

AMENDMENTS TO HOUSE BILL NO. 790

Sponsor: SENATOR VOGEL

Printer's No. 1701

1 Amend Bill, page 1, lines 1 through 8, by striking out all of
2 said lines and inserting

3 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
4 Statutes, regulating controlled plants and noxious weeds;
5 establishing the Controlled Plant and Noxious Weed Committee;
6 providing for powers and duties of the Controlled Plant and
7 Noxious Weed Committee; imposing powers and duties on the
8 Secretary of Agriculture and municipalities; prescribing
9 penalties; establishing a category of controlled plants and
10 providing for the permitting of controlled plants; abrogating
11 regulations; and making related repeals.

12 Amend Bill, page 1, lines 11 through 19; pages 2 through 33,
13 lines 1 through 30; page 34, lines 1 through 13; by striking out
14 all of said lines on said pages and inserting

15 Section 1. Part III of Title 3 of the Pennsylvania
16 Consolidated Statutes is amended by adding a chapter to read:

17 CHAPTER 15

18 CONTROLLED PLANTS AND NOXIOUS WEEDS

19 Subchapter

20 A. Preliminary Provisions

21 B. Regulation and Administration

22 C. Enforcement

23 D. Miscellaneous Provisions

24 SUBCHAPTER A

25 PRELIMINARY PROVISIONS

26 Sec.

27 1501. Scope of chapter.

28 1502. Definitions.

29 § 1501. Scope of chapter.

30 This chapter relates to controlled plants and noxious weeds.

31 § 1502. Definitions.

32 The following words and phrases when used in this chapter
33 shall have the meanings given to them in this section unless the
34 context clearly indicates otherwise:

35 "Class A noxious weed." A weed listed in section 1519(a)

1 (relating to noxious weed list) or a weed that has been
2 determined by the committee to be a Class A noxious weed and
3 that:

4 (1) Is established in this Commonwealth.

5 (2) Is geographically limited.

6 (3) Is intended to be eradicated.

7 "Class B noxious weed." A weed listed in section 1519(b) or
8 a weed that has been determined by the committee to be a Class B
9 noxious weed and that:

10 (1) Is widely established in this Commonwealth.

11 (2) Cannot feasibly be eradicated.

12 "Class C noxious weed." A weed listed in section 1519(c) or
13 a weed that has been determined by the committee to be a Class C
14 noxious weed and that:

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

16 (2) Poses a potential threat if introduced in this
17 Commonwealth.

18 "Committee." The Controlled Plant and Noxious Weed Committee
19 established in section 1511 (relating to designation of noxious
20 weeds and controlled plants).

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

24 "Control order." A written order issued by the department to
25 a person detailing required treatment measures to control
26 noxious weeds or controlled plants.

27 "Controlled plant." A plant species or subspecies that has
28 been designated by the committee as a controlled plant and is
29 regulated to prevent uncontained growth and to negate
30 undesirable characteristics.

31 "Distribute" or "distribution." To barter, consign,
32 exchange, give away, import, in any way transfer, offer for
33 sale, sell or otherwise supply or transport a noxious weed or
34 controlled plant in this Commonwealth.

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

38 "Established." When used in reference to a plant population,
39 either:

40 (1) a plant or plant population found growing in this
41 Commonwealth as a wild population and capable of
42 reproduction; or

43 (2) a plant that has escaped from cultivation and is
44 reproducing.

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

47 "General permit." A Statewide or regional permit that is
48 issued by the department for a controlled plant and specifies
49 terms and conditions for distribution, cultivation or
50 propagation of the controlled plant.

51 "Geographically limited." Found in discrete, limited

1 locations of this Commonwealth.

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

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

7 (2) research and educational purposes related to a
8 noxious weed.

9 "Landowner."

10 (1) A person:

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

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

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

21 "Lessee." A person who has entered into a contract granting
22 the person occupation or use of property during a certain period
23 of time in exchange for a specified rent.

24 "Noxious weed." Either:

25 (1) a plant part or plant in any stage of development
26 that is determined to be injurious to crops, livestock,
27 agricultural land or other property including forest land and
28 bodies of water; or

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

31 "Noxious weed control area." A geographic area of this
32 Commonwealth, including the entire State, municipality or any
33 part or tract of land or body of water where a noxious weed is
34 to be controlled as prescribed under this chapter.

35 "Person." An individual, corporation, association,
36 partnership, municipality or any other entity.

37 "Plant Pest Management Account" or "account." The Plant Pest
38 Management Account established under the act of December 16,
39 1992 (P.L.1228, No.162), known as the Plant Pest Act.

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

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

45 "Treatment measure." A method of eradicating, managing,
46 regulating or controlling noxious weeds or controlled plants
47 utilizing biological, chemical or mechanical means or a
48 combination thereof.

49 "Widely established." Established throughout multiple
50 counties or municipalities of this Commonwealth.

51 SUBCHAPTER B

1 REGULATION AND ADMINISTRATION

2 Sec.

3 1511. Designation of noxious weeds and controlled plants.

4 1512. Permits.

5 1513. General permits.

6 1514. Individual permits.

7 1515. Prohibited acts.

8 1516. Noxious weed control areas.

9 1517. Control orders.

10 1518. Compliance with orders.

11 1519. Noxious weed list.

12 1520. Fees.

13 1521. Powers and duties of secretary and department.

14 1522. Stop-sale orders.

15 1523. Seizure and condemnation.

16 1524. Appeal process.

17 1525. Cooperation with other entities.

18 1526. Rules and regulations.

19 § 1511. Designation of noxious weeds and controlled plants.

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

21 (1) The Controlled Plant and Noxious Weed Committee is
22 established in the department and shall have the powers of a
23 departmental administrative board.

24 (2) The committee shall be composed of:

25 (i) the secretary, who shall be the chairperson of
26 the committee;

27 (ii) the Secretary of Conservation and Natural
28 Resources;

29 (iii) the Secretary of Environmental Protection;

30 (iv) the Secretary of Transportation;

31 (v) the Executive Director of the Fish and Boat
32 Commission and the Executive Director of the Game
33 Commission;

34 (vi) the chairperson and minority chairperson of the
35 Agriculture and Rural Affairs Committee of the Senate and
36 the chairperson and minority chairperson of the
37 Agriculture and Rural Affairs Committee of the House of
38 Representatives;

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

42 (A) One member of a Statewide general farm
43 organization.

44 (B) One member representing the ornamental, turf
45 and horticultural industry.

46 (C) One member from an institution of higher
47 education within this Commonwealth.

48 (3) Except for appointed members, who may be represented
49 by designees selected by the secretary, members may be
50 represented by a designee selected by the member.

51 (4) The appointed members shall serve four-year terms

1 except that the terms shall initially be staggered with one
2 of the three members serving a two-year term.

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

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

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

11 (1) A majority of the committee shall constitute a
12 quorum. A quorum of the committee shall be required to take
13 any action. All actions of the committee shall be by a
14 majority vote.

15 (2) Prior to taking any action, the committee shall be
16 required to convene a public meeting to elicit comments from
17 the regulated community and other interested parties. The
18 notice and agenda for a meeting of the committee shall
19 contain a list of the plants to be considered for addition to
20 or deletion from the noxious weed list or controlled plant
21 list. The notice and agenda for a meeting shall be published
22 in the Pennsylvania Bulletin at least one week prior to the
23 meeting, except in the case of a special meeting or
24 rescheduled meeting as allowed under 65 Pa.C.S. § 709(a)
25 (relating to public notice). All meetings shall be open to
26 the public and shall comply with the requirements of 65
27 Pa.C.S. Ch. 7 (relating to open meetings).

28 (3) The committee shall have the following powers and
29 duties:

30 (i) To establish a noxious weed list inclusive of
31 the list set forth under section 1519 (relating to
32 noxious weed list). The committee may add weeds to or
33 remove weeds from the noxious weed list, or move noxious
34 weeds to the controlled plant list, in accordance with
35 the provisions of this chapter.

36 (ii) To establish a controlled plant list and to add
37 plants to or remove plants from the controlled plant list
38 in accordance with the provisions of this chapter. A
39 controlled plant, upon approval of the committee, may be
40 moved from the controlled plant list to the noxious weed
41 list.

42 (iii) To propose the addition or removal of plants
43 to or from the noxious weed list or controlled plant
44 list. The committee may request that the department
45 perform a study and risk assessment related to any plant
46 the committee may consider for addition to or removal
47 from the noxious weed list or controlled plant list.

48 (iv) To publish the noxious weed list and the
49 controlled plant list and additions or removals or
50 changes thereto as a notice in the Pennsylvania Bulletin.
51 Any additions to or removal from the noxious weed list or

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

3 (c) Noxious weed and controlled plant seeds.--

4 (1) Upon the determination of the committee that a plant
5 falls within the classification of a noxious weed or
6 controlled plant, the committee, in consultation with the
7 department, shall determine if the weed's seed falls within
8 the category of a prohibited noxious weed seed or a
9 restricted noxious weed seed and the seeds shall be regulated
10 in the manner established in 7 Pa. Code Ch. 111 (relating to
11 seed testing, labeling and standards).

12 (2) If no regulatory criteria exist for controlled plant
13 seeds, the department may regulate controlled plant seeds
14 through permit, for a period of two years from the effective
15 date of this section, at which time the department shall
16 promulgate regulatory standards.

17 § 1512. Permits.

18 (a) General rule.--The following permitting rules apply to
19 noxious weeds for research or educational purposes and to
20 controlled plants for research or marketing purposes,
21 cultivation, propagation, storing, warehousing or display, and
22 for retail, wholesale or distribution:

23 (1) For noxious weeds, the department may issue
24 individual permits. A permit may allow for the cultivation
25 and propagation of a noxious weed for research and
26 educational purposes only. The department shall establish the
27 criteria for a noxious weed individual permit through the
28 issuance of a temporary order, as set forth in section
29 1514(4) (relating to individual permits).

30 (2) For controlled plants, the department may issue
31 individual permits or general permits. The department shall
32 establish the criteria for a controlled plant individual
33 permit through the issuance of a temporary order as specified
34 under section 1514(4).

35 (b) Permit required.--No person may research, market,
36 distribute, transport, cultivate, hold, retail, wholesale,
37 propagate or display a noxious weed or controlled plant without
38 obtaining a permit from the department in accordance with the
39 provisions of this chapter.

40 (c) Notice of closing, change of name or moving location.--

41 (1) Any person who holds a permit under this chapter
42 shall notify the department, in writing, prior to any change
43 of status related to the permit, including:

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

46 (ii) Intent to move the location of the business or
47 entity or the location of the activity specifically
48 authorized by the permit.

49 (iii) Intent to discontinue the activities
50 specifically authorized by the permit.

51 (2) Upon notification, the department may enter onto the

1 land and premises, including buildings and conveyances that
2 were utilized for or where the permitted activity of the
3 person holding or required to hold a permit under this
4 chapter took or are taking place, and to conduct inspections
5 of the premises as are necessary to determine what remedial,
6 eradication or containment practices are necessary prior to
7 the closure or other change of status occurring.

8 (3) Failure to notify the department or otherwise comply
9 with the provisions of this subsection shall be a violation
10 of this chapter.

11 (d) Revocation or suspension.--Within 30 days of receipt of
12 a notice of revocation, the permit holder may apply for an
13 amendment to the permit or request a hearing as provided under
14 section 1524 (relating to appeal process). The secretary may
15 revoke or suspend all or part of a permit issued under this
16 section when:

17 (1) The secretary determines that a permit holder has
18 failed to comply with the requirements of this chapter.

19 (2) It is necessary to protect crops, livestock,
20 agricultural land or other property including forest land and
21 bodies of water.

22 § 1513. General permits.

23 General permits may be issued for the research, marketing,
24 retail, wholesale, transport, storage, warehousing, display,
25 distribution, cultivation or propagation of controlled plants
26 under the following circumstances:

27 (1) General permits may be issued on a Statewide or
28 regional basis for controlled plants where the controlled
29 plants have similar characteristics and are capable of being
30 cultivated, propagated, processed and controlled or
31 eradicated in a similar fashion.

32 (2) General permits shall be published in the
33 Pennsylvania Bulletin effective upon publication.

34 (3) An applicant seeking a general permit under this
35 section shall inform the department of the applicant's
36 intended use of the general permit and complete an
37 application for approval to operate under the general permit
38 requirements. The application shall include a written plan
39 establishing the practices and methods the applicant will
40 utilize in order to assure compliance with the general permit
41 requirements established by the department. In addition to
42 the written plan, the application shall state, at a minimum,
43 all of the information required under section 1514(5)(i),
44 (ii), (iii), (iv), (v), (vi), (vii), and (viii) (relating to
45 individual permits).

46 (4) Before the approval and issuance of a general
47 permit, the department may enter onto and inspect the land
48 and premises, including buildings and conveyances, that will
49 be utilized for the purpose of engaging in an activity
50 authorized by the permit regarding a controlled plant. The
51 inspection shall be conducted during normal business hours.

1 § 1514. Individual permits.

2 Individual permits may be issued for noxious weeds and
3 controlled plants in accordance with the following:

4 (1) An individual permit may be issued for any
5 controlled plant where:

6 (i) The controlled plant has individual
7 characteristics as to make it difficult or impossible for
8 the department to regulate through a general set of
9 requirements.

10 (ii) The land or area on which the controlled plant
11 will be cultivated has characteristics as would make it
12 difficult or impossible for the department to regulate
13 the controlled plant.

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

19 (2) An individual permit shall be issued in writing to
20 the specific permit holder, contain the temporary order
21 establishing the requirements of the individual permit and be
22 published in the Pennsylvania Bulletin and effective as
23 provided under paragraph (4) (iii).

24 (3) The department may establish through regulation or a
25 temporary order, standards and requirements addressing the
26 issuance and criteria of an individual permit for noxious
27 weeds and controlled plants.

28 (4) For each noxious weed, the department shall issue a
29 temporary order establishing the criteria for the individual
30 permit to be issued. For a controlled plant, upon determining
31 that a set of characteristics or circumstances requires the
32 issuance of an individual permit, the department shall issue
33 a temporary order establishing the criteria for the
34 individual permit to be issued. The following shall apply:

35 (i) Through the temporary order, the department may
36 establish restrictions and standards, including bonding
37 requirements, as the department determines are necessary
38 to:

39 (A) Identify the specific characteristics of the
40 noxious weed or controlled plant or the circumstances
41 including Federal laws, regulations or orders, that
42 require the issuance of the individual permit.

43 (B) Assure the permit holder institutes proper
44 containment, remediation and eradication criteria to
45 protect the interests of the public, the native plant
46 and animal populations in this Commonwealth and this
47 Commonwealth's flora, fauna and natural resources.

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

51 (D) Assure that the permit holder does not

1 abandon the permitted site prior to notifying the
2 department and taking the remediation, containment or
3 eradication measures as the department may determine
4 are necessary.

5 (ii) The department shall publish the temporary
6 order as a notice in the Pennsylvania Bulletin. A copy of
7 the order shall also be delivered to the person seeking
8 the individual permit.

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

15 (iv) The temporary order shall remain in effect for
16 a period not to exceed the length of time for which the
17 individual permit was issued, unless the permit is
18 reissued or extended.

19 (5) A written application for an individual permit shall
20 meet the criteria established by the department through a
21 temporary order as authorized by this chapter and be made on
22 a form and in a manner prescribed by the department. The
23 application shall contain at least the following:

24 (i) The legal name, address and daytime and evening
25 telephone numbers of the applicant.

26 (ii) The physical location, including a detailed
27 plot map and description of the site to be planted or
28 site where the noxious weed or controlled plant will be
29 propagated, cultivated, stored or distributed. The
30 description of the location shall also include the
31 county, municipality and the name of each road bordering
32 the physical location. The plot map shall be attached to
33 the application and shall state the GPS coordinates
34 outlining the boundaries of the site and other important
35 landmarks.

36 (iii) For a seller, distributor, holder or
37 depository of propagation material, the name and address
38 and the applicable Federal or Commonwealth license or
39 certification number or both, where applicable.

40 (iv) The scientific and common names of the noxious
41 weed or controlled plant for which the applicant desires
42 an individual permit according to the United States
43 Department of Agriculture PLANTS Database, including
44 classification of species by sterile biotype, cultivar,
45 variety F1 parent, variety F2 parent or other name.

46 (v) The identity of the intended plant parts to be
47 used and the stage of development at planting, including
48 seed, rhizome and cutting.

49 (vi) Attestation that the plant materials have been
50 selected from apparently disease-free and pest-free
51 sources.

1 (vii) A description of the packaging and biosecurity
2 safeguards to be utilized. Plant material shall be
3 packaged and safeguarded sufficiently to maintain
4 isolation from the domestic environment during
5 transportation.

6 (viii) An attestation by the applicant stating the
7 applicant shall continue to comply with the permit
8 requirements for the duration of time the plant materials
9 are in the permit holder's possession and that the permit
10 holder understands and agrees to the following:

11 (A) If the permit holder intends to transfer
12 possession or ownership of the noxious weed or
13 controlled plant, the permit holder shall, before the
14 transfer of possession or ownership, notify the
15 department and assure the person to whom the noxious
16 weed or controlled plant will be transferred or sold
17 that the permit holder has obtained the required
18 individual permit.

19 (B) If the permit holder intends to stop growing
20 or cultivating the noxious weed or controlled plant,
21 the permit holder shall notify the department and
22 implement all measures ordered by the department to
23 destroy the noxious weed or controlled plant, unless
24 another person assumes responsibility for the noxious
25 weed or controlled plant and is issued an individual
26 permit.

27 (C) If the permit holder abandons, relinquishes
28 possession or ownership of, control over or
29 responsibility for the noxious weed or controlled
30 plant, in a manner inconsistent with the provisions
31 of this chapter, all plant material regulated by the
32 permit shall be destroyed in a manner approved by the
33 department. The original permit holder shall continue
34 to be responsible for the noxious weed or controlled
35 plant, the cost of destruction and eradication of the
36 noxious weed or controlled plant and any plant
37 material associated with the noxious weed or
38 controlled plant. The original permit holder shall
39 continue to be subject to the penalties imposed under
40 this chapter.

41 (ix) The identification of the use of the noxious
42 weed or controlled plant to be permitted, including
43 ornamental landscape, agricultural crop, feed crop,
44 research, education, biofuel, biomass, further sale or
45 distribution or any other particular use.

46 (x) A detailed description of the activity
47 authorized by the permit, including the intended size of
48 the area to be planted and the intended date of planting.

49 (xi) Whether the noxious weed or controlled plant
50 will be further distributed, sold, transported,
51 replanted, used for seed or other purposes. If the

1 noxious weed or controlled plant will be further
2 distributed, sold, transported, replanted, used for seed
3 or other purposes, the permit shall include the name and
4 address of the person and location to which the noxious
5 weed or controlled plant will be distributed, sold or
6 transported. If sold or distributed for further
7 propagation, the application shall include the
8 information required under subparagraphs (i) and (ii) and
9 the name and address of the person to which the noxious
10 weed or controlled plant was sold or distributed for the
11 use.

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

16 (xiii) An attestation that the applicant shall
17 comply with all terms and conditions contained in the
18 permit.

19 (6) The secretary may request, in writing, additional
20 information, if necessary, from the applicant after the
21 application is received to evaluate the potential risk to the
22 Commonwealth. An applicant for an individual permit may be
23 required to post a bond or other security instrument in a
24 form satisfactory to the secretary in an amount the secretary
25 determines.

26 (7) An individual permit shall expire on December 31 of
27 each year, unless otherwise specified in the permit. An
28 application for renewal of an individual permit must be made
29 by October 1 of the year the permit expires. An application
30 for renewal shall describe any change to the required
31 information previously submitted. Failure to renew an
32 individual permit shall be a violation of this chapter.

33 (8) General information regarding permit compliance
34 shall be updated on a calendar year basis. Updated
35 information shall be submitted to the department no later
36 than January 10 of each new calendar year. Failure to submit
37 the required information within the time period established
38 under this paragraph shall be a violation of this chapter.

39 (9) Before the approval and issuance of an individual
40 permit, the department may enter onto and inspect the land
41 and premises, including buildings and conveyances, that will
42 be utilized for the purpose of engaging in an activity
43 authorized by the permit. The inspection shall be limited to
44 normal business hours.

45 § 1515. Prohibited acts.

46 (a) General compliance.--It shall be a violation of this
47 chapter to fail to comply with any provision of this chapter or
48 any regulation, permit requirement or order established pursuant
49 to this chapter.

50 (b) Noxious weeds.--Except as established in an individual
51 permit allowing educational or research purposes, it shall be a

1 violation of this chapter to distribute, cultivate or propagate
2 any noxious weed within this Commonwealth.

3 (c) Controlled plants.--It shall be a violation of this
4 chapter to research, market, hold, warehouse, retail, wholesale,
5 transport, display, distribute, cultivate or propagate a
6 controlled plant without a permit issued by the department.

7 (d) Abandonment.--It shall be a violation of this chapter
8 for a person holding or required to hold or comply with a permit
9 requirement of this chapter to abandon a noxious weed or
10 controlled plant site or premises without first notifying the
11 department and taking actions as are necessary or ordered by the
12 department to remediate the site.

13 (e) Concealment or misrepresentation.--It shall be unlawful
14 for a person to:

15 (1) conceal a noxious weed or controlled plant from
16 inspection; or

17 (2) make a false declaration of acreage, square footage
18 or any other information required to comply with the permit
19 requirements of this chapter.

20 § 1516. Noxious weed control areas.

21 (a) General rule.--The following apply:

22 (1) The department may establish a noxious weed control
23 area through a control order issued by the department under
24 section 1517 (relating to control orders). The order shall be
25 published in the Pennsylvania Bulletin and disseminated to
26 persons in the noxious weed control area that will be
27 affected by the order. A control order shall remain in effect
28 until the time as it is rescinded by the department.

29 (2) Within the noxious weed control area, the department
30 may prohibit, without inspection, the movement, shipment or
31 transportation of any noxious weed or other material capable
32 of carrying the noxious weed from the area under the control
33 order.

34 (b) Compliance.--The department shall require an affected
35 landowner or lessee or other person within the noxious weed
36 control area to comply with the provisions of the control order
37 within the time frame indicated in the order.

38 (c) Publication.--Every designated noxious weed control area
39 and any accompanying control order created under this section
40 and section 1517 shall be published in the Pennsylvania Bulletin
41 pursuant to the act of July 31, 1968 (P.L.769, No.240), referred
42 to as the Commonwealth Documents Law.

43 § 1517. Control orders.

44 (a) Noxious weeds.--

45 (1) The department may issue a control order requiring a
46 person to implement treatment measures for noxious weeds. The
47 control order shall state the general factual and legal basis
48 for the action and shall advise the affected person that,
49 within 15 days of receipt of the control order, the affected
50 person may file with the department a written request for an
51 administrative hearing. The hearing shall be conducted in

1 accordance with 2 Pa.C.S. (relating to administrative law and
2 procedure).

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

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

10 (b) Controlled plants.--

11 (1) The department may issue a control order requiring a
12 controlled plant permit holder or a person required to have
13 the permit to implement treatment measures for a controlled
14 plant. The department may issue a control order for
15 controlled plants if the department finds that a controlled
16 plant is growing on any premises or property without a valid
17 permit. The order shall state the general factual and legal
18 basis for the action and advise the affected person that
19 within 15 days of receipt of the order, the affected person
20 may file with the department a written request for an
21 administrative hearing. The hearing shall be conducted in
22 accordance with 2 Pa.C.S.

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

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

30 (c) Description of situation in order.--The control order
31 shall describe the noxious weed or controlled plant situation
32 that exists and prescribe the required treatment measures and
33 the date by which the measures must be completed.
34 § 1518. Compliance with orders.

35 (a) General rule.--A person subject to a control order
36 issued under section 1517 (relating to control orders) shall
37 comply with the control order within the time frame specified in
38 the control order or, if appealed, the time frame established in
39 the final adjudication of the secretary. The cost of the
40 treatment measures shall be borne by the person subject to the
41 control order.

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

43 (1) If the person subject to the control order fails to
44 comply with the control order, the department shall notify
45 that person and the municipality within which the person
46 resides or where the person's property is located by
47 certified mail. After receipt of the notice, the appropriate
48 officials of the municipality shall take the necessary steps
49 to carry out the treatment measures established in the
50 control order within the time frame specified in the
51 notification by the department.

1 (2) A municipality which acts to control a noxious weed
2 or controlled plant on a noncomplying person's property may
3 recover the expenses and costs incurred by the municipality
4 in carrying out the treatment measures established in the
5 control order from the person who is the subject of the
6 department's control order.

7 § 1519. Noxious weed list.

8 (a) Class A noxious weeds.--Preventing new infestations and
9 eradicating existing infestations of noxious weeds in the class
10 is high priority. The following are Class A noxious weeds:

11 (1) *Amaranthus palmeri* S. Watson (commonly known as
12 Palmer amaranth).

13 (2) *Amaranthus rudis* (commonly known as common
14 waterhemp).

15 (3) *Amaranthus tuberculatus* (commonly known as tall
16 waterhemp).

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

18 (5) *Cuscuta* spp., except for native species (commonly
19 known as dodder).

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

21 (7) *Heracleum mantegazzianum* Sommier & Levier (commonly
22 known as giant hogweed).

23 (8) *Hydrilla verticillata* (L.f.) Royle (commonly known
24 as hydrilla).

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

27 (10) *Orobanche* spp., except for native species (commonly
28 known as broomrape).

29 (11) *Pueraria lobata* (Willd.) Ohwi (commonly known as
30 kudzu).

31 (b) Class B noxious weeds.--The department may require
32 control of Class B weeds to contain an injurious infestation, or
33 may provide education or technical consultation. The following
34 are Class B noxious weeds:

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

36 (2) *Cirsium arvense* L. (commonly known as Canada
37 thistle).

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

39 (4) Exotic *Lythrum* species, including *Lythrum salicaria*
40 L. (commonly known as purple loosestrife), the *Lythrum*
41 *salicaria* complex and *Lythrum virgatum* L. (commonly known as
42 European wand loosestrife), their cultivars and any
43 combination thereof.

44 (5) *Persicaria perfoliata* (L.) H. Grass (formerly known
45 as *Polygonum perfoliatum* L.) (commonly known as mile-a-minute
46 weed).

47 (6) *Rosa multiflora* L. (commonly known as multiflora
48 rose).

49 (7) *Sorghum bicolor* L. Moench (commonly known as
50 shattercane).

51 (8) *Sorghum halepense* (L.) Pers. (commonly known as

1 Johnson grass).

2 (9) Conium maculatum L. (commonly known as poison
3 hemlock).

4 (c) Class C noxious weeds.--Preventing introduction and
5 eradicating infestations of noxious weeds in this class is the
6 highest priority. Class C noxious weeds are any Federal noxious
7 weeds listed in 7 CFR 360.200 (relating to designation of
8 noxious weeds) not established in this Commonwealth which are
9 not referenced above.

10 (d) Committee determination.--Any plant or weed designated
11 as a noxious weed under this section and as authorized under
12 section 1511 (relating to designation of noxious weeds and
13 controlled plants).
14 § 1520. Fees.

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

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

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

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

24 (4) Inspection fees for greenhouses - Greenhouse
25 locations shall be assessed a fee based on square footage as
26 follows:

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

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

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

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

31 (6) Laboratory testing - Fees as established in Chapter
32 71 (relating to seed).

33 (b) Adjustment of fees.--The department may promulgate
34 regulations to fix, adjust, assess and collect, or cause to be
35 collected, fees as established in this chapter. The fees shall
36 be large enough to meet the reasonable expenses incurred by the
37 department or its agents in administering this chapter,
38 including issuing permits, conducting inspections and carrying
39 out necessary testing. If the secretary determines that money
40 derived from all authorized fees are either greater or less than
41 that required to administer this chapter, the secretary may
42 reduce or increase the fees so as to maintain revenues
43 sufficient to administer this chapter.

44 (c) Payment of fees.--Fees shall be paid by check, money
45 order or electronic payment made payable to the Commonwealth of
46 Pennsylvania. Failure to pay a fee on time shall be a violation
47 of this chapter. A late fee of \$25 shall be assessed for every
48 month that a fee is past due.

49 § 1521. Powers and duties of secretary and department.

50 (a) General rule.--The secretary shall enforce this chapter
51 and may employ all proper means for the enforcement of this

1 chapter, including issuing notices of violation and orders,
2 filing violations for criminal prosecution, seeking injunctive
3 relief, imposing civil penalties and entering into consent
4 agreements.

5 (b) General powers and duties of department.--The
6 department, in carrying out the provisions of this chapter and
7 in addition to all other authority granted to the secretary and
8 the department by this chapter, shall have the authority to:

9 (1) Issue and enforce a written control order to any
10 person in possession of a noxious weed or controlled plant.

11 (2) Issue and enforce written permits and permit
12 requirements to any person who wishes to research, market,
13 hold, warehouse, retail, wholesale, propagate, transport,
14 cultivate or distribute a noxious weed or controlled plant
15 under the terms and conditions as are reasonably required to
16 carry out the provisions of this chapter.

17 (3) Utilize any enforcement tool authorized by this
18 chapter to control, remediate, contain or eradicate a noxious
19 weed or controlled plant.

20 (4) Recover, from the noncomplying person or landowner,
21 expenses and costs incurred in the enforcement and compliance
22 actions. The department may impose additional civil or
23 criminal penalties for failure to comply. The penalties shall
24 include the reasonable cost of eradication and compliance
25 expenses incurred by the department.

26 (5) If the department is denied access to any building,
27 conveyance, equipment, land or vehicle where the access was
28 sought for the purposes and under the authority set forth in
29 this chapter, the secretary may apply to any issuing
30 authority for a search warrant authorizing access to the
31 building, conveyance, equipment, land or vehicle for that
32 purpose. The court may, upon application by the department,
33 issue the search warrant for the purposes requested.

34 (b.1) Right of entry and inspection.--In the performance of
35 the duties required by this chapter, the department and its
36 inspectors, employees and agents shall have access, during
37 reasonable hours, to inspect the land and premises and any areas
38 of the land and premises, including buildings and conveyances,
39 that are or will be utilized for permitted activities.

40 (c) Search warrants.--

41 (1) If an inspector, employee or agent of the department
42 has probable cause to believe a noxious weed or controlled
43 plant exists on a property or premises, the department's
44 inspector, employee or agent may, upon oath or affirmation,
45 declare before a court of competent jurisdiction that the
46 inspector, employee or agent has probable cause to believe
47 that noxious weeds or controlled plants exist on the land or
48 premises.

49 (2) Upon review of the declaration, the court may issue
50 a search warrant for the property or premises. The search
51 warrant shall describe the property or premises, which may be

1 searched under authority of the search warrant, but need not
2 describe the exact or all possible noxious weeds or
3 controlled plants that exist or may exist on the property or
4 premises.

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

7 (i) That, in cases involving a person who holds an
8 individual permit or general permit under this chapter,
9 the inspector, employee or agent has been refused or
10 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 chapter or
13 regulations promulgated or orders issued under the
14 authority of this chapter has been or is occurring.

15 (d) 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 a permit
20 under this chapter.

21 (2) The department may inspect any records required to
22 be kept under an individual permit or general permit and any
23 attendant orders and regulations.

24 (3) The department may collect samples and take pictures
25 of any noxious weeds or controlled plants.

26 (e) Delegation.--The secretary may delegate any power or
27 duty under this chapter to an agent acting on behalf of the
28 department, with the exception of the powers and duties of the
29 committee.

30 § 1522. Stop-sale orders.

31 (a) General rule.--The department may issue and enforce a
32 stop-sale order to any person holding or required to hold a
33 permit under this chapter or to any person where a noxious weed
34 or controlled plant exists. The stop-sale order shall require a
35 person to hold, at a designated place, any noxious weed or
36 controlled plant. Noxious weeds or controlled plants subject to
37 a stop-sale order issued under the authority of this subsection
38 shall continue to be held at the designated place until the
39 department is notified by the person to whom the stop-sale order
40 was directed that the prescribed treatment measure or action has
41 been taken and a reinspection of the premises indicates the
42 treatment measure has been completed and was effective.

43 (b) Official marking of noxious weeds and controlled plants
44 subject to a stop-sale order.--

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

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

51 (c) Violation of a stop-sale order.--It shall be unlawful to

1 violate a stop-sale order issued under this section. The
2 department may impose any and all penalties authorized under
3 this chapter for a violation of the order.

4 § 1523. Seizure and condemnation.

5 (a) General rule.--Where the distribution, transportation,
6 cultivation, propagation, marketing, retail, wholesale, holding,
7 warehousing, research or educational practices of a noxious weed
8 or controlled plant is not in compliance with the provisions of
9 this chapter, a permit, or any regulation promulgated or order
10 issued under this chapter, the department, in addition to any
11 other action authorized under this chapter, may file a complaint
12 before a court of competent jurisdiction in the area in which
13 the noxious weed or controlled plant is located, or before the
14 Commonwealth Court, requesting the injunctive relief as
15 necessary to prevent harm and requesting an order of seizure and
16 condemnation be issued.

17 (b) Relief.--In the event that the court finds the noxious
18 weed or controlled plant to be in violation of this chapter, a
19 permit, or any regulation promulgated or order issued under this
20 chapter, the court shall order the condemnation of the noxious
21 weed or controlled plant. Upon execution of the court order, the
22 condemned noxious weed or controlled plant shall be disposed of
23 in any manner consistent with the laws of this Commonwealth.

24 § 1524. Appeal process.

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

32 § 1525. Cooperation with other entities.

33 The department may cooperate and enter into agreements with
34 any individual, person, organization or Federal, State, county,
35 or municipal agency for the purpose of implementing the
36 provisions of this chapter. The department may assist in the
37 enforcement of any Federal noxious weed quarantine established
38 under Federal act or regulations.

39 § 1526. Rules and regulations.

40 The department may promulgate rules and regulations and
41 establish and enforce orders necessary for administration and
42 implementation of this chapter in accordance with the act of
43 July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth
44 Documents Law, the act of October 15, 1980 (P.L.950, No.164),
45 known as the Commonwealth Attorneys Act, and the act of June 25,
46 1982 (P.L.633, No.181), known as the Regulatory Review Act.

SUBCHAPTER C

ENFORCEMENT

49 Sec.

50 1541. Unlawful conduct.

51 1542. Interference with inspector, agent or employee of

department.
1543. Enforcement and penalties.
1544. Injunctive relief.
1545. De minimis violations.
§ 1541. Unlawful conduct.

It shall be unlawful for a person to fail to comply with or to cause or assist in the violation of a permit, an order or provision of this chapter or any attendant regulation.

§ 1542. Interference with inspector, agent or employee of department.

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

§ 1543. Enforcement and penalties.

(a) Criminal penalties.--Unless otherwise specified, a person who violates a permit, a provision of this chapter or a rule or regulation adopted pursuant to this chapter or any order issued under this chapter:

(1) For the first offense, commits a summary offense and may, upon conviction, be sentenced for each offense to pay a fine of not less than \$100 and costs of prosecution or to undergo imprisonment for a term which shall be fixed at not more than 90 days, or both.

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

(b) Civil penalties.--

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

(2) No civil penalty shall be assessed unless the person assessed the penalty has been given notice and an opportunity for a hearing on the assessment in accordance with the provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice

1 and procedure of Commonwealth agencies) and 7 Subch. A
2 (relating to judicial review of Commonwealth agency action).
3 § 1544. Injunctive relief.

4 In addition to any other remedies provided for in this
5 chapter, the Attorney General, at the request of the secretary,
6 may initiate, in Commonwealth Court or the court of common pleas
7 of the county in which the defendant resides or has a place of
8 business, an action in equity for an injunction to restrain any
9 and all violations of this chapter, a permit, order, or the
10 rules and regulations promulgated under this chapter.

11 § 1545. De minimis violations.

12 Nothing in this chapter shall be construed as requiring the
13 department to report a violation or to institute seizure
14 proceedings or other enforcement actions under this chapter as a
15 result of de minimis violations of this chapter if the
16 department concludes that the public interest will be best
17 served by a suitable notice of violation or warning in writing.

18 SUBCHAPTER D

19 MISCELLANEOUS PROVISIONS

20 Sec.

21 1561. Disposition of funds.

22 1562. Preemption.

23 § 1561. Disposition of funds.

24 (a) Plant Pest Management Account.--Money received from
25 permitting fees, control work reimbursement, fines and penalties
26 under this chapter shall be paid into the Plant Pest Management
27 Account.

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

30 (1) Federal funds appropriated to the department for
31 purposes of this chapter.

32 (2) State funds appropriated to the department for
33 purposes of this chapter.

34 (3) Gifts and other contributions from public or private
35 sources for purposes of this chapter.

36 § 1562. Preemption.

37 All local laws contrary to this chapter are preempted.

38 Section 2. The regulations under 7 Pa. Code §§ 111.22
39 (relating to prohibited noxious weed seeds) and 111.23 (relating
40 to restricted noxious weed seeds) are abrogated insofar as they
41 are inconsistent with the addition of 3 Pa.C.S. Ch. 15.

42 Section 3. Repeals are as follows:

43 (1) The General Assembly declares that the repeals under
44 paragraphs (2) and (3) are necessary to effectuate the
45 addition of 3 Pa.C.S. Ch. 15.

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

48 (3) 3 Pa.C.S. Ch. 71 is repealed insofar as it is
49 inconsistent with the addition of 3 Pa.C.S. Ch. 15.

50 Section 4. This act shall take effect in 60 days.