

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1445 Session of  
1986

INTRODUCED BY WILT AND REIBMAN, MARCH 19, 1986

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MARCH 19, 1986

AN ACT

1 Amending the act of March 1, 1974 (P.L.90, No.24), entitled "An  
2 act relating to the labeling, distribution, storage,  
3 transportation, use, application and disposal of pesticides  
4 and devices; providing for registration and examination of  
5 such materials; the licensing of pesticide dealers and pest  
6 management consultants and imposing penalties," further  
7 providing for licensing of commercial applicator firms, for  
8 licensing and certification of commercial applicators and  
9 public applicators, for registration and training of certain  
10 noncertified employees, for increased recordkeeping  
11 requirements, for additional enforcement authority and  
12 additional authority on product registration data review, and  
13 for increase of fees.

14 The General Assembly of the Commonwealth of Pennsylvania  
15 hereby enacts as follows:

16 Section 1. Section 4(6), (26) and (28) of the act of March  
17 1, 1974 (P.L.90, No.24), known as the Pennsylvania Pesticide  
18 Control Act of 1973, are amended and the section is amended by  
19 adding definitions to read:

20 Section 4. Definitions.--As used in this act:

21 \* \* \*

22 [(6) "Applicators" means certified applicator, private  
23 applicator, commercial applicator, public operator, under the

1 direct supervision of a certified applicator.

2 (A) "Certified applicator" means any individual who is  
3 certified under sections 16, 17, and 18 of this act as  
4 authorized to use or supervise the use of any pesticide which is  
5 classified for restricted use.

6 (B) "Private applicator" means a certified applicator who  
7 uses or supervises the use of any pesticide which is classified  
8 for restricted use for purposes of producing any agricultural  
9 commodity on property owned or rented by him or his employer or  
10 (if applied without compensation other than trading of personal  
11 services between producers of agricultural commodities) on the  
12 property of another person.

13 (C) "Commercial applicator" means a certified applicator  
14 (whether or not he is a private applicator with respect to some  
15 uses) who uses or supervises the use of any pesticide which is  
16 classified for restricted use for any purpose or on any property  
17 other than as provided by paragraph (B) hereof.

18 (D) "Public operator" means any individual who applies  
19 pesticides as an employe of a State agency, municipal  
20 corporation, or other governmental agency. This term does not  
21 include employes who work only under direct on the job  
22 supervision of a certified public operator.

23 (E) "Under the direct supervision of a certified applicator"  
24 unless otherwise prescribed by its labeling means application of  
25 pesticides by a competent person acting under the instructions  
26 and control of a certified applicator who is available if and  
27 when needed, even though such certified applicator is not  
28 physically present at the time and place the pesticide is  
29 applied.]

30 (6) "Applicator" means certified applicator, private

1 applicator, commercial applicator, or public applicator.

2 (A) "Certified applicator" means any individual who is  
3 certified under sections 16.1, 17, or 17.1 of this act as  
4 competent to use or supervise the use or application of any  
5 pesticide.

6 (B) "Private applicator" means a certified applicator who  
7 uses or supervises the use of any pesticide which is classified  
8 for restricted use for purposes of producing any agricultural  
9 commodity on property owned or rented by him or his employer or,  
10 if applied without compensation other than trading of personal  
11 services between producers of agricultural commodities, on the  
12 property of another person.

13 (C) "Commercial applicator" means a certified applicator  
14 (whether or not he is a private applicator with respect to some  
15 uses) who uses or supervises the use of any pesticide on the  
16 property or premises of another, or on easements granted under  
17 State law, or any applicator who uses or supervises the use of  
18 any restricted use pesticide on property owned or rented by him  
19 or his employer, when not for purposes of producing an  
20 agricultural product. The secretary may by regulation deem  
21 certain types of applicators using any pesticide on their own  
22 property or that of his employer as commercial applicators.

23 (D) "Public applicator" means any certified applicator who  
24 applies pesticides as an employe of the State or its  
25 instrumentalities or any local agency.

26 (E) "Pesticide application technician" means any individual  
27 employed by a commercial applicator or governmental agency who,  
28 having met the competency requirements of section 16.1 of this  
29 act, is registered by the secretary to apply any pesticides  
30 under the direct supervision of a certified applicator.

\* \* \*

(9.1) "Department" means the Department of Agriculture of the Commonwealth.

\* \* \*

(24.1) "License" means written permission, issued by the department, to a business or person as authorized in sections 12, 13 and 15.1 of this act.

(24.2) "Local agency" means a governmental unit other than the Commonwealth government. The term shall include, but not be limited to, a county, city, borough, town, township, school district or municipal authority.

\* \* \*

(26) ["Municipal corporation" means a county, city, borough, town, township, school district or municipal authority.]

\* \* \*

(28) "Permit" means a written certificate, issued by the secretary or his authorized agent, authorizing the purchase, possession, and/or use of pesticides classified for restricted use by a [certified] private applicator.

\* \* \*

(39.1) "Secretary" means the Secretary of the Department of Agriculture of the Commonwealth.

\* \* \*

(40.1) "Under the direct supervision of a certified commercial or public applicator," unless otherwise prescribed by labeling, means application by a registered pesticide application technician acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied, or application

1 by a crew of noncertified or nonregistered employees working  
2 under the instruction and control of a certified commercial or  
3 public applicator who is physically present at the job site.

4 \* \* \*

5 Section 2. Section 5 of the act is repealed.

6 Section 3. The act is amended by adding a section to read:

7 Section 5.1. Registration.--(a) Every pesticide which is  
8 distributed in this State shall be registered with the  
9 secretary, subject to the provisions of this act. Such  
10 registration shall be renewed annually prior to January 1, but  
11 registration is not required if a pesticide is shipped from one  
12 plant or warehouse to another plant or warehouse operated by the  
13 same person and used solely at such place or warehouse as a  
14 constituent part to make a pesticide which is registered under  
15 the provisions of this act, or if the pesticide is distributed  
16 under the provisions of an experimental use permit issued under  
17 section 7 of this act or an experimental use permit issued by  
18 the Federal Environmental Protection Agency.

19 (b) The applicant for registration shall file a statement  
20 with the secretary which shall include:

21 (1) The name and address of the applicant and the name and  
22 address of the person whose name will appear on the label, if  
23 other than the applicant's.

24 (2) The name of the pesticide.

25 (3) Other information which the secretary determines is  
26 necessary based on a validated test or other significant  
27 evidence raising prudent concerns of unreasonable adverse risk  
28 to people or to the environment.

29 (4) A complete copy of the labeling accompanying the  
30 pesticide and a statement of all claims to be made for it,

1 including the directions for use and the use classification as  
2 provided for in the Federal Pesticide, Fungicide and Rodenticide  
3 Act of 1947 (61 Stat. 163, 7 U.S.C. § 36 et seq.).

4 (c) The secretary, when he deems it necessary in the  
5 administration of this act, may require the submission of the  
6 complete formula of any pesticide, including the active and  
7 inert ingredients.

8 (d) The secretary may require a full description of the  
9 tests made on any pesticide and the results thereof upon which  
10 the claims are based. In the case of renewal of registration, a  
11 statement shall be required only with respect to information  
12 which is different from that furnished when the pesticide was  
13 registered or last reregistered.

14 (e) The secretary may prescribe other necessary information  
15 by regulation.

16 (f) The applicant desiring to register a pesticide shall pay  
17 an annual registration fee of twenty-five dollars (\$25) to the  
18 secretary for each pesticide registered for such applicant. All  
19 such registrations shall expire on December 31 of any one year,  
20 unless sooner cancelled. A registration for a special local need  
21 pursuant to subsection (h) which is disapproved by the  
22 administrator of the Federal Environmental Protection Agency  
23 shall expire on the effective date of the administrator's  
24 disapproval.

25 (g) Any registration approved by the secretary and in effect  
26 on the thirty-first day of December for which a renewal  
27 application has been made and the proper fee paid shall continue  
28 in full force and effect until such time as the secretary  
29 notifies the applicant that the registration has been renewed,  
30 or otherwise denied, in accord with the provisions of section 6

of this act. Forms for reregistration shall be mailed to registrants at least thirty days prior to the due date.

(h) Provided the Commonwealth is authorized by the administrator of the Federal Environmental Protection Agency to register pesticides to meet special local needs pursuant to section 24(c) of the Federal Insecticide, Fungicide and Rodenticide Act of 1947, the secretary shall require the information set forth under subsections (b), (c), (d), and (e) of this section and shall, subject to the terms and conditions of authorization, register such pesticide if he determines that:

(1) Its composition is such as to warrant the proposed claims for it.

(2) Its labeling and other material required to be submitted comply with the requirements of this act.

(3) It will perform its intended function without unreasonable adverse effects on the environment.

(4) When used in accordance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effects on the environment.

(5) The proposed classification for general use or for restricted use, or for both, is in conformity with section 3(d) of the Federal Insecticide, Fungicide, Rodenticide Act of 1947.

(6) A special local need exists.

(i) The secretary shall not make any lack of essentiality a criterion for denying registration of any pesticide. Where two pesticides meet the requirements of this section, one should not be registered in preference to the other.

Section 4. Sections 7 and 8(f) and (m) of the act are amended and section 8 is amended by adding subsections to read:

Section 7. Determinations; Rules and Regulations; Classified

1 for Restricted Use; and Uniformity.--(a) The secretary is  
2 authorized, after due notice and an opportunity for [a hearing]  
3 public comment:

4 (1) To declare as a pest any form of plant or animal life  
5 (except virus, bacteria, or other microorganisms on or in living  
6 man or other living animals) which is injurious to man,  
7 desirable animals, desirable plants, and land; and

8 (2) To determine pesticides, and quantities of substances  
9 contained in pesticides, which are injurious to the environment.  
10 The secretary shall be consistent with the Federal Environmental  
11 Protection Agency regulations in this determination.

12 (b) The secretary is authorized, after due notice and a  
13 [public hearing] public comment, to adopt appropriate  
14 regulations for carrying out the provisions of this act,  
15 including but not limited to regulations providing for:

16 (1) The collection, examination, and reporting of samples of  
17 pesticides or devices.

18 (2) The safe handling, transportation, storage, display,  
19 distribution, and disposal of pesticides and their containers  
20 consistent with "Federal Insecticide, Fungicide and Rodenticide  
21 Act of 1947," as amended in 1972.

22 (3) Restricting or prohibiting the use of certain types of  
23 containers or packages for pesticides not federally registered.  
24 These restrictions may apply to type of construction, strength,  
25 and/or size to alleviate danger of spillage, breakage, or  
26 misuse. The secretary shall be consistent with Federal  
27 regulations concerning pesticide containers.

28 (4) Labeling requirements of all pesticides not federally  
29 registered required to be registered under provisions of this  
30 act.



(5) Regulating the labeling of devices.

(6) Adopting lists of pesticides classified for restricted use for the Commonwealth or for designated areas within the Commonwealth if the secretary determines that such pesticides may require regulations restricting or prohibiting their distribution or use. Such lists are to be consistent with Federal lists unless there is a local need or imminent hazard. The secretary may include in the regulation the time and conditions of distribution or use of such pesticides classified for restricted use and may, if he deems it necessary to carry out the purpose and provisions of this act, require that any or all pesticides classified for restricted use shall be purchased, possessed, or used only under the permit of the secretary and under his direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations.

(c) Such rules and regulations shall be adopted pursuant to the provisions of the act of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth Documents Law."

(d) For the purpose of uniformity of requirements between the states and the Federal Government, and to avoid confusion endangering the environment, the secretary may, after [a public hearing] public comment, adopt regulations in conformity with the primary pesticide standards, particularly as to labeling, registration requirements, and pesticides classified for restricted use as established by the Federal Environmental Protection Agency or other Federal or Commonwealth agencies.

(e) Nothing in this act shall be construed as requiring the secretary to report minor violations of this act for prosecution or for the institution of condemnation proceedings when he believes that the public interest will be served best by a

1 suitable notice of warning in writing. However, the secretary  
2 shall maintain an appropriate record of all violations  
3 identified as a result of use observations, misuse  
4 investigations or by inspectors in the normal conduct of their  
5 duties.

6 Section 8. Prohibited Acts.--\* \* \*

7 [(f) No person shall use for his own advantage or reveal any  
8 information relative to the formulas of pesticide products  
9 acquired by the authority of section 5 of this act, but this  
10 provision shall not be deemed to prohibit the use of disclosure  
11 of information to the secretary or proper officials or employees  
12 of the Commonwealth, or to courts of competent jurisdiction in  
13 response to a subpoena, or to physicians or pharmacists or other  
14 qualified persons for use in the preparation of antidotes.]

15 (f) No person shall use for his own advantage or reveal any  
16 information relative to the formulas, supporting data, or other  
17 confidential information for registration of pesticide products  
18 acquired by the authority of section 5.1 of this act, but this  
19 provision shall not be deemed to prohibit the disclosure of  
20 information to the secretary or proper officials or employees of  
21 the Commonwealth, or to courts of competent jurisdiction in  
22 response to a subpoena, or to physicians or pharmacists or other  
23 qualified persons for use in the preparation of antidotes.

24 \* \* \*

25 (m) No person shall engage in the business of applying  
26 pesticides [classified for restricted use] on the lands of  
27 another without first obtaining a current, valid license  
28 pursuant to the provisions of this act.

29 \* \* \*

30 (s) No individual shall purchase or attempt to purchase any

pesticide classified for restricted use, unless such individual is a certified or permitted pesticide applicator.

(t) No person shall apply a restricted use pesticide within 100 feet of publicly owned or designated areas as defined in section 25.1 of this act unless a waiver is granted by the secretary.

Section 5. Section 15 of the act is repealed.

Section 6. The act is amended by adding a section to read:

Section 15.1. Pesticide Application Licensing.--(a) Each business, public utility, government agency or other entity engaged in applying or contracting for the application of pesticides, as meets the definition of "commercial applicator," shall hold a license stating those categories in which it is to do business. No license shall be issued to any business, public utility, or agency, nor shall any license remain valid unless such business, public utility or agency has a certified applicator in its employ at all times. No license shall be required of any private applicator.

(b) The secretary shall categorize the applicator licenses issued hereunder as one of the following:

(1) Commercial pesticide applicator.

(2) Public pesticide applicator.

(c) The secretary shall subcategorize applicator licenses to be issued under this section. Such categories may include, but not be limited to, structural pest control operators, ornamental, agricultural, or right-of-way pesticide applicators, and further designations as to ground, aerial or manual methods used by any licensee to apply pesticides or to use pesticides to control pests.

(d) Application for an applicator license shall be made in

1 writing to the secretary on a designated form provided by the  
2 secretary.

3 (e) The secretary shall require a fee not to exceed twenty-  
4 five dollars (\$25) per year for each licensee, but no business  
5 shall be required to pay an additional license fee if such  
6 business desires to be licensed in one or more of the license  
7 categories provided for by the department under the authority of  
8 this section.

9 (f) If the secretary determines and designates the applicant  
10 or his employe to be a certified applicator and qualified to  
11 apply pesticides in the categories applied for, and in the case  
12 of an applicant for a license as a commercial applicator, if the  
13 applicant or his employer files the satisfactory evidence of  
14 financial responsibility as required hereunder and if the  
15 applicant applying for a license to engage in aerial application  
16 of pesticides has met all the requirements of the Federal  
17 Aviation Administration and any other applicable Federal or  
18 State laws or regulations to operate the equipment described in  
19 the application, the department shall issue a license limited to  
20 the categories for which said applicant is qualified. Such  
21 evidence of financial responsibility shall be presented and  
22 shall be maintained throughout the entire life of the license.  
23 The secretary may limit the license of the applicant to the use  
24 of certain pesticides, or to certain areas, or to certain types  
25 of equipment if the applicant is only so qualified. If a license  
26 is not issued as applied for, the secretary shall inform the  
27 applicant in writing of the reasons therefor.

28 (g) The secretary shall not grant a license until the  
29 applicant for a license has furnished evidence of financial  
30 responsibility to the secretary, consisting either of a surety

1 bond, self-insurance, or a liability insurance policy or  
2 certification thereof, or other evidence of financial  
3 responsibility. The secretary may determine by regulation the  
4 financial responsibility requirements after due notice and a  
5 hearing.

6 (h) (1) The secretary may, after notice, including a  
7 statement of reason therefor, and opportunity for a hearing,  
8 suspend, revoke, or modify any license granted under this act  
9 where the secretary has reasonable grounds to believe that the  
10 licensee is responsible for any prohibited acts pursuant to this  
11 act. The secretary shall furnish the licensee with notice of the  
12 time and place of the hearing, which notice shall be served  
13 personally or by certified mail, directed to his place of  
14 business or last known address with postage fully paid, at least  
15 ten days prior to the time fixed for the hearing.

16 (2) Should the financial responsibility furnished become  
17 unsatisfactory, said licensee shall immediately execute a new  
18 bond, insurance, or other financial responsibility and shall he  
19 fail to do so, the secretary may revoke his license and give him  
20 notice of said fact.

21 (i) All licenses shall continue in full force and effect  
22 until the thirty-first day of December each year, whereupon they  
23 shall become invalid unless renewed. Forms for renewal shall be  
24 mailed to all holders of current licenses by the secretary at  
25 least sixty days prior to expiration.

26 (j) The provisions of this section relating to licenses and  
27 requirements for their issuance shall not apply to research  
28 personnel applying pesticides to bona fide experimental plots.

29 Section 7. Section 16 of the act is repealed.

30 Section 8. The act is amended by adding sections to read:

Section 16.1. Standards of Qualifications for Certification of Commercial Applicators.--No individual shall be certified competent to apply or supervise the application of any pesticide for any purpose unless he has demonstrated his competence to apply pesticides in the proper certification category. Each category shall be subject to separate testing procedures, requirements, and examination fees. The secretary shall require a fee not to exceed fifty dollars (\$50) for the basic core examination for certified applicators, and an additional fee not to exceed ten dollars (\$10) shall be charged for each additional category in which the applicant desires to be certified. An annual fee of thirty dollars (\$30) shall be charged when the certification does not require an examination. Certifications shall be valid for one calendar year. The secretary shall have the authority to promulgate rules and regulations pertaining to:

(1) Written examination requirements for obtaining an applicator's certification. Each applicant for certification shall demonstrate knowledge and competence as to:

(i) Identification of pests to be controlled and the damages caused by such pests.

(ii) The appropriate control measures to be used, including pesticides.

(iii) The hazards that may be involved in applying pesticides, so as to protect people and the environment.

(iv) The proper use of pesticide application equipment, including calibration and dosage calculations.

(v) Protective clothing and respiratory equipment required during application and handling of pesticides.

(vi) General precautions to be followed in cleaning and maintaining equipment used.

1     (vii) Transportation, storage, and disposal of pesticides.

2     (viii) Applicable Federal and State pesticide laws and  
3 regulations.

4     (2) Renewal of applicator's certificates shall be on the  
5 basis of attendance at approved courses. Such courses shall  
6 include, at a minimum, a review of certification course subject  
7 matter, but shall not include a written examination.

8     Section 16.2. Registration of Pesticide Application  
9 Technicians.--(1) Noncertified employes of any business engaged  
10 in applying pesticides to the lands of another or to any  
11 easement granted by the Commonwealth may apply pesticides only  
12 under the direct supervision of a certified applicator.

13     (2) It shall be the duty of all licensees to register with  
14 the secretary their noncertified employes as pesticide  
15 application technicians when such employes are applying  
16 pesticides in situations where a certified applicator is not  
17 physically present on the site. In order to register those  
18 employes as pesticide application technicians, the licensee  
19 shall submit a form provided by the secretary. The postmark date  
20 shall designate the beginning of a training period of not less  
21 than thirty days which must elapse before registration is  
22 granted and the employe issued a pesticide application  
23 technician identification card by the department. During this  
24 period, and yearly thereafter, the employe shall engage in a  
25 training program which contains, as a minimum, the subject  
26 matter prescribed in regulations adopted by the secretary. An  
27 annual registration fee shall be charged by the department for  
28 issuance of the pesticide application technician identification  
29 card.

30     (3) The training program for a pesticide application

1 technician shall involve subject matter similar to the  
2 commercial applicator's area of competence but of a more  
3 specific nature involving the assigned tasks of the technician.

4 The training program shall include, but not be limited to:

5 (i) Identification of pests relative to job responsibility.

6 (ii) The proper use of pesticides and use of application  
7 equipment, including calibration and maintenance equipment used  
8 on the job.

9 (iii) Protective clothing and respiratory equipment required  
10 during the application and handling of pesticides.

11 (iv) Transportation and disposal of pesticides used in and  
12 around the workplace.

13 (v) Applicable State and Federal regulations as they affect  
14 the work assignments.

15 (4) Where there are two or more noncertified employees  
16 engaged in the application of pesticides on a job site, they  
17 shall, at a minimum, be either of the following:

18 (i) A crew composed solely of pesticide application  
19 technicians.

20 (ii) A crew of noncertified or nonregistered employees  
21 working under the instruction and control of a certified  
22 commercial or public applicator who is physically present.

23 Section 17.1. Public Applicators.--No person employed by any  
24 unit of a Federal, State, or local agency shall engage in  
25 applying pesticides at any time without being certified as  
26 provided under sections 16.1 and 16.2 of this act. Such  
27 certification fee shall be ten dollars (\$10) and shall be valid  
28 for a three-year period.

29 Section 17.2 Private Applicators.--(a) No private  
30 applicator shall use any pesticides classified for restricted



1 use without that private applicator first complying with the  
2 certification requirements determined by the secretary as  
3 necessary to prevent unreasonable adverse effects on people or  
4 on the environment. To be certified, the private applicator  
5 shall pass a written examination administered by the secretary  
6 or his agent.

7 (b) Certain standards to determine the individuals  
8 competency with respect to the use and handling of restricted  
9 use pesticides by the private applicator shall take into  
10 consideration the standards of the Federal Environmental  
11 Protection Agency but, as a minimum, shall include the following  
12 topics:

- 13 (1) Labeling and label comprehension.
- 14 (2) Safety and health.
- 15 (3) Environmental protection.
- 16 (4) Pests.
- 17 (5) Pesticides.
- 18 (6) Integrated pest management.
- 19 (7) Equipment.
- 20 (8) Application techniques and technology.
- 21 (9) Laws and regulations.

22 (c) Upon successful completion of the written examination,  
23 the private applicator shall be issued a permit authorizing the  
24 purchase and use of restricted use pesticides. Such permit fee  
25 shall be ten dollars (\$10) and shall be valid for a three-year  
26 period.

27 (d) A private applicator shall be recertified as competent  
28 with respect to the use and handling of restricted use  
29 pesticides upon the successful completion of an update training  
30 program as determined by the secretary. Such program shall

1 include, at a minimum, a review of certification topics, but  
2 shall not include a written examination.

3 Section 17.3. Protection of Trade Secrets and Other  
4 Information.--(a) In submitting data required by this act, the  
5 applicant may:

6 (1) Clearly mark any portions thereof which in his opinion  
7 are trade secrets or commercial or financial information.

8 (2) Submit such marked material separately from other  
9 material required to be submitted under this act.

10 (b) Notwithstanding any other provisions of this act, the  
11 secretary shall not make public information which in his  
12 judgment contains or relates to trade secrets in commercial or  
13 financial information which is obtained from a person and is  
14 privileged or confidential, except that, when necessary to carry  
15 out the provisions of this act, information relating to formulas  
16 of products acquired by authorization of this act may be  
17 revealed to any State or Federal agency consulted or as required  
18 by law.

19 (c) If the secretary proposes to release for inspection  
20 information which the applicant or registrant believes to be  
21 protected from disclosure under subsection (b), he shall notify  
22 the applicant or registrant, in writing, by certified mail. The  
23 secretary shall not thereafter make available for inspection  
24 such data until thirty days after receipt of the notice by the  
25 applicant or registrant. During this period, the applicant or  
26 registrant may initiate an action in an appropriate court for a  
27 declaratory judgment as to whether such information is subject  
28 to protection under subsection (b).

29 Section 9. Sections 18 and 19 of the act are repealed.

30 Section 10. Section 25(a) of the act is amended to read:

1       Section 25.   Pesticide Advisory Board.--(a)   [There is hereby  
2   created a Pesticide Advisory Board consisting of three licensed  
3   pesticide applicators residing in the State (one shall be  
4   licensed to operate ground equipment, one shall be licensed to  
5   operate aerial equipment, and one shall be licensed for  
6   structural pest control), one entomologist in public service,  
7   one environmental health specialist from the Pennsylvania  
8   Department of Health, one toxicologist in public service, one  
9   plant pathologist in public service, one member from the  
10   agricultural chemical industry, one member from the food  
11   processing industry, two producers of agricultural crops or  
12   products on which pesticides are applied or which may be  
13   affected by the application of pesticides, one representative of  
14   the Pennsylvania Department of Agriculture, one representative  
15   of the Pennsylvania Fish Commission, one representative from the  
16   Pennsylvania Game Commission, one representative of the  
17   Pennsylvania Department of Environmental Resources and one  
18   representative of the Pennsylvania Department of Transportation.  
19   Such members shall be appointed by the Governor for terms of  
20   four years and may be appointed for successive four-year terms  
21   at the discretion of the Governor. The Governor may remove any  
22   member of the board prior to the expiration of his term of  
23   appointment for cause: Provided, That at the inception of this  
24   act the Governor shall appoint four members which shall not  
25   include two members from any one representative group for a  
26   period of two years; five members for a period of three years  
27   which shall not include two members from any one representative  
28   group; and five members for a period of four years which shall  
29   not include two members from any one representative group. All  
30   subsequent terms for appointments to such board shall be for a

1 period of four years.] There is hereby created a Pesticide  
2 Advisory Board. Members of the Pesticide Advisory Board shall be  
3 residents of the Commonwealth of Pennsylvania. The Pesticide  
4 Advisory Board shall consist of three licensed pesticide  
5 applicators (one shall be licensed to operate ground equipment,  
6 one shall be licensed to operate aerial equipment, and one shall  
7 be licensed for structural pest control), one entomologist in  
8 public service, one environmental health specialist from the  
9 Pennsylvania Department of Health, one toxicologist in public  
10 service, one plant pathologist in public service, one member  
11 from the agricultural chemical industry, one member from the  
12 food processing industry, two producers of agricultural crops or  
13 products on which pesticides are applied or which may be  
14 affected by the application of pesticides, one member  
15 representing environmental interests (having demonstrated  
16 significant expertise and knowledge of pesticide handling and  
17 application), one representative of the Pennsylvania Department  
18 of Agriculture, one representative of the Pennsylvania Fish  
19 Commission, one representative of the Pennsylvania Game  
20 Commission, one representative of the Pennsylvania Department of  
21 Environmental Resources and one representative of the  
22 Pennsylvania Department of Transportation. Such members shall be  
23 appointed by the Governor for terms of four years and may be  
24 appointed for successive four-year terms at the discretion of  
25 the Governor. The Governor may remove any member of the board  
26 prior to the expiration of his term of appointment for cause:  
27 Provided, That at the inception of this act the Governor shall  
28 appoint six members which shall not include two members from any  
29 one representative group for a period of two years; six members  
30 for a period of three years which shall not include two members

from any one representative group; and five members for a period of four years which shall not include two members from any one representative group. All subsequent terms for appointments to such board shall be for a period of four years.

\* \* \*

Section 11. The act is amended by adding a section to read:

Section 25.1. Additional Regulatory Authority.--(a) The secretary is authorized to, after due notice and public comment, adopt appropriate regulations providing for:

(1) The control of the aerial application of restricted use pesticides to rights-of-way.

(2) The prior notification by commercial applicators to individuals residing in dwellings on land contiguous to a restricted use pesticide application site, as such prior notification is required by pesticide labels. The secretary, by regulations, shall determine the appropriate mechanism for and the timing and form of notification.

(3) Regulations to prohibit the application of restricted use pesticides within 100 feet of certain publicly owned or designated lands unless a waiver is granted. The secretary may grant a waiver if an applicant demonstrates that:

(1) The application of the specified pesticide is necessary and will result in a demonstrated public benefit.

(2) The application of the pesticide will not cause adverse impact on the use of the area to be protected.

(3) The application of the pesticide will not result in the destruction or loss of any rare or endangered flora or fauna or significant natural community existing in the protected area.

(b) The protected publicly owned or designated area under this section shall include:

1     (1) Designated natural areas on State forest lands.

2     (2) Important wetlands as defined in 25 Pa. Code § 105.17  
3 (relating to special criteria for projects affecting important  
4 wetlands).

5     (3) Areas designated on Pennsylvania's Natural Diversity  
6 Inventory containing rare or endangered species or significant  
7 natural communities.

8     Section 12. Section 30 of the act is repealed.

9     Section 13. The act is amended by adding a section to read:

10    Section 30.1. Civil Penalties; Exemptions.--(a) Civil  
11 penalties:

12    (1) In addition to proceeding under any other remedy  
13 available at law or in equity for a violation of a provision of  
14 this act or a rule or regulation adopted thereunder, or any  
15 order issued pursuant to, the secretary may assess a civil  
16 penalty not to exceed ten thousand dollars (\$10,000) upon an  
17 individual or business for each offense.

18    (2) No civil penalty shall be assessed unless the person  
19 charged shall have been given notice and opportunity for a  
20 hearing on such charge in accordance with law.

21    (3) In determining the amount of the penalty, the secretary  
22 shall consider the gravity of the violation, the appropriateness  
23 of such penalty to the size of the business of the person  
24 charged, and the effect on the person's ability to continue in  
25 business. Whenever the secretary finds a violation which did not  
26 cause harm to human health or unreasonable adverse affect on the  
27 environment, the secretary may issue a warning in lieu of  
28 assessing a penalty.

29    (4) In cases of inability to collect such civil penalty or  
30 failure of any person to pay all or such portion of the penalty

1 as the secretary may determine, the secretary may refer the  
2 matter to the Office of the Attorney General which shall recover  
3 such amount by action in the appropriate court.

4 (b) The penalties provided by this section shall not apply  
5 to:

6 (1) Any carrier while lawfully engaged in transporting a  
7 pesticide or device within this State, if such carrier shall,  
8 upon request, permit the department to copy all records showing  
9 the transactions and movement of the pesticide or device.

10 (2) Any person who prepares or packs any pesticide or device  
11 intended solely for export to a foreign country according to the  
12 specifications or directions of the purchasers.

13 (3) The manufacturer or shipper of a pesticide for  
14 experimental use only:

15 (i) by or under the supervision of an agency of this  
16 Commonwealth or of the Federal Government authorized by law to  
17 conduct research in the field of pesticides; or

18 (ii) by others if the pesticide is not sold and if the  
19 container thereof is plainly and conspicuously marked "for  
20 experimental use only, not to be sold," together with the  
21 manufacturer's name and address. If any experimental use permit  
22 has been obtained from the department, pesticides may be sold  
23 for experiment purposes subject to such restrictions and  
24 conditions as may be set forth in the permit.

25 Section 14. Sections 35, 37 and 38 of the act are amended to  
26 read:

27 Section 35. Records.--Any person issued a license or permit  
28 under provisions of this act shall be required by the secretary  
29 to keep accurate records of such relevant information as the  
30 secretary may deem necessary as specified by regulation and

1 shall make such records available to the secretary upon written  
2 request.

3       Section 37. Delegation of Duties; Exclusion of Local Laws  
4 and Regulations.--(a) All authority vested in the secretary by  
5 virtue of the provisions of this act may with like force and  
6 effect be executed by such employes of the Commonwealth as the  
7 secretary may from time to time designate for said purpose.

8       (b) This act and its provisions are of Statewide concern and  
9 occupy the whole field of regulation regarding the registration,  
10 sale, transportation, distribution, notification of use, and use  
11 of pesticides to the exclusion of all local regulations. Except  
12 as otherwise specifically provided in this act, no ordinance or  
13 regulation of local government, including, but not limited to,  
14 an action by a local governmental agency or department, a county  
15 board of commissioners or the equivalent in home rule counties,  
16 a city council, or a township board of supervisors, may prohibit  
17 or in any way attempt to regulate any matter relating to the  
18 registration, sale, transportation, handling, or use of  
19 pesticides, and any of these ordinances, laws or regulations are  
20 void and of no force or effect.

21       Section 38. Disposition of Funds.--[Fees so collected as  
22 well as moneys derived from registration, licensing and fines,  
23 and civil penalties, shall be paid into the State Treasury.]  
24 Fees so collected, as well as moneys derived from registration,  
25 licensing and fines, and civil penalties, shall be paid into a  
26 special restricted account in the General Fund to be known as  
27 the Pesticide Regulatory Account for use by the department in  
28 administering the act. All such moneys placed in the Pesticide  
29 Regulatory Account under the provisions of this section are  
30 hereby made available immediately, and are hereby specifically



- 1 appropriated to the department for the purposes herein
- 2 specified.
- 3     Section 15. This act shall take effect in 90 days.