

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1110 Session of
2015

INTRODUCED BY ARGALL, SCHWANK, VOGEL, RAFFERTY, VULAKOVICH,
BARTOLOTTA AND RESCHENTHALER, JANUARY 21, 2016

REFERRED TO AGRICULTURE AND RURAL AFFAIRS, JANUARY 21, 2016

AN ACT

1 Regulating controlled plants and noxious weeds; establishing the
2 Controlled Plant and Noxious Weed Committee; providing for
3 powers and duties of the Controlled Plant and Noxious Weed
4 Committee; imposing powers and duties on the Secretary of
5 Agriculture and municipalities; prescribing penalties;
6 establishing a category of controlled plants and providing
7 for the permitting of controlled plants intended to be grown
8 for biomass and biofuel production or for other beneficial
9 purposes; and repealing the Noxious Weed Control Law.

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

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25 CHAPTER 1

26 PRELIMINARY PROVISIONS

27 Section 101. Short title.

28 This act shall be known and may be cited as the Controlled
29 Plant and Noxious Weed Act.

30 Section 102. Definitions.

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

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

7 (1) Is established in this Commonwealth.

8 (2) Is geographically limited.

9 (3) Is intended to be eradicated.

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

13 (1) Is widely established in this Commonwealth.

14 (2) Cannot feasibly be eradicated.

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

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

19 (2) Poses a potential threat if introduced in this
20 Commonwealth.

21 "Committee." The Controlled Plant and Noxious Weed Committee
22 established in section 301.

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

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

29 "Controlled plant." A plant that has been determined by the
30 committee to be a "controlled plant" and is regulated to prevent

1 uncontained growth and to negate undesirable characteristics.

2 "Department." The Department of Agriculture of the
3 Commonwealth.

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

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

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

13 "Established." Either:

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

17 (2) a plant that has escaped from cultivation and is
18 reproducing.

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

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

25 "Geographically limited." Found in discrete, limited
26 locations of this Commonwealth.

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

29 (1) research, marketing, warehousing, holding,
30 retailing, wholesaling, transporting, distributing,

1 cultivating or propagating of a controlled plant; or

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

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

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

8 "Landowner." A person:

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

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

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

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

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

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

26 "Lessor." A person who grants a lease or rents property to
27 another for a definite or indefinite period of time, by a
28 written or oral lease, irrespective of whether a statute of
29 fraud requires the lease to be in writing.

30 "Noxious weed." Either:

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

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

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

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

15 "Person." An individual, corporation, association,
16 partnership, municipality or any other entity.

17 "Plant Pest Management Account" or "account." The Plant Pest
18 Management Account established under section 702.

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

21 "Secretary." The Secretary of Agriculture of the
22 Commonwealth.

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

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

30 "Widely established." Growing throughout multiple counties

1 and municipalities of this Commonwealth.

2 CHAPTER 3

3 REGULATION AND ADMINISTRATION

4 Section 301. Designation of noxious weeds and controlled
5 plants.

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

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

10 (2) The committee shall be composed of:

11 (i) the secretary, who shall be the chairperson of
12 the committee;

13 (ii) the Secretary of Conservation and Natural
14 Resources;

15 (iii) the Secretary of Environmental Protection;

16 (iv) the Secretary of Transportation;

17 (v) the Executive Director of the Fish and Boat
18 Commission and the Executive Director of the Game
19 Commission;

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

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

28 (A) One member of a Statewide general farm
29 organization.

30 (B) One member representing the ornamental, turf

1 and horticultural industry.

2 (C) One member from an institution of higher
3 education within this Commonwealth.

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

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

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

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

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

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

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

1 meeting, except in the case of a special meeting or
2 rescheduled meeting as allowed under 65 Pa.C.S. § 709(a)
3 (relating to public notice). All meetings shall be open to
4 the public and shall comply with the requirements of 65
5 Pa.C.S. Ch. 7 (relating to open meetings).

6 (3) The committee shall have the following powers and
7 duties:

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

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

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

25 (iv) To publish the noxious weed list and the
26 controlled plant list and any additions or deletions or
27 changes thereto as a notice in the Pennsylvania Bulletin.
28 Any additions to or deletions from the noxious weed list
29 or the controlled plant list shall become effective 60
30 days from publication.

1 (c) Prohibitions.--

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

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

11 (3) An individual permit shall be required for research
12 and educational purposes.

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

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

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

24 Section 302. Permits.

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

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

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

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

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

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

29 (4) Individual permits may be issued for research or the
30 marketing, distribution, cultivation or propagation of

1 controlled plants under the following circumstances:

2 (i) Individual permits may be issued for any
3 controlled plant where:

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

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

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

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

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

29 (6) For each noxious weed, the department shall issue a
30 temporary order establishing the criteria for the individual

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

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

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

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

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

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

27 (ii) The department shall publish the temporary
28 order as a notice in the Pennsylvania Bulletin. A copy of
29 the order shall also be delivered to the person seeking
30 to research, market, plant or cultivate the noxious weed

1 or to research, market, plant, cultivate, warehouse,
2 store, display, grow, produce, hold, distribute, retail,
3 wholesale or propagate the controlled plant under the
4 individual permit.

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

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

17 (b) Permit required.--

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

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

1 activities.

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

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

17 (ii) Where the department has established a general
18 permit requirement for a controlled plant, a person
19 seeking to conduct research on, market, retail,
20 wholesale, produce, distribute, transport, cultivate,
21 propagate or reproduce the controlled plant shall, prior
22 to undertaking the activity, inform the department of the
23 intent and complete an application for approval to
24 operate under the general permit requirements. The
25 application shall include a plan establishing the
26 practices and methods the applicant will utilize in order
27 to assure compliance with the general permit requirements
28 established by the department. In addition to the written
29 plan, the application shall state, at a minimum, all of
30 the information required in subsection (c) (1), (2), (3),

1 (4), (5), (6), (7) and (8).

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

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

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

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

30 (3) For any seller, distributor, holder or depository of

1 propagation material, the name and address and the applicable
2 Federal or Commonwealth license or certification number or
3 both, where applicable.

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

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

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

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

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

24 (i) If the permit holder intends to transfer
25 possession or ownership of the noxious weed or controlled
26 plant, the permit holder shall, prior to the transfer of
27 possession or ownership, notify the department and assure
28 the person to whom the noxious weed or controlled plant
29 will be transferred or sold that the permit holder has
30 obtained the required individual permit.

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

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

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

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

29 (11) Whether the noxious weed or controlled plant will
30 be further distributed, sold, transported, replanted, used

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

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

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

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

18 (e) Expiration date and renewal.--

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

26 (2) Information regarding general permit compliance
27 shall be updated on a calendar year basis. Updated
28 information shall be submitted to the department no later
29 than January 10 of each new calendar year. Failure to submit
30 the required information within the time period established

1 in this paragraph shall be a violation of this act.

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

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

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

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

12 (iii) Intent to discontinue the activities
13 specifically authorized by the permit.

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

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

28 (g) Revocation or suspension.--Within 30 days of receipt of
29 a notice of revocation, the permit holder may apply for an
30 amendment to the permit or request a hearing as outlined in

1 section 312. The secretary may revoke or suspend all or part of
2 a permit issued under this section when:

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

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

9 Section 303. Prohibited acts.

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

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

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

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

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

30 (1) conceal a noxious weed or controlled plant from

1 inspection; or

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

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

8 Section 304. Noxious weed control areas.

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

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

26 (c) Compliance.--The department shall require an affected
27 landowner or lessee or other person within the noxious weed
28 control area to comply with the provisions of the noxious weed
29 control order within the time frame indicated in the order. A
30 noxious weed control order may require treatment measures,

1 including remedial, containment and eradication requirements,
2 for the noxious weeds to be implemented by the landowner, lessee
3 or other affected person.

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

9 Section 305. Control orders.

10 (a) Noxious weeds.--

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

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

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

27 (b) Controlled plants.--

28 (1) The department may issue a control order requiring a
29 controlled plant permit holder or a person required to have
30 such permit to implement treatment measures for a controlled

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

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

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

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

22 Section 306. Compliance with orders.

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

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

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

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

16 Section 307. Noxious weed list.

17 (a) Class A noxious weeds.--The following are Class A
18 noxious weeds:

19 (1) *Amaranthus palmeri* S. Watson (commonly known as
20 Palmer amaranth).

21 (2) *Amaranthus rudis* (commonly known as common
22 waterhemp).

23 (3) *Amaranthus tuberculatus* (commonly known as tall
24 waterhemp).

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

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

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

28 (7) *Heracleum mantegazzianum* Sommier & Levier (commonly
29 known as giant hogweed).

30 (8) *Hydrilla verticillata* (L.f.) Royle (commonly known

as hydrilla).

(9) *Orobancha* L. (commonly known as broomrape).

(10) *Pueraria* DC. (commonly known as kudzu).

(11) *Solanum viarum* Dunal (commonly known as tropical soda apple).

(12) *Sorghum bicolor* L. Moench (commonly known as shattercane).

(13) *Sorghum halepense* (L.) Pers. (commonly known as Johnson grass).

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

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

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

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

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

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

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

(c) Class C noxious weeds.--Class C noxious weeds are any Federal noxious weeds listed in 7 CFR 360.200 (relating to designation of noxious weeds) not established in this Commonwealth which are not referenced above.

(d) Committee determination.--Any plant or weed designated

1 as a noxious weed as authorized by section 301.

2 Section 308. Fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (3) Issue and enforce a written control order to any
29 person in possession of a noxious weed or controlled plant.

30 (4) Issue and enforce written permits and permit

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

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

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

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

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

30 (2) The department may enter onto and inspect the land

1 and premises and any areas of the land and premises,
2 including buildings and conveyances, that are or will be
3 utilized for such activities or where the permitted
4 activities are or will be conducted.

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

12 (e) Search warrants.--

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

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

29 (3) An inspector, employee or agent of the department
30 possessing such search warrant shall have all the authority

1 of a constable or peace officer in the execution of the
2 warrant.

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

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

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

13 (f) Inspections and sampling authority.--

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

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

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

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

1 committee.

2 Section 310. Stop-sale orders.

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

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

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

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

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

27 Section 311. Seizure and condemnation.

28 (a) General rule.--Where the distribution, transportation,
29 cultivation, propagation, reproduction, research or educational
30 practices of a noxious weed or controlled plant is not in

1 compliance with the provisions of this act or any regulation
2 promulgated or order issued under this act, the department, in
3 addition to any other action allowed under this act, may file a
4 complaint before a court of competent jurisdiction in the area
5 in which the noxious weed or controlled plant is located, or
6 before the Commonwealth Court, requesting such injunctive relief
7 as necessary to prevent harm and requesting an order of seizure
8 and condemnation be issued.

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

16 Section 312. Appeal process.

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

24 Section 313. Cooperation with other entities.

25 The department may cooperate and enter into agreements with
26 any individual, person, organization or Federal, State, county,
27 or municipal agency for the purpose of implementing the
28 provisions of this act. The department may assist in the
29 enforcement of any Federal noxious weed quarantine established
30 under Federal act or regulations.

1 Section 314. Rules and regulations.

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

5 CHAPTER 5

6 ENFORCEMENT

7 Section 501. Unlawful conduct.

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

11 Section 502. Interference with inspector, agent or employee of
12 department.

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

20 Section 503. Enforcement and penalties.

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

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

30 (2) For a subsequent offense committed within three

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

7 (b) Civil penalties.--

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

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

26 Section 504. Injunctive relief.

27 In addition to any other remedies provided for in this act,
28 the Attorney General, at the request of the secretary, may
29 initiate, in the Commonwealth Court or the court of common pleas
30 of the county in which the defendant resides or has his place of

1 business, an action in equity for an injunction to restrain any
2 and all violations of this act or the rules and regulations
3 promulgated under this act.

4 Section 505. De minimis violations.

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

11 CHAPTER 7

12 MISCELLANEOUS PROVISIONS

13 Section 701. Transfer.

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

17 Section 702. Disposition of funds.

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

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

25 (1) Federal funds appropriated to the department for
26 purposes of this act.

27 (2) State funds appropriated to the department for
28 purposes of this act.

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

(c) Status of funds.--The account shall not be subject to 42 Pa.C.S. Ch. 37, Subch. C (relating to judicial computer system).

Section 703. Preemption.

All local laws contrary to this act are preempted.

Section 704. Abrogation.

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

Section 705. Repeals.

Repeals are as follows:

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

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

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

Section 706. Effective date.

This act shall take effect in 60 days.