limited to, mammals,
25 birds and aquatic life.

26 Section 4. Registration, production, storage and sales.

27 (a) Registration.--Every pesticide which is distributed,
28 sold or offered for sale within this Commonwealth or delivered
29 for transportation or transported in interstate commerce or
30 between points within this Commonwealth through any point

1 outside this Commonwealth shall be registered in the office of
2 the department, and such registration shall be renewed annually.
3 Emergency exemptions from registration may be authorized in
4 accordance with the rules of the department. The registrant
5 shall file with the department a statement including:

6 (1) The name and street address of the registrant.

7 (2) The name of the pesticide.

8 (3) An ingredient statement and a complete copy of the
9 labeling accompanying the pesticide which shall conform to
10 the registration and a statement of all claims to be made for
11 it, including directions for use and a guaranteed analysis
12 showing the names and percentages by weight of each active
13 ingredient, the total percentage of inert ingredients and the
14 names and percentages by weight of each added ingredient
15 contained therein.

16 (b) Registration fee.--For the purpose of defraying expenses
17 of the department each person shall pay a registration fee of
18 \$10 for every brand registered annually, for the first ten
19 brands, and \$2.50 for every brand in excess thereof. All
20 registrations expire on December 31 of each year and new
21 registrations must be filed before January 15 of the current
22 year. Nothing in this section shall be construed as applying to
23 distributors or retail dealers selling pesticides when such
24 pesticides are registered by another person.

25 (c) Powers of department.--The department may require the
26 registrant to submit the complete formula, evidence of the
27 efficacy and the safety of any pesticide and other relevant
28 data. The department, for reasons of adulteration, misbranding,
29 or other good cause, may refuse or revoke the registration of
30 any pesticide, upon notice to the applicant or registrant of its

1 intention to so refuse or revoke, giving its reasons therefor.
2 The applicant may request a hearing on the intention of the
3 department to refuse or revoke registration, and, upon his
4 failure to do so, the refusal or revocation shall become final
5 without further procedure. In no event shall registration of a
6 pesticide be construed as a defense for the commission of any
7 offense.

8 (d) Continuation of registration.--When a registrant
9 discontinues the distribution of a pesticide which has been
10 registered in this Commonwealth, the registrant will be required
11 to continue registration of this pesticide until no more remains
12 on the retailer's shelves, or not to exceed two years after
13 written notice to the department of date of discontinuance,
14 provided such continued registration or sale is not specifically
15 prohibited by the department or the United States Environmental
16 Protection Agency.

17 Section 5. Restricted-use pesticides; review of data; testing.

18 (a) Department.--The department shall adopt rules governing
19 the review of data submitted by an applicant for registration of
20 a restricted-use pesticide and shall determine whether a
21 restricted-use pesticide should be registered, registered with
22 conditions, or tested under field conditions in this
23 Commonwealth. The department shall transmit a copy of the
24 application and other pertinent information to each member of
25 the Pesticide Review Council within 30 days of receipt of an
26 application for the registration of a restricted-use pesticide.

27 (b) Special permit.--When the commission determines that
28 field testing in this Commonwealth is warranted, the
29 manufacturers of a restricted-use pesticide or persons wishing
30 to register a restricted-use pesticide for use in this

1 Commonwealth shall apply to the department for a special permit
2 to conduct tests under field conditions in this Commonwealth.
3 The field testing permit shall contain testing criteria
4 developed by the most appropriate State agency, as determined by
5 the council.

6 (c) Review.--The department may review and comment on
7 restricted-use pesticides registered at the time of review, in
8 addition to restricted-use pesticides for which application for
9 registration has been made. Further, the department may review
10 and comment on any restricted-use pesticide that may pose
11 unreasonably adverse effects on the environment.

12 Section 6. Refusal to register; cancellation; suspension; legal
13 recourse.

14 (a) Notification.--If it does not appear to the secretary
15 that a pesticide registered under his authority is such as to
16 warrant the proposed claims for it or if the pesticide and its
17 labeling and other material required to be submitted do not
18 comply with the provisions of this act or regulations adopted
19 thereunder, he shall notify the applicant of the manner in which
20 the pesticide, labeling or other material required to be
21 submitted fails to comply with this act so as to afford the
22 applicant an opportunity to make the necessary corrections. If,
23 upon receipt of such notice, the applicant does not make the
24 required changes, the secretary may refuse to register the
25 pesticide.

26 (b) Cancellation.--The secretary may, when he determines
27 that a pesticide registered under his authority or its labeling
28 does not comply with this act or the regulations adopted
29 thereunder, cancel the registration of a pesticide.

30 (c) Suspension.--The secretary may, when he determines that

1 there is an imminent hazard, suspend on his own motion the
2 registration of a pesticide registered under his authority.

3 Section 7. Registration of warehouse.

4 Each producer and distributor of pesticides shall be required
5 to register with the department and shall display a certificate
6 of registration from the department. Each producer and
7 distributor shall maintain such records as may be required,
8 which shall be open for inspection by the department. Each
9 warehouse used by a producer or a distributor shall be open to
10 inspection by the department.

11 Section 8. Pesticide dealer license.

12 (a) Dealers.--It shall be unlawful for any person to act in
13 the capacity of a pesticide dealer who sells pesticides which
14 are classified for restricted use or advertise as, or assume to
15 act as a pesticide dealer at any time without first having
16 obtained an annual license from the secretary which shall expire
17 December 31 of each year. A license shall be required for each
18 location or outlet located within this Commonwealth from which
19 such pesticides are sold. Any manufacturer, registrant or
20 distributor who has no pesticide dealer outlet licenses within
21 this Commonwealth and who distributes such pesticides directly
22 into this Commonwealth shall obtain a pesticide dealer license
23 for his principal out-of-state location or outlet.

24 (b) Fee.--Application for a license shall be accompanied by
25 an annual license fee and shall be on a form prescribed by the
26 secretary.

27 (c) Exception.--This section shall not apply to a licensed
28 pesticide applicator who sells pesticides only as an integral
29 part of his pesticide application service when such pesticides
30 are dispensed only through equipment used for such pesticide

1 application; or to any Federal, State, county or municipal
2 agency which provides pesticides only for its own programs.

3 (d) Applications.--Applications for renewals of pesticide
4 licenses shall be mailed to registrants at least 60 days prior
5 to due date.

6 (e) License.--Each pesticide dealer shall be responsible for
7 the acts of each person employed by him in the solicitation and
8 sale of pesticides and all claims and recommendations for use of
9 pesticides. The dealer's license shall be subject to denial,
10 suspension or revocation after a hearing for any violation of
11 this act whether committed by the dealer or by the dealer's
12 office, agent or employee.

13 Section 9. Prohibited acts.

14 It shall be unlawful to distribute, sell or offer for sale
15 within this Commonwealth or deliver for transportation or
16 transport in intrastate commerce or between points within this
17 Commonwealth through any point outside this Commonwealth any of
18 the following:

19 (1) Any pesticide which has not been registered pursuant
20 to this act, or any pesticide if any of the claims made for
21 it or any of the directions for its use differ in substance
22 from the representations made in connection with its
23 registration, or if the composition of a pesticide differs
24 from its composition as represented in connection with its
25 registration.

26 (2) Any pesticide unless it is in the registrant's or
27 the manufacturer's unbroken immediate container, and there is
28 affixed to such container and to the outside container or
29 wrapper of the retail package, if there be one, through which
30 the required information on the immediate container cannot be

1 clearly read, a label bearing:

2 (i) The name and address of the manufacturer or the
3 registrant.

4 (ii) The name brand or trademark under which the
5 article is sold.

6 (iii) The net weight or measure of the contents,
7 subject, however, to such reasonable variations as the
8 department may permit.

9 (iv) All other mandatory labeling requirements.

10 However, the delivery of pesticides in bulk, on permit of the
11 department, is deemed to comply with the unbroken container
12 and labeling provision of this paragraph when safely
13 transported, transferred, deposited and labeled in a manner
14 provided by technical rule.

15 (3) Any pesticide which contains any substance or
16 substances in quantities highly toxic to man, determined as
17 provided in this act, unless the label shall bear, in
18 addition to any other matter required by this act:

19 (i) The skull and crossbones.

20 (ii) The word "POISON" prominently, in red, on a
21 background of distinctly contrasting color.

22 (iii) A statement of an antidote for the pesticide.

23 (iv) Specific directions for removing and destroying
24 all waste pesticides from containers and decontamination
25 of empty containers.

26 (v) A warning that all waste pesticide shall be
27 removed from containers and that empty containers shall
28 be either burned or buried or decontaminated thoroughly
29 before disposal in any other manner.

30 (4) Any pesticide highly toxic to man if its container

1 is not closed and made of such material as will prevent
2 leakage or dusting out when shipped, stored or handled.

3 (5) The pesticides commonly known as standard lead
4 arsenate, basic lead arsenate, calcium arsenate, magnesium
5 arsenate, zinc arsenate, zinc arsenite, sodium fluoride,
6 sodium flousilicate and barium flousilicate unless they have
7 been distinctly colored or discolored as provided by
8 regulations issued in accordance with this law, or any other
9 white powder pesticide which the department, after
10 investigation of and after public hearing on the necessity
11 for such action for the protection of the public health and
12 the feasibility of such coloration or discoloration, shall,
13 by regulation, require to be distinctly colored or
14 discolored, unless it has been so colored or discolored. The
15 department may exempt any pesticide to the extent that it is
16 intended for a particular use or uses from the coloring or
17 discoloring required or authorized by this section if it
18 determines that such coloring or discoloring for such use or
19 uses is not necessary for the protection of the public
20 health.

21 (6) Any pesticide which is adulterated or misbranded, or
22 any device which is misbranded.

23 (7) For any person to detach, alter, deface or destroy,
24 in whole or in part, any label or labeling provided for in
25 this law or regulations promulgated hereunder, or to add any
26 substance to, or take any substance from, any pesticide in a
27 manner that may defeat the purpose of this act.

28 (8) For any person to use for his own advantage or to
29 reveal information relative to formulas of products acquired
30 by authority of this act, other than to the department,

1 proper officials or employees of the Commonwealth, the courts
2 of this Commonwealth in response to a subpoena, physicians,
3 to pharmacists in emergencies and other qualified persons for
4 use in the preparation of antidotes.

5 (9) For any person to disseminate any false
6 advertisement.

7 (10) For any person to dispose of in any manner a
8 pesticide that has been placed under a "stop sale, use or
9 removal" order by the department without a written release
10 order from the department or to remove the "stop sale, use or
11 removal" order from the article so detained.

12 (11) For any person to hold or offer for sale, sell or
13 distribute in this Commonwealth restricted-use pesticides
14 unless he holds a dealer's license and unless the person to
15 whom the sale is made holds a valid applicator's license to
16 purchase and use such restricted-use pesticides or holds a
17 valid purchase authorization card, in which case the use of
18 the restricted-use pesticide shall be by a licensed
19 applicator or employee under his direct supervision.

20 (12) For any person to purchase any restricted-use
21 pesticide unless he is the holder of a valid dealer's
22 license, applicator's license or purchase authorization card,
23 or to use a restricted-use pesticide unless he is the holder
24 of a valid applicator's license or unless he is using the
25 restricted-use pesticide under the direct supervision of a
26 licensed applicator.

27 (13) For any person to use any pesticide, including a
28 restricted-use pesticide, or to dispose of any pesticide
29 containers in a manner other than those stated in the
30 labeling or on the label or as specified by the department or

1 the United States Environmental Protection Agency. However,
2 it shall not be unlawful to:

3 (i) apply a pesticide at any dosage, concentration
4 or frequency less than that specified on the label or
5 labeling, provided that the efficacy of the pesticide is
6 maintained and further provided that when a pesticide is
7 applied by a commercial applicator, any deviation from
8 label recommendations must be with the consent of the
9 purchaser of the pesticide application services;

10 (ii) apply a pesticide against any target pest not
11 specified in the labeling if the application is to a
12 crop, animal or site specified on the label or labeling,
13 provided that the label or labeling does not specifically
14 prohibit the use on pests other than those listed on the
15 label or labeling;

16 (iii) employ any method of application not
17 prohibited by the labeling;

18 (iv) mix a pesticide or pesticides with a fertilizer
19 when such mixture is not prohibited by the label or
20 labeling; or

21 (v) use in a manner determined by rule not to be an
22 unlawful act.

23 (14) For any person to handle, transport, store, display
24 or distribute pesticides in such a manner as to endanger man
25 or his environment or to endanger food, feed or any other
26 products that may be transported, stored, displayed or
27 distributed with such pesticides.

28 (15) For any person to dispose of, discard or store any
29 pesticides or pesticide containers in such a manner as to
30 cause injury to humans, vegetation, crops, livestock,

1 wildlife or pollinating insects or to pollute any water
2 supply or waterway.

3 (16) For any person to make any false or fraudulent
4 claims through any media misrepresenting the effect of
5 pesticide materials or application methods to be utilized.

6 (17) For any person to operate pesticide application
7 equipment or devices in a faulty, careless or negligent
8 manner.

9 (18) For any person to refuse or neglect to keep and
10 maintain the records required by this act or to make reports
11 when and as required by regulation.

12 (19) For any person to make false or fraudulent records,
13 invoices or reports concerning the manufacture,
14 transportation, sales, storage, control and application of
15 pesticides.

16 (20) For any person to make any false statement or
17 misrepresentation of material fact on any application for the
18 issuance or renewal of any license, permit or certification
19 issued pursuant to this act.

20 (21) For any person to refuse or neglect to comply with
21 any limitations imposed upon a license, permit or
22 certification issued pursuant to this act.

23 (22) For any person to aid or abet another to evade the
24 provisions of this act, conspire with another for that
25 purpose or allow his license, permit or certification to be
26 used by another.

27 (23) For any person to make any false or misleading
28 statement during or after an inspection concerning any
29 infestation or infection of pests found on the land
30 inspected.

1 (24) For any person to impersonate any Federal, State,
2 county or city inspector or official in connection with any
3 matter regulated by this act.

4 (25) For any commercial applicator to make any
5 application of aldrin, chlordane, chlorpyrifos, dieldrin,
6 heptachlor, lindane or pentachlorophenol in or around any
7 residential dwelling, tenement, apartment complex or other
8 living area not associated with agricultural production
9 without the actual physical presence of a certified
10 applicator who controls and supervises the pesticide
11 application at the site.

12 Section 10. Records.

13 (a) Emergency use.--The department, when emergency use is
14 authorized, shall maintain a record of action taken, including:

- 15 (1) name and amount of pesticide used;
- 16 (2) manner of application;
- 17 (3) disposal of container; and
- 18 (4) method of cleaning equipment.

19 (b) Reports by registrants.--Registrants selling persistent
20 pesticides shall report to the department the name and the
21 amount of each persistent pesticide sold by them in this
22 Commonwealth during each calendar year. The report shall be
23 filed with the department no later than January 31 following the
24 said reporting year.

25 (c) Reports by department.--The department shall annually
26 report to the Governor and the General Assembly for each
27 calendar year, no later than March 1 of the following year, the
28 amount and kind of persistent pesticides sold in this
29 Commonwealth.

30 Section 11. "Stop sale, use or removal" order.

1 When the secretary has reasonable cause to believe a
2 pesticide or device is being distributed, stored, transported or
3 used in violation of any of the provisions of this act, or of
4 any of the prescribed regulations under this act, he may issue
5 and serve a written "stop sale, use or removal" order upon the
6 owner or custodian of any such pesticide or device. If the owner
7 or custodian is not available for service of the order upon him,
8 the secretary may attach the order to the pesticide or device
9 and shall notify the owner, custodian and registrant. The
10 pesticide or device shall not be sold, used or removed until the
11 provisions of this act have been complied with and the pesticide
12 or device has been released in writing under conditions
13 specified by the secretary or the violation has been otherwise
14 disposed of as provided in this act by a court of competent
15 jurisdiction.

16 Section 12. Judicial action after "stop sale, use or removal"
17 order.

18 (a) Actions.--After service of a "stop sale, use or removal"
19 order is made upon any person, either that person, the
20 registrant or the secretary may file an action in a court of
21 competent jurisdiction for an adjudication of the alleged
22 violation. The court in such action may issue temporary or
23 permanent injunctions and such intermediate orders as it deems
24 necessary or advisable. The court may order condemnation of any
25 pesticide or device which does not meet the requirements of this
26 act or regulations adopted thereunder.

27 (b) Disposal of pesticide.--If the pesticide or device is
28 condemned, it shall, after entry of decree, be disposed of by
29 destruction or sale as the court directs, and if such pesticide
30 or device is sold, the proceeds, less costs including legal

1 costs, shall be paid into the State Treasury as provided in this
2 act, provided that the pesticide or device shall not be sold
3 contrary to the provisions of this act or regulations adopted
4 thereunder. Upon payment of costs and execution and delivery of
5 a good and sufficient bond conditioned that the pesticide or
6 device shall not be disposed of unlawfully, the court may direct
7 that the pesticide or device be delivered to the owner thereof
8 for relabeling, reprocessing or otherwise bringing the product
9 into compliance or withdrawal of the product from this
10 Commonwealth.

11 (c) Decree of condemnation.--When a decree of condemnation
12 is entered against the pesticide or device, court costs, fees,
13 and storage and other proper expenses shall be awarded against
14 the person, if any, appearing as claimant of the pesticide.

15 Section 13. Pesticide Control Commission.

16 (a) Commission created.--There is created within the
17 Department of Environmental Resources, the Pesticide Control
18 Commission to consist of 12 members as follows: a scientific
19 representative from the Department of Environmental Resources, a
20 scientific representative from the Department of Agriculture, a
21 scientific representative from the Department of Health and a
22 scientific representative from the Game and Fish Commissions,
23 each to be appointed by the respective agency; and a State
24 chemist, an academic scientist, a pesticide industry
25 representative, a member of an environmental group, a
26 hydrologist, a toxicologist and an independent scientific
27 research consultant with experience in both government and
28 industry, each to be appointed by the Governor.

29 (b) Members.--Immediately after their appointment, the
30 members of the commission shall meet and organize by electing a

1 chairman, a vice chairman and a secretary whose terms shall be
2 for two years each. Commission officers may not serve
3 consecutive terms.

4 (c) Meetings.--The commission shall meet at the call of its
5 chairman, at the request of a majority of its members, at the
6 request of the department or at such time as a public health or
7 environmental emergency arises.

8 Section 14. Powers and duties of commission.

9 (a) Commission.--The Pesticide Control Commission shall have
10 the power and duty to:

11 (1) Review data of the United States Environmental
12 Protection Agency on any pesticide.

13 (2) Initiate scientific studies on any registered
14 pesticide when substantive preliminary data indicate that the
15 pesticide, as presently being used, poses an unreasonably
16 adverse effect on the hydrogeological environment or human
17 health, or that claims made by the registrant to the United
18 States Environmental Protection Agency in the registration
19 application relative to the sale, distribution, use or
20 effects of the pesticide are substantially different from
21 actuality. The commission shall utilize the available
22 services of State agencies or The Pennsylvania State
23 University or other institutions of higher education to
24 conduct scientific studies determined to be necessary in the
25 performance of its duties.

26 (3) Apprise the United States Environmental Protection
27 Agency of the specific soil, hydrogeological and other
28 environmental conditions in counties of this Commonwealth
29 where intense pesticide application is taking place.

30 (4) Formally request the United States Environmental

1 Protection Agency to require registrants of pesticides to
2 provide the commission with environmental test data generated
3 in this Commonwealth or generated by simulating environmental
4 conditions in this Commonwealth.

5 (5) Request information from the United States
6 Environmental Protection Agency relating to the findings upon
7 which that agency based its registration determinations for
8 pesticides registered in this Commonwealth.

9 (6) Make recommendations, subject to a majority vote,
10 directly to the secretary for actions to be taken with
11 respect to the sale or use of a pesticide which the
12 commission has studied or reviewed.

13 (7) Provide information to appropriate governmental
14 agencies, as requested, with respect to information gleaned
15 about pesticides which have been reviewed or studied by the
16 commission. However, confidential data received from the
17 United States Environmental Protection Agency or the
18 registrant shall be treated as such and it is unlawful for
19 any member of the commission to use the data for his own
20 advantage or to reveal the data to the general public.

21 (8) Evaluate the feasibility of using biological
22 controls to replace the use of pesticides.

23 (b) Standing.--The commission is defined as a "substantially
24 interested person" and has standing in any proceeding conducted
25 by the department or the Environmental Quality Board relating to
26 the registration of a pesticide under this act. The standing of
27 the commission shall in no way prevent individual members of the
28 commission from exercising standing in such matters.

29 (c) Reimbursement.--Members of the commission shall receive
30 no compensation for their services but are entitled to be

1 reimbursed for per diem and travel expenses.

2 Section 15. Powers and duties of Environmental Quality Board.

3 (a) Environmental Quality Board.--The Environmental Quality
4 Board shall have the power and its duties shall be:

5 (1) To adopt such rules and regulations of the
6 department governing the control of pesticides in this
7 Commonwealth, as it deems necessary for the implementation of
8 this act. Such rules and regulations shall be at least as
9 stringent as the standards established pursuant to the
10 Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat.
11 163, 7 U.S.C. § 136 et seq.).

12 (2) To establish fees for such licenses, permits,
13 registration activities, inspections and testing as may be
14 undertaken pursuant to this act.

15 (3) To adopt lists of pesticides which are approved for
16 use, or whose use is restricted or banned in this
17 Commonwealth.

18 (4) To allow for appropriate public comment on the
19 registration of any pesticides.

20 (5) To establish guidelines for the department to
21 declare amnesty days for the purpose of permitting any person
22 the opportunity to properly dispose of restricted or banned
23 pesticides.

24 (b) Classification of license.--The Environmental Quality
25 Board may classify licenses to be issued. Separate
26 classifications and subclassifications may be specified by the
27 board as deemed necessary to carry out this act. Each
28 classification may be subject to separate requirements or
29 testing procedures. In specifying classifications, the
30 department may consider, but is not limited to, the following:

1 (1) Commercial, public, private or agricultural
2 applicator status.

3 (2) Ground or aerial methods of application.

4 (3) The specific crops or pests upon which pesticides
5 are applied.

6 (4) The proximity of populated areas to the land upon
7 which restricted pesticides are applied.

8 (5) The acreage under the control of the licensee.

9 (6) The pounds of technical restricted toxicant applied
10 per acre per year by the licensee.

11 (c) Persons required to be licensed.--A person who applies a
12 restricted or classified pesticide by a hand-held or hand-
13 powered device on property belonging to that person which is not
14 being used for commercial agricultural activities, shall not be
15 required to be licensed.

16 Section 16. Powers and duties of department.

17 (a) General rule.--The department shall have the power and
18 its duty shall be:

19 (1) To adopt such rules, procedures, forms and standards
20 as may be necessary to implement this act.

21 (2) To issue such orders and initiate such proceedings
22 as may be necessary and appropriate for the enforcement of
23 this act. These actions include, but are not limited to:

24 (i) Instituting in a court of competent jurisdiction
25 proceedings against any person to compel compliance with
26 the provisions of this act, the regulations and standards
27 issued pursuant thereto, or any conditions of a permit,
28 registration certificate or license.

29 (ii) Initiating criminal prosecutions, including
30 issuance of summary citations by agents of the

1 department.

2 (3) To do any and all things and actions not
3 inconsistent with this act, rules and regulations and
4 licenses or permits issued hereunder.

5 (4) To enter any premises upon presentation of
6 appropriate credentials at any reasonable time in order to
7 determine compliance with this act, and to make tests and
8 samples and otherwise inspect the premises and inspect, copy
9 or photograph records required to be kept under provisions of
10 this act.

11 (b) Search warrants.--An agent or employee of the department
12 may apply for a search warrant to any Commonwealth official
13 authorized to issue a search warrant for the purposes of
14 inspecting or examining any property, building, premises, place,
15 book, record or other physical evidence or conducting tests or
16 taking samples. The warrant shall be issued upon probable cause.
17 It shall be sufficient probable cause to show any of the
18 following:

19 (1) The inspection, examination, test or sampling is
20 pursuant to a general administrative plan to determine
21 compliance with this act.

22 (2) The agent or employee has reason to believe that a
23 violation of this act has occurred or may occur.

24 (3) The agent or employee has been refused access to the
25 property, building, premises, place, book, record or physical
26 evidence, or has been prevented from conducting tests or
27 taking samples.

28 (c) Examination.--The draft shall require each applicant for
29 an applicator's license to demonstrate by a written or oral
30 examination, or such other equivalent procedure as may be

1 adopted by rule under this act, that he possesses adequate
2 knowledge concerning the proper use and application of
3 pesticides in each classification for which application for
4 license is made. Examination or other equivalent procedure may
5 be prepared, administered and evaluated by the department.
6 Although not limited to such, each applicant for a certified
7 applicator's license shall demonstrate competence as to:

8 (1) The proper use of the equipment.

9 (2) The environmental hazards that may be involved in
10 applying the pesticides.

11 (3) Calculating the concentration of pesticides to be
12 used in particular circumstances.

13 (4) Identification of common pests to be controlled and
14 the damages caused by such pests.

15 (5) Protective clothing and respiratory equipment
16 required during the handling and application of pesticides.

17 (6) General precautions to be followed in the disposal
18 of containers as well as the cleaning and decontamination of
19 the equipment which the applicant proposes to use.

20 (7) Applicable State and Federal pesticide laws and
21 regulations.

22 (d) Cooperative agreements.--The department may cooperate,
23 receive grants-in-aid and enter into agreements with any agency,
24 private or public, of the Federal Government, of this
25 Commonwealth or with any agency of another state, in order:

26 (1) To secure uniformity of regulations.

27 (2) To cooperate in the enforcement of the Federal
28 Pesticide Control Laws through the use of State and Federal
29 personnel and facilities and to implement cooperative
30 enforcement programs.

1 (3) To develop and administer State programs for
2 training and certification of certified applicators
3 consistent with Federal standards.

4 (4) To contract for training with other agencies,
5 including Federal agencies, for the purpose of training
6 certified applicators.

7 (5) To contract for monitoring pesticides for the
8 national plan.

9 (6) To prepare and submit State plans to meet Federal
10 certification standards.

11 (7) To regulate certified applicators.

12 (8) To issue permits, licenses and certificates.

13 (9) To provide or require public notification, by
14 appropriate means, of an actual or imminent public health
15 hazard.

16 (10) To include in any inspection of any public
17 facility, including restaurants, golf courses, hospitals and
18 schools and grocery and food markets undertaken pursuant to
19 any other law protecting the public health, including the act
20 of May 23, 1945 (P.L.926, No.369), referred to as the Public
21 Eating and Drinking Place Law, testing or monitoring for
22 misapplication of pesticides or high residual levels of
23 pesticides which could threaten the public health.

24 (11) To reimburse to each cooperating county or
25 municipality 23.5% of payments made to the Commonwealth by
26 the counties or municipalities pursuant to State-County-
27 Federal cooperative agreements for gypsy moth control entered
28 into during 1981. The money for the reimbursements shall be
29 paid out of the Federal augmentation appropriated to the
30 department for gypsy moth control.

1 (e) Delegation of duties.--All authority vested in the
2 department by virtue of the provisions of this act may with like
3 force and effect be executed by such employees of the
4 Commonwealth or other governmental units as the secretary may,
5 from time to time, designate for this purpose.

6 (f) Publication of information.--The department shall
7 annually publish a composite report of the results of analyses
8 based on official samples as compared with the analyses
9 guaranteed and information concerning the distribution of
10 pesticides. Individual distribution information shall not be a
11 public record.

12 (g) Information.--In cooperation with The Pennsylvania State
13 University or any other public educational institutions and
14 industry associations, the department shall publish information
15 and conduct short courses of instruction in the areas of
16 knowledge required for licensing applications.

17 Section 17. Licensing, classification, certification,
18 examination, fees, applications, issue of
19 license, nonresident licensee.

20 (a) Licensing.--It is unlawful for any person to engage in
21 the application of restricted-use pesticides, without a
22 certified applicator's license issued by the department unless
23 such person is doing so under the direct supervision of a
24 licensee. However, all aerial applicators applying restricted-
25 use pesticides shall be certified by the department in the
26 appropriate category or categories, and provisions for direct
27 supervision shall not be held to apply to aerial applicators.

28 (b) Classification.--The Environmental Quality Board may
29 classify licenses to be issued. Separate classifications and
30 subclassifications may be specified by the Environmental Quality

1 Board as deemed necessary to carry out the provisions of this
2 act. Each classification shall be subject to requirements or
3 testing procedures to be set forth by rule of the department. In
4 specifying classifications, the department may consider, but is
5 not limited to, the following:

6 (1) Commercial, public or private applicator status.

7 (2) Ground or aerial methods of application.

8 (3) The specific crops upon which pesticides are
9 applied.

10 (4) The proximity of populated areas to the land upon
11 which restricted pesticides are applied.

12 (5) The acreage under the control of the licensee.

13 (6) The pounds of technical restricted toxicant applied
14 per acre per year by the licensee.

15 (c) Certification.--The department shall develop a
16 certification program, including an optional training session of
17 at least four hours, designed to ensure the competency of those
18 persons to whom the department issues licenses. A standard core
19 examination shall be developed which shall be administered to
20 all applicants for licensure.

21 (d) Examination.--The department shall require each
22 applicant for a certified applicator's license to demonstrate,
23 by a written or oral examination, that the applicant possesses
24 adequate knowledge concerning the proper use and application of
25 pesticides in each classification for which application for
26 license is made. The examination may be prepared, administered
27 and evaluated by the department. Although not limited to such,
28 each applicant for a certified applicator's license shall
29 demonstrate competence as to:

30 (1) The proper use of the equipment.

1 (2) The environmental hazards that may be involved in
2 applying the pesticides.

3 (3) Calculating the concentration of pesticides to be
4 used in particular circumstances.

5 (4) Identification of common pests to be controlled and
6 the damages caused by such pests.

7 (5) Protective clothing and respiratory equipment
8 required during the handling and application of pesticides.

9 (6) General precautions to be followed in the disposal
10 of containers as well as the cleaning and decontamination of
11 the equipment which the applicant proposes to use.

12 (7) Applicable State and Federal pesticide laws and
13 regulations.

14 (8) General safety precautions.

15 (e) Fees.--

16 (1) The department may require an initial fee for
17 processing the application and issuing a person a license as
18 a certified applicator, which fee shall not be waived by
19 rule. The fee shall not represent more than the approximate
20 cost of certification for the applicant, as provided by rules
21 promulgated under this act.

22 (2) The department shall require a fee for renewal of a
23 certified applicator's license through the recertification
24 process.

25 (3) The department shall determine annually the cost of
26 operating the certification and licensure programs and shall
27 certify such costs to the Environmental Quality Board so that
28 the cost per applicant may be ascertained for the purpose of
29 setting fees.

30 (f) Application.--Application for license shall be made in

1 writing to the department on a form furnished by the department.
2 Each application shall contain information regarding the
3 applicant's qualifications, proposed operations and license
4 classification or subclassifications, as prescribed by rule.

5 (g) Issue of license.--If the department finds the applicant
6 qualified in the classification for which he has applied and if
7 the applicant applying for a license to engage in aerial
8 application of pesticides has met all of the requirements of the
9 Federal Aviation Agency and the Department of Transportation of
10 the Commonwealth to operate the equipment described in the
11 application and has shown proof of liability insurance, or has
12 posted a surety bond in an amount to be set forth by rule of the
13 Environmental Quality Board or other evidence of ability to pay,
14 the department shall issue a certified applicator's license,
15 limited to the classifications for which the applicant is
16 qualified, which shall expire as required by rules promulgated
17 under this act unless it has been revoked or suspended prior
18 thereto by the department for cause as hereinafter provided. The
19 license shall be conspicuously displayed at the principal
20 business address of the licensee or kept on the person of the
21 licensee while performing work as a certified applicator.

22 (h) Nonresident licensee; reciprocal agreement.--

23 (1) The department may waive all or part of the
24 examination requirements provided for in this act on a
25 reciprocal basis with any other state that has substantially
26 the same or better standards.

27 (2) Any nonresident applying for a license under this
28 act to operate in this Commonwealth shall file a written
29 power of attorney designating the Secretary of the
30 Commonwealth as the agent of such nonresident upon whom

1 service of process may be had in the event of any suit
2 against such nonresident person and such power of attorney
3 shall be prepared in such form as to render effective the
4 jurisdiction of the courts of this Commonwealth over such
5 nonresident applicant. However, any such nonresident who has
6 a duly appointed resident agent upon whom process may be
7 served as provided by law shall not be required to designate
8 the Secretary of the Commonwealth as such agent. The
9 Secretary of the Commonwealth shall be allowed such fees
10 therefor as provided by law for designating resident agents.
11 The department shall be furnished with a copy of such
12 designation of the Secretary of the Commonwealth or of a
13 resident agent, such copy to be duly certified by the
14 Secretary of the Commonwealth.

15 Section 18. Governmental agencies.

16 All governmental agencies shall be subject to the provisions
17 of this act and rules adopted hereunder. Public applicators
18 using or supervising the use of restricted-used pesticides shall
19 be subject to examination as provided in this act.

20 Section 19. License renewals; penalty; recertification.

21 (a) Renewal of applicator's license.--The department shall
22 require renewal of a certified applicator's license every four
23 years. If the application for renewal of any license provided
24 for in this act is not filed on time, a penalty shall be
25 assessed not to exceed \$50. However, the penalty shall not apply
26 if the applicant furnishes an affidavit certifying that he has
27 not engaged in business subsequent to the expiration of his
28 license for a period exceeding 60 days. A license may be renewed
29 without taking another examination unless the department
30 determines that new knowledge related to the classification for

1 which the applicant has applied makes a new examination
2 necessary; however, the department may require the applicant to
3 provide evidence of continued competency, as determined by rule.
4 If the license is not renewed within 60 days of the expiration
5 date, the licensee may again be required to take another
6 examination unless there is some unavoidable circumstance which
7 results in the delay of the renewal of any license issued under
8 this act which was not under the applicant's control.

9 (b) Evidence of competency.--The department shall require
10 all certified applicators to provide evidence of continued
11 competency through the implementation of a recertification
12 program set forth by rule. Recertification options shall
13 include, but not be limited to, the attendance of training
14 sessions with either a written or oral examination. If the
15 licensee fails to renew his license within 60 days of the
16 expiration date, reexamination shall be required.

17 Section 20. Grounds for disciplinary action; penalties.

18 (a) Grounds for action.--Each of the following acts shall
19 constitute a ground for which any of the disciplinary actions
20 described in subsection (b) may be taken upon a finding that the
21 applicant or licensee committed such act by:

22 (1) Making false or fraudulent claims through any
23 medium, misrepresenting the effect of materials or methods to
24 be utilized.

25 (2) Making a pesticide recommendation or application not
26 in accordance with the label, except as provided in this act,
27 or not in accordance with recommendations of the United
28 States Environmental Protection Agency or not in accordance
29 with the specifications of a special local need registration.

30 (3) Operating faulty or unsafe equipment.

1 (4) Operating in a faulty, careless or negligent manner
2 so as to cause damage to property or person.

3 (5) Applying any pesticide that is harmful to human
4 beings to fields where persons are engaged in work.

5 (6) Failing to disclose to an agricultural crop grower,
6 at the time pesticides are applied to a crop, full
7 information regarding the possible harmful effects to human
8 beings or animals and the earliest safe time for workers or
9 animals to reenter the treated field.

10 (7) Refusing or, after notice, neglecting to comply with
11 this act, the rules adopted hereunder, or any lawful order of
12 the department.

13 (8) Refusing or neglecting to maintain the records
14 required by this act or to make reports as required.

15 (9) Making false or fraudulent records, invoices or
16 reports.

17 (10) Using fraud or misrepresentation in making an
18 application for a license or renewal of same.

19 (11) Refusing or neglecting to comply with any
20 limitations or restrictions on or in a duly issued license.

21 (12) Aiding or abetting a licensed or unlicensed person
22 to evade the provisions of this act, combining or conspiring
23 with a licensed or unlicensed person to evade the provisions
24 of this act or allowing his license to be used by an
25 unlicensed person.

26 (13) Making false or misleading statements during or
27 after an inspection concerning any infestation or infection
28 of pests found on land.

29 (14) Making false or misleading statements, or failing
30 to report any known damage to property or illness or injury

1 to persons caused by the application of pesticides.

2 (15) Impersonating any State, county or city inspector
3 or official.

4 (16) Failing to maintain a current liability insurance
5 policy or surety bond or provide other evidence of ability to
6 pay.

7 (17) Failing to adequately train or supervise unlicensed
8 applicators or mixer-loaders applying restricted-use
9 pesticides under their direct supervision.

10 (b) Penalties.--When the department finds any person,
11 applicant, or licensee guilty of any of the grounds set forth in
12 subsection (a), it may enter an order imposing any one or more
13 of the following penalties:

14 (1) Denial of an application for licensure.

15 (2) Revocation or suspension of a license.

16 (3) Issuance of a warning letter.

17 (4) Placement of the licensee on probation for a
18 specified period of time and subject to such conditions as
19 the department may specify by rule, including requiring the
20 licensee to attend continuing education courses, to
21 demonstrate his competency through a written or practical
22 examination, or to work under the direct supervision of
23 another licensee.

24 (5) Imposition of an administrative fine not to exceed
25 \$1,000 per occurrence.

26 Section 21. Duties of licensee with respect to unlicensed
27 applicators and mixer-loaders and field workers.

28 (a) Instruction and training.--Each licensed applicator
29 shall provide to each unlicensed applicator or mixer-loader
30 working under his direct supervision adequate instruction and

1 training so that the applicator or mixer-loader understands the
2 safety procedures required for the pesticides that he will use.
3 The applicator or mixer-loader shall be given this training
4 before handling restricted-use pesticides. This training shall
5 be set forth by the department by rule and shall include, but
6 not be limited to, the safety procedures to be followed as
7 specified on the label; the safety clothing and equipment to be
8 worn; the common symptoms of pesticide poisoning; the dangers of
9 eating, drinking, or smoking while handling pesticides; and
10 where to obtain emergency medical treatment. No licensee shall
11 be permitted to provide direct supervision to more than 15
12 unlicensed applicators or mixer-loaders at any given time.

13 (b) Warning to workers.--Prior to the entry of workers into
14 a field, it shall be the responsibility of the licensed
15 applicator to assure that the workers' direct supervisor
16 provides an oral statement to the workers, in language
17 understood by the workers, of the warning contained on the
18 pesticide label with respect to any pesticides that have been
19 used within a 48-hour period.

20 Section 22. Damage or injury to property, animal or person;
21 mandatory report of damage or injury; time for
22 filing; failure to file.

23 (a) Damage claims.--The person claiming damage or injury to
24 property (including water supplies), animal, or man from
25 application of a pesticide shall file with the department a
26 written statement claiming damages, on a form prescribed by the
27 department, within 48 hours after such damage or injury becomes
28 apparent or prior to the time that 25% of a crop damaged has
29 been harvested, whichever occurs first. Such statement shall
30 contain, but shall not be limited to, the name of the person

1 responsible for the application of the pesticide, the name of
2 the owner or lessee of the land on which the crop is grown and
3 for which such damages are claimed, and the date on which it is
4 alleged that such damages occurred. The department shall prepare
5 a form to be furnished to persons to be used in such cases, and
6 such form shall contain such other requirements as the
7 department may deem proper. The department shall, upon receipt
8 of such statement, notify the licensee and the owner or lessee
9 of the land or other person who may be charged with the
10 responsibility for such damages claimed and furnish copies of
11 such statements as may be requested by other interested parties.
12 The department shall investigate the alleged damages and notify
13 all concerned parties of its findings. If the findings reveal a
14 violation of the provisions of this act, the department shall
15 determine an appropriate penalty. The filing of such report or
16 the failure to file such a report need not be alleged in any
17 complaint which might be filed in a court of law, and the
18 failure to file the report shall not be considered any bar to
19 the maintenance of any criminal or civil action.

20 (b) Reports of damage.--It is the duty of any licensee to
21 report substantial damage to property or injury to a person as
22 the result of the application of a restricted-use pesticide by
23 him or by an applicator or mixer-loader under his direct
24 supervision, if and when the licensee has knowledge of such
25 damage or injury. It is also the express intent of this section
26 to require all physicians to report all pesticide-related
27 illnesses or injuries to the nearest municipal health
28 department, which will notify the department so that the
29 department may establish a pesticide incident monitoring system.

30 (c) Investigation.--When damage to property, animal, or man

1 is alleged to have been done, the claimant shall permit the
2 licensee and his representatives to observe within reasonable
3 hours the property, person, or nontarget organism alleged to
4 have been damaged, in order that such damage may be examined.
5 The failure of the claimant to permit such observation and
6 examination of the damaged property shall automatically bar the
7 claim against the licensee.

8 (d) Presumption.--There shall be a presumption that the
9 damage or degradation of a public or private water supply by the
10 chemicals included in a pesticide shall reside with the
11 certified applicator, unless the applicator can provide
12 otherwise.

13 Section 23. Records; annual report.

14 Private licensees supervising 15 or more unlicensed
15 applicators or mixer-loaders and commercial and public licensees
16 shall maintain such records as the department may determine by
17 rule with respect to the application of restricted pesticides,
18 including, but not limited to, the type and quantity of
19 pesticide, method of application, crop treated, and dates and
20 location of application. Other private licensees shall maintain
21 such records as the department may determine by rule with
22 respect to the date, type and quantity of restricted-use
23 pesticides used. Such records shall be kept for a period of two
24 years from date of the application of the pesticide to which
25 such records refer, and the department shall, upon request in
26 writing, be furnished with a copy of such records forthwith by
27 the licensee. Each year, the department shall conduct a random-
28 sample survey and compile an annual report for the department on
29 restricted-use pesticides in this Commonwealth. This report
30 shall include, but not be limited to, types and quantities of

1 pesticides, methods of application, crops treated and dates and
2 locations of application, records of persons working under
3 direct supervision, and reports of misuse, damage or injury.

4 Section 24. Public operators.

5 The application of pesticides by any governmental agency
6 shall be under supervision of a licensed certified applicator,
7 who has met the qualifications for such a license. However, the
8 governmental agency shall not be required to pay a licensing
9 fee.

10 Section 25. Public utilities.

11 The application of pesticides by any public utility shall be
12 subject to the provisions of this act. A public utility shall be
13 required to provide advance notice to the department of its
14 plans to apply pesticides, and such notice shall identify the
15 type of pesticide to be applied, and the locations in which the
16 application shall occur. Each public utility shall annually
17 report to the department on its pesticide application
18 activities.

19 Section 26. Criminal penalties.

20 (a) First offense.--A person who violates this act commits a
21 summary offense and shall, upon conviction, be sentenced to pay
22 a fine of not more than \$300 or to imprisonment for not more
23 than 90 days, or both.

24 (b) Subsequent offenses.--A person who, within three years
25 after being convicted of an offense pursuant to subsection (a),
26 violates this act, or who violates this act after the person was
27 issued a written warning by the secretary pursuant to this act,
28 commits a misdemeanor of the second degree and shall, upon
29 conviction, be sentenced to pay a fine of not less than \$500 nor
30 more than \$5,000 or to imprisonment for not more than two years,

1 or both.

2 (c) Subsequent offense after warning.--A person who, within
3 three years after being convicted of an offense pursuant to
4 subsection (a), violates this act, or who violates this act
5 after the person was issued a written warning by the secretary
6 pursuant to this act, commits a misdemeanor of the third degree
7 and shall, upon conviction, be sentenced to pay a fine of not
8 more than \$2,500 or to imprisonment for not more than one year,
9 or both.

10 Section 27. Civil penalties.

11 In addition to proceeding under any other remedy available at
12 law or in equity for a violation of this act or a rule or
13 regulation adopted hereunder, or any order issued pursuant
14 hereto, the secretary, after hearing, may assess a civil penalty
15 upon a person other than a private applicator for such
16 violation. The civil penalty so assessed shall not be less than
17 \$200 nor more than \$10,000. The civil penalty shall be payable
18 to the Commonwealth and shall be collectible in any manner now
19 or hereafter provided at law for the collection of debt. If any
20 person liable to pay such civil penalty neglects or refuses to
21 pay the same after demand, the amount of the civil penalty,
22 together with interest and any other costs that may accrue,
23 shall be a lien in favor of the Commonwealth upon the property,
24 both real and personal, of such person after the same has been
25 entered and docketed of record by the prothonotary of the county
26 where the property is situated. It shall be the duty of each
27 prothonotary, upon receipt of the certified copy of such a lien,
28 to enter and docket the lien in the records of his office, and
29 to index it as judgments are indexed without requiring the
30 payment of costs as a condition precedent to the entry thereof.

1 Section 28. Civil remedy.

2 In addition to any other remedies provided for in this act,
3 the Attorney General, at the request of the secretary, may
4 initiate in the Commonwealth Court or the court of common pleas
5 of the county in which the defendant resides or has his place of
6 business, an action in equity for an injunction to restrain any
7 and all violations of this act or the rules and regulations
8 promulgated hereunder or any order issued pursuant to this act
9 from which no timely appeal has been taken or which has been
10 sustained on appeal. In any such proceeding, the court shall,
11 upon motion of the Commonwealth, issue a preliminary injunction
12 if it finds that the defendant is engaging in unlawful conduct,
13 as set forth in this act, or is engaging in conduct which is
14 causing immediate or irreparable harm to the public. The
15 Commonwealth shall not be required to furnish bond or other
16 security in connection with such proceedings. In addition to an
17 injunction, the court, in such equity proceedings, may levy
18 civil penalties as provided in this act.

19 Section 29. Concurrent remedies.

20 The penalties or remedies prescribed by this act shall be
21 deemed concurrent and the existence of or exercise of any remedy
22 shall not prevent the secretary from exercising any other remedy
23 hereunder, at law or in equity.

24 Section 30. Pesticides registered under prior law.

25 Pesticides which have been registered under the act of March
26 1, 1974 (P.L.90, No.24), known as the Pennsylvania Pesticide
27 Control Act of 1973, shall continue to be registered for the
28 duration of the registration period granted under that act. At
29 the termination of that registration period, all currently
30 registered pesticides shall be reregistered under this act.

1 Section 31. Applicators certified or licensed.

2 (a) Applicators certified or licensed under prior law.--All
3 applicators who have been certified or licensed under the act of
4 March 1, 1974 (P.L.90, No.24), known as the Pennsylvania
5 Pesticide Control Act of 1973, shall continue to be so certified
6 or licensed for two years after the effective date of this act.
7 Within two years of the effective date of this act, a certified
8 or licensed applicator subject to the provisions of this act
9 shall be licensed under this act or shall cease to practice as a
10 pesticide applicator.

11 (b) Commercial applicator's license.--No person shall engage
12 in the business of applying pesticides classified for restricted
13 use to the lands of another at any time without a commercial
14 applicator's license issued by the secretary. The secretary
15 shall require an annual fee of \$30 for each pesticide
16 applicator's license issued and shall have the authority to
17 promulgate rules and regulations relating to:

18 (1) Applicator's license.

19 (2) Examination requirement for obtaining an
20 applicator's license.

21 (3) Classification of licenses.

22 (4) Methods for renewals of an applicator's license,
23 including a renewal written examination every three years.

24 (c) Insurance required of commercial applicator licensee.--
25 The amount of the financial responsibility as provided for in
26 this section shall be not less than \$250,000) for property
27 damage and public liability insurance, each separately, and
28 including loss or damage arising out of the actual use of any
29 pesticide. Such financial responsibility shall be maintained at
30 not less than that sum at all times during the licensed period.

1 The secretary shall be notified ten days prior to any reduction
2 at the request of the applicant or cancellation of such
3 financial responsibility by the surety or insurer. The total and
4 aggregate of the surety and insurer for all claims shall be
5 limited to the face of the bond or liability insurance policy if
6 used. The secretary may accept a liability insurance policy or
7 surety bond, if used in the proper sum, which has a deductible
8 clause in an amount not exceeding \$1,000 for all applicators for
9 the total amount of liability insurance or surety bond required
10 herein. If the applicant has not satisfied the requirement of
11 the deductible amount in any prior legal claim, such deductible
12 clause shall not be accepted by the secretary unless such
13 applicant furnishes the secretary with a surety bond or
14 liability insurance or financial responsibility which shall
15 satisfy the amount of the deductible as to all claims that may
16 arise in his application of pesticides.

17 (d) Reports of pesticide accidents, incidents or loss.--The
18 secretary shall by regulation require the reporting by licensees
19 of all pesticide accidents or incidents to a designated State
20 agency.

21 Section 32. Transfers.

22 All records and funds subject to the jurisdiction of the
23 Department of Agriculture under the act of March 1, 1974
24 (P.L.90, No.24), known as the Pennsylvania Pesticide Control Act
25 of 1973, are hereby transferred to the jurisdiction of the
26 Department of Environmental Resources.

27 Section 33. Existing liability.

28 The enactment of this act shall not have the effect of
29 terminating, or in any way modifying, any liability, civil or
30 criminal, which shall already be in existence on the date this

1 act becomes effective.

2 Section 34. Pesticide Control Account.

3 All fines and penalties and license, registration,
4 certification and permit fees shall be paid into the State
5 Treasury into a special restricted receipt account in the
6 General Fund known as the Pesticide Control Account,
7 administered by the department for use in administering this
8 act, and the money in the account is appropriated to the
9 department for this purpose.

10 Section 35. Repeals.

11 (a) Specific repeal.--The act of March 1, 1974 (P.L.90,
12 No.24), known as the Pennsylvania Pesticide Control Act of 1973,
13 is repealed.

14 (b) General repeal.--All other acts and parts of acts are
15 repealed insofar as they are inconsistent with this act.

16 Section 36. Effective date.

17 This act shall take effect immediately.