

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 790 Session of 2017

INTRODUCED BY PASHINSKI, CAUSER, EVERETT, HAGGERTY, RABB, V. BROWN, CALTAGIRONE, D. COSTA, BRIGGS, SOLOMON, STURLA, DALEY, SCHWEYER, O'BRIEN, GAINNEY, McCARTER, DEAN, BOYLE, FLYNN, DONATUCCI, KIM, KAVULICH AND BARBIN, MARCH 10, 2017

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, MAY 9, 2017

AN ACT

1 Regulating controlled plants and noxious weeds; establishing the
2 Controlled Plant and Noxious Weed Committee; providing for
3 powers and duties of the Controlled Plant and Noxious Weed
4 Committee; imposing powers and duties on the Secretary of
5 Agriculture and municipalities; prescribing penalties;
6 establishing a category of controlled plants and providing
7 for the permitting of controlled plants; and making a related
8 repeal.

9 The General Assembly of the Commonwealth of Pennsylvania
10 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 species or subspecies that has
30 been determined by the committee to be a "controlled plant" and

1 is regulated to prevent uncontained growth and to negate
2 undesirable characteristics.

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

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

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

12 "Established." Either:

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

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

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

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

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

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

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

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

3 "Landowner." A person:

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

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

10 The term includes a department, board, commission, agency and
11 instrumentality of the Federal Government and the Commonwealth
12 and any of its political subdivisions.

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

16 "Noxious weed." Either:

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

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

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

27 "Person." An individual, corporation, association,
28 partnership, municipality or any other entity.

29 "Plant Pest Management Account" or "account." The Plant Pest
30 Management Account established under the act of December 16,

1 1992 (P.L.1228, No.162), known as the Plant Pest Act.

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

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

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

9 "Treatment measure." A method of eradicating, managing,
10 regulating or controlling noxious weeds or controlled plants
11 utilizing biological, chemical or mechanical means or a
12 combination thereof.

13 "Widely established." ~~Growing~~ ESTABLISHED throughout
14 multiple counties and municipalities of this Commonwealth.

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15 CHAPTER 3

16 REGULATION AND ADMINISTRATION

17 Section 301. Designation of noxious weeds and controlled
18 plants.

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

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

23 (2) The committee shall be composed of:

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

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

28 (iii) the Secretary of Environmental Protection;

29 (iv) the Secretary of Transportation;

30 (v) the Executive Director of the Fish and Boat

1 Commission and the Executive Director of the Game
2 Commission;

3 (vi) the chairperson and minority chairperson of the
4 Agriculture and Rural Affairs Committee of the Senate and
5 the chairperson and minority chairperson of the
6 Agriculture and Rural Affairs Committee of the House of
7 Representatives;

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

11 (A) One member of a Statewide general farm
12 organization.

13 (B) One member representing the ornamental, turf
14 and horticultural industry.

15 (C) One member from an institution of higher
16 education within this Commonwealth.

17 (3) Except for appointed members, who may be represented
18 by designees selected by the secretary, members may be
19 represented by a designee selected by the member.

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

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

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

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

2 (1) A majority of the committee shall constitute a
3 quorum. A quorum of the committee shall be required to take
4 any action. All actions of the committee shall be by a
5 majority vote.

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

19 (3) The committee shall have the following powers and
20 duties:

21 (i) To establish a noxious weed list inclusive of
22 the list set forth under section 307. The committee may
23 add weeds to or delete weeds from the noxious weed list,
24 or move noxious weeds to the controlled plant list, in
25 accordance with the provisions of this act.

26 (ii) To establish a controlled plant list and to add
27 plants to or delete plants from the controlled plant list
28 in accordance with the provisions of this act. A
29 controlled plant, upon approval of the committee, may be
30 moved from the controlled plant list to the noxious weed

1 list.

2 (iii) To propose the addition or deletion of plants
3 to or from the noxious weed list or controlled plant
4 list. The committee may request that the department
5 perform a study and risk assessment related to any plant
6 the committee may consider for addition to or deletion
7 from the noxious weed list or controlled plant list.

8 (iv) To publish the noxious weed list and the
9 controlled plant list and any additions or deletions or
10 changes thereto as a notice in the Pennsylvania Bulletin.
11 Any additions to or deletions from the noxious weed list
12 or the controlled plant list shall become effective 60
13 days from publication.

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

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

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

25 Section 302. Permits.

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

1 (1) For noxious weeds, the department may issue
2 individual permits. A permit 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 subsection (d)
7 (4).

8 (2) For controlled plants, the department may issue
9 individual permits or general permits. The department shall
10 establish the criteria for a controlled plant individual
11 permit through the issuance of a temporary order as specified
12 under subsection (d)(4).

13 (b) Permit required.--No person may research, market,
14 distribute, transport, cultivate, hold, retail, wholesale,
15 propagate or display a noxious weed or controlled plant without
16 obtaining a permit from the department in accordance with the
17 provisions of this act.

18 (c) General permits.--General permits may be issued for the
19 research, marketing, retail, wholesale, transport, storage,
20 warehousing, display, distribution, cultivation or propagation
21 of controlled plants under the following circumstances:

22 (1) General permits may be issued on a regional or
23 Statewide basis for controlled plants where the controlled
24 plants have similar characteristics and are capable of being
25 cultivated, propagated, processed and controlled or
26 eradicated in a similar fashion.

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

29 (3) An applicant seeking a general permit under this
30 subsection shall inform the department of the applicant's

1 intended use of the general permit and complete an
2 application for approval to operate under the general permit
3 requirements. The application shall include a written plan
4 establishing the practices and methods the applicant will
5 utilize in order to assure compliance with the general permit
6 requirements established by the department. In addition to
7 the written plan, the application shall state, at a minimum,
8 all of the information required under subsection (d) (5) (i),
9 (ii), (iii), (iv), (v), (vi), (vii), and (viii).

10 (4) Before the approval and issuance of a general
11 permit, the department may enter onto and inspect the land
12 and premises, including buildings and conveyances, that will
13 be utilized for the purpose of engaging in an activity
14 authorized by the permit regarding a controlled plant. The
15 inspection shall be conducted during normal business hours.

16 (d) Individual permits.--Individual permits may be issued
17 for noxious weeds and controlled plants in accordance with the
18 following:

19 (1) An individual permit may be issued for any
20 controlled plant where:

21 (i) The controlled plant has such individual
22 characteristics as to make it difficult or impossible for
23 the department to regulate THROUGH a general set of <--
24 requirements.

25 (ii) The land or area on which the controlled plant
26 will be cultivated has such characteristics as would make
27 it difficult or impossible for the department to regulate
28 the controlled plant.

29 (iii) The controlled plant is highly regulated or
30 requires additional scrutiny because of a characteristic

1 of the plant that would be hard to control under a
2 general permit or where Federal law preempts and requires
3 such permitting.

4 (2) An individual permit shall be issued in writing to
5 the specific permit holder, contain the temporary order or
6 reference the regulations establishing the requirements of
7 the individual permit and be published in the Pennsylvania
8 Bulletin and effective as enumerated in paragraph (4).

9 (3) The department may establish through regulation or a
10 temporary order, standards and requirements addressing the
11 issuance and criteria of an individual permit for noxious
12 weeds and controlled plants.

13 (4) For each noxious weed, the department shall issue a
14 temporary order establishing the criteria for the individual
15 permit to be issued. For a controlled plant, upon determining
16 that a set of characteristics or circumstances requires the
17 issuance of an individual permit, the department shall issue
18 a temporary order establishing the criteria for the
19 individual permit to be issued. The following shall apply:

20 (i) Through the temporary order, the department may
21 establish restrictions and standards, including bonding
22 requirements, as the department determines are necessary
23 to:

24 (A) Identify the specific characteristics of the
25 noxious weed or controlled plant or the circumstances
26 including Federal laws, regulations or orders, that
27 require the issuance of the individual permit.

28 (B) Assure the permit holder institutes proper
29 containment, remediation and eradication criteria to
30 protect the interests of the public, the native plant

1 and animal populations in this Commonwealth and this
2 Commonwealth's flora, fauna and natural resources.

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

6 (D) Assure that the permit holder does not
7 abandon the permitted site prior to notifying the
8 department and taking such remediation, containment
9 or eradication measures as the department may
10 determine are necessary.

11 (ii) The department shall publish the temporary
12 order as a notice in the Pennsylvania Bulletin. A copy of
13 the order shall also be delivered to the person seeking
14 the individual permit.

15 (iii) The provisions of the temporary order shall be
16 applicable as of the date of actual or constructive
17 notice of the temporary order or any later date specified
18 in the temporary order. Publication of the temporary
19 order in the Pennsylvania Bulletin shall be constructive
20 notice.

21 (iv) The temporary order shall remain in effect for
22 a period not to exceed the length of time for which the
23 individual permit was issued, unless the permit is
24 reissued or extended, or until the criteria stated in the
25 temporary order are established in regulation, whichever
26 occurs first.

27 (5) A written application for an individual permit shall
28 meet the criteria established by the department through a
29 temporary order or regulation as authorized by this act and
30 be made on a form and a manner as prescribed by the

1 department. The application shall contain at least the
2 following:

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

5 (ii) The physical location, including a detailed
6 plot map and description of the site to be planted or
7 site where the noxious weed or controlled plant will be
8 propagated, cultivated, stored or distributed. The
9 description of the location shall also include the
10 county, municipality and the name of each road bordering
11 the physical location. The plot map shall be attached to
12 the application and shall state the GPS coordinates
13 outlining the boundaries of the site and other important
14 landmarks.

15 (iii) For a seller, distributor, holder or
16 depository of propagation material, the name and address
17 and the applicable Federal or Commonwealth license or
18 certification number or both, where applicable.

19 (iv) The scientific and common names of the noxious
20 weed or controlled plant for which the applicant desires
21 an individual permit according to the United States
22 Department of Agriculture PLANTS Database, including
23 classification of species by sterile biotype, cultivar,
24 variety F1 parent, variety F2 parent or other name.

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

28 (vi) Attestation that the plant materials have been
29 selected from apparently disease-free and pest-free
30 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
14 the transfer of possession or ownership, notify
15 the department and assure the person to whom the
16 noxious weed or controlled plant will be
17 transferred or sold that the permit holder has
18 obtained the required individual permit.

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

28 (C) If the permit holder abandons,
29 relinquishes possession or ownership of, control
30 over or responsibility for the noxious weed or

1 controlled plant, in a manner inconsistent with
2 the provisions of this act, all plant material
3 regulated by the permit shall be destroyed in a
4 manner approved by the department. The original
5 permit holder shall continue to be responsible
6 for the noxious weed or controlled plant, the
7 cost of destruction and eradication of the
8 noxious weed or controlled plant and any plant
9 material associated with the noxious weed or
10 controlled plant. The original permit holder
11 shall continue to be subject to the penalties
12 imposed under this act.

13 (ix) The identification of the use of the
14 noxious weed or controlled plant to be permitted,
15 including ornamental landscape, agricultural crop,
16 feed crop, research, education, biofuel, biomass,
17 further sale or distribution or any other particular
18 use.

19 (x) A detailed description of the activity
20 authorized by the permit, including the intended size
21 of the area to be planted and the intended date of
22 planting.

23 (xi) Whether the noxious weed or controlled
24 plant will be further distributed, sold, transported,
25 replanted, used for seed or other purposes. If the
26 noxious weed or controlled plant will be further
27 distributed, sold, transported, replanted, used for
28 seed or other purposes, the permit shall include the
29 name and address of the person and location to which
30 the noxious weed or controlled plant will be

1 distributed, sold or transported. If sold or
2 distributed for further propagation, the application
3 shall include the information required under
4 subparagraphs (i) and (ii) and the name and address
5 of the person to which the noxious weed or controlled
6 plant was sold or distributed for such use.

7 (xii) A written contingency plan for each site
8 for eradication or recapture in the event of an
9 unauthorized escape or introduction of the noxious
10 weed or controlled plant.

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

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

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

25 (8) General information regarding permit compliance
26 shall be updated on a calendar year basis. Updated
27 information shall be submitted to the department no later
28 than January 10 of each new calendar year. Failure to submit
29 the required information within the time period established
30 under this paragraph shall be a violation of this act.

1 (9) Before the approval and issuance of an individual
2 permit, the department may enter onto and inspect the land
3 and premises, including buildings and conveyances, that will
4 be utilized for the purpose of engaging in an activity
5 authorized by the permit. The inspection shall be limited to
6 normal business hours.

7 (e) Notice of closing, change of name or moving location.--

8 (1) Any person who holds a permit under this act shall
9 notify the department, in writing, prior to any change of
10 status related to the permit, including:

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

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

16 (iii) Intent to discontinue the activities
17 specifically authorized by the permit.

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

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

1 of this act.

2 (f) Revocation or suspension.--Within 30 days of receipt of
3 a notice of revocation, the permit holder may apply for an
4 amendment to the permit or request a hearing as outlined in
5 section 312. The secretary may revoke or suspend all or part of
6 a permit issued under this section when:

7 (1) The secretary determines that a permit holder has
8 failed to comply with the requirements of this act.

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

13 Section 303. Prohibited acts.

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

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

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

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

1 department to remediate the site.

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

4 (1) conceal a noxious weed or controlled plant from
5 inspection; or

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

9 Section 304. Noxious weed control areas.

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

11 (1) The department may establish a noxious weed control
12 area through a control order issued by the department UNDER <--
13 SECTION 305. The order shall be published in the Pennsylvania
14 Bulletin and disseminated to persons in the noxious weed
15 control area that will be affected by the order. A control
16 order shall remain in effect until such time as it is
17 rescinded by the department or until the criteria set forth
18 in the control order are established by regulation.

19 (2) Within the noxious weed control area, the department
20 may prohibit, without inspection, the movement, shipment or
21 transportation of any noxious weed or other material capable
22 of carrying the noxious weed from the area under the control
23 order.

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

28 (c) Publication.--Every designated noxious weed control area
29 and any accompanying control order created under this section
30 AND SECTION 305 shall be published in the Pennsylvania Bulletin <--

1 pursuant to the act of July 31, 1968 (P.L.769, No.240), referred
2 to as the Commonwealth Documents Law.

3 Section 305. Control orders.

4 (a) Noxious weeds.--

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

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

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

21 (b) Controlled plants.--

22 (1) The department may issue a control order requiring a
23 controlled plant permit holder or a person required to have
24 such permit to implement treatment measures for a controlled
25 plant. The department may issue a control order for
26 controlled plants if the department finds that a controlled
27 plant is growing on any premises or property without a valid
28 permit. The order shall state the general factual and legal
29 basis for the action and advise the affected person that
30 within 15 days of receipt of the order, the affected person

1 may file with the department a written request for an
2 administrative hearing. The hearing shall be conducted in
3 accordance with 2 Pa.C.S.

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

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

11 (c) Description of situation in order.--The control order
12 shall describe the noxious weed or controlled plant situation
13 that exists and prescribe the required ~~remediation, control,~~ <--
14 ~~eradication or~~ treatment measures and the date by which such
15 measures must be completed.

16 Section 306. Compliance with orders.

17 (a) General rule.--A person subject to a control order
18 issued under section 305 shall comply with the control order
19 within the time frame specified in the control order or, if
20 appealed, the time frame established in the final adjudication
21 of the secretary. The cost of the ~~remediation, control,~~ <--
22 ~~eradication or~~ treatment measures shall be borne by the person
23 subject to the control order.

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

25 (1) If the person subject to the control order fails to
26 comply with the control order, the department shall notify
27 that person and the municipality within which the person
28 resides or where the person's property is located by
29 certified mail. After receipt of the notice, the appropriate
30 officials of the municipality shall take the necessary steps

1 to carry out the TREATMENT measures established in the <--
2 control order within the time frame specified in the
3 notification by the department.

4 (2) A municipality which acts to control a noxious weed
5 or controlled plant on a noncomplying person's property may
6 recover the expenses and costs incurred by the municipality
7 in carrying out the TREATMENT measures established in the <--
8 control order from the person who ~~was~~ IS the subject of the <--
9 department's control order.

10 Section 307. Noxious weed list.

11 (a) Class A noxious weeds.--The following are Class A
12 noxious weeds:

13 (1) *Amaranthus palmeri* S. Watson (commonly known as
14 Palmer amaranth).

15 (2) *Amaranthus rudis* (commonly known as common
16 waterhemp).

17 (3) *Amaranthus tuberculatus* (commonly known as tall
18 waterhemp).

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

20 (5) *Cuscuta* ~~H.~~ SPP., EXCEPT FOR NATIVE SPECIES (commonly <--
21 known as dodder).

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

23 (7) *Heracleum mantegazzianum* Sommier & Levier (commonly
24 known as giant hogweed).

25 (8) *Hydrilla verticillata* (L.f.) Royle (commonly known
26 as hydrilla).

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

29 (10) *Orobanche* ~~H.~~ SPP., EXCEPT FOR NATIVE SPECIES <--
30 (commonly known as broomrape).

1 (11) ~~Pueraria DC.~~ LOBATE (WILLD.) OHWI (commonly known <--
2 as kudzu).

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

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

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

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

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

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

17 (6) Rosa multiflora L. (commonly known as multiflora
18 rose).

19 (7) Sorghum bicolor L. Moench (commonly known as
20 shattercane).

21 (8) Sorghum halepense (L.) Pers. (commonly known as
22 Johnson grass).

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

27 (D) COMMITTEE DETERMINATION.--ANY PLANT OR WEED DESIGNATED <--
28 AS A NOXIOUS WEED UNDER THIS SECTION AND AS AUTHORIZED UNDER
29 SECTION 301.
30 Section 308. Fees.

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

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

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

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

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

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

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

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

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

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

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

30 (c) Payment of fees.--Fees shall be paid by check or money

1 order made payable to the Commonwealth of Pennsylvania. Failure
2 to pay a fee on time shall be a violation of this act. A late
3 fee of \$25 shall be assessed for every month that a fee is past
4 due.

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

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

11 (b) General powers and duties of department.--The
12 department, in carrying out the provisions of this act and in
13 addition to all other authority granted to the secretary and the
14 department by this act, shall have the authority to:

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

17 (2) Issue and enforce written permits and permit
18 requirements to any person who wishes to research, market,
19 hold, warehouse, retail, wholesale, propagate, transport,
20 cultivate or distribute a NOXIOUS WEED OR controlled plant <--
21 under such terms and conditions as are reasonably required to
22 carry out the provisions of this act.

23 (3) ~~When utilizing~~ UTILIZE any enforcement tool <--
24 authorized by this act to control, remediate, contain or
25 eradicate a noxious weed or controlled plant, ~~or to recover~~ <--
26 PLANT. <--

27 (4) RECOVER, from the noncomplying person or landowner,
28 expenses and costs incurred in such enforcement and
29 compliance actions. The department may impose additional
30 civil or criminal penalties for failure to comply. Such

1 penalties shall include the reasonable cost of eradication
2 and compliance expenses incurred by the department.

3 (5) IF THE DEPARTMENT IS DENIED ACCESS TO ANY BUILDING, <--
4 CONVEYANCE, EQUIPMENT, LAND OR VEHICLE WHERE SUCH ACCESS WAS
5 SOUGHT FOR THE PURPOSES AND UNDER THE AUTHORITY SET FORTH IN
6 THIS ACT, THE SECRETARY MAY APPLY TO ANY ISSUING AUTHORITY
7 FOR A SEARCH WARRANT AUTHORIZING ACCESS TO SUCH BUILDING,
8 CONVEYANCE, EQUIPMENT, LAND OR VEHICLE FOR THAT PURPOSE. THE
9 COURT MAY, UPON APPLICATION BY THE DEPARTMENT, ISSUE THE
10 SEARCH WARRANT FOR THE PURPOSES REQUESTED.

11 (B.1) RIGHT OF ENTRY AND INSPECTION.--IN THE PERFORMANCE OF
12 THE DUTIES REQUIRED BY THIS ACT, THE DEPARTMENT AND ITS
13 INSPECTORS, EMPLOYEES AND AGENTS SHALL HAVE ACCESS, DURING
14 REASONABLE HOURS, TO INSPECT THE LAND AND PREMISES AND ANY AREAS
15 OF THE LAND AND PREMISES, INCLUDING BUILDINGS AND CONVEYANCES,
16 THAT ARE OR WILL BE UTILIZED FOR PERMITTED ACTIVITIES.

17 (c) Search warrants.--

18 (1) If an inspector, employee or agent of the department
19 has probable cause to believe a noxious weed or controlled
20 plant exists on a property or premises, the department's
21 inspector, employee or agent may, upon oath or affirmation,
22 declare before a court of competent jurisdiction that the
23 inspector, employee or agent has probable cause to believe
24 that noxious weeds or controlled plants exist on the land or
25 premises.

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

1 controlled plants that exist or may exist on the property or
2 premises.

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

5 (i) That in cases involving a person who holds an
6 individual permit or general permit under this act, the
7 inspector, employee or agent has been refused or delayed
8 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 (d) 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 a permit
18 under this act.

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

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

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

28 Section 310. Stop-sale orders.

29 (a) General rule.--The department may issue and enforce a
30 stop-sale order to any person holding or required to hold a

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

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

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

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

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

23 Section 311. Seizure and condemnation.

24 (a) General rule.--Where the distribution, transportation,
25 cultivation, propagation, marketing, retail, wholesale, holding,
26 warehousing, research or educational practices of a noxious weed
27 or controlled plant is not in compliance with the provisions of
28 this act, A PERMIT, or any regulation promulgated or order <--
29 issued under this act, the department, in addition to any other
30 action authorized under this act, may file a complaint before a

1 court of competent jurisdiction in the area in which the noxious
2 weed or controlled plant is located, or before the Commonwealth
3 Court, requesting such injunctive relief as necessary to prevent
4 harm and requesting an order of seizure and condemnation be
5 issued.

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

13 Section 312. Appeal process.

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

21 Section 313. Cooperation with other entities.

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

28 Section 314. Rules and regulations.

29 The department may promulgate rules and regulations and
30 establish and enforce orders necessary for administration and

1 implementation of this act in accordance with the act of July
2 31, 1968 (P.L.769, No.240), referred to as the Commonwealth
3 Documents Law, the act of October 15, 1980 (P.L.950, No.164),
4 known as the Commonwealth Attorneys Act, and the act of June 25,
5 1982 (P.L.633, No.181), known as the Regulatory Review Act.

6 CHAPTER 5

7 ENFORCEMENT

8 Section 501. Unlawful conduct.

9 It shall be unlawful for a person to fail to comply with or
10 to cause or assist in the violation of A PERMIT, an order or <--
11 provision of this act OR ANY ATTENDANT REGULATION. <--

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

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

21 Section 503. Enforcement and penalties.

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

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

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

8 (b) Civil penalties.--

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

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

28 In addition to any other remedies provided for in this act,
29 the Attorney General, at the request of the secretary, may
30 initiate, in the Commonwealth Court or the court of common pleas

1 of the county in which the defendant resides or has his place of
2 business, an action in equity for an injunction to restrain any
3 and all violations of this act, A PERMIT, ORDER, or the rules <--
4 and regulations promulgated under this act.

5 Section 505. De minimis violations.

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

12 CHAPTER 7

13 MISCELLANEOUS PROVISIONS

14 Section 701. Disposition of funds.

15 (a) Plant Pest Management Account.--Money received from
16 permitting fees, control work reimbursement, fines and penalties
17 under this act shall be paid into the Plant Pest Management
18 Account.

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

21 (1) Federal funds appropriated to the department for
22 purposes of this act.

23 (2) State funds appropriated to the department for
24 purposes of this act.

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

27 Section 702. Preemption.

28 All local laws contrary to this act are preempted.

29 Section 703. Abrogation.

30 The regulations under 7 Pa. Code §§ 111.22 (relating to

1 prohibited noxious weed seeds) and 111.23 (relating to
2 restricted noxious weed seeds) are abrogated insofar as they are
3 inconsistent with this act.

4 Section 704. Repeals.

5 Repeals are as follows:

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

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

10 (3) 3 Pa.C.S. Ch. 71 is repealed insofar as it is
11 inconsistent with this act.

12 Section 705. Effective date.

13 This act shall take effect in 60 days.